

PENNSYLVANIA AUTO LAW

WALTER TIMBY, ESQUIRE

HARRISBURG OFFICE 35 I O TRINDLE ROAD CAMP HILL, PA 17011 7 | 7-975-8 | | 4

PITTSBURGH OFFICE 525 WILLIAM PENN PLACE SUITE 3300 PITTSBURGH, PA 15219 412-281-4256

SCRANTON OFFICE 220 PENN AVENUE **SUITE 305** SCRANTON, PA 18503 570-342-4231

CENTRAL PA OFFICE P 0 Box 628 HOLLIDAYSBURG, PA 16648 8 | 4-224-2 | | 9

MARGOLIS EDELSTEIN

WALTER TIMBY, ESQUIRE THE CURTIS CENTER, 4TH FLOOR 170 S. INDEPENDENCE MALL W. SUITE 400E PHILADELPHIA, PA 19106-3337 NORTH NEW JERSEY (215)922-1100 FAX (215)922-1772 WTIMBY@MARGOLISEDELSTEIN.COM

SOUTH NEW JERSEY OFFICE IOO CENTURY PARKWAY SUITE 200 MT. LAUREL, NJ 08054 856-727-6000

OFFICE 300 CONNELL DRIVE **SUITE 6200** BERKELEY HEIGHTS, NJ 07922 908-790-1401

WILMINGTON OFFICE 750 SHIPYARD DRIVE SUITE I 02 WILMINGTON, DE 19801 302-888-1112

PENNSYLVANIA

COVERAGE

I. FINANCIAL RESPONSIBILITY

The following coverages are mandatory, unless the otherwise insured party files a Certificate of Self-Insurance with the Commonwealth.

A. LIABILITY COVERAGE

Every operator of a motor vehicle registered in Pennsylvania is required to be financially responsible.

"Financial responsibility" is defined as the ability to respond in damages for liability on account of accidents arising out of the maintenance or use of a motor vehicle in the amount of \$15,000 because of injury to one person in any one accident, and in the amount of \$30,000 because of injury to two or more persons in any one accident.

B. FIRST PARTY BENEFITS

Every policy of insurance covering a motor vehicle, including a bus, must provide coverage for medical benefits in the amount of \$5,000.00. 75 PA. CS. 1711(a).

Under Pennsylvania's Motor Vehicle Financial Responsibility Law ("MVFRL"), first party, or PIP benefits must be made **available for purchase**, **but coverage is not mandatory**. First party benefits include:

- (1) Medical Benefits coverage for all reasonable and necessary medical treatment and rehabilitative service, with limits up to at least \$100,000;
- (2) Extraordinary Medical Benefits reasonable and necessary medical treatment and rehabilitative services which exceed \$100,000, the coverage limits of which must be from at least \$100,000 to \$1,100,000.
- (3) Income Loss Benefits includes 80% of actual loss of gross income. \$2,500 per month to a maximum benefit of at least \$50,000 must be made available;
- (4) Accidental Death the available death benefit paid to the insured's personal representative must be up to at least \$25,000;
- (5) Funeral Benefits \$2,500.

Under Pennsylvania's modified no-fault system, any person who suffers injury arising out of the "maintenance or use" of a motor vehicle is entitled to recover first party benefits from the applicable insurance coverage in the following order of priority.

- (1) for a named insured, the policy on which he is the named insured;
- (2) for an insured, the policy covering the insured;
- (3) for the occupants of an insured motor vehicle, the policy on that motor vehicle;
- (4) for persons not occupying a motor vehicle, i.e., pedestrians, the policy on any motor vehicle involved in the accident.

75 Pa. CS. 1713(a). Therefore, if a passenger owns a motor vehicle and is the named insured on a policy covering that vehicle, or is an insured under any other policy, he must look to one of those policies, and not the insured's policy, for first party benefits. If the bus passenger is the owner of a currently registered motor vehicle, but does not have financial responsibility, he cannot recover first party benefits from any source. 75 Pa. CS. 1714. If, however, the passenger does not own a motor vehicle and is not covered by any other insurance policy, then he may recover first party benefits under the policy because that is the first applicable policy on the priority list under 1713(a).

