

# A Legal Handbook For New York Cyclists

A Practical  
Guide For  
People Who  
Rely on Bicycles  
as a Form of  
Recreation and  
Transportation



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[www.newyorkbikelawyer.com](http://www.newyorkbikelawyer.com)



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# INTRODUCTION

In the last decade, New York has seen an explosion of growth in cycling. New York City has created hundreds of miles of bike lanes, adapted Vision Zero initiatives and released one of the largest bike share programs in the country. Thousands of New Yorkers have ditched their MetroCards and have taken to the streets to commute by bike. Outside New York City, the growth of cycling can be seen as well. The weekends bring hundreds of cyclists to the suburban streets riding and training with bike clubs and friends. On a Sunday, just sit on the Long Island Expressway Service Road and watch the club rides go by, or head to Route 9W and watch a dedicated group of cyclists climbing up to Bear Mountain to get ready for their next event.

Although the benefits of cycling far exceed the risks, anyone who spends time on the road is consciously aware of the possibility of a crash. If it has not happened to them, they know more than one person who has sustained a serious injury while cycling. While the most common type of crash a cyclist will encounter is with a vehicle, other conditions such as road defects cause serious—if not fatal—injuries in a crash.

If you have been involved in a crash, you are probably worried about how your medical bills will get paid, who will compensate you for your lost wages and damage to your bike. You may also have serious questions about your legal right to compensation for the injuries sustained following the crash.

This book is here to serve as a resource guide for the New York cycling community. It includes information about the laws in the city and state of New York, details about no-fault claims, how to handle your property damage claim, as well as your rights and remedies if you are involved in a crash.

However, this book should not be used in lieu of legal advice from an attorney. It is merely a guide to help you understand the potential claims and recourse available. If you have been involved in a crash, we strongly recommend contacting a competent attorney with experience handling a bike crash case. Almost all attorneys, including my office, offer free consultations.

Certain claims, such as no-fault claims, have short time periods in which to make a claim. Even if you are unsure about whether you intend to bring a lawsuit, we strongly suggest that you contact an attorney who is experienced in handling a bike crash case to make sure all your bases are covered, and you understand how to best protect yourself. While there are many competent attorneys in New York to handle your case, quite often having an attorney who is also a cyclist can be advantage. The firsthand knowledge that lawyers have after handling hundreds of bike crash cases, as well as understanding your riding environment and crash scenarios, is not something taught in law school. If you have been involved in a crash, feel free to call or email our office for a free consultation.



## ABOUT THE AUTHOR

I am a partner at the law firm of Flanzig and Flanzig, LLP, a nationally-recognized personal injury law firm with offices in New York City and Long Island. Our firm is a New York personal injury law firm that has developed a focused practice representing the rights of seriously injured cyclists and other crash victims throughout Manhattan, Brooklyn, Queens, Bronx, Staten Island, Nassau, Suffolk, Westchester and the lower Hudson Valley. Our firm is dedicated to the practice of representing vulnerable road users whether on bike, as a pedestrian, on a motorcycle, or in a vehicle.

For over 25 years, I have been riding my bike around New York City before the first signs of bike lanes. After finishing law school, I found an interest in competitive cycling and started participating in duathlons and other road events. Since then, I have competed in over 50 races including two New York City marathons and six New York City half-marathons.

All this time on the road and outside of a car has taught me firsthand the vulnerability of cyclists, runners and pedestrians. As my law career took hold, I quickly became passionate about protecting the rights of road users and litigating on behalf of crash victims. As I spent more time in the courts, I began to notice a gap in New York's legal community for those dedicated to representing cyclists. It was then that I developed NewYorkBikeLawyers.com, a focused practice area for New York cyclists.

In 2012, I started entering the bike advocacy world. My work began with volunteering with the New York Bicycling Coalition, New York State's only statewide bike advocacy group. I helped develop bike law content for their website and started working on pro-bike legislation and local bike issues in New York City and Long Island. In 2015, I was asked to join their board of directors and then, later, their executive committee. My focus remains on providing safety and legal advice for cyclists in New York State and helping to promulgate pro-cycling legislation. Together with my colleague Jim Reed, Esq., another dedicated bike lawyer, I have developed "Wheels of Justice," a monthly bike law blog published on the coalition's website and shared with other bike advocacy groups around the state.

After my start with NYBC, I began to connect with local advocacy groups. In 2013, my firm began a great relationship with Bike New York, the country's premier bike education organization. We became a premiere sponsor of the TD Five Boro Bike Tour, the world's largest charity bike tour. In partnership with Bike NY I have lectured and run bike law educational programs throughout New York City. In 2019, our program became a dedicated part of Bike NY's educational programming.

I have provided legal advice and remain a dedicated supporter and fund raiser for Transportation Alternatives. Working closely with its executive director and legislative staff, we have collaborated on issues unique to New York City and New York State.



These include lobbying in Albany for changes in crash reporting and crash investigation by the Department of Motor Vehicles.

Many a night I can be found lecturing at bike shops or at bike club meetings throughout New York City and Long Island. Nothing is more fun for me then being in a room and talking bikes with people who share the same passion I have. They are always eager to learn more about bike law and how they can better protect themselves on the road.

