

## ***Did You Know That Your Insurance May Not Apply If You Injure a Bike Rider Opening a Taxi Cab Door?***

Take this scenario. You live in New York City. You get into a taxicab. You reach your destination. You open the door and a bicycle rider crashes into the door. The rider is seriously injured. The police arrive and fill out an accident report which makes it look like both you and the taxi are responsible for the accident. The bike rider is taken to the hospital. A short time later you are served with a summons and complaint.

Since you were in a taxi, the first thing you do is send the summons and complaint to the taxi company. In a matter of days, the taxi's insurance company sends you a letter advising that you have no insurance coverage under the taxi policy for the accident.

You then look for your insurance policy. You have a homeowner's policy with limits of \$5 million from a very reputable insurance company. Since you do not have a car, you do not have an auto policy. You contact your broker who gives notice of the lawsuit to your insurance company. The insurance company reviews the matter and writes you a letter advising you that you have no insurance coverage for the accident under your homeowner's policy. That means that if you are found liable in the lawsuit you will have to pay any judgment against you out of your own pocket.

Since the taxi has insurance and you have insurance why is it that neither policy covers you for the accident? The answer is that an insurance policy that covers you for liability does not cover every kind of accident. An insurance policy is a contract. Its terms determine what the policy pays. The taxi policy covers the owner of the taxi and the driver but does not provide coverage for a passenger. Your homeowner's policy will cover you if someone accidentally falls in your home, but it will not cover you for an automobile accident. It will not cover you for

injuring someone as you open the door of a taxi. If you had a car, your auto policy should cover you for the taxi door accident. If you do not have a car you may need what is called an umbrella policy. The umbrella, like the umbrella that protects you from the rain, is intended to protect you from claims not covered by your primary or underlying coverage such as your homeowner's policy. An umbrella policy sits above the limits of your basic policies and provides additional coverage or "excess liability." Umbrella policies also provide a broader form of coverage and can help cover legal fees, false arrest, libel, slander and sometimes even liability as a member of the board of director of a cooperative corporation that owns the apartment building where you live.

### ***Homeowners Coverage***

The average person has two kinds of insurance policies. One covers your home and, if you have a car, your auto policy covers car accidents.

If you own a home, you may have a homeowner's policy that provides coverage for the value of your home and its contents (if you rent, you may have a renter's policy which generally provides the same coverage as the homeowner's policy). These policies generally also provide liability coverage for injuries in or about your home. However, they have an exclusion for liability arising out of a motor vehicle accident or the use of a motor vehicle. They will not cover the taxi door accident.

### ***Auto Coverage***

An automobile policy covers any cars or other vehicles you own. All states require you to have some amount of coverage if you own a car. This coverage will cover you if you are in an accident and as an operator or user of another vehicle. It should cover you for taxi car door accident but the policy's terms control.

### ***Broad Auto Coverage***

There are various types of auto coverage. The policy may provide coverage for liability arising out of an “automobile accident” which is broad coverage. For example, in Henderson v. New York Cent. Mut. Fire Ins. Co., 56 A.D.3d 1141, 1142, 867 N.Y.S.2d 628, 630 (2<sup>nd</sup> Dep’t. 2008), the Court reasoned:

.....the complaint in the underlying action alleges negligent conduct on the part of James Henderson and, if he accidentally or negligently caused Prave's injuries while opening the driver's door, that event may be considered an “automobile accident” within the meaning of the policy

### ***Taxi Coverage***

What about the taxicab? The taxicab in New York City will have a provision that the policy provides coverage to the “owner or operator” of a vehicle. The operator of a vehicle is the driver. The passenger is neither the owner nor the operator. Opening the door is not operating the vehicle. In Kohl v. Am. Transit Ins. Co., 59 A.D.3d 681, 682, 874 N.Y.S.2d 213 (2<sup>nd</sup> Dep’t 2009), aff’d, 15 N.Y.3d 763, 933 N.E.2d 208 (2010), the Court described this scenario:

the plaintiff was a passenger in a taxicab insured by the defendant. David Marmolejo allegedly was injured while riding a bicycle when the plaintiff, upon exiting the taxicab, opened a rear door into Marmolejo's path, causing a collision with the open door. In January 2008 Marmolejo commenced a personal injury action in the Supreme Court, New York County, against the plaintiff and the taxicab's owner and driver. In March 2008 the plaintiff commenced this action for a judgment declaring that the defendant was required to defend and indemnify him in the personal injury action. The Supreme Court granted the defendant's cross motion for summary judgment. \*\*2

