Finding Insurance Coverage in Motor Vehicle Collision Cases

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Few things are more frustrating to a lawyer and deserving client than a case with clear liability, high damages, and limited or no insurance coverage. Although the minimum automobile insurance increased recently to $30,000/$60,000,[1] those limits will leave innumerable victims unable to recover from a primary liability policy. Those victims must seek additional sources of recovery.

Unfortunately, as you will read below, Maryland law only requires pre-litigation insurance coverage information in one limited circumstance. Therefore, it is imperative to obtain the motor vehicle accident report at your earliest opportunity to secure insurance information. If no report is written, your client or you must try to obtain the negligent driver's vehicle license plate tag number as soon as possible.

With the tag number, you can run a "tag search" for insurance information on the vehicle through the Motor Vehicle Administration. Although this process will provide you with the name of the registered owner and last known insurance company (and its policy number), it will not provide you with the limits of liability coverage for the vehicle. If you do not have a tag number, it is advisable to directly contact the at-fault driver as soon as possible to obtain insurance information. A form letter attached to this article can be used and should be sent by certified and regular U.S. mail to the at-fault driver's address (Letter Attachment One).

When obtaining first-party insurance information in conjunction with a timely Personal Injury Protection ("PIP") claim, it is a good practice to either request or have your client provide you with a declaration page from her insurance company. This will simplify any Uninsured Motorist ("UM") or Underinsured Motorist ("UIM") concerns that may arise as the case progresses. Be on the lookout for PIP coverage in excess of $2,500, because some Maryland policies have higher limits, up to $10,000 in some instances, and while others have Medical Payments coverage (commonly referred to as "Med-Pay"). You should also check that the declaration page corresponds to the applicable date of loss and is not outdated.

Determining the Amount of Insurance Coverage

Finding out the amount of available insurance early on is especially important for high damages cases. If automobile liability insurance is insufficient, attorneys will have to investigate other avenues of recovery. Some of those methods, like product liability cases against a vehicle's manufacturer, can be expensive and require early evidence collection and preservation.

There are two occasions when the automobile insurance policy can be determined—pre-litigation and during the discovery phase of litigation:

Pre-litigation

In 2011, Maryland passed Section 10-1101, et seq. to the Maryland Courts & Judicial Proceedings Article: Prelitigation Discovery.[2] That section enables practitioners to seek insurance limits from liability insurers or self-insured companies by submitting the following particulars in writing:

1. The date of the vehicle accident;
2. The name and last known address of the alleged tortfeasor;
3. A copy of the vehicle accident report, if available;
4. The insurer's claim number, if applicable;

1 INS. § 19-504; TRANSP. § 17-103.

2 CTS. & JUD. PROC. § 10-1101 (2011), *et seq.*

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5. The claimant's health care bills and documentation of the claimant's loss of income, if any, resulting from the vehicle accident; and
6. The records of health care treatment for the claimant's injuries caused by the vehicle accident.

Importantly, the total of the medical bills and lost wages must equal or exceed $12,500.00 in order to obtain the policy limits. Other information is required for claims of wrongful death, but there is no minimum damages threshold for disclosure.[3]

Once a written request is received, the insurer has 30 days to provide the limits information.[4] See the attached form letters (Letter Attachment Two, Letter Attachment Three).

Litigation

The Maryland Rules specifically require disclosure of insurance limits if a party asks for that information during written discovery. Rule 2-402(c), pertaining to Circuit Court cases, states:

> **Insurance agreement.** A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shall not be treated as part of an insurance agreement.

For District Court cases, Rule 3-421(a)(2) pertaining to interrogatories contains an identical provision.

Other States

Several other states have statutes permitting pre-litigation discovery of insurance limits. Some of them have less onerous requirements than Maryland. Thus, when the tortfeasor has a connection to another state, or the collision occurred in another state, research for similar rules may yield a faster way to obtain insurance information.

Potential "Out-of-the-Box" Defendants

Attorneys must consider whether there are other options for recovery. A run-of-the-mill automobile tort case, for example, could also be a workers' compensation claim, or a product liability case.