After living in Manhattan for over 20 years, several years ago I moved my family from NYC back to Long Island where I was raised. As I started riding again on Long Island, I learned that Nassau and Suffolk sadly have the highest reported fatalities for cyclists and pedestrians in the state. Spend some time on the road here and you will learn that the attitude of motorists towards cyclists surely is a competent cause of that statistic. This is new area that I have become passionate about addressing.

In the legal community, I have developed a series of continuing legal education programs and have lectured both in New York State and nationally teaching other lawyers on how to properly and effectively represent cyclists involved in a crash.

I am lucky enough to frequently be quoted in the *The New York Times* as well as other national and international news for my work as a bike advocate and for some of the high-profile cases my firm has handled. I was honored to be featured in Bicycle Times Magazine as a leader in bicycle law advocacy and as a New York City bike crash lawyer.

Since 2011, I have been consistently named one of **The New York Area's Top Rated Lawyers** and as a **New York Super Lawyer**. Our firm has been awarded and maintains a **Martindale Hubbell AV Preeminent** rating in ethics and ability. Both I and my partner and sister, Cathy Flanzig, have been granted membership in the **Million Dollar Advocates Forum and Multi-Million Dollar Advocates Forum**, for the trial verdicts and settlements we have obtained in excess of one million dollars on behalf of our firm's clients.

I add this section to the book not to show off my accomplishments but rather to allow you to decide whether this is a guy whose advice you will heed. I am proud of my work to date and plan on continuing to advocate for cyclists both in and outside the courtroom. I hope reading this will motivate others to join the cause.



## CHAPTER 1: **PROPERTY DAMAGE**

We get several calls and emails each week from New York cyclists involved in crashes in which their bikes were damaged or totaled. They seek legal advice and to see whether or not they need to hire a lawyer to pursue a property damage claim when negligent drivers have caused damage to their bikes. If the cyclist was injured in the crash, then our firm can—and will—help. Our firm policy is to handle BOTH a property damage claim and a personal injury claim while representing a client in a crash. However, if the cyclist was thankfully not injured, but still wants to pursue a property damage claim, they will most likely 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 fair replacement value of the bike. Do not let the insurance company convince you that you should settle for a “depreciated” value of your bike; or quote you a number from the “Bicycle Blue Book”. I have failed to see any science supporting this “Blue Book” and at best it is a reference for the wholesale value of a bike, NOT replacement value. We take the position that a bike is valued at “fair market value”. This can be what you paid for it or what the current market



is for that bike. For instance, a rare vintage bike may have a high “fair market value” even know the cost was relatively low. Likewise, a 15-year-old \$10,000.00 bike today may be worth much less. Fair market value can be established by a qualified expert, like a bike shop owner, or by your own independent and reliable research. In addition to the market value, you are entitled to be paid for any add-ons placed on the bike. New wheels sets, cranks, cages or computers are all part of the value.

Be sure that BEFORE you have any repairs performed, you offer to make the bike available for an inspection performed by the insurance company itself. Always exercise caution when making statements to an insurance company. Beware that they are usually recorded. The adjuster may act warm and accommodating but remember that he or she is not your side; an innocent statement you make may prove to be detrimental to your claim.

Here are our suggestions on how to handle property damage claim:

- 1.) **Get the police report.** This will provide you with any and all contact information you will need, and hopefully will include the driver’s insurance information as well. If there is a witness on the report, make sure to ask that they provide you with a statement.
- 2.) **Using the police report, locate the driver’s insurance company.** In New York, this information should be next to the vehicle registration information in the form of a three-digit code. From there, you can look up the company by visiting: [www.dfs.ny.gov/insurance/dmvindex.htm#dmvnum](http://www.dfs.ny.gov/insurance/dmvindex.htm#dmvnum) or on our website under “How to Identify Insurance Companies in New York.”
- 3.) **Take pictures of your bike.** The pictures must show the entire bicycle, especially the individual parts that were damaged. I also suggest taking photos of serial numbers and any other identifying labels or inscriptions.
- 4.) **Get one or more estimates for the repairs.** If the bike is damaged beyond repair, try to obtain your original purchase receipt. Most bike shops are very helpful in this task, as they hope that you will return to their shop to make your new purchase. If you cannot obtain 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 all other damages that you will claim.** Did you make any improvements to the bike such as wheel sets, saddles, bottle cages, cranks or bike computers? Was your clothing or any other items damaged in the crash? If so, you are entitled to be reimbursed for these items as well.

Once you have compiled all of your evidence, you will need to call the insurance company and file a claim. You should do this straightaway. The insurance company will provide you with a claim number, which you will use to identify your claim when

calling and writing. After you send the insurance company the documentation, be patient, as insurance companies are notoriously slow. After some time, give them a call and ask if they received everything and whether they require anything else. Expect a call back within two or three weeks. They will usually tell you that they are completing their investigation and need more time. However, if you do not hear from them, make sure that you 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 may not warrant hiring an attorney. Generally, they are less formal 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 name both the driver and vehicle owner in the claim. In New York State, the vehicle owner is almost always responsible for the driver’s actions, especially because 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, so that you can settle your claim. Have your evidence organized and ready to present to the judge or mediator.

