

# **MOTORCYCLE ACCIDENT LAW IN NEW JERSEY**

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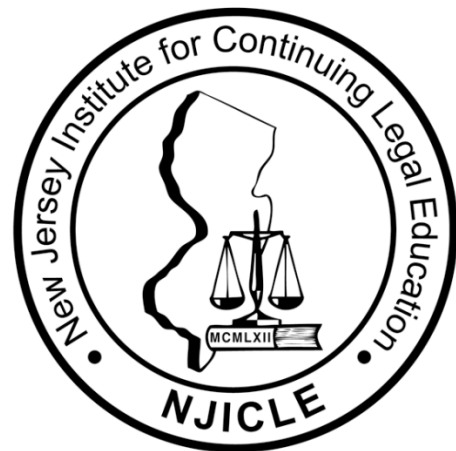
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# MOTORCYCLE ACCIDENT LAW IN NEW JERSEY

## **Moderator/Speaker**

**Jerry Friedman, Esq.**

*Law Office of Jerry Friedman, P.C.  
(Franklinville, Holmdel, Linwood, Marlton,  
Neshanic Station, Toms River)*

## **Speakers**

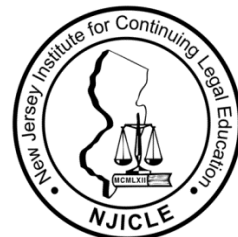
**Deborah S. Dunn, Esq.**

*Certified by the Supreme Court of New  
Jersey as a Civil Trial Attorney  
Stark & Stark  
(Marlton)*

**Michael J. Rizol, Jr.**

*Equity Reconstruction  
(Mount Laurel)*

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## Table of Contents

	<u>Page</u>
Handling the Motorcycle Case Jerry Friedman, Esq.	1
Medicals	1
Property Damage	4
Lost Wages	4
Investigation	4
Lawsuit Limitation	4
Policy Issues	5
Motorcycle Accident Reconstruction Michael J. Rizol, Jr.	9
Statistics	9
The Hurt Report	9
Factors That Must Be Explored and Considered	9
What Can Equity Reconstruction Do for You?	10
What Can You Do to Help Your Own Case?	11
About the Panelists...	13

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## Handling the Motorcycle Case

Jerry Friedman, Esq.

### Medicals

-Who pays the bills?

-No PIP.

-Motorcycle not automobile. N.J.S.A. 39:6A-2(a)

*a. "Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.*

### N.J.S.A. 39:6A-4. Personal Injury Protection Coverage

“Except as provided by section 45 of P.L. 2003, c 89 (C. 39:6A-3.3) and section 4 of P.L. 1998, c 21 (C. 39:6A-3.1), every standard automobile liability insurance policy issued or renewed on or after the effective date of P.L. 1998, c 21 (C. 39:6A-1.1 et al.) shall contain personal injury protection benefits for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustain bodily injury as a result of an accident while *occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile* or by an object propelled by or from an automobile, and to other persons sustaining bodily injury while occupying, entering into, alighting from or using the automobile of the named insured, with permission of the named insured.”

-Ingersoll v Aetna, 138 N.J. 236, 238 (1994)

“Because he was riding a motorcycle when the accident occurred, Brian was not eligible to recover his medical expenses under the basic PIP coverage of his automobile policy with JUA..’

-Passenger not a pedestrian. N.J.S.A. 39:6A-2(h)

"h. 'Pedestrian' means any person who is *not* occupying, entering into, or alighting from *a vehicle propelled by other than muscular power and designed primarily for use on highways*, rails and tracks."

-PLIGA

-N.J.S.A. 39:86.1- Passenger not a pedestrian & not otherwise PIP eligible.

- Auto Med-Pay

-N.J.A.C 11:3-7.3(b) Extended Medical Expense Coverage.

“Each policy form or endorsement covering an automobile as defined at 39:6A-2 shall include excess medical payments coverage, corresponding to Section II, Extended Medical Expense Benefits Coverage of the personal automobile policy. Insurers must include a minimum coverage of \$ 1,000 and may offer coverage of \$ 10,000.”