Product Liability

Serious automobile collisions, even single-vehicle collisions, must be evaluated as potential product liability cases. Plaintiffs in products cases can often file their claim in one of several jurisdictions, including where the collision happened, where the car manufacturer has its principal place of business, and where the vehicle was purchased. Because each potential state will have its own applicable law, a discussion of those rules is beyond the scope of this article. However, an automobile negligence practitioner should be aware of several common types of product liability involving vehicles:

1. **Failure of airbag:** If the airbags should have inflated, but did not, and that failure to do so caused or exacerbated serious injuries;
2. **Crashworthiness/Rollover:** Vehicles that are prone to rolling over, that have insufficient ability to protect occupants during a crash, and that have seatbelts which fail and cause the ejection or serious injury of occupants;
3. **Defective tires:** Vehicles with defective tires often cause rollover collisions;

3 CTS. & JUD. PROC. § 10-1104 (2011).
4 CTS. & JUD. PROC. § 10-1105 (2011).

4. **Failure of child safety seats:** Properly installed child safety seats and booster seats should provide a minimum level of protection, but some fail to provide that protection and some even exacerbate injuries; and

5. **Sudden acceleration:** Over the past few years, vehicles that have sticking gas pedals have featured prominently in the news.

Workers' Compensation

Workers' compensation claims are especially important for catastrophically injured employees who may require a lifetime of care, because employees may be entitled to a lifetime of medical benefits. If an automobile collision victim was on the job at the time of the collision, and regardless of whose fault it was (contributory negligence is not an issue in workers' compensation claims), the employee may be entitled to benefits. There is usually a shorter two-year statute of limitations to file a claim with the Workers' Compensation Commission,[5] and there are notice provisions that *may* require that an employer be informed of an "accident" within 10 days for an injury, and 30 days for a death.[6] Attorneys who do not regularly practice workers' compensation law should seek guidance from someone who does if there are any facts to support an on-the-job injury.

5 LAB. & EMP. § 9-709(b)(3).

Respondeat Superior/Negligent Entrustment

When reviewing the vehicle ownership information, always check to see if the at-fault vehicle was owned by someone other than the driver. Different last names or a company name could invoke additional parties and insurance coverage to a case. If an employer has expressly or impliedly authorized an employee to use a vehicle, even one owned by the employee (personal vehicle), for the employee's job duties, and the employee is engaged in those duties at the time of the collision, then the employer may be held vicariously liable for injuries caused under the doctrine of *respondeat superior*.[7] If an employee is merely traveling to and from work, then absent any special circumstances, the employer will not be held vicariously liable.[8] The amount of control maintained

6 LAB. & EMP. § 9-704.

7 *L.M.T. Steel Products, Inc. v. Peirson*, 47 Md. App. 633, 425 A.2d 242 (1981) and *Connors v. Oaks*, 100 Md. App. 525, 642 A.2d. 245 (1994)(employer was vicariously liable for employee's use of personal vehicle for job duties).

8 *Dhanraj v. Potomac Elec. Power Co.*, 305 Md. 623, 506 A.2d 224 (1986).

Chad Staller

James Markham

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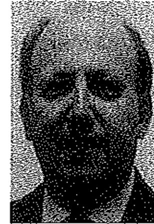
Stephen Rosen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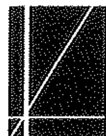

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by the employer over the employee's work is usually the key factor in determining any employer-employee relationship.[9]

Another legal theory that is often used to expand coverage is negligent entrustment.[10] A cause of action exists when the owner of vehicle entrusts a motor vehicle to an individual with knowledge of that person's reckless driving habits. The vehicle owner may be held liable for the operator's negligence under the doctrine of negligent entrustment. This doctrine has been somewhat limited by the courts and carries a fairly high burden of proof (it does not even apply when leaving keys in a vehicle driven off by a passenger[11]). Additionally, mere permission to operate a vehicle does not impose liability on the owner.

Practically speaking, it is not always easy to determine how an at-fault driver obtained the vehicle, the purpose of the trip or even if an employer-employee arrangement exists in the pre-litigation phase of the case. The same holds true for a negligent entrustment situation. Thus, it is important to allow sufficient time before the expiration of the statute of limitations to conduct discovery to determine how and why the vehicle was being used. If appropriate, you can add a party and attempt to obtain additional insurance coverage.