### **The Defense of Comparative Negligence in New York**

Be prepared. The insurance company or the small claims judge may tell you the full claim will not be paid and will reduce the payment by whatever amount 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 as follows:

*Two cars have an intersection collision, and one driver was injured. The injured 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 percent for that driver’s comparative negligence in contributing to the crash. The judgment entered for that driver will now be 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 the full value of your claim is not paid.

At some point a settlement offer may be made. It may or may not be at full value of your claim. You will need to decide if you want to take it. All trials, including small claims trials have risks. The court process also takes time. If a reasonable offer is made, sometimes a settled claim is the best claim.

## CHAPTER 2: **Understanding New York’s No-Fault System**

In the 1970s, New York’s automobile no-fault law was enacted to ensure insurance companies would pay for legitimate crash-related medical expenses, lost earnings, and incidental costs, regardless of who was at fault in a crash. The intent behind this law was to speed up compensation without the necessity of long, drawn-out litigation over fault and the amounts owed. Additionally, the law aimed to curb and control claims that are related to automobile crash expenses. New York’s no-fault insurance law offers benefits (e.g., quick payments for expenses) and restrictions (e.g., lawsuits for pain and suffering). New York is one of the few states that have no-fault coverage. If you are injured in a crash in New York, the no-fault coverage you receive comes from the vehicle you were operating or in which you were a passenger. When you’re a cyclist or pedestrian, no-fault coverage will come from the vehicle that you came into contact with. In some circumstances actual contact might not even need to occur to make a no-fault claim.

No-fault is a separate and distinct claim from a bodily injury claim. This confuses many people. Cyclists, pedestrians, drivers, or passengers who are injured in a crash may





have the right to sue for their injury, as well as for their pain and suffering. This is what we call a “bodily injury” or “BI” claim. When you are a cyclist, pedestrian or passenger, the same insurance company that will defend and indemnify the negligent driver will also provide and pay for your no-fault claim. Although payment is made by the same insurance company, these are completely separate claims. Each claim is handled differently with different laws and regulations. The claims are handled by different adjusters and departments within the insurance company. The two claims also have different standards of proof, available compensation, and coverage.

No-fault in New York was designed to ensure that regardless of fault, an insurance company will pay cyclists, pedestrians, drivers, and passengers up to a statutory minimum of \$50,000.00 in benefits. Some policies are greater. The expenses that are covered are ambulance and hospital expenses, doctor bills, prescription drugs and diagnostic tests (such as x-rays and MRIs), as well as therapeutic services (such as physical therapy). This will also include any lost wages. It will not include compensation for pain and suffering. However, if you qualify (having sustained a “serious injury”), you can pursue any additional claims by a separate lawsuit against the driver(s) and vehicle owner, or against any other party that is responsible for causing the crash and your injury.

If you have been injured in an accident, it is important to contact an attorney quickly because there are many circumstances that require immediate action. No-fault claims in New York must be filed within 30 days of the crash. This requires completing and delivering a no-fault benefit application. Bills for services should be submitted within 45 days of the treatment being provided.

### ***Who gets No-Fault?***

New York’s no-fault law applies to any cyclist, pedestrian, passenger, or driver who is injured by a motor vehicle in New York. There are several conditions that must be met to qualify for no-fault coverage, such as:

- The crash occurred in New York.
- The injured party was the driver or passenger of the insured vehicle, a cyclist who was struck by or in contact with the motor vehicle, or a pedestrian who was struck by or in contact with the motor vehicle.
- The vehicle must be a car, truck, bus, taxi (not a motorcycle), or other vehicle covered by the New York no-fault law.
- The vehicle is registered in New York.
- The vehicle has an insurance policy which is either sold in New York or which is issued by a company licensed to do business in the state of New York.

### *Who Does Not Get No-Fault?*

- Motorcyclists
- Vespa or scooter riders
- Someone who was injured as a result of operating a motor vehicle while under intoxication.
- Under other certain circumstances, out-of-state policies and policies not required to conform to New York's no-fault laws.

### *How to File for No-Fault*

There are important steps to follow when making a no-fault claim. Although the intent of the legislation was to create an easier process, this has not been the result. Under the false premise that they are combating insurance fraud, insurance companies have turned this process into an adversarial proceeding, taking advantage of any mistake a claimant may make to deny him or her coverage.

Even when everything is done properly, a claimant may still face a denial of benefits for other reasons. This includes an opinion from a medical doctor hired by the insurance company that the treatment rendered was not medically necessary (this is known as a "peer review"). Benefits also may be denied after an examination is conducted by a doctor hired by the insurer determines in that doctor's opinion that the claimant is no longer in need of treatment. Yes, treatment can hinge on an opinion by a doctor hired and paid for by the same insurance company trying to deny you benefits. This what they label an "Independent Medical Exam" or I.M.E. I have yet to figure out where the "independent" part comes in .

In order to protect your coverage and benefits, you must be aware of the following:

- **The No-Fault Application (form NF-2):** The no-fault application is normally provided by the insurance carrier of the car which struck the claimant, which the claimant came into contact with, which the claimant was driving, or in which the claimant was a passenger. If the claimant was a cyclist or a pedestrian AND owns his or her own car, they must send an application to their own insurance company as well as there may be benefits available under his or her own policy. This can include such things as excess PIP (additional no-fault coverage above \$50,000). The application can be requested by phone, but it is additionally recommended to request it by mail, certified return receipt requested.
- **Time Constraints:** You will have thirty (30) days from the date of the crash to file the application. Do not delay thinking that your injuries may get better or that your health insurance will cover the injuries that were suffered in the crash. Keep in mind that simply filing the application does not create an obligation to commence a claim or even get treatment. It is just reserving your right to do so should the need arise.



