Legal Matters®

Consumer Safety
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When can your insurance provider rescind your automobile policy?

If you plan to drive your car on a public roadway, you need auto insurance so that if you cause an accident the other driver isn't on the hook for the damage to their car or for any bodily injury they suffer.

However, it's important to know that your insurer can cancel your policy for a variety of reasons, which could be a source of major headaches. Now you have to shop elsewhere for insurance and, with a cancellation on your record, your new insurer will no doubt charge you more.

So under what circumstances can an insurer rescind your policy?

The most common circumstance is if you don't pay your premiums on time.

Your insurer can also cancel your policy if it finds out that you weren't truthful on your application. For example, maybe you provided a different address than the one where you actually keep the car, or maybe you were less than truthful about who is actually a regular driver of the car, in the hopes that you'd get a lower rate. This is called making a "material misrepresentation" and is a common way customers get burned.

Additionally, your insurer can cancel your policy because your driving habits, like getting a lot of tickets or being involved in a number of fender-benders in a short period of time, make you too risky to insure.

If you make false claims hoping to get a payout you're not entitled to, or if you use your car for business purposes (like making deliveries or driving for Uber or Lyft) despite not having a commercial policy, your policy could also be canceled.

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At the same time, insurers that seek to cancel your policy must do so in good faith and not look for devious or opportunistic reasons to cancel, as a couple of recent cases from Michigan tell us.

In the first case, a married couple bought a six-month policy that took effect on Sept. 26, 2017, when the husband made the first premium payment. On October 19, the insurer mailed him a letter informing him his next payment was due October 26 and that they would

continued on page 3

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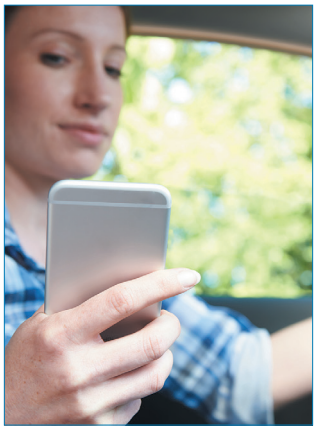
Estate of woman killed by distracted driver collects large sum



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Whether it's people chatting away on their cellphones and not paying attention to the road, texting while driving or fiddling around with increasingly complex and distracting automobile entertainment and navigation systems, distracted driving causes about 3,000 deaths and 280,000 injuries each year, according to the National Highway Traffic Safety Administration.

If you or someone close to you has been hurt by a distracted driver, call an attorney experienced with car wreck cases to find out if you can hold the distracted driver accountable, as a family in North Carolina recently did.

In that case, a 47-year old woman was in her minivan on her way to the store preparing to host her young grandchildren for the weekend when another vehicle blew through a stop sign and slammed into the driver's side of her vehicle.

The woman's seatbelt failed and she was ejected. She died soon after arriving at the hospital.

Her estate sought to hold the other driver accountable, but his insurer claimed that the driver, who was on the job at the time, was not distracted. Numerous social media posts that he made right around the time of the accident told a different story.

Unable to credibly claim the driver wasn't distracted, the insurer then tried to blame the victim by arguing that she should have seen him coming and anticipated the impact. However, statements of officers who responded to the scene, as well as photos and an inspection of the crash site undermined this defense.

Along similar lines, the insurer suggested that low traces of prescribed painkillers found in the victim's system were to blame for the crash. It quickly became apparent that the attempt to portray the victim, a full-time daycare worker and substitute elementary school teacher, as a drug addict was questionable at best.

Ultimately the insurance company decided it wasn't worth the risk of putting the case before a jury and agreed to settle it for a sizeable sum.

While the victim's family obtained justice in this case, each case is different and results will depend on the underlying facts. A local attorney can help you determine the value of your own case.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

Psychiatrist held responsible for woman's suicide attempt

A Missouri woman who severely burned herself in an attempted suicide after being discharged from a local hospital was able to hold the psychiatrist who sent her home accountable, even though her suicide attempt occurred two weeks after her discharge.

The patient, Katherine Harned, apparently had a long history of psychiatric care that included prior suicide attempts. She was hospitalized after attempting to overdose on prescription medication.

During her stay at the hospital, Harned expressed suicidal thoughts but, when speaking to a psychiatrist, denied being suicidal. The psychiatrist did not admit her as an inpatient and instead sent her home with instructions to visit a mental health facility for a follow-up in another eight days.

Harned kept that appointment, but six days later (which was two weeks after her discharge) she covered her body in hairspray and lit herself on fire. Although she survived, she sustained third-degree burns over 42 percent of her body.