Many states have dangerous instrumentality doctrines or other legal doctrines that hold the owner of the vehicle responsible for any at-fault collision, even without alleging *respondeat superior* and negligent entrustment. Accordingly, when dealing with an out-of-state vehicle, make sure to research this area for insurance coverage as the vehicle owner's insurance will usually be primary in this instance.

UM/UIM

Because the amount of coverage for the at-fault driver, if any, is almost always unknown in the initial days after a collision, it is advisable to put your client's insurance company on notice for any UM/UIM coverage claim in the beginning of the claims process. The best way to do this is to include a request for UM/UIM benefits in your initial letter, when you request other first-party coverage, including PIP. Send another letter to your client's insurance carrier, putting them on notice of the claim again, when it becomes a bona fide UM/UIM claim.

A UM/UIM claim should be initiated if the at-fault driver is uninsured, or if the collision has resulted in the bodily injury for which the sum of the limits of liability under all valid and collectible liability insurance policies is less than the amount of uninsured motorist coverage.[12] The amount of UM/UIM benefits will be reduced by any amount paid to your client under any liability claim.

Again, it is important to collect all the applicable first-party insurance coverage limits information. This means obtaining the policy for the vehicle your client is riding in at the time of the collision, the insurance policy for any other vehicles your client may own, and the insurance policy for any vehicle owned by any other member of the client's household. All of these policies may afford coverage in a UM/UIM situation. The language of the policy is particularly important in cases involving taxis, buses and non-owned vehicles.

In some states, including Virginia, West Virginia and Pennsylvania allow the stacking of first-party insurance to increase the coverage limits. Unfortunately, Maryland law does not permit stacking.[13] Stacking of insurance allows you to add coverage to increase the available first-party limits, either through multiple policies or multiple vehicles on the policy. For example, if you have two vehicles in your household on the same policy they may stack. If each vehicle has UM/UIM coverage of $100,000 per person, and $300,000 per occurrence, and you have "stacked" the limits (this usually requires an additional premium), you would actually have $200,000 per person, and $600,000 per occurrence of coverage. When representing a seriously injured client, it is important to consider if the client may have insurance coverage in another state. If so, it may be stacked to increase the available limits.[14]

Excess or umbrella policies in Maryland do not always provide for UM/UIM benefits. Surprisingly, most do not. The Maryland Court of Special Appeals recently issued an opinion holding that Section 19-509.1 of the Insurance Article merely permits, rather than requires, insurers to offer uninsured motorist coverage in their umbrella policies.[15] Thus, you should request the policy to ascertain its scope of coverage.

Truck Cases

Cases involving commercial vehicles can present numerous coverage issues. You cannot solely rely on the motor vehicle accident report for coverage information as not all information routinely makes it onto the report. There may be is a shipper, hauler, subcontractor and tractor-trailer involved, each with separate coverage. Under these circumstances, it can be a challenge to determine among multiple insurers which provides primary coverage.

Fortunately, Interstate Carriers are required to post their insurance information with the Federal Motor Carrier

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9 *Rubin v. Weissman*, 59 Md. App. 392, 475 A.2d 1235 (1984).
10 *Kahlenburg v. Goldstein*, 290 Md. 477, 431 A.2d 76 (1981).
11 *Mackey v. Dorsey*, 104 Md. App. 250, 655 A.2d 1333 (1995).
12 INS. § 19-509.

13 INS. § 19-513.
14 Stacking also allows PIP coverage to be increased in many jurisdictions.
15 *Stickley v. State Farm Fire & Casualty Company*, 204 Md. App. 679, 42 A.3d 696 (2012).

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Finding Insurance Coverage

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Safety Administration (FMCSA), a great resource. Using the checklist below and the FMSCA resources can help get all available insurance coverage and maximize your client's recovery.

1. Go online to the FMSCA website. Pull up the registration, licensing, insurance and safety information by using the USDOT number of the motor carrier involved in the collision.
2. Request from all defendants the underlying policy, excess, umbrella, self-insurance, and reinsurance documents, including endorsements. This includes the truck driver, trucking company, contractor, subcontractor and shipper.
3. Specify "MCS-90" for the tractor, trailer and shipper.
4. Obtain information from the insurance agent and/or broker concerning the truck company's insurance policy.