Additionally, most health insurance companies will balk at paying claims resulting from a car crash. They require that no-fault becomes primary coverage. Filing the form will simply protect the rights of anyone involved in the crash.

There are occasions in which you may not be able to ascertain the insurance company of the car that struck you. This may occur if the police did not respond to the crash to collect this information or if the driver of the car is particularly uncooperative and refuses to provide the information. You may have suffered a long-term hospitalization or disability related to the crash that affected your ability to timely file a claim. One way to protect yourself against this is to always be sure to call the police after a crash. If the police are doing a proper job, the police will obtain the information for all parties and will place it on the report. This information is found on the report by a three-digit code that will identify the insurance carrier. If the police do not respond or the driver tries to flee, get the license plate. The insurance information can be found through the Department of Motor Vehicles.

If the insurance company is still unknown, the new regulations will allow the claimant to provide written proof of a “clear or reasonable” reason for missing the 30-day deadline. However, the insurance companies are largely responsible for determining what is “clear or reasonable,” so you should not depend on this provision to save yourself or your claim from the consequences of late filing.

## WHAT TO EXPECT AFTER YOUR CLAIM IS FILED

After a claim is filed, you should be provided with a no-fault claim number. Provide this number, along with the name of the insurance company, the name of the adjuster assigned, and any contact information to your doctor and any other health care providers for all treatment—both past and future. If you have already left the hospital without providing insurance information, make sure to call the hospital billing department right away and give them the information.

Additionally, a no-fault facility or assignment of benefits form may have been provided. This should be filled out with the no-fault information and the claimant's patient number, then mailed to the hospital right away. In the next several weeks, you may receive a bill for the ambulance, x-rays, labs, or other treatment related to the crash. Be sure to provide the no-fault information to these facilities as well. Once this information has been provided, you have fulfilled your obligation. At that point, it is incumbent upon the service providers to, in a timely fashion, submit the claims and respond to the insurance companies' demand for additional information.

Do not expect no-fault to last forever. Keep in mind that the insurance company wants you off of its coverage as soon as possible. In order to do this, it is allowed to have you examined by a physician or a medical specialist to determine, in their own opinion, whether you require additional treatment. If the doctor does not agree that this is the case, your treatment and no-fault benefits should be terminated. The doctor who is hired by the insurance company will also decide whether or not you are still disabled, or if you are capable of returning to work. If you fail to appear for an exam, the insurance company can use this as grounds to terminate the benefits that you have been provided.

In addition, you may be required to appear for an E.U.O. (examination under oath). This is a hearing ordered by the insurance company, at which an attorney who is hired by this company will ask you questions regarding the crash and treatment. If you fail to appear at this hearing, the insurance company can use this as grounds to terminate your benefits as well.

### ***Lost Wages***

Under no-fault, you can claim lost earnings and out of pocket expenses. Lost earnings require that your employer sends proof of your wages on a form called a No-Fault Wage Verification Report, which is provided by the insurance company. Under no-fault, you will be entitled to receive 80 percent of your crash-related lost earnings, at up to \$2,000 each month. Some policies provide more. If you are self-employed, you will need to provide proof of income via tax returns. A note from a doctor stating that you have become disabled from performing your normal job duties will be required as well. This doctor must specify the length of your disability, and must state that said disability is related to the crash.



### *Out-of-Pocket Expenses*

It is important to save all of the receipts for taxis and transportation costs, pharmacy bills, and other crash-related expenses. Travel expenses to and from the doctor's office or a facility for medical treatment will be reimbursed by no-fault. Medications, a brace, and bandages and costs up to \$25 per day for other related items such as dog walking or house cleaning can also be reimbursed.

### **WHAT IF YOUR CLAIM IS DENIED?**

If the claim is denied and you have private health insurance, the bills can be submitted to your private carrier. In this situation, it is also advised that you request that your doctor's bills be directed there as well. A copy of the denial of the claim should be obtained; as most insurance companies will want proof that you have been denied by no-fault prior to the company assuming your bills.

The no-fault carrier's denial includes instructions on how to fight or arbitrate the denial. **YOU SHOULD NOT ARBITRATE THE NO-FAULT DENIAL, NOR SHOULD YOU ALLOW YOUR DOCTOR TO DO IT FOR YOU, UNTIL THE LAWSUIT IS RESOLVED.** An adverse finding at the arbitration can destroy the claims in your underlying lawsuit for damages.

### *Why Contact a Lawyer when Dealing with No-Fault?*

Some days I think I should send a thank-you note to certain insurance companies. I find a large number of clients retain us for the sole reason that insurance companies have given them such difficulties in filing a no-fault claim.

