

April 2009

# BIKING IN NYC

LESSONS OF AN EXPERIENCED NEW YORK BIKE ACCIDENT LAWYER

The Perils Of  
Bicycle Riding In New  
York City- Here's  
What You Need To  
Know



**EVER BEEN DOORED?** I have.

**EVER BEEN CUT OFF BY A CARELESS MOTORIST?** I have.

Have you ever been thrown off your bike after a car side-swiped you? Did you wind up in the emergency room? Broken bones? Need surgery? Did you have head trauma? Was your bike totally destroyed? Do you know someone who went over their handlebars and walked away without breaking a bone in their body?

*Frequently Asked Questions:*

“How do I pay for my medical bills when I’ve been hit by a car?”

“How do I get reimbursed for my damaged bike?”

“I was out of work for 3 weeks, while I was recuperating from getting hit by a careless truck driver. Is there any way I can recover my lost earnings for the time I was in the hospital?”



If you've asked these questions, you are not alone. If you've ridden in any metropolitan area like New York City, you are bound to encounter a careless car, bus or truck driver. Here are 20 key questions a New York Bicycle Accident lawyer needs to know when you have been hurt while bicycle riding:

### ***Evaluating liability- Who's responsible?***

1. Where were you riding (on the street, on the sidewalk, with traffic, against traffic)?
2. What was the weather like?
3. What time of day did your accident happen?
4. What safety devices did you have on (helmet, reflective clothing, blinking butt lights, headlights)?
5. Describe the road or intersection where the accident happened (one way, two-way, how many lanes of travel in each direction, was there parking on both sides, was it residential or a commercial area)?
6. Was there anything blocking your view?
7. Were there any double-parked cars/buses/ trucks?
8. How fast were you going at the time of the impact?
9. How fast was the other driver going at the time of impact?
10. How did the accident happen?

“What happens if I was riding against traffic? Does that affect my liability?” Yes it does. As a bicycle rider you are still obligated to follow the ‘rules of the road’ and to ride responsibly. You cannot disregard red lights with impunity. You cannot blow through a stop sign knowing there’s no oncoming cars or pedestrians. You are required to follow the same traffic signs as cars. If you are hit while riding against traffic, you will be partially responsible for causing your accident.

Remember, since New York is a “No-Fault” state, that means that the drivers’ insurance company will still be obligated to pay for your medical bills. If you own a car and have car insurance, the two insurance companies will hook up and determine, behind the scenes, who is actually responsible for your accident. Depending on the analysis, one insurance company will reimburse the other for the medical expenses they had to pay out on your behalf.

### ***Evaluating damages- What Injuries Did You Suffer as a Result of This Accident?***

1. Did an ambulance and/or police come to the scene?
2. Were you taken to a hospital?
3. What did the x-rays, CT scan, MRI scans show?

4. Do you have any broken bones?
5. Did you need surgery?
6. Did you suffer head trauma?
7. Did you lose consciousness?
8. Were you hospitalized?
9. Did you require rehabilitation following your hospitalization?
10. What permanent injuries do you have as a result of your accident?

### ***Do You Even Need A Lawyer?***

In many cases you don't. In cases with minor injuries such as bruises and scrapes, you most likely do not need an attorney, and can probably handle the matter on your own. In a minor accident, the biggest obstacle is overcoming the fact that your ride was disturbed and what you went through was more aggravation than what you really needed.

A lawyer is often needed when you have significant injuries. Why? Because the insurance companies who represent drivers of cars, buses and trucks have claims examiners who do everything in their power to limit their company's liability and limit the amount of money they pay out to settle a claim. That's their job. Unless you are in the business of evaluating and negotiating accident cases every day, it is very unwise to try to handle a claim on your own. Take it from someone who has been doing this kind of work for twenty years in the New York metropolitan area. The insurance company will do everything possible to take advantage of you, and be very pleasant about it at the same time. They will sweet talk you, tell you how sorry they are to hear of your problems and then low ball you with a settlement offer. Insurance company representatives have been known to show up at the accident scene and offer a settlement check right then and there. I've also had situations where the claims examiner has taken the bold step of cutting a settlement check and mailing it to the victims' home, before any negotiation has taken place. The problem with accepting an unsolicited settlement check is that an injured victim who cashes that settlement check has just extinguished all of their legal rights to obtain proper compensation for their injuries. On the back of that check it will state in very small print that by cashing this check the "Claimant" (the injured victim) agrees to release the insurance company and the driver of the car for any and all claims or injuries arising out of this accident. This is a seriously bad move.

Importantly, compensation is a debt to be repaid. Plain and simple. Once a driver causes you injury, they have now created a debt that must be repaid. Think about this. If you own a Picasso painting that is valued at 5 Million dollars and that painting is destroyed in a fire, your insurance company is obligated to pay you 5 Million dollars for the value of that painting. Now, if you break your leg

because you were hit by a car, the driver's insurance company will have to evaluate the extent of your injury, whether you are disabled and unable to perform your daily activities. Are you able to tie your shoes; can you take a shower without assistance; can you carry your groceries; can you work out at the gym anymore; can you run, bike or exercise? The answers to these questions will determine the value of your potential case.