If the motor vehicle with which an insured vehicle is involved in an accident is covered by an insurance policy, both the driver and his passenger(s) must look to the policy on that motor vehicle for First Party Benefits. If the motor vehicle is not presently insured, the owner of the vehicle, if in the vehicle at the time, is barred from recovery of first party benefits from the vehicle in which they are a passenger, but those who are not the owners are not.

Stacking of Benefits - The MVFRL does not permit the stacking of limits of coverage for first party benefits. 75 PA. CS. 1717.

Audit/Review of Medical Bills

All healthcare providers' bills must be forwarded directly to the insurer not to the insured for collection. Two separate evaluations should be made of all bills received by the carrier. First, an injured person or the healthcare provider providing treatment to that person (to whom plaintiffs right to benefits is generally assigned) may not receive first party benefits in excess of 100% of the prevailing charge at the 75 percentile of that rate pertaining to the service involved applicable under the Medicare program for comparable services. (If applicable, the measure against which recoverable benefits are made may be 110% of the applicable fee schedule, the recommended fee or the inflation index charge; or 100% of the diagnostic-related groups (D.R.G.) Payment.) 75 Pa. C.S. 1797(a). Therefore, all bills should be independently audited with respect to the amount charged.

Second, all insurers covered by the MVFRL are required to contract with a peer review organization (PRO) for the purpose of evaluating treatment and healthcare services provided a claimant. 75 Pa. CS. 1797(b). PRO evaluations are for the purpose of confirming services as reasonable and medically necessary. If an insurer intends to challenge the reasonableness and medical necessity of treatments reflected in a claimant's bill, it must submit its challenge to its PRO within 90 days of receipt of the providers' bill. If an insurer challenges a bill within 30 days of receipt, it need not pay the healthcare provider until a determination has been made by the PRO. Otherwise. it is required to pay the bill, pending the outcome of the peer review. If the PRO determines a bill is reasonable and medically necessary, the insurer must pay the bill plus 12% interest per annum on any balance it withheld after the 30 days. If the PRO determines certain treatment was not reasonable or medically necessary, and the carrier has paid the bill, the provider must reimburse the carrier for any benefits paid plus 12% interest per annum thereon. If an insurer fails to submit a bill to a PRO and refuses payment for that and future bills, the healthcare provider and/or insured may challenge the insurer's refusal in Court. If the Court determines medical treatment was necessary and reasonable, the insurer will be required to pay the outstanding amount plus 12% interest, as well as the costs of the challenge and all attorneys' fees. Conduct considered to be wanton shall be subject to a payment of treble damages:

NOTE: Because of the extent of potential exposure (attorney fees, interest, treble damages), it is advisable to submit a claim to a PRO in almost all situations. Also, firms that simply audit bills for compliance with 1797(a) (i.e., the amount of the bill) most often do not evaluate the reasonableness and necessity of treatment, and therefore submission to such agencies will not satisfy & the requirement of submission of bills to a PRO.

Bad Faith: The failure of an insurer to submit bills to a bona fide PRO (as opposed to a mere auditing firm) is frequently the basis of a plaintiffs claim of bad faith. Pennsylvania courts have held, however, that the Pennsylvania statute creating a cause of action against an insurer for bad faith conduct is not applicable to actions for denial of first party benefit under the MVFRL. Although the court may award, under 42 Pa. C.S. 8371, interest, court costs, attorney fees and punitive damages against an insurer found to have acted in bad faith toward its insured, only the remedies under 1797(b) apply with regards to bad faith conduct for failure to pay first party benefits under the MVFRL.

Subrogation -

No right to subrogation exists with respect to BI benefits paid or payable between First Party Benefit providers. 75 Pa. C.S. 1720.

Exceptions -

There is a right of subrogation for an insurance company who pays workers' compensation benefits to a person injured in a motor vehicle accident. Also, an ERISA plan that pays medical benefits is entitled to subrogation. Medicare, Medicaid and payments made by the Pennsylvania Department of Public Assistance are all subject to subrogation. To the extent that subrogation is allowed, only the amount actually paid is recoverable, not the face amount of the bill. An example would be if there is a hospital bill for \$10,000 and Medicare pays \$6,000 to satisfy that obligation, the amount of the subrogation lien and the amount that could be presented to a jury for consideration in a verdict is \$6,000.