Although no-fault was originally designed to be non-adversarial, it has turned out to be just the opposite. The rules change regularly, and the failure to comply with even one element may destroy an injured party's rights to collect these benefits. Most lawyers, at least the ones you want to hire, do not charge for handling the no-fault aspect of the case while they are representing you in the underlying personal injury litigation. A well-versed bike crash attorney is familiar with all of the no-fault regulations, knows how to deal with the most difficult insurance companies, and can easily navigate the insurance company's attempts to deny you benefits.

## Chapter 3: **The Motor Vehicle Accident Indemnity Corporation (MVAIC)**

Let's start with the premise that I hope you never need it. However, if you do the Motor Vehicle Accident Indemnification Corporation (MVAIC) it created to pay benefits to automobile crash victims, pedestrians, or cyclists who were injured by an uninsured vehicle. MVAIC provides both no-fault benefits up to \$50,000.00, as well as the available coverage for up to \$25,000.00 per person injured in a crash.

MVAIC is a state-run agency, which steps into the shoes of the insurance company in the event the vehicle has no insurance or is a hit and run. If the identity of the insurance company becomes known after the claim has been filed with MVAIC, it can still be withdrawn. Hopefully, involving the MVAIC will not be necessary, as it is a state agency and with bureaucratic paperwork which makes it difficult for even the most seasoned attorney to navigate.

Filing a claim through MVAIC is a method to make a recovery if you are involved in a crash and neither you, nor anyone in your household owned a vehicle at the time.



MVAIC also applies if coverage is denied or disclaimed, the collision was a hit and run, it involved a stolen vehicle, or the owner did not give driver permission to use the car (denial of permissive use).

**The requirements for MVAIC benefits are:**

- You were involved in a motor vehicle crash in New York.
- You were a resident of New York when the crash occurred. (Under special circumstances, residents of other states may be eligible for MVAIC benefits.)
- You have no other automobile insurance available to you. (If you or any of your household relatives own an insured motor vehicle, you will be required to file a claim with that insurance company to see if you are covered under that policy for benefits.)
- You were NOT the owner of the uninsured vehicle that was involved in the crash.
- You were NOT the spouse of the owner of the uninsured vehicle, or a passenger in that uninsured vehicle.

Additionally, there are time frame requirements that must be adhered to. If these timeframes are not met, your eligibility could be affected. This includes:

- The motor vehicle collision must be reported to the police (peace officer) within 24 hours of the accident occurring.
- A Notice of Intention (NOI) is submitted to MVAIC within 90 days of the collision, if the accident was with a hit and run or unidentified motor vehicle.
- An NOI is submitted to MVAIC within 180 days of the collision, if the accident was with an identified motor vehicle.

MVAIC may require you to provide a bicycle crash claim form, in addition to the NOI claim forms if the crash involves a bicycle.

Again, let's hope MVAIC is something you never need to access. The rules and procedures are endless and for all that effort the maximum bodily injury recovery is only \$25,000.

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In New York, identifying the company that insures a vehicle starts at the crash scene. The responding officer should obtain the information in the process of preparing a police or collision report. The officer usually obtains this information when the driver produces an insurance card at the scene of the crash or by running the vehicle through the Department of Motor Vehicles.

Once the officer obtains the information, it is then placed on the report. The insurance company is identified by a three-digit code located in the last box on the right next to the vehicle type. That three-digit code will correspond to codes provided by the Department of Motor Vehicles and the New York State Insurance Department.

The three-digit code can be found here on the report:

Page 1 of 4 Pages		New York State Department of Motor Vehicles	
<b>POLICE ACCIDENT REPORT (NYC)</b>		MV-104AN (7/11)	
Precinct <b>030</b> Accident No. <b>MY-2021-030-000003</b>		Complaint Number <b>2021-030-000034</b>	
		<input type="checkbox"/> AMENDED REPORT	
Accident Date: Month Day Year <b>1 2 2021</b>		Day of Week <b>SATURDAY</b> Military Time <b>15:50</b>	
No. of Vehicles <b>1</b>		No. Injured <b>1</b> No. Killed <b>0</b> <input checked="" type="checkbox"/> Not Investigated at Scene <input type="checkbox"/> Reconstructed	
Left Scene <input type="checkbox"/>		Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
VEHICLE 1		VEHICLE 2 <input checked="" type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN	
VEHICLE 1 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Address (include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____ Ticks/Areas Number(s) _____ Violation Section(s) _____ Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.		VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Address (include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____ Ticks/Areas Number(s) _____ Violation Section(s) _____ Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.	
Box 1 - Point of Impact Box 2 - Most Damage Enter up to three most Damage Codes <b>1 1 1</b> Vehicle By Towed: To _____ Vehicle Damage Coding: 1-13. See DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER		Box 1 - Point of Impact Box 2 - Most Damage Enter up to three most Damage Codes <b>6 1 5</b> Vehicle By Towed: To _____ Vehicle Damage Coding: 1-13. See DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER	
Diagram showing vehicle positions and damage codes. A circle around the intersection indicates the accident location.		Diagram showing vehicle positions and damage codes. A circle around the intersection indicates the accident location.	
Reference Marker Coordinates (if available) 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100		Reference Marker Coordinates (if available) 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	





Once you have the code, you can look up the carrier by visiting the Department of Financial Services website or using our website as well where we have easy links to the site. We also maintain links for New Jersey and Pennsylvania as well. Once you locate the company, an address and phone number will be listed. This will give you all the information to report your claim.

