

Hit or Miss and Run Drivers - Are You Protected?

Legal View

By Jeffrey R. Kelley, Esq.

Many times, reckless drivers wreak havoc, causing injuries and damages to innocent persons, and disappear into thin air. Sometimes, no one can identify who caused the “accident,” yet there are real injuries, even fatalities, that go uncompensated because the at-fault driver didn’t stop to render aid, or even realize they caused a crash because there was no contact between the vehicles. Last week’s column stressed the need to protect oneself from uninsured or underinsured drivers. This week’s Legal View takes this point one step further, that is, when you have been involved in a crash caused by someone who didn’t stop or pulled in front of you and then unknowingly (or not?) kept on driving. In this scenario, you may have been the victim of a “phantom driver,” and your UM/UIM insurance is there to protect you. In other words, someone may have unknowingly, but still negligently, caused you to crash your car, motorcycle or bicycle and caused serious injury, yet drove on, never to be found.

How Does Someone Cause a Crash and Not Know It?

It’s easy. A phantom driver may not know they injured someone because they were distracted by texting or talking on their phone, or they were tired or worse, intoxicated. If they were aware they caused a crash, they may have simply left the scene feigning ignorance because they were intoxicated, uninsured, or both. Maybe they had borrowed a friend’s car and were uninsured, had an outstanding warrant, or possibly even stole the car they were driving. Regardless, if they were driving and caused a crash, they are responsible. In this case, the hope of recovery for your damages falls back on you to have opted and paid for insurance coverage to provide coverage for the negligence of another person, even if they can be found or not, it still qualifies as a motor vehicle collision. Remember, you do NOT need to make contact with another vehicle to qualify as a motor vehicle accident. But, you will need witnesses or other evidence to establish there was another driver involved who caused you to crash your vehicle.

Why Are Motorcyclists, Bicyclists and Pedestrians Most at Risk?

Drivers (or pedestrians) often have no passengers, and therefore have no one to attest to how the crash occurred. I once represented a motorcyclist who was run off the road and we only prevailed on the claim against his own UM/UIM insurance because a Good Samaritan stopped and reported what happened. My client was driving a Harley, not wearing a helmet (his right to not wear one) and had no one riding with him. A downed rider (including pedestrians and cyclists) have no way to defend themselves, many times they are unconscious, or so severely injured and in shock that they are unable to communicate and must be immediately taken from the scene to the hospital.

What Can You Do to Protect Yourself?

Immediately report the accident to the police and detail how the crash was caused by a phantom vehicle. First responders, paramedics and intake nurses will note how the event

occurred to give rise to the injuries suffered by the involved parties. Contact your insurance company immediately so they can also obtain witness statements including your own.

Video cameras for motorcyclists, cars and even bicyclists can be essential to prove how were injured; we know that police are using body cams, so why not protect yourself in the same way? Although it may seem extreme to have to protect yourself, if you are seriously injured and it comes down to your word versus that of the insurance adjuster, your video of an errant driver causing the crash and leaving the scene could mean the difference between coverage and no coverage. In the end, UM/UIM insurance coverage and dash cams are inexpensive “insurance policies” to have in place if the unexpected happens. Not to mention, if your camera coverage identified the at-fault third party, there may be additional (third party) insurance coverage available to compensate you for your injuries. Our roads are congested, active, and it is up to us to determine how to fully protect ourselves from the negligence of others.

Do you have a legal question? Send your inquiry question to Jeff@klfpc.com. Appointments are available in both Black Hawk and Denver offices.

Note: While very effort has been made to ensure the accuracy of this information, it is published for general information and not intended to provide specific legal advice as individual situations will differ and require full analysis by an attorney of the specific facts involved.