There is no right of subrogation or reimbursement from plaintiff's tort recovery with respect to first party benefits paid or payable under any applicable policy covering plaintiff 75 PA. C.S. 1720.

Statute of Limitations –

If first party benefits have not been paid, an action to recover such benefits shall be commenced within four years from the date of the accident giving rise to the claim. If first party benefits have been paid, an action for flirther benefits shall be commenced within four years from the date of the last payment.

C. PROPERTY DAMAGE

Coverage for property damage is not required under the MVFRL. Nonetheless, if an insurer makes coverage for property damage available, the coverage offered must be at least \$5,000.00.

D. UNINSURED MOTORIST AND UNDERINSURED MOTORIST UM/UIM) COVERAGE

UM/UIM coverage must be made available, but coverage is not required under the MVFRL.

Important: Unless coverage is waived by the first named insured on the policy by signing and dating an approved form, the insured is **deemed to have elected UM/UIM coverage** in amounts equal to the BI coverage §1731(c.1). The waiver forms must each be on a separate sheet. The separate sheet requirement means only that UM and UIM forms must be separate from each other.

Stacking of UM/UIM Coverage

Absent a waiver of stacking on the policy in return for a reduced premium, "insureds" may stack in UM/UIM claims based on the sum of the limits of coverage on vehicles on applicable policies.

NOTE: A commercial vehicle owner is recommended to reject/waive both UM/UIM coverage and stacking coverage.

Priority of UM/UIM coverage 75 Pa.C.S.A. §1733

Where multiple policies are applicable, the priority of recovery outlined by the statute is:

- (1) The policy covering the motor vehicle occupied by the claimant;
- (2) The policy under which the claimant is an insured.

The priority for UM/UIM for all passengers, including the employee driver, is the vehicle which they occupy.

II. THIRD PARTY CLAIMS

A. TORT THRESHOLD OPTIONS

The MVFRL permits an insured to choose one or two options regarding his ability to sue for non-economic damages (pain and suffering, inconvenience).

(1) "Limited Tort" Option: An insured may sue for economic losses, but not for noneconomic losses unless the injuries sustained fall within the definition of "serious injury" or "serious impairment of a bodily function" as set forth in the applicable policy. An owner of a currently registered private passenger motor vehicle who lacks financial responsibility, i.e., has no insurance, is deemed to have chosen the limited tort option if he brings suit as a result of an accident.

NOTE: An individual otherwise bound by the limited tort options retains full tort rights, including the right to sue for non-economic damages, if injured while an occupant of a motor vehicle other than a private passenger motor vehicle. Therefore, as an example, a bus passenger may recover economic as well as non-economic damages.

(2) "Full Tort" Options: An insured may seek recovery for all economic as well as non-economic damages. An individual who is neither the owner of a currently registered private passenger motor vehicle nor a named insured nor an insured under any private passenger motor vehicle policy is treated as though she had elected the full tort option.

B. NEGLIGENCE THEORIES - COMPARATIVE NEGLIGENCE ACT

Pennsylvania is a modified comparative negligence state. Under 42 Pa. CS. 7102 plaintiff must be at least 51% at fault in order to be barred from recovery. If plaintiff is found 50% or less negligent, he is entitled to recover the damages awarded less the percentage of fault attributable to him.

The negligence of a driver cannot be imputed to his claimant passenger and the passenger is presumed to have exercised due care, unless it can be shown the guest concurred in the driver's negligence, i.e., smoking marijuana with the driver, allowing the driver to drive even though the passenger is aware the driver is intoxicated. A child under seven years of age cannot be found contributorily negligent. Children between 7 and 14 years of age are presumed non-negligent, but this presumption is rebuttable.

C. JOINT AND SEVERAL LIABILITY

The joint and several liability of August 19, 2002, was ruled to be unconstitutional and is not the law of Pennsylvania. Pennsylvania remains a joint and several state subject to the Pennsylvania Comparative Negligence Act.