In the event the officer does not get the information, or the code is incorrect, we also have the ability to run the plate with the Department of Motor Vehicles which will provide the most up to date insurance information on the vehicle.

## CHAPTER 5: CLAIMS AGAINST MOTORISTS AND YOUR RIGHTS FOR RECOVERY

The most common cause of a bike crash will be a bike crash with a motor vehicle. To avoid these types of crashes, be confident and in control on your bike. Follow traffic laws, obey signs and signals, and use headlights and taillights at night. Conspicuous clothing and bright moving parts also increase awareness on the road. Our motto is “Be Safe, Be Seen”.

I am not going to spend the time writing about how crashes occur. There is plenty published about right hooks, left hooks, and more. This book’s purpose is to let you know your rights before a crash occurs and the steps to take afterward. While I spend countless hours advocating for safer streets, our day job is obtaining compensation and justice for those when injured in a crash. This means from day one we are launching our investigation, gathering facts and preparing your case for trial. By doing so we ensure that we are maximizing your recovery for the injuries you sustained in the crash. To learn more about this, visit our website’s results page. There you will see some of the results we have obtained for our past clients including some of our annual top verdicts and settlements.



One of the most common questions that our firm is asked is “if I pursue a claim against the driver who has hit me, what happens to them?” When a cyclist brings a lawsuit against a driver or property owner who has caused him or her injury, that driver or property owner’s insurance company will almost always step in. The insurance company must cover the payments made to the injured person. If a lawsuit is filed, the cost of defense is also paid by the insurance company, usually adding no additional expenses to the insured.

Aside from recovery for the property damage and no-fault coverage New York law allows recovery for each of the following: medical expenses that are not covered by a collateral source (health insurance or no-fault), lost wages, pain and suffering, loss of enjoyment of life, as well as pain and suffering, and medical expenses encompass both past and future damages. These types of damages are what drives the large results we have obtained for our clients.

### **The Process:**

Our office is a bike crash litigation law firm. That means that the majority of the cases we handle are placed into suit and litigated. The litigation process in New York typically takes from two to three and a half years from crash to trial, depending upon the county the case will be heard. The process of litigation involves discovery, which includes both document discovery and depositions.

- A deposition is when parties to the crash are asked questions under oath about how the crash occurred, and in the case of the plaintiff, details about injury and disability. We, in turn, get to depose the defendant.
- Document discovery involves the exchange of documents relevant to the case, such as medical records, as well as authorizations for the defendant’s attorneys to obtain your records from your doctor. After this all occurs, the injured party is almost always required to submit to one or more physicals conducted by a doctor designated by the defendants.

Once discovery is complete, the case may be placed on the trial calendar. Not all cases go to trial. In reality, most cases resolve along the way. However, we prepare for and are ready to try all our cases. In doing so, we can maximize the recovery for our clients and know we have done everything we can to get justice for the injury you sustained in the crash.

## Chapter 6: **Uninsured, Underinsured and Hit-and-Run Crashes**

Some of the most complicated and most serious bike crash cases that our firm handles involve hit-and-run crashes, uninsured vehicles or underinsured vehicles.

If you have been injured in a hit-and-run crash, we suggest that you obtain an experienced attorney who is not only familiar with cycling crashes, but also the understanding of the complex investigation that follows this type of crash. Accessing and working with the police and the District Attorney's office is also critical to a fruitful investigation and helping the victim obtain justice.

Your lawyer should also have a working knowledge of hit-and-run insurance claims and policy coverage. If either you or someone living in your household owns a motor vehicle, that person may be able to make a claim with whichever insurance company covers this automobile. This claim would be under the supplementary uninsured/underinsured motorist (SUM) provision of that policy.

Hit-and-run collisions are typically where the driver and owner of the car were never identified. Another common scenario involves a serious crash where the offending vehicle and driver were underinsured, meaning that the coverage of the vehicle was insufficient to compensate our client for the severity of the injury. In an even worse scenario, the offending vehicle fails to have insurance at all. Lack of sufficient insurance may affect you if you participate in group rides. Sadly, it is not uncommon to hear of crashes when a vehicle strikes multiple riders in a peloton. In that circumstance, one insurance policy may be called upon to cover multiple injuries. If that driver has the minimum coverage allowed in New York (\$25,000 for one injured party and a maximum of \$50,000 for all injured parties) that one auto policy may not be enough coverage for those who were injured. So what can you do to protect yourself and your family if this occurs?

### **SUM Coverage**

SUM coverage is also known as underinsured or uninsured motorist coverage. It is mandatory in New York; it is separate and apart from your liability and no-fault coverage. By law, everyone who purchases insurance for a vehicle in New York has available to them uninsured coverage of \$25,000.00 per occurrence. However, for most people involved in a serious crash this coverage is just not enough. Your policy allows you to purchase additional coverage, and the cost of this additional protection is minimal. The law currently requires that your SUM coverage be equal to your liability limits. Whether you are a cyclist, pedestrian, driver or even a passenger, this coverage will protect you and your family. There is a difference in these coverages.

### **Uninsured Motorist Protection**

Uninsured motorist protection is when the offending vehicle simply has no coverage at all or the vehicle is insured, but coverage for the crash is denied due to a disclaimer.