Not owned by or furnished for or available for the regular use of the named insured and family members.@ Ingersoll v Aetna, 138 N.J. 236 (1994)

-Motorcycle Med-Pay

-Coordination of Benefits Issues

-Subrogation/Reimbursement Issues

Perreira v. Rediger, 169 N.J. 399 (2001)

- (1) The statutory collateral source rule, N.J.S.A. 2A:15-97, prohibits health insurers from recovering payment for medical bills, by way of subrogation or reimbursement, out of a tort judgment or settlement against third parties in favor of their insured;
- (2) The New Jersey Insurance Commissioner’s regulations authorizing subrogation and reimbursement provisions in health insurance contracts are limited to cases in which the statutory collateral source rule does not apply; and
- (3) A health insurer has no contractual, common law or equitable right to reimbursement from tort settlement proceeds.

Werner v. Latham, 322 N.J. Super. 76 (App. Div. 2000).

“A health insurer’s right to reimbursement of medical bills must yield to the injured insured’s rights to full recovery in a settlement with a tortfeasor. Any alleged lien would necessarily be subordinate to the rights of the insured to be fully compensated for the full amount of damages including pain and suffering, disability and impairment, loss of enjoyment of life and loss of income.”

-Union Health & Welfare

-Coordination of Benefits Issues

-Subrogation/Preemption - Employee Retirement Income Security Act (ERISA) 29 U. S. C. § 1132(a)(3) (1994 ed.)

-Health Carrier

-Subrogation/ Reimbursement - Perreira v. Rediger, 169 N.J. 399 (2001)

-Medicare

-Reimbursement required by Federal Law.



-Medicaid

-Qualify

-Be a resident of New Jersey

-Be a U.S. Citizen or qualified alien (most immigrants who arrive after August 22, 1996 are barred from Medicaid for five years, but could be eligible for NJ FamilyCare and certain programs for pregnant women)

- Meet specific standards for financial income and resources

- Fall into one of the following categories:

Families with dependent children

People who are 65 years of age or older, blind, or permanently disabled

Pregnant Women

-Reimbursement required by Federal Law.

-Workers Compensation

-Reimbursement required by NJ Law

-No Medical Coverage

-Charity Care N.J.S.A. 44:5-19.1

“The board of chosen freeholders of any county, which furnishes medical care and hospitalization to resident indigent patients who cannot be maintained by private means, in a hospital or hospitals supported by private charity, on a per diem per patient basis, shall have a lien against the property of any person receiving such service in an amount equal to the cost to the county of the maintenance of such person in such hospital, which lien shall have priority over all unrecorded encumbrances.”

-Hospital & Medical Liens N.J.S.A. 2A:44-36

“Every hospital and nursing home in this State, and every licensed physician or dentist practicing in this State, shall have a lien in the manner set forth in this article for services rendered, by way of treatment, care or maintenance after, to any person who shall have sustained personal injuries in an accident as a result of the negligence or alleged negligence of any other person.”

-Negotiating a Compromise

-Medicals at Trial - N.J.S.A. 39:6A-12

“Except as may be required in an action brought pursuant to section 20 of P.L.1983, c.362 (C.39:6A-9.1), evidence of the amounts collectible or paid under

a standard automobile insurance policy pursuant to sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10), amounts collectible or paid for medical expense benefits under a basic automobile insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) and amounts collectible or paid for benefits under a special automobile insurance policy pursuant to section 45 of P.L.2003, c.89 (C.39:6A-3.3), to an injured person, including the amounts of any deductibles, copayments or exclusions, including exclusions pursuant to subsection d. of section 13 of P.L.1983, c.362 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil action for recovery of damages for bodily injury by such injured person.”

Adams v. Cooper Hospital, 295 N.J. Super. 5, 12 (App. Div. 1996)

“The statute is designed to prevent double recovery by a plaintiff eligible for PIP benefits”

### **Property Damage**

- Tortfeasor liability policy v Motorcycle collision carrier.
- Photographs of property damage.