As a failsafe, also keep in mind that the Motor Carrier Safety endorsement (MCS-90) provides coverage in several situations where traditional insurance does not apply.[16] One example is when there is a vehicle that is not listed on the policy. Other examples include, failing to give proper notice of a claim, and failing to cooperate.[17] The MCS-90 does not provide insurance coverage per se. The endorsement is intended to apply only when the underlying policy does not provide traditional coverage for some reason. The insurer is then required to provide coverage and pay the injured party regardless of defenses arising from the policy.

UCJ and MAIF

In any collision in which the negligent driver cannot be found (like a hit-and-run), or is uninsured, the Maryland Automobile Injury Fund (MAIF) may be liable for up to $30,000.00 for the injury or death of one person. MAIF is responsible only in the event there is no other insurance available to pay a claim, such as a third-party liability policy or UM/UIM coverage. If other sources are exhausted, a claimant may make a claim to MAIF's Unsatisfied Judgment and Claim (UCJ) section. The rules regarding these claims are located primarily in Insurance Art. § 20-601, et seq.

The most important part of a UCJ claim is notice (typically within 180 days of the collision[18]). The claimant must provide information to MAIF, including:

- MAIF's notice of claim form (last updated in 1998)
- Certification by the employer of lost wages up to the filing of the notice
- Evidence of medical bills up to the filing of the notice
- All reports of medical treatment
- Evidence of other claimed damages
- Police and accident reports

The notice of claim form must be signed by the claimant, and ostensibly requires background information about the collision, and information about household residents (including their dates of birth and social security numbers). Essentially, MAIF wants proof that the claimant is not eligible for uninsured motorist coverage through a family member living in the same household.

Conclusion

Cases without obvious sources of insurance, or with inadequate insurance, can be frustrating, particularly because of the prospect of an injured client who may not be able to

16 49 U.S.C. §13906 (2000); 49 C.F.R. § 387.7 (2002).
17 *Piere v. Providence Washington Ins. Co.*, 784 N.E. 2d 52 (N.Y. 2002).
18 INS. § 20-603.

recover even a fraction of the costs – financial and otherwise -- of his injuries. Lawyers tackling automobile negligence cases should explore all possible avenues in a quest to find coverage. ■

Letter Attachment One

Request for insurance information from defendant

Mr. Benjamin Finney
1234 Main Street
City, State 12345-0000

Dear Mr. Finney:

Please provide me with the insurance information for your 2005 BMW (tag number NCC-1701) involved in the [insert date] collision as shown on the enclosed Maryland Motor Vehicle Accident report.

You can note this information on the attached page and return it to us in the self-addressed/stamped envelope enclosed for your convenience. I have enclosed an extra copy of this letter for your records.

If you did not have insurance coverage on the vehicle at the time of the collision, please indicate that on the attached page so that my client can make an uninsured motorist claim.

Thanks for your time.

Sincerely,

Samuel T. Cogley, Esquire

What follows should be a separate page

NAME OF AUTO INSURANCE COMPANY_______
POLICY NUMBER ___________________________

OR

ON _________, I DID NOT HAVE AUTOMOBILE LIABILITY INSURANCE COVERAGE ON MY 2005 BMW, WHICH WAS INVOLVED IN A MOTOR VEHICLE COLLISION ON THAT DATE.

____

Benjamin Finney

DATE: _______________

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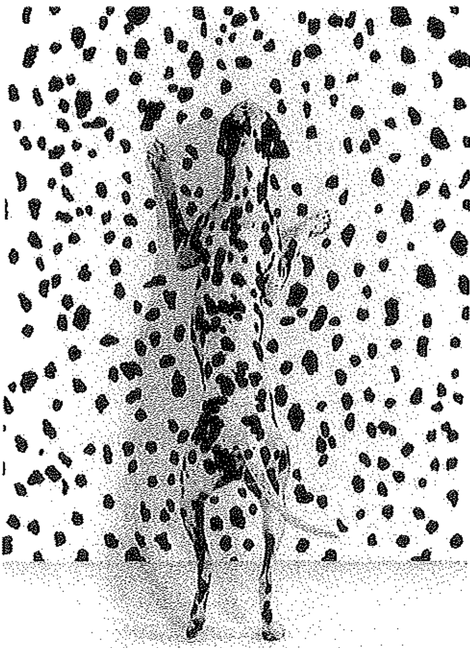

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