She sued the psychiatrist and the hospital, arguing that the doctor did not take the time to treat her properly, failed to admit her to the hospital for monitoring and treatment and did not develop a safety plan for her. A reasonably competent psychiatrist would have done otherwise, she asserted.

The psychiatrist and the hospital responded that suicide is not predictable and that there was nothing to justify admitting Harned on an inpatient basis.

The case went to trial and a jury found the defendants liable for Harned's harm, awarding a significant amount for past medical damages, future noneconomic damages (in other words, harm that you cannot put an exact dollar figure on, like pain and suffering and loss of enjoyment of life) and $300,000 in future noneconomic damages.

The results obtained by Harned in this case might not be predictive of other cases, because any case's outcome depends on the facts as well as laws in the state where the trial is taking place. However, this is not the only time where a patient has been able to hold a mental-health professional responsible for substandard care resulting in harm. If you or a loved one have suffered an injury that you feel is due to deficient care from a psychiatrist or clinical psychologist, it's worth a call to an attorney to discuss your options.

‘Acknowledgement of risk’ form doesn’t preclude liability

Though the days of the Wild West are far in the past, horseback riding is still a popular leisure activity in many places. That is why 46 states have “equine activity liability” statutes that generally shield horseback riding camps, stables and tour operators from legal responsibility for equestrian accidents that could not easily have been avoided.

However this protection is not bulletproof, as an Arizona case shows us.

In that case, a tour operator called Wild Western Horseback Adventures required participants to sign an “acknowledgement of risk” form before their ride. The form stated that the rider assumed full responsibility for personal injury to themselves or their family members as a result of their negligence “except to the extent such damage or injury” was due to the negligence of the operator. The form also described certain risks and dangers inherent in guided horseback tours.

During the ride, one of the riders lost a stirrup and the horse bit his leg. As the guide stopped the ride to respond, the horse in front of the rider’s wife kicked her shin, breaking her tibia.

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The couple sued the operator, but a trial judge threw out the case, ruling that the acknowledgement they signed constituted a “release” under the Arizona equine activity statute that cleared the operator of all responsibility.

But the Arizona Court of Appeals reversed the decision, pointing out that the acknowledgement did not count as a release because it expressly preserved the couple’s right to sue for damage that might be due to the operator’s negligence.

Still, rules surrounding releases may differ depending on each state’s equine activity law, so check with an attorney where you live.

When can your car insurer rescind your policy?

continued from page 1

cancel the policy if he failed to pay by that date. He failed to do so and the insurer terminated the policy for nonpayment on October 27. The insurer sent a letter three days later saying it would reinstate the policy if he made a payment by November 27.

In the interim, on November 15, the couple was struck by a car while walking down the street. Two days later, the husband made payments to reinstate the policy and made a claim for personal injury protection (PIP) benefits.

Though the insurer denied the claim, the Michigan Supreme Court ruled that the insurer’s original cancellation notice was invalid because it wasn’t “explicit and unconditional” and did not provide the required 10 days’ notice under state law.

The other case involved that same insurer’s attempt to cancel a different man’s policy because he didn’t list his wife, who had no driver’s license, as a driver.

Twenty days after obtaining the policy, the man

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and his wife were hurt in a car crash and, like the couple in the other case, sought PIP benefits. The insurer argued that the wife should have been listed as a driver because the application defined “driver” or “potential driver” as “all household members age 14 or older” and that the failure to do so was a material misrepresentation.

But the Michigan Court of Appeals found that reasonable minds could differ on the issue and that it was a question for a jury to resolve.

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Ice in parking lot may not count as 'open and obvious danger'


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In many states, someone who is injured as a result of an "open and obvious danger" (in other words a visibly dangerous condition that would have been obvious to a reasonable person) may not be able to hold a property owner accountable for failing to fix the condition or warn the injured person.

However, a recent decision illustrates the limits of this rule and suggests that it's worth talking to an attorney about any injury sustained on someone else's property.

In this case, a restaurant worker slipped in the restaurant's snow-covered employee parking lot, which according to the worker looked like a "sheet of ice," and suffered injuries that led to three surgeries. She sought to hold responsible the company that leased the premises to the restaurant. The property owner argued in response that the condition was open and obvious, so the plaintiff did not have claim.

A trial judge disagreed, ruling that the "open and obvious danger" rule doesn't apply if the hazard is unavoidable. In this case, said the judge, there was a legitimate question for a jury as to whether the worker would have been allowed to use the front parking lot and entrance to get to work instead.

A state court of appeals upheld the decision, although one judge issued a dissenting opinion stating that the worker could have avoided the danger by skipping work and going home, meaning the hazard was not unavoidable.