### **Lost Wages**

- New Jersey Temporary Disability Income
- Workers Compensation
- Union Health & Welfare
- Employer Disability Plans

### **Investigation**

- Understanding Motorcycle Operation
- Conspicuity
- Experts
- Motorcycle Autopsy
- Product Liability/Dealer Repair Issues
- Head Injuries & Helmet Issues

### **Lawsuit Limitation**

- Koff v Carrubba, 290 N.J. Super. 544 (App. Div. 1996)

(1) the plaintiff is, or is treated as if he or she were, the owner of an automobile that is insured under a New Jersey automobile liability insurance policy for which the verbal threshold option has been selected, and (2) the plaintiff is either a person required to maintain Personal Injury Protection (PIP) coverage because he or she is the "owner ... of an automobile registered or principally garaged in this State," N.J.S.A. 39:6A-8a, -3; see also N.J.S.A. 39:6B-1, -2, or, alternatively, is a person who has the right to receive PIP benefits pursuant to N.J.S.A. 39:6A-4.

#### Questions

- 1) Own or treated as owner of an auto with VT AND EITHER
- 1) required to maintain PIP as an owner or

2) Entitled to receive PIP

See also, Echeverri v Blakely, 384 N.J. Super. 10 (App. Div. 2006)

## Policy Issues

### UM/UIM

#### -Lawsuit Limitation

-UM - N.J.S.A. 17:28-1.1a.

“[U]ninsured motorist coverage shall provide that in order to recover for non-economic loss, as defined in [*N.J.S.A. 39:6A-2*], for accidents to which the benefits of [*N.J.S.A. 39:6A-4*] apply, the tort option elected pursuant to [*N.J.S.A. 39:6A-8*] shall apply to that injured person.”

Stamps v. NJ Auto. Full Ins., 279 N.J. Super. 485, 487-488 (App. Div. 1995)

“Plaintiff admits that she elected the verbal threshold option provided by *N.J.S.A. 39:6A-8(a)*. However, plaintiff argues that this election does not apply to her claim for uninsured motorist benefits, because the verbal threshold option applies only when the other vehicle involved in an accident is an automobile covered by the PIP benefits provided under *N.J.S.A. 39:6A-4*. Since the other vehicle in plaintiff's accident was a truck and thus plaintiff's cause of action against the truck driver would not be subject to the verbal threshold, *N.J.S.A. 39:6A-2(a)*;

However, plaintiff's claim for uninsured motorist benefits is not governed by *N.J.S.A. 39:6A-8* but rather by *N.J.S.A. 17:28-1.1(a)*. This section clearly states that "the tort option elected pursuant to 488\*488 [*N.J.S.A. 39:6A-8*] shall apply to" any claim "for non-economic loss" arising out of an accident "to which the benefits of [*N.J.S.A. 39:6A-4*] apply." Plaintiff's accident was indisputably one "to which the benefits of [*N.J.S.A. 39:6A-4*] apply" because she was operating her own automobile at the time.”

#### -All Applicable UM Policies

N.J.S.A. 17:28-1.1a2.

“All motor vehicle liability policies, except basic automobile insurance policies, shall also include coverage for the payment of all or part of the sums which persons insured thereunder shall be legally entitled to recover as damages from owners or operators of uninsured motor vehicles, other than hit and run motor vehicles, because of injury to or destruction to the personal property of such insured, with a limit in the aggregate for all insurers involved in any one accident of \$5,000.00, and subject, for each insured, to an exclusion of the first \$500.00 of such damages.”

#### -UIM/LOL

Since N.J.S.A. 17:28-1.1a does not mandate UIM coverage, claims are governed by policy language, which usually provides for damages which the insured is “legally entitled to recover.” The UIM carrier therefore has no greater defense than the tortfeasor. If the Koff analysis subjects the injured motorcyclist to, and

the tortfeasor is protected by, the LOL, the motorcyclist's UIM claim must overcome the LOL.