### *How Much Is Your Injury Worth?*

If you do not handle bicycle accident and injury cases on a regular basis, how do you know how much your injury is worth? Where would your case be "venued" if a lawsuit were brought on your behalf? This is important. Cases in the Bronx are perceived to be more valuable to an injured victim than in Westchester. A Brooklyn venue is often preferable to a New York venue. I guarantee that the claims adjuster will never give you this information.

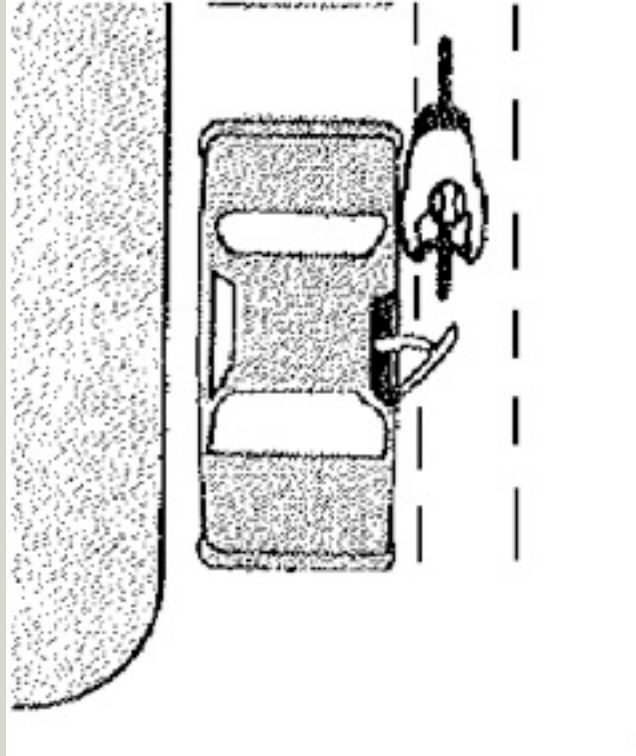
How do you know whether your injuries will get worse over time? Do you know whether you will need surgery in the future? What about rehabilitation in the future? Will you need ongoing medical care? How do you know how much those expenses will be? How can you properly negotiate with the insurance company unless you have this information at your disposal? Who paid for your medical bills? Did you know that New York is a "No-Fault" state? This means that the drivers' insurance company is obligated to pay for your medical bills up to \$50,000. After that, your own health insurance kicks in. Are you aware that if Medicaid or Medicare paid for any of your medical bills for treatment from your bike accident, they will require that you repay them (or at least a negotiated repayment) if you receive any compensation as a result of your accident. I guarantee you that an insurance claims examiner will not tell you this crucial information.

### *If You Are Killed, Who Will Speak For You?*

If, god-forbid, you are killed while riding your bicycle, who will speak for you? Can a family member handle your claim? Is he or she familiar with the strict time limits to sue a municipal entity like the MTA? Does your loved one know how much time she has to start a lawsuit for wrongful death in the State of New York? If she does, that's good. However, most people do not.

You don't want to be another faceless ghost-rider, whose fatal accident is remembered by a white-painted bike attached to a sign where you were killed. You need someone with experience, with a strong voice who has the knowledge and ability to teach you and explain to you how the legal process works. You need an attorney who keeps you up to date; someone who is responsive to your calls.

*A bicyclist can not avoid an opening car door when traveling faster than 5-7 miles per hour.*



Bike riding in New York City is dangerous. You must follow all traffic rules. If you suffer an injury while bike riding, an experienced attorney will first look to determine whether the driver was at fault and violated any motor vehicle traffic laws or city ordinances.

Then, your attorney will focus on your actions to determine if you bear any responsibility for causing your accident and resulting injuries. If you are partially at fault and you ultimately bring a lawsuit against the driver of the car that hit you, a jury will be permitted to apportion liability between you and the driver. Obviously, your attorney will seek to minimize the percentage of your liability and try to place all or most of the blame on the driver that hit you.

However, if you were following all traffic rules and there are witnesses who saw you riding correctly, and who witnessed the accident, you stand a much

better chance of fending off the defense claims that you are partially at fault for causing your own injuries.

## **CONCLUSION:**

Ride smart; ride with a helmet; and always follow the traffic rules when bicycle riding in New York City.

*If you have legal questions about your bicycle accident, please give me a call. I can answer your legal questions. Call me directly at 516-487-8207 or by email at [lawmed10@yahoo.com](mailto:lawmed10@yahoo.com). I look forward to your call.*

*For more information about negligence and accident cases in New York, explore my educational website, <http://www.oginski-law.com> and also take a look at my video blog where I give helpful video tips about accident cases and medical malpractice here in NY; <http://medicalmalpracticetutorial.com>.*