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Riding Along 'Uninsured' with IFCA

By Stacie Bain

I am a bike lawyer. By this I mean that I represent injured bicyclists. I am also a bicyclist. Last year, I was hit by an uninsured driver on my ride home from work and utilized the Insurance Fair Conduct Act (RCW § 48.30.015) when my insurer claimed that I was not insured when riding my bike.

The Insurance Fair Conduct Act (IFCA) was approved by voters and signed into law in 2007. IFCA provides remedies for people whose claims are unreasonably denied by their insurance companies or if their insurance companies fail to comply with particular regulations governing unfair claims settlement practices.¹

My Bike Crash

It was a dark and rainy Seattle night when I left work. I was wearing my helmet, a light-blue rain jacket and rain pants with reflective piping on both legs. My bike had both a headlight and a rear light, and my bike bag had a reflective back.

About 10 blocks away from my house, I saw a flash of light and felt metal underneath my body. I saw a streetlight pass by above me and, at that moment, I realized that I was on top of a moving vehicle and still clipped into my bicycle pedals. I had enough time to fully appreciate that I was probably going to hit the pavement soon.

Sure enough, I slammed onto the ground and began a marathon slide along the pavement. All I could see was a sea of headlights closing in on me. There was nothing I could do but worry about getting hit a second time before I could get out of the street.

When I finally came to a stop, I jumped up and threw my bike onto the sidewalk. I was shocked and grateful to be alive and out of the street. I did not know at that time that I had actually been thrown over the hood and up over the roof of a car.

I began to assess the scene. The driver in the car behind me was staring at me with eyes as wide as saucers. I looked in the direction of the car that had just rear-ended me and saw it speeding away from the scene. I pointed at the stopped driver and then pointed up the street, imploring him to follow the hit-and-run driver. He understood and sped off after the driver.

Thanks to the witness who gave chase, the hit-and-run driver was arrested a few miles down the road. Not surprisingly, he was uninsured.

My Uninsured Motorist Coverage

I am happily car-free. One problem with not having a car is not having my own auto insurance policy with uninsured/underinsured motorist (UIM) coverage. So, when my partner and I bought a house and moved in together, I asked him to add me to his auto insurance policy so that I would be covered while riding my bike. He added me and I rode more securely, thinking I was covered. My insurer had other thoughts when I made this claim.

An unplanned perk in my employment at Washington Bike Law was representation with this claim. My boss and attorney, Bob Anderton, sent a letter of representation to the insurance company and requested a certified copy of the policy. No policy was provided² nor was my claim acknowledged until Anderton called the insurer 109 days later,³ at which time we were informed that the claim had been closed, without notice to us, for 86 days.⁴

The insurer then proceeded to variously accept and deny coverage, ultimately determining that I was not a "named insured." Although I was named on the policy, the insurer had unilaterally chosen to list me as a "friend" on the policy rather than as a "named insured" as my partner had requested.⁵ Apparently, being added as a "friend" translates into "no uninsured motorist coverage." This listing was ambiguous enough to confuse the adjuster, but evidently not so ambiguous that the insurer would agree that I was covered.⁶

At one point, the insurer defended its failure to provide us with a copy of the policy by arguing that, according to its interpretation of the policy language, I was not a "named insured" and was therefore not entitled to see the policy. Without a complete copy of the policy, it was impossible for us to rebut their argument or identify any ambiguities in the policy language.

Since IFCA requires insurance companies to acknowledge their policyholders' communications, promptly investigate claims, and promptly and fairly settle valid claims,⁷ we had multiple bases for initiating a claim for damages under IFCA.

IFCA in Action

IFCA requires claimants to mail written notice to the insurance company and to the Office of the Insurance Commissioner at least 20 days before filing a lawsuit.⁸ After we did this, we assumed the insurance company would reconsider its position. It didn't.

We filed suit against the insurance company, claiming, among other things, that it violated IFCA and the Consumer Protection Act.⁹ We sought to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs.¹⁰

The insurance company quickly deposed me and my partner. After we served it with extensive discovery requests in state court, the insurer removed the case to federal court and sent us a copy of a Western District Court order dismissing another bicyclist's UIM claim on summary judgment for not being a "named insured" on the policy.

Undeterred, we moved forward with initial discovery disclosures. Interestingly, we received an offer of judgment that was close to 10 times the amount of my medical bills, but that expired before the insurer's discovery was due. Although we wanted to see the insurer's discovery materials, we accepted the offer of judgment just short of one year after the collision. Ultimately, acknowledging my claim would have been easy

and much of the judgment was money the insurer could have saved if it had just honored my UIM claim.

Lessons Learned

First, it's a good idea to confirm that your insurance company has actually extended the coverage you requested, especially if you are trying to get UIM coverage on an existing policy. Bicyclists and pedestrians especially should make sure that they are a "named insured" on an insurance policy, or that their auto policy covers them when not in their vehicle, and that they have adequate UIM coverage.

Second, IFCA can provide leverage against stonewalling insurers or insurers who aggressively interpret their policies to exclude coverage, since a prevailing plaintiff may recover actual damages sustained, statutory costs of the action, reasonable attorneys' fees¹¹ and, in some cases, expert witness fees.¹² Most importantly, IFCA allows the court to increase the total award of damages to an amount not to exceed three times the actual damages.¹³ While the enactment of IFCA does not guarantee that insurance companies will honor every claim, it does provide claimants with increased power to fight back when their claims are unreasonably denied.

Third, justice takes time. We lawyers are used to explaining this to clients, but believe me, it is especially frustrating when you are the client. I am glad that I listened to Anderton, who kept telling me that the longer they denied me, the more they would pay. ■

Stacie Bain is a bike lawyer with renewed empathy for her clients. She and attorney Bob Anderton represent their fellow cyclists at Washington Bike Law – Anderton Law Office. Bain can be reached at 206-838-7464 or stacie@andertonlaw.com.

¹ See RCW § 48.30.015(1).

² See WAC 284-30-350(1) (requiring insurers to fully disclose to first-party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented).

³ See WAC 284-30-360(1) (requiring insurers to respond within 10 working days upon receiving notification of a claim to acknowledge receipt of the claim); WAC 284-30-330(2) (requiring insurers to acknowledge and act reasonably promptly upon communications with respect to claims under insurance policies); WAC 284-30-360(3) (requiring insurers to reply within 10 working days on all pertinent communications from a claimant which reasonably suggest that a response is expected).

⁴ See WAC 284-330-330(13) (requiring insurers to provide reasonable explanation of basis in insurance policy in relation to facts or applicable law for denial of a claim).

⁵ See WAC 284-30-330(1) (prohibiting insurers from misrepresenting pertinent facts or insurance policy provisions).

⁶ See *Ross v. State Farm Mut. Auto. Ins. Co.*, 132 Wn.2d 507, 516 (1997) ("If the portion of the policy being considered is an inclusionary clause in the insurance policy, the ambiguity should be liberally construed to provide coverage whenever possible.")

⁷ See RCW § 48.030.015(5).

⁸ See RCW § 48.030.015(8)(a).

⁹ RCW ch. 19.86, *et seq.*

¹⁰ See RCW § 48.030.015(1).

¹¹ RCW § 48.30.015(1).

¹² RCW § 48.30.015(3).

¹³ RCW § 48.30.015(2).