The Supreme Court properly granted the defendant's cross motion for summary judgment since the **plaintiff is not entitled to a defense or to indemnity for his “use” of a vehicle under the defendant's commercial automobile policy insuring the owner and the driver of the taxi-cab** (*emphasis added*).

*Distinctions in Auto Policies*

The seminal case explaining the types of auto policy coverage is Swee v. Vals Trans, Inc., 225 A.D.2d 113, 115–16, 649 N.Y.S.2d 146 (1<sup>st</sup> Dep’t. 1996). There the Court explained that there is no coverage under a taxi policy for injury involving the taxi passenger because coverage under a business automobile policy is not...

..., extended to a passenger as a user, as it would be under the omnibus coverage clause found in a family automobile policy. While a passenger might be, as here, a user of the vehicle, he or she cannot be an “operator” of the vehicle “in the business of the insured” to qualify as one to whom, under the express provisions of the policy, its liability coverage extends. [The taxi] policy specifically provides, as required by Vehicle and Traffic Law § 370, that it “shall inure to the benefit of any person legally operating any motor vehicle described herein in the business of the Insured and with his permission, in the same manner and under the same conditions and to the same extent as to the Insured.” The policy says nothing about it inuring to the benefit of users. In fact, the policy expressly provides that it “conforms to the policy form approved by the Superintendent of Insurance for use in compliance with section 370 of the Vehicle and Traffic Law of the State of New York”.

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Since a business automobile policy, pursuant to Vehicle and Traffic Law § 370, extends coverage to the insured (owner) and persons operating the vehicle in the owner's business and with its permission, unlike the family automobile policy which extends coverage to both the operator and user of the vehicle, and a passenger is not an “operator” under Vehicle and Traffic Law § 113, a passenger of a taxicab is not entitled to indemnity or a defense for his “use” of a vehicle under a business automobile policy. (*See, Epstein v Keron*, 68 Misc 2d 29.)

While the policy at issue, to be sure, does provide coverage for damages “resulting from the ... use ... of the motor vehicles described in the Declaration,” this language is in

conformity with Vehicle and Traffic Law § 388 requirements and provides liability coverage for the owner and its drivers as a result of a passenger's negligent opening of the taxicab door, that is, the passenger's use of the vehicle. That, however, is not the issue here. Since the passengers claiming here are not, as indicated, additional insureds under the policy, the policy's liability coverage does not extend to them. [The taxi insurance company] owes the passengers neither a defense nor indemnification of any liability damage award imposed against them in the instant matter.

### ***Umbrella Coverage***

The only way to protect yourself is with an umbrella policy. Umbrella policies will cover you for your liability if you open the door of a taxicab and injure someone on a bicycle. The umbrella policy will cover you for the "use" of the motor vehicle.

### ***The Importance of Insurance Brokers***

Surprisingly, even insurance brokers at sophisticated nationally known brokerage firms sometimes tell their wealthy customers that they do not need an umbrella policy if they do not have an automobile. This is flat out wrong. Here's the way it should work. If you have a primary policy and an umbrella policy, the umbrella policy should "drop down" and provide coverage for accidents not covered by the primary policy, such a claim for libel and slander or an accident involving a motor vehicle. Some umbrella policies are simply called excess policies so it's important to check the terms. The point is that you need a policy that will cover you for accidents not covered by your primary policy, such as the "use" of an automobile, i.e. opening the door of the taxi and injuring a bike rider.

The average person is not familiar and may not be able to interpret an insurance policy. Indeed, many lawyers may be unfamiliar with the terms of any of their insurance policies. You

have to rely on a broker. First and foremost, you want the broker to give you the best advice possible to make sure that there isn't a gap in your insurance coverage. .

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