



Posted on: February 13, 2007

## COVER ME

February 13, 2007

David Hay

*Originally published in Momentum Magazine, BC Edition*

It is frightening enough to be in a collision in an automobile owned and operated by a B.C. resident; what happens when you are riding your bike out of the Province or even out of the Country and you are injured, or your bike is destroyed, or both, by someone with no assets and who lives outside our jurisdiction? Let's assume you are run over by a drunk and penniless Washington State driver just outside of Seattle while on a hitherto pleasant bike trip. So as not to make this scenario unnecessarily scary, let's assume you manage to identify that driver or the driver is identified by the Washington State Police. Finally, let's assume the responsible motorist had no insurance.

While this may seem unsettling, in fact, from a legal perspective your problems are not insurmountable. The *Insurance (Motor Vehicle) Act*, [R.S.B.C. 1996] Chapter 231, provides the authority for a cyclist to apply to the Insurance Corporation of British Columbia in a prescribed form for payment of damages in a action against an uninsured motorist. The prescribed form is a Statutory Declaration, or Affidavit. This Declaration, sworn by the cyclist, provides details of the accident and the offending vehicle and indicates a belief that the vehicle is not insured.

Once the Statutory Declaration is filed and an application is made by the cyclist to the Insurance Corporation of British Columbia, I.C.B.C. will forward a notice to the Washington driver and owner of the vehicle that a claim has been made, giving that person an opportunity to respond. I.C.B.C.'s policy is normally limited to \$200,000.00, or to the minimum limits applicable to the third party legal liability in Washington, whichever is less.

The limited coverage for out of country uninsured claims raises a very chilling prospect. What happens if your injuries are catastrophic and \$200,000.00 is insufficient to compensate you for general damages, income loss, and future care costs? Fortunately, provided you are a person named as an owner in a Motor Vehicle Certificate, or a member of that person's household, you are entitled to additional coverage for injury or death arising out of the operation of an "**underinsured**" vehicle in Canada or the United States.



Coverage is up to 1 million dollars, and an additional 1 million can be purchased.

Regardless of fault and issues around claims against drivers, as a cyclist you are entitled to disability benefits for employed persons, or homemakers, and medical rehabilitation benefits within certain limits, but only if you are named in a Owner's Certificate of Insurance or a driver's license or you are a member of a household of a person named in a certificate. Naturally, as much as it may pain some of my readers to hear this, when riding in the United States it is highly advisable to have this limited association with the motoring public (you don't need to drive!).

Assuming you are looking for more from the penniless, uninsured, drunk Washington driver who injured you, than simply no fault benefits, (that is, if you are looking for proper compensation), you need to jump through a number of technical hoops relating to the uninsured motorist's scheme. You may need to engage a lawyer in the United States to sue the rogue driver and prove there are no exigible assets, a most disagreeable and wasteful exercise.

What then of an accident in other Provinces of Canada? If you are cycling in one of the other provinces, and you have no car insurance in B.C., and no one in your household does, and that province happens to be a "no fault" jurisdiction (Saskatchewan, Manitoba, Quebec, and for non-permanent injuries, Ontario), you may be completely without a remedy, even in the most outrageous circumstances. No fault jurisdictions have basically eliminated the right to sue for personal injuries. In effect, in those jurisdictions, you have the same rights as the negligent motorist who hit you. For cyclists, this serves as a reminder that so called "no fault" jurisdictions suffer from a genuine systemic bias in favour of automobiles. No fault insurance jurisdictions represent the height of horror for the injured cyclist.

Don't be unnerved if what you have just read seems complicated - it is. Even worse is that there are many ways you can prejudice any coverage you might have if you make the wrong move after being involved in an accident outside the province. At the risk of sounding disingenuous, in these circumstances, you will almost certainly need legal advice.

David Hay is a litigation lawyer and partner at Richards Buell Sutton, LLP. He has a special interest in bike injury and can be contacted directly at 604.661.9250 or by email.

