



A Guide to Understanding Bicycle Damage Claims in New York

*Welcome to “Wheels of Justice” a monthly column co-written by New York Bike Lawyers **James B. Reed, Esq. and Daniel Flanzig, Esq.** Jim and Daniel are both active Trial Lawyers representing cyclists in New York. With Jim’s office located in Elmira and Daniel’s in Manhattan and Long Island, they have collaborated to produce a monthly column on legal issues for New York cyclists. Each month Jim and Daniel will provide guidance on cycling safety, advocacy, bike crashes or insurance issues relevant to all cyclists across the State. Whether you ride in Albany, Buffalo, Brooklyn Manhattan or Montauk, Dan and Jim have you covered.*

Our firms get several calls or e-mail a week from New York cyclists involved in a crash where their bikes were damaged or totaled. They call for advice on whether they need to hire a lawyer to pursue a property damage claim when a negligent driver causes damage to their bike. If the cyclist was injured in the crash then our firms can and will help. It is our normal practice that while representing cyclists in their personal injury claim that we will gladly and aggressively pursue the claim for damage to their bike as well.

If the cyclist was thankfully not injured, but still wants to pursue a property damage claim, they most likely do not and will not need the assistance of a lawyer.

Handling the property damage claim should be relatively simple. By law you are entitled to be compensated for the cost of repairs. If the bike was totaled and cannot be repaired you are entitled to be compensated for the replacement value of your bike. Do not let the insurance company convince you that you should settle for a “depreciated” value of your bike. There is no such thing as a “Kelly Blue Book” for bikes. It is our position that if a bike is no longer manufactured and the closest or similar model costs more, the company is responsible to pay the increased replacement cost. They normally don’t agree but this remains our position and we suggest you do the same. It’s not your fault that your perfectly good bike is now trashed. Why should you have to pay more to replace it?

Also, BEFORE you have any repairs performed offer to make the bike available for the insurance company to inspect themselves.

Be careful when making statements to an insurance company. Be aware that they are usually recorded. The adjuster may act warm and friendly but remember they are not your friend. The innocent statement you make may be detrimental to your claim later on.

Here our suggestions in how to handle property damage claim:

1.) Get the Police Report. This will give you all the contact information you need and hopefully the driver's insurance information as well. If there is a witness on the report contact the witness and ask that they provide you with a statement.

2.) Locate the driver's insurance company using the police report. Next to the registration information is a three digit code. You can look up the company by going to:www.dfs.ny.gov/insurance/dmvindex.htm#dmvnum

3.) Take pictures of your bike. The pictures should show the whole bicycle as well as the individual parts that were damaged. We also suggest taking photos of serial numbers or other identifying labels or inscriptions.

4.) Get one or more estimates for the repairs. If the bike is totaled, try to obtain your original purchase receipt. Most bike shops are very helpful in this task as they hope you will return to their shop to make your new purchase. If you can't get the original receipt, some insurance companies will accept a credit card bill. Internet searches are also helpful in obtaining the original and replacement costs of the Bike.

5.) Document other damages that you will claim. Did you make improvements to the bike such as bags, water bottle cages, bike computers? Was your clothing or other items damaged in the crash? If so, you are entitled to be reimbursed for these items as well.

Once you have compiled all your evidence you'll need to call the insurance company and file a claim. Do this as soon as you can. You should be provided with a claim number. Use this to identify your claim when calling and writing. After you send them the documentation give them some time. Insurance companies are notoriously slow. Give them a call and ask if they received everything and if they require anything else. Expect a call back within 2-3 weeks. They will usually tell

you that they are completing their investigation and need more time. If you don't hear from them call again to follow-up on the claim.

If the insurance company continues to ignore you, tries to lowball you, or flat out denies your claim, you can file a "Small Claims" lawsuit. Each county in New York has a small claims court. In New York State Small Claims Courts can hear disputes up to the amount of \$5,000.00.

Small Claims Court is specifically for people with cases that might not warrant hiring a lawyer. Small claims courts are generally more informal and often have relaxed rules surrounding evidence to make it easier for people to seek legal relief without representation by an attorney. When filing your Small Claims case remember to sue **both the driver and the owner of the vehicle** as in New York State the owner is almost always responsible for the driver's actions. The owner is the one who holds the insurance policy for the car. You and the Judge will want a representative of the insurance company present in Court to be able to settle your claim.

The defense of Comparative Negligence in New York

Be prepared. The insurance company or the Small Claims Judge may tell you that they will not pay the full claim and will reduce the payment by what they consider to be your "comparative negligence" in contributing to the crash. New York State is a "comparative negligence" State. A simple description of how comparative negligence works is the following:

2 cars have an intersection collision and one driver was injured. That driver sues the other. At trial a jury finds them equally responsible for the crash. If the jury awards \$100,000.00 to the injured driver, that verdict is then reduced by 50% for that driver's comparative negligence in contributing to the crash and the judgment entered for the driver is now only \$50,000.00.

There are all types of scenarios that may create comparative negligence so do not be surprised if this defense is raised and full value of your claim is not paid.

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These are some simple guidelines provided by NewYorkBikeLawyers.com, Flanzig and Flanzig, LLP and Jim Reed, Esq. of ZiffLaw.com. We are New York Attorneys focusing in the rights and protection of cyclists across New York. Nothing on this page should be construed as legal advice nor does the use of this page or column create an attorney client relationship. The advice on this page offers a general overview of the laws in New York. Remember, every incident or claim is specific and the guidelines may not be applicable to your particular case. As always, we suggest contacting an attorney with any legal claim or issue before taking action on your own behalf.

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