The general rules of joint and several apply in motor vehicle claims. Therefore, if a Defendant is determined to be one percent liable for a particular incident, plaintiff may seek payment of the entire judgment from the "deeper pocket". "The Deep Pocket" would then be entitled to seek contribution from the primary tortfeasor. If the primary tortfeasor is insolvent or has minimal insurance, "The Deep Pocket" will be required to absorb any difference between the amount if paid plaintiff and the portion of total damages for which it was responsible.

D. STATUTE OF LIMITATIONS

The statute of limitations for third party bodily injury and property damage claims is 2 years. However, the statute of limitations on the claims of a minor does not begin to run until the minor reaches 18 years of age, which is the age of majority in Pennsylvania.

E. PUNITIVE DAMAGES

Punitive damages are not generally covered by insurance policies issued in the Commonwealth of Pennsylvania. However, plaintiff may plead and recovery punitive damages for outrageous conduct or acts committed with reckless disregard for human life. Punitive damages must be specifically plead in plaintiffs complaint. The willful and malicious, and even criminal, acts of an employee may not be imputed to his employer unless they were committed within the course and scope of employment and are of the kind and nature the employee was hired to perform, i.e., a bouncer at a bar throwing a drunk patron into the street.

F. WRONGFUL DEATH/SURVIVAL

The wrongful death action is brought by the survivors of a decedent to recover funeral, medical, administrative expenses and value of loss of services. A survival action is brought by the estate of decedent to recover on any cause of action decedent would otherwise still possess future loss of wages and pain and suffering. The statute of limitations is 2 years for both causes of action.

G. SEAT BELT DEFENSE

Pennsylvania has abolished the seat belt defense. Although all drivers and passengers are required by statute to wear seat belts, evidence of a plaintiffs failure to wear a seat belt is inadmissible in a civil proceeding.

H. INTOXICATION

Pennsylvania reduced the legal limit for intoxication from .10% to .08%, effective February 1, 2006. The legal limit for intoxication is blood alcohol level of 0.08, but medical testimony can be used to establish a driver was impaired at a lesser blood alcohol level. 75 PA. C.S. 3131(a). The server of alcohol can be held liable to a third party if it serves alcohol to a visibly intoxicated person and the third person's injures are proximately caused by the intoxicated person's intoxicated state. 47 Pa. CS. 4-497. The legal drinking age in Pennsylvania is 21 years old.

However, it is possible to present evidence that a person was impaired due to consumption of alcohol or drugs even if the blood alcohol is less than .08%. Medical evidence and in particular, physical evidence, such as observations of the individual by witnesses is what would be necessary to establish that a person was impaired even though the blood alcohol level was less than .08%. Also, expert testimony from a toxicologist would be important evidence.

A server of alcohol can be held liable to a third person to whom alcohol is served if that individual was visibly intoxicated when served. Visible intoxication can be proven by circumstantial evidence. However, to be liable under Pennsylvania's Dram Shop Act, the person serving the alcohol must be a "licensee", i.e. it has a license issued by a state to serve alcoholic beverages. Pennsylvania does not recognize social hosts liability. Therefore, there is no liability to a person or entity who is not a licensee for serving alcohol to someone who is visibly intoxicated if that individual later is involved in a motor vehicle accident. However, there is liability of a social host if the individual served alcohol is a minor, that being someone under the age of 21 years.

I. FAMILY IMMUNITY

All such immunity has been abolished.

J. WORKERS' COMPENSATION

A workers' compensation carrier has a right to subrogation from plaintiff's tort recovery. 75 Pa. C.S. 1720. This provision became effective on August 31, 1993, and has been held to apply where the subject accident occurred after the effective date. It does not apply where the accident occurred before the effective date, but the right to subrogation accrued subsequently.

Walter J. Timby, III, Esquire Margolis Edelstein The Curtis Center, Suite 400E 170 S. Independence Mall W. Philadelphia, PA 19106 Phone: (215) 931-5828

Fax: (215) 922-1772

wtimby@margolisedelstein.com