Such denials can be based upon the vehicle being stolen, the driver not having permission to use the vehicle or using the vehicle in violation of the terms of coverage.

### **Underinsured Motorist Protection**

Underinsured motorist protection is when the vehicle is insured, but there is not enough coverage to compensate you or your family member for the crash. If you have sufficient SUM coverage, you can make a claim against your own policy for the additional damage.

For example: The offending vehicle has \$25,000 in coverage – the minimum allowable in New York state. You have \$100,000 SUM coverage. After collecting the \$25,000 from the other vehicle, you would have available to you \$75,000 to compensate you for your injury. If you did not have \$100,000 in SUM coverage, the most insurance available to you would only be \$25,000.00, despite the severity of your injury.

There is no limit to the amount of SUM coverage you can buy, it just must be consistent with your liability coverage on your car. Have you checked your own auto policy for SUM coverage? Today! Right Now! Check your insurance policy! You need to check your auto insurance policy and verify your coverage. DO NOT rely solely upon your broker or insurance company salesperson to confirm you are covered. After purchasing sufficient liability coverage, the cost for increased SUM is not expensive. Don't let your broker or sales representative talk you out of it. New York recently passed a law that created mandatory SUM coverage equal to the policyholder's liability. The policyholder would affirmatively have to opt out of the coverage if they so choose to do so.

### **What if I don't own a car nor does anyone in my household?**

As a last resort there is MVAIC, the details of which were discussed above. Again, MVAIC is the last resort. If you own a car, and have proper SUM coverage, you will never need to make a claim.

### **Hit-and-Run Claims**

Hit-and-run claims fall under the category of uninsured motorists claims. In order to make this claim with your insurance company, the law requires that hit-and-run crashes be reported to the police within 24 hours of the crash. There also must be contact between the offending vehicle and the cyclist, pedestrian or other vehicle involved in the crash. All the applications of the policy follow the same criteria of uninsured motorists claims as set out above. The police in New York have discretion on whether to pursue and investigate hit-and-run crashes. The motivating factor typically is the injury sustained by the victim in the crash. The more severe the injury, the more motivated the police are to investigate and the district attorney to prosecute. The charges also increase based upon the injury.

As always, if you have any questions about this coverage and how it applies in a bike, pedestrian or other auto crash case, please feel free to call or e-mail us. We are also happy to review your auto coverage with you and discuss your current coverage and how it will best protect you and your family.

## CHAPTER 7: “DOORING”

What we call the “door zone” is the space two to four feet adjacent to a parallel parked or stopped car. While riding in the “door zone,” a cyclist can suffer a severe or even fatal injury if a door is suddenly swung open into their path of travel.

“Doorings” are all too common in New York. About half of the bike-crash cases that are handled by our firm involve “doorings”, most commonly with taxis, Ubers or other ride share vehicles. Although one of the most preventable crashes, it still remains the most common and potentially the most dangerous.

When choosing a lawyer to handle a “dooring” crash case, it helps if your lawyer is not only a cyclist, but also someone familiar with the laws and methods used while litigating this type of crash, as not all personal injury lawyers are familiar with these types of cases. Our firm has literally now handled over 100 such cases in the last eight years. We have also successfully won over 18 summary judgement motions where we have asked the court to find the defendant 100 percent responsible for the crash, before the matter even needs to be heard by a jury. Our article written for the New York Law Journal on this topic still remains a resource for judges and attorneys in New York State.



The other issue also presented is who responsible—the driver, the owner of the vehicle, or even the passenger. Depending upon the circumstance, it can be all three. Under Vehicle and Traffic Law Sec. 388 the owner of the vehicle remains vicariously liable (responsible) for use and operation of a vehicle and the acts of its passengers. This makes the owner responsible and more importantly triggers insurance coverage for the event. We have also been successful in making a claim directly against the passenger. We have found insurance coverage for the passenger via a homeowners or rental policy that insures for negligence and even had one case where we were successful in making a claim against the passenger's employer because they were "in the scope of their employment" when the crash occurred. A thorough understanding of the law and competent investigation is needed in order to successfully litigate these claims.

### **The Laws in New York Applicable to "Doorings"**

In New York City and New York State, opening a vehicle door into moving traffic is a violation of the Vehicle and Traffic Law:

- Section 1214 of the Vehicle and Traffic law states "opening and closing vehicle doors- "No person shall open the door of a motor vehicle on the side available to moving traffic, and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall a person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers."
- NYCRR- Section 4-12-(c) Getting Out of Vehicle: In New York City: "No person shall get out of any vehicle from the side facing on the traveled part of the street in such manner as to interfere with the right of the operator of an approaching vehicle or a bicycle."
- NYCRR- Section 4-11, Section C, requires "Taxis...while engaged in picking up or discharging passengers must be within 12 inches of the curb or parallel thereto".
- NYCRR- Section 4-11-Taxi and Cars for Hire- (c) picking up or discharging passengers shall not be made under such conditions as to obstruct the movement of traffic and in no instance so as to leave fewer than 10 feet available for the free movement of vehicular traffic; Where stopping is prohibited;... (6) Within a bicycle lane.