-No Stacking/Pro Rata N.J.S.A. 17:28-1.1c

“Uninsured and underinsured motorist coverage provided for in this section shall not be increased by stacking the limits of coverage of multiple motor vehicles covered under the same policy of insurance nor shall these coverages be increased by stacking the limits of coverage of multiple policies available to the insured. If the insured had uninsured motorist coverage available under more than one policy, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.”

-Buyers Guide and Coverage Selection Form – Not Applicable to Motorcycles

N.J.S.A. 39:6A-23 a. “No new *automobile* insurance policy shall be issued on or after the 180th day following the effective date of P.L.1985, c.520, unless the application for the policy is accompanied by a written notice identifying and containing a buyer's guide and coverage selection form. The buyer's guide shall contain a brief description of all available policy coverages and benefit limits, and shall identify which coverages are mandatory and which are optional under State law, as well as all options offered by the insurer.”

-N.J.S.A. 17:28-1.9 Immunity– Not Applicable to Motorcycles.

“a) Notwithstanding any other provision of law to the contrary, no person, including, but not limited to, an insurer, an insurance producer...shall be liable in an action for damages on account of the election of a given level of motor vehicle insurance coverage by a named insured as long as those limits provide at least the minimum coverage required by law or on account of a named insured not electing to purchase underinsured motorist coverage, collision coverage or comprehensive coverage.”

“ b. The coverage selection form required pursuant to section 17 of P.L.1983, c.362 (C.39:6A-23) shall contain an acknowledgement by the named insured that the limits available to him for uninsured motorist coverage and underinsured motorist coverage have been explained to him and a statement that no person, including, but not limited to, an insurer, an insurance producer...shall be liable in an action for damages on account of the election of a given level of motor vehicle insurance coverage by a named insured as long as those limits provide at least the minimum coverage required by law or on account of a named insured not electing to purchase underinsured motorist coverage, collision coverage or comprehensive coverage, except for that person causing damage as the result of his willful, wanton or grossly negligent act of commission or omission.”

Avery v. Wysocki, 302 N.J. Super. 186, 190 (App. Div.1997)

“We are satisfied that the insured's completion and execution of the coverage

selection form is a condition of the grant of immunity by subsection a.”

-Policy Reformation

-Broker=s and Agent=s Negligence Rider v. Lynch, 42 N.J. 465 (1964)

-Sobotor v. Prudential Property & Cas. Ins. Co., 200 N.J. Super. 333 (App. Div.1984)

-1-800 Sales & Unlicensed Agents N.J.S.A. 17:22A-26-48

-Step Down & Exclusionary Clauses

Attempts to exclude UM coverage for motorcycles have been held invalid. Rider v. First Trenton Companies, 354 N.J. Super. 491 (App. Div. 2002). Automobile carriers have been consistently adding “step down” clauses to limit UM/UIM coverage for “owned but not insured” vehicles. A thorough review of the automobile UM/UIM endorsement, as well as recent cases with regard to these clauses is required. Katchen v. Geico, 457 N.J. Super. 600 (App. Div. 2019), cert. granted, 239 N.J. 13 (2019); Granata et al. v. Rasizer et al. v. NJM, No. L-3139-13, 2016 WL 2903562 (N.J. Super. App. Div. May 19, 2016), cert. denied, 227 N.J. 358 (September 23, 2016); cf Cox v. Tomasso, et al., Docket No.: A-0106-17T2, decided November 1, A 2018.

-Loss Limitations N.J.S.A. 39:6A-4.5

The N.J.S.A. 39:6A-4.5 section a) "Golden Rule" that precludes uninsured drivers from suing for their damages does not apply to motorcycles as the statute only refers to *automobiles*. Solorzano v. Sapunarich, 386 N.J. Super. 323 (App. Div. 2006). However, section b), precluding claims by drivers who are found guilty or plead guilty to drunk driving, does include motorcycles as the statute refers to *motor vehicle* accidents.

