

BALINT'S BULLETIN

CLIENT LAW UPDATE

Issue 84

January 2018

Happy New Year!

Bike Helmets—It's the Law!

Three bike-share companies are doing business in Seattle: LimeBike, Spin and ofo. In violation of Seattle and King County law, none of them offer helmets as part of the rental. To ride a bicycle in Seattle or King County without a helmet is against the law. It seems like our Seattle Police Department is in collusion with these companies because they have virtually stopped enforcing this statute. In 2011 our police wrote 600 tickets for helmet violations. This encouraged more and more people to use helmets. In the first half of 2017, however, they have issued only 12 tickets. I have done several bike injury cases and I relish the day that someone comes in with the case against one of these three companies for not issuing helmets. Yes, there is resistance to wearing helmets in much the same way that there was resistance to seat belt use. But several studies have consistently found that using a helmet and wearing it properly reduces the risk of head injury by 85%. On average a bicycle rider is likely to have a crash once every 4,000 or so miles. In New York recently, 97% of deaths and 87% of serious injuries while riding a bike occurred to people without a helmet. The Bicycle Helmet Safety Institute cautions that low-speed falls can be just as devastating as higher speeds because the distance between a person's head and the pavement is the same regardless of speed. Of the 700 people killed on bicycles per year in our country, three-fourths of them are from head injuries. The same safety institute estimates that two

thirds of those injuries and deaths could have been prevented had the rider been wearing a helmet. There are no "mild" head injuries. They are all devastating even if the loss of brain function is a small percentage. If our police departments would enforce the law, these bike share companies would be forced to figure out a way to provide helmets. It's just a matter of time before someone does get hurt on one of these bikes and they face what I hope will be an economically devastating lawsuit. Preventable injuries from any cause are costly to society.

Insurance Company Survey/Recommendations

In my last Balint's Bulletin, I strongly recommended that anyone who has Allstate, State Farm, or American National property and Casualty (ANPAC) as their insurance company should immediately terminate them. They are simply awful to deal with when it comes to paying for medical bills pursuant to your personal injury protection (PIP) coverage or paying out claims when their insureds hurt people, thereby involving their customers in unnecessary and nasty litigation. Even more egregious is the way they handle underinsured motorist (UIM) claims.

Anyone paying attention to the numerous television ads for the various insurance companies should pay attention to the contents of these ads. Literally all of them talk about what a great experience people had with adjusting claims. But all of these ads only talk about property damage claims, never brag about adjusting the far more crucial personal injury claims. Here's the problem: A large percentage of drivers in Washington

have no liability insurance whatsoever. I have heard various statistics ranging up to 20 or 25%. I don't believe there are any statistics as to how many drivers have only the state minimum of liability insurance which is \$25,000. So the most important insurance you can have to be covered if you get hurt in a crash is your UIM coverage. Once you make a claim under UIM, you are suddenly transformed by your insurance company into an enemy. How insurance companies adjust UIM claims is a more important criterion than how they adjust claims for dents.

In response to the article, I received several calls and emails asking me what insurance companies I do in fact recommend. So I did an informal survey with a group of lawyers who represent injured persons. Here is a list of companies to avoid listed from worse to even worse (if that's a word): Allstate, ANPAC, State Farm, GEICO, Progressive, and Safeco (now Liberty Mutual). So far the ones that are on the acceptable list include (in no particular order) Amica, Pemco, Nationwide, Grange and Chubb.

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This newsletter reports on news and developments in the law. It is offered as a service to our clients and readers and is not a substitute for legal advice.

Homeowners Insurance Advice

If you own a home it is important to periodically check with your insurance agent as to the adequacy of your homeowners insurance. There are several coverages available and everyone should make sure they have them. The basic coverage is protection in the event of loss due to disasters including the structure of the home (like fire), damage to personal belongings such as fire or theft, coverage for additional living expenses should there be a disaster forcing you out of your home, and liability protection. The policy should cover anyone injured on your property including abutting sidewalks. It covers you should you or your family members negligently damage someone else's property. It should cover you if your pets injure someone. It should cover you should someone accuse you of libel or slander (defamation) whether in print or even on social media. My thanks to John DeFranco of DeFranco insurance for the following advice: "Personal Injury coverage is an optional endorsement on the standard homeowner's policy that provides protection for libel, slander, defamation of character, false arrest, malicious prosecution, and wrongful eviction. This coverage is also provided by most umbrella policies." Not only will the insurance company be responsible (up to their limits) for these kinds of losses, but even more importantly, in most instances, is the fact that they have to provide you with and pay for an attorney and all legal expenses associated with defending you.

Legal Malpractice/ Lawyer Discipline

Over the years I have done a significant number of cases against lawyers, i.e., legal malpractice cases. Knowing what I know, I am amazed at how infrequently the Washington State Bar Association in conjunction with the State Supreme Court imposes sanctions on lawyers for wrongdoing. Here are the latest numbers from 2016. There were over 31,500 active lawyers.

