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April 15, 2012

Thomas V. Dale, Commissioner of Police  
Nassau County Police Department  
1490 Franklin Ave.  
Mineola, New York, 11501

Re: Police accident reports

Dear Commissioner Dale:

I am writing to advise of a serious omission by police officers to record vehicle information when completing police accident reports involving "hit and run" accidents where there is no contact. This may be occurring because of a misunderstanding of the law.

Specifically, the negligent omission occurs when a motor vehicle is involved in an accident after being cut off by another motor vehicle which stops at the accident scene, or is otherwise identified, but where there is no contact between the two vehicles. In these situations, police officers are instructing the other allegedly negligent driver to go on their way without taking any identifying information from that vehicle and driver who stopped at the scene.

This type of accident occurs most frequently with motorcyclists because drivers just don't see motorcycles. In fact, several injured motorcyclists contacted me about accidents where police officers negligently instructed the offending motorist to leave the scene without obtaining identifying information about the driver, registration and insurance even though the motorcyclists requested the police officers to obtain the information. Police officers have told my clients that they can't take the information because, without contact, the motorcyclist can't sue. This is incorrect. Often, the motorcyclist is too badly injured to write down the plate number. In one of those accidents, a witness fortunately wrote down the license plate number so that a third party liability claim was possible.

I suspect the failure to properly record accident information including the identity of all potentially involved vehicles and drivers is due to a misunderstanding of New York State Insurance Law § 5217 concerning "hit and run" drivers. Insurance Law § 5217 requires contact only where the identity of the driver is not identified and an injured motorist files an uninsured claim with his/her own insurance company. However, there is no requirement for contact between motor vehicles under § 5217 or any other New York State law where the identity of the negligent vehicle is known such as when the driver has not "run". This would arise to a third party liability claim rather than an uninsured claim.

When a police officer fails to obtain the identity of a potentially involved driver and vehicle and the identity of the vehicle remains unknown, the claim which could have existed as a third party liability claim changes to an uninsured claim where contact is required. However, without contact an uninsured claim is not permitted under Insurance Law § 5217. Consequently, the injured person is left without the ability to obtain just compensation and this office will have no choice but to consider the feasibility of a claim against the police department for compensation of injuries because

of the police department's failure to perform its duty.

Since the motorcycle season has now started, I strongly recommend that you immediately advise all your police officers to include on police accident reports the information about all vehicles which are potentially involved in a motor vehicle accident even if there is no contact. Your police officers can simply note that there was no observed contact with a particular vehicle and the reason the vehicle is identified on the report. The lawyers can then discern the facts.

Another problem I frequently see on police reports is the failure to take names of witnesses. This often occurs even though my clients say that witnesses offered their names to the police officer and on some occasions even where my client asked the police officer to take the name of a witness.

It is possible that this may occur because the police officer believes that the liability is 100% the fault of one of the vehicles and that witness information is not needed. However, during the course of a lawsuit, witness statements are very important. In fact, if the names of witnesses were known it would likely save the state and insurance companies substantial money because many cases could be settled instead of going to trial.

Please make sure that your police officers record witness information every time a witness is available.

If you have any questions, please feel free to call me.

Sincerely,

PHILIP L. FRANCKEL, ESQ.