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# Motorcycle Accident Reconstruction

Michael J. Rizol, Jr.

## Statistics

- Nationwide, 4,985 motorcycle riders were killed in accidents in 2018.
- Motorcyclists are 29 times more likely to suffer fatal injuries than car passengers.
- Drunk driving accounts for one out of three life-threatening motorcycle crashes.
- 45% of motorcycle crashes result in more than a minor injury.
- Motorcycle helmets lower the risk of head injury by 69% and the risk of death by almost 50%.
- Males are overrepresented in motorcycle fatalities.
- 25% of motorcycle deaths occur because of collision with fixed objects.
- More than 3 out of 10 motorcycle accidents involve one vehicle.
- Nearly two-thirds of single-vehicle motorcycle crashes are caused by the rider's error.
- Nearly 50% of all motorcycle accident fatalities involve a motor vehicle turning left in front of the motorcycle.
- About 67% of multiple-vehicle accidents occur when the other driver violates the biker's right-of-way.
  - o People do not see motorcycles.
  - o People have difficulty judging speed and distance of motorcycles.
- Research shows the 40-and-older age group accounts for over 54% of such deaths in 2016.
- Motorcyclists represent just 3% of all registered vehicles but account for 14% of yearly traffic-related deaths.
- 92% of motorcyclists involved in crashes learned to ride on their own or with the help of a friend or family member.

## The Hurt Report

900 Crash Reconstructions were conducted in the Los Angeles area ~ 1979

- 66% evaluated at-scene
- 34% done within 24 hours of the crash

Three major problem areas were identified:

- Improper braking
- Improper turning or evasive action
- Failure to take any action

## Factors that must be explored and considered

### Vehicle Factors

- Has the motorcycle been recently serviced or repaired?
- Are there any improper modifications?
- Are vehicle defects suspected?

Did a roadway hazard contribute to the crash such as a pothole, roadway maintenance defect or other debris?

- Why was it there?
- How long has it been there?
- Who is responsible?

Was conspicuity a factor?

- Should the other driver have seen the motorcycle prior to the crash?
- How long was it visible?
- From how far away could it be seen?

Were any vehicle factors suspected to be involved?

- Improper maintenance
- Recent repairs or modifications by the owner or dealer/repair facility
- Could vehicle defects have contributed to the crash?
- Is a mechanical inspection by an expert necessary?

Has roadway evidence been preserved?

- Has the scene been measured and mapped?
- Have the roadway, roadway evidence, traffic controls, vehicle and injuries been photographed?

Has any video been located and preserved?

- Crash or precrash surveillance video is often available but needs to be located quickly.
- Dash Cam video may be available.
- Police DIVR or body camera video

Is EDR data available?

National Highway Traffic Safety Administration United States Code of Federal Regulation (CFR) Title 49 Part 563 defines an EDR as a device or function in a vehicle that captures the vehicle's dynamic, time-series data during the time period just prior to a crash event (*e.g.*, vehicle speed vs. time) or during a crash event (*e.g.*, delta-V vs. time), such that the data can be retrieved after the crash event.

- Motorcycles are not required to have an EDR so very few do.
- EDR data from the other involved vehicle can be critical to your case.
- The information must be download before it is overwritten, or the vehicle is no longer available.

### **What can Equity Reconstruction do for you?**

Provide an initial consultation by phone including a basic review of the crash report (free of charge).

Review any available data (police reports, photographs, diagrams, statements, interrogatories, depositions, medical records, autopsy reports and any other information related to the crash).



As needed:

- Conduct an inspection of the motorcycle and other involved vehicle.
- Image EDR data from involved motor vehicles.
- Diagram and photograph the crash site.

Report preliminary findings to the attorney

Write a report that provides an honest opinion as to the cause of the crash.

- Complete a crash analysis and reconstruction
- Calculate the speed at impact of the motorcycle and other involved vehicle
- Complete a time distance analysis

Testify at depositions or trial

### **What can you do to help your own case?**

Notify Equity Reconstruction LLC as soon as you get a case.

