

# NYC's Bike-Share Program Could Spark Tour De Litigation

By **Pete Brush**

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The long-awaited Citi Bike program is set to launch a fleet of riders who could subject New York City to liability far beyond the \$10 million in annual insurance provided by operator Alta Bicycle Share Inc., some lawyers say, but the city has made key legislative changes that could end up limiting the impact of any potential litigation.

Their comments came Thursday as the city — after nearly a year of software- and Superstorm Sandy-related delays — finally announced that the 6,000-bike, 330-station share program will launch May 27 for some 8,000 potential riders who already have purchased annual memberships.

“Now’s the time for New Yorkers to sign up for their own keys to the city,” New York City Department of Transportation Commissioner Sadik-Khan said.

The city hopes the number of users will grow exponentially from there including those, like summer tourists, who may partake in the program on a daily or weekly basis in taking unlimited, short-duration rides from station to station.

But, as the excitement mounts ahead of a summer of cycling, some lawyers predicted a rise in bicycle-related mishaps from the program and a concomitant rise for the city in legal headaches.

**Bicycle-accident attorney Dan Flanzig of Flanzig & Flanzig** pointed to a recent report issued by New York City Comptroller John Liu, which said that, while the city has required Alta to purchase \$10 million in general liability coverage for every year the program operates, “it is unknown if the level of coverage is adequate.”

New York City has played down those liability questions, but they haven't gone away. According to **Flanzig**, the \$10 million level of coverage is “shocking” given the coming influx of bikers who will be taking to the streets — with or without helmets, which are encouraged but not legally required.

The city paid about \$4.7 million per year in bicycle-related claims settlements from 2002 through 2012, that report said. But that number is likely to rise sharply with Citi Bike, according to **Flanzig**.

“The risk to the city potentially is in street defects, downed stop signs and road closures, that kind of thing. That’s where their exposure really lies. That level of insurance doesn’t seem to be substantial enough to keep the city out of liability,” **Flanzig** said.

Some of the biggest settlements the city has paid out to cyclists have come from collisions with

city vehicles, they also pointed out.

But another experienced bicycle-accident lawyer, Robert S. Fader, said those fears likely were overblown.

For one thing, New York City has moved to shield itself from claims stemming from collisions with street defects such as potholes by requiring would-be plaintiffs to prove that the city had notice of the defect before any incident.

The city also has shortened the time frame during which claims can be made against it to 90 days and has shifted liability in sidewalk mishaps to landlords, Fader said.

"The city takes care of itself. They have passed the laws they need to help them," Fader said, though he did acknowledge that there is little doubt that plaintiffs will attempt to hold the city liable when they endure wipe-outs not caused by privately insured vehicles.

But **Flanz** and other lawyers said pothole and other city-induced wipe-out claims are not impossible to prove. Cyclists who run into obstacles that are the product of city work zones or messes left behind by city workers, for example, can file claims against the city, they say.

"The Department of Transportation does a very poor job of maintaining the roads," said attorney Jeffrey A. Barr, who already has sued the bike-share program for posting a rental station in front of a West Village building. "There are potholes; there's sand; there's ice. Even experienced cyclists have accidents."

Barr says the city has no real idea of how many potential claims could be coming, noting that other bike-share cities — there are more than 500 worldwide — have seen upticks in crashes as their programs got underway.

"I don't know for sure that there will be an increase in accidents — but if more people are going to be on bikes, it's likely there will be more," he said.

And unlike Fader, who sees the average rider as fairly experienced, Barr said Citi Bike will be injecting a major element of inexperience into the bicycling mix.

"All you need is a credit card now. Nobody needs a license to ride a bike, even though it requires a certain skill to ride in New York City," he said.

**Flanz** also took a dimmer view of what the ability of the average New York City bike-share cyclist might be.

"There are a lot of people who never learned to ride a bike who will be tempted by this program," **Flanz** said. "I don't think a proper place to learn to ride a bike is Fifth Ave. and 45th Street."