About 5,500 people contacted the Bar Association about perceived lawyer misconduct. Since the Bar Association requires a written complaint before doing anything about it, there were just 1,800 formal complaints. The most serious discipline that can be meted out to lawyers is to be disbarred or suspended from the practice of law. In each of those cases the lawyer must cease practicing law in any way, either permanently or during the period of suspension, and must notify their clients of this discipline. In 2016 there were 45 lawyers who received serious discipline and 7 others who resigned instead of facing the disciplinary proceedings. Most lawyers I know and deal with are competent and ethical. Even the ones I sue may only have been negligent and not dishonest. But to have 52 bad apples out of 31,500, one-fifth of 1%, indicates to me a shortcoming of the system.



Student Loan Default?—Lose Your Job

Washington is one of 39 states in which the banks and debt collection agencies have convinced legislatures to enact laws suspending any license to do business when the person so licensed has defaulted on a student loan, regardless of cause or excuse. Once a license is revoked, of course, the person would no longer be able to work and therefore would find it even more difficult to repay the loan. In Washington almost every license of any kind can be revoked in this manner. This includes lawyers, accountants, doctors and all other health care workers, plumbers, architects, well-diggers, and almost any other occupation requiring a license to do business. This is on top of federal legislation making it nearly impossible to discharge a student loan debt in bankruptcy no matter how

dire a person's financial situation has become and no matter what the cause of that financial distress was. The typical Washington statute reads:

"The board shall suspend the license or certificate of any person who has been certified by a lending agency and reported to the board for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license or certificate shall not be reissued until the person provides the board a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure or certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the board may impose."

Road Sign Shapes—History

At the turn of the 20th century, American roads were chaos. Drivers didn't need a license, lane lines didn't exist, and stop signs hadn't yet been invented. Of course, the cars were much slower. My mother, for example, said that she started to drive when she was 14 in South Bend, Indiana. When the first official stop sign appeared in Detroit, in 1915, it was small, white, and square, nothing like the red octagon we know today. But in 1923, a branch of Mississippi's highway department suggested a change—what if a sign's shape could denote the kind of hazard ahead? The logic was simple: The more sides a sign has, the more dangerous the upcoming stretch of road is. In 1922, representatives from Wisconsin, Indiana, and Minnesota toured several states in order to gener-

ate ideas for uniform signs and street markings. They made it their goal to develop a system that matched unique shapes to specific messages: **Round** — Railroad crossing ahead; **Octagon** — Stop sign; **Diamond** — Curve ahead; **Square** — Caution or attention; **Rectangle** — Mileage and speed limit signs. This would make signs more helpful in the nighttime, especially as drivers could identify shapes before reading the signs' words. All signs would be black text on a white background and 2 square feet in size. These recommendations were presented in January 1923 to the Mississippi Valley Association of State Highway Departments and later to the American Association of State Highway Officials. They became the basis for the earliest national standardization, which was made official in 1935. A few decades of earnest confusion followed. It wasn't until 1948 that the United States government made a concerted effort to simplify and standardize each sign. Now the highway engineers and human-factors experts have refined signage and other traffic controls in impressive ways to enhance safety. The Manual on Uniform Traffic Control Devices (MUTCD) is a highly refined standard that has the force of law in the United States.

Decoding Your Driver License

There are a few linguistic mistakes that people make that I always seem to notice. No one has a safety deposit box—they have a safe deposit box. No one has a driver's license—they have driver license. The phrase "or not" is almost always superfluous and useless when used in conjunction with "whether." Looking at my Washington driver license I got a bit off topic here. How is your driver license number coded? The first 5 spaces are the first 5 letters of your last name. If you have a 3 letter last name the last 2 of those lines will be asterisks. The next 2 lines will be the initials of your first and middle name. If you have no middle name there will be another asterisk. (I don't

know what they would do if a person has only one name such as occurs in people coming from other countries.) The next 2 lines is your birth year. But it is done by subtracting your actual birth year from 100. For example, I was born in 1947. 100 minus 47 equals 53. The next column is a crosscheck number or letter which is a bit too complicated for this article. The next column is your month of birth in code usually as follows: Jan=B, Feb=C, Mar=D, Apr=J, May=K, Jun=L, Jul=M, Aug=N, Sep=O, Oct=P, Nov=Q, Dec=R. An exception is if someone else shared your driver license number there may be a different letter designating the month of birth. Your day of birth, the last column, is also in code: 1=A, 2=B, 3=C, 4=D, 5=E, 6=F, 7=G, 8=H, 9=I, 10=S, 11=J, 12=K, 13=L, 14=M, 15=N, 16=W, 17=P, 18=Q, 19=R, 20=O, 21=1, 22=2, 23=3, 24=4, 25=5, 26=6, 27=7, 28=8, 29=9, 30=T, 31=U. Now you know one way that the police can spot forged driver licenses!