- Evidence is fresh.
- Vehicles are available for inspection.
- EDR Data may be available.
- Missing the opportunity to collect important evidence could limit your case.
- 

Build a relationship with the investigating officer.

- They will often help you.
- This will help you recognize what has been done, and what needs to be done.

Request specific information in discovery.

- Make OPRA requests.
- Missing information could make or break your case.

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## About the Panelists...

**Deborah S. Dunn**, Certified as a Civil Trial Attorney by the Supreme Court of New Jersey, is a Shareholder in Stark & Stark's Accident & Personal Injury and Motorcycle Injury practices in Marlton, New Jersey. A member of the firm's Diversity, Equity & Inclusion Committee, she concentrates her practice in the representation of victims who have been injured or died as the result of motorcycle accidents as well as individuals who have been catastrophically injured or killed due to the negligence of others.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Ms. Dunn is a member of the National and State Trial Lawyers Associations, and serves on the Board of Governors of the New Jersey Association for Justice (NJAJ). She is also a member of the American Association for Justice (AAJ) and AAJ's Women Trial Lawyers Caucus. Ms. Dunn serves as the Chair of the Board of Directors of the Mercer Council on Alcoholism and Drug Addiction and as a member of the Board of Directors of the Parker Mother and Child Foundation. A frequent contributor to the *Personal Injury Law Journal*, she was an adjunct professor Mercer County Community College.

Ms. Dunn received her B.A. from Rutgers University and her J.D. from Rutgers University School of Law-Camden. She was a law clerk to The Honorable Thomas P. Kelly, Mercer County, Superior Court of New Jersey.

**Jerry Friedman**, The Law Office of Jerry Friedman, P.C. with offices in Franklinville, Holmdel, Linwood, Marlton, Neshanic Station and Toms River, New Jersey, has concentrated his practice in representing injured motorcyclists throughout New Jersey since 1977. He has experience in handling the unique aspects associated with motorcycle accidents and has represented clients in cases arising from motor vehicle collisions, wrongful death, product liability, brain injuries and claims against governmental entities.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Mr. Friedman has been involved with the New Jersey motorcycle community for more than 40 years. He served as counsel for many years to the New Jersey Motorcyclists Alliance and ABATE of the Garden State, both statewide motorcycle rights organizations, and has been a member of the New Jersey State Bar Association and the New Jersey Association for Justice. He is a former Assistant Prosecutor in the Camden County Prosecutor's Office.

Mr. Friedman's informational brochure, *A Rider's Guide to Motorcycle Insurance*, is distributed free to motorcycle riders and riding clubs throughout New Jersey. Articles about his motorcycle practice have appeared in New Jersey newspapers and legal periodicals, and he has lectured at legal seminars on handling motorcycle cases.

Mr. Friedman received his B.A. from University of Buffalo and his J.D. from Rutgers Law School-Camden. After law school he was Law Clerk to the Honorable Phillip Gruccio, Superior Court of New Jersey, Chancery Division.

**Michael J. Rizol, Jr.** is founder and Principal of Equity Reconstruction in Mt. Laurel, New Jersey, where he provides motor vehicle accident investigation and consulting services to

attorneys, insurance companies and government agencies. He is Certified as an Accident Reconstructionist by the Accreditation Commission for Traffic Accident Reconstructionists (ACTAR), has 16 years of experience in accident reconstruction and is a licensed private investigator in New Jersey.

Mr. Rizol retired from the New Jersey State Police as a Captain and was head of the NJSP Traffic and Public Safety Office and Unit Head of the NJSP Fatal Accident Investigation Unit. He began that assignment as a detective and investigated more than 225 serious or fatal motor vehicle crashes and reviewed or participated in more than 500 other serious or fatal crash investigations. He is also a former member of the NJSP Motor Vehicle Crash and Vehicular Pursuit Review Board and has been an Academic Specialist at Kean University.

Mr. Rizol received his undergraduate degree from LaSalle University.