One Way to Get Hurt by Medicare

My mom went through what seemed like endless months of end-of-life medical care. A constant source of major worry and stress was whether Medicare was going to pay bills. Here's a way the hospital can really burn their Medicare patients, especially the elderly. One can go to the ER, stay several nights and even have surgical procedures done. But hospitals can and do sometimes classify patients as 'under observation' and not as 'admitted.' When this happens the patient is classified as an outpatient. When discharged, if such a person needs specialized rehabilitation or nursing care, Medicare may not cover it. Medicare Part A covers hospital costs only for inpatients. The less comprehensive Part B deals with outpatients. If the hospital patient has 3 consecutive days as an

admitted patient, all nursing home costs for the 1st 20 days are covered and many of the costs are likewise covered up to 100 days. But if the hospital classified the stay as outpatient, well, prepare for sticker shock!



Swimming Pools

I have 3 grandchildren who love to swim. They have been taking lessons almost from the time they could walk. They are like fish when in the water. So it is with trepidation that I write this. **DON'T READ FURTHER, KIDS!** Recent studies have quantified the extent to which public pools are used by some as vast open toilets. There are certain chemicals that derive solely from human urine. A certain artificial sweetener, acesulfame potassium, is prevalent in human foods, drinks and even medicines. Ingested does not equal digested—for the most part the stuff just passes on through. Some clever scientists, once they realized how it works, used its concentration in swimming pools (and other bodies of water) as a measure of how much urine was present in the water. They measured the concentration of this chemical in large numbers of pools. The result? In a 110,000 gallon pool there is about 8 gallons of urine. But wait—there's more! Someone figured out that children have as much as 10 grams of feces clinging to their bottoms. With 1000 children splashing around in a large pool the total floating around can be 22 pounds! Eeew! But do we need the scientists to tell us this? No. A chlorinated pool of pure water has almost no odor and does not cause much eye irritation. When the chlorine does its job by attacking contaminants including bodily excretions, lotions and hair products, the chlorine is noticeable by our noses and by our eyes. [P.S.—The rates of serious illness

from pools is miniscule. But keep your mouth closed and your goggles on!!!!]

Paradox of Our Age

Credit for this originally belonged to a local former pastor. The source isn't as important as the words. I include my favorites: "We spend more but have less; we buy more but enjoy it less; we have bigger houses and smaller families; more conveniences, yet less time; we have more degrees but less sense; more knowledge but less judgment; more experts, yet more problems; we have more gadgets but less satisfaction; more medicine, yet less wellness... We've learned how to make a living, but not a life; we've added years to life, not life to years. We've been all the way to the moon and back, but have trouble crossing the street to meet the new neighbor. We've conquered outer space, but not inner space... we learned to rush, but not to wait; we have more weapons, but less peace; ... more parties, but less fun; ... more acquaintances, but fewer friends; more effort, but less success. We build more computers to hold more information, to produce more copies than ever, but have less communication; ... more leisure and less fun; higher postage, but slower mail; more kinds of food, but less nutrition. ...these are the times!"

Obituary—James S. Kempton

My friend and fellow lawyer, Jim

Kempton, died on August 7, 2017 at 87 years old. Jim was a wonderful lawyer. He did mostly criminal defense work but he and I did a few personal injury cases together or he referred them to me. His competence was often underestimated by other lawyers because he had such a friendly, casual demeanor. Until smoking in office buildings was prohibited (but even somewhat thereafter) when you spoke to him in his office you spoke through a cloud of cigar smoke. Jim always had interesting and funny stories to tell. Being a good trial lawyer means being a good communicator. He did that well. He was a lifelong native of the Northwest, earning his undergraduate and law degrees from the University of Washington following his service in the Korean War. He seemed casual but he knew what he was doing and he was loyal to a fault. His wife, Carolee, preceded him in death after they had been married for 51 years.

The Big Lie

In his declaration of principles, *Mein Kampf*, Hitler articulated the effectiveness of the Big Lie. The technique is even more effective in the age of the internet. Does this sound familiar?:

"In the big lie there is always a certain force of credibility; because the broad masses of a nation are always

more easily corrupted in the deeper strata of their emotional nature than consciously or voluntarily; and thus in the primitive simplicity of their minds they more readily fall victims to the big lie than the small lie, since they themselves often tell small lies in little matters but would be ashamed to resort to large-scale falsehoods. It would never come into their heads to fabricate colossal untruths, and they would not believe that others could have the impudence to distort the truth so infamously. Even though the facts which prove this to be so may be brought clearly to their minds, they will still doubt and waver and will continue to think that there may be some other explanation. For the grossly impudent lie always leaves traces behind it, even after it has been nailed down, a fact which is known to all expert liars in this world and to all who conspire together in the art of lying."

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