These laws provide legal protection to cyclist and are designed to prevent doorings. Armed with these laws, and the advocacy of a bike lawyer, compensation can be obtained if you are injured as a result of this conduct.

## CHAPTER 8: **CLAIMS AGAINST MUNICIPALITIES, MUNICIPAL VEHICLES AND ROAD DEFECT CLAIMS**

If you have been involved in a fall or crash due to a defective condition in the roadway, you have the right to pursue a claim against the City of New York, or another town, city or village within the state. Almost all municipalities and public authorities require the service of a notice of claim within 90 days after the crash.

Lawsuits against municipal defendants have very unique and restrictive rules. Actions against the state, cities, counties, towns, and villages usually require the service of a notice of claim. The most important thing to remember is that if the claimant is over 18 years of age, they will often have only 90 days after the date of the accident to file a notice of claim.

This notice of claim states that this person intends to bring a lawsuit against the municipality or agency. If this is not completed within 90 days, the claimant will lose his or her right to bring a lawsuit. (Sometimes a failure to timely file the notice of claim can be corrected if a special proceeding is brought within a year and 90 days of the accident).

The 90-day notice of claim requirement applies to many different types of cases against the city of New York, counties of Nassau and Suffolk, Westchester, and the various towns, villages and public authorities throughout the state. These may include falls or crashes due to roadway defects, such as potholes, vault, or other defective street hardware.

It is critically important to document the condition that caused the crash as soon as possible. Be sure to take photographs of the location, record measurements, and obtain any other evidence which is necessary to preserve the condition. These conditions are often transient and are often repaired quickly after a crash.

Street defects and other dangerous roadway conditions for cyclists include:

- Potholes
- Road hardware such as manhole covers and utility vaults
- Construction plates
- Road cuts, trenches, and other temporary paving
- Grates and sewers
- Construction debris and negligently placed construction equipment
- Negligently placed dumpsters or other demolition equipment
- Improperly marked or placed speed bumps or speed humps
- Dangerous and defective bridges or bike paths



Keep in mind that one of the most difficult cases to prove is one involving a pothole in a city street. In almost all cases in New York, it must be proven that the city or municipality had “prior written notice of the defect” before your accident occurred. However, if it can be proven that the city or municipality “affirmatively” created the condition, worked in the area, or otherwise had notice of the condition, you may be able to maintain a lawsuit. Outside New York City these cases become even more difficult, as ownership of roadways crosses state, county, town and village jurisdictions.

### **Negligently Designed or Maintained Roadways and Bike Lanes**

Another type of claim involves crash due to negligent and unsafe road or bike lane design or maintenance. In a recent case called *Torturo v The City of New York*, the Court of Appeals, the highest court in New York State, recently made these type of claims a little easier to pursue. Since municipalities are given certain immunities from suit, the case of *Torturo*, clearly defined what needs to be proven against a state, city, county or other municipality in a road design case. These claims can now be based upon a finding that a municipality failed to conduct an adequate study or that the municipality failed to adhere to or follow their own internal plans. This was a dramatic change in law the lowered to bar for injured cyclists and others to pursue a claim due to negligent road design.



## Manhole covers, Street Plates, and other Hardware

Utility companies will normally have specific markings on street hardware. These markings are in the form of abbreviations such as “MGO” or “WSNY”. A complete list of typical markings can be found at our website, [NewYorkBikeLawyers.com](http://NewYorkBikeLawyers.com). Even with markings, there is no guarantee that this alone will identify the actual true owner. Further investigation will always be required.

In New York City, the law is different when it comes to road hardware, such as manholes and vaults, which may be owned and maintained by private companies, municipal authorities, or utility providers. In accordance with the NYC Admin. Code Sec. 2-07(b) the following maintenance requirements must be followed by any of these private companies, municipal authorities, or utility providers:

- 1.) The owners of covers or gratings on a street are responsible for monitoring the condition of the covers, gratings, and the area extending twelve inches outward from the perimeter of the hardware.
- 2.) The owners of covers and gratings shall replace or repair any cover or grating found to be defective and shall repair any defective street condition found within an area extending twelve inches outward from the perimeter of the cover or grating.
- 3.) Street hardware shall be flush with the surrounding street surface. Street hardware which is greater than ½ inch above or below the street surface shall be replaced or adjusted.

“The twelve-inch rule,” as we call it, is important because it creates a basis for liability for the entity that owns and maintains the street hardware.

### Street Plates

Street opening plates (traffic plates) are required to be “pinned” in place so that they do not shift or move as a result of vehicle traffic. They should be ramped to both keep them in secure positions and to maintain a smooth transition as one traverses the plate. If a street opening is made by a contractor and plates are used, it is that contractor’s responsibility to properly pin and ramp the plate, as well as to maintain the surrounding roadway.

By statute, a contractor working on a city street or sidewalk is required to keep all areas used by the public in a safe condition. The law dictates that it “shall be maintained free from debris, equipment, materials, projections or conditions that may cause a slipping, tripping or other hazard.” In addition, “waste dumpsters and debris, debris boxes should be secured and those containing material or debris shall be covered at the end of each workday.”

For a further list of the New York City rules and regulations regarding street opening and excavations, visit our website at [NewYorkBikeLawyer.com](http://NewYorkBikeLawyer.com).

Even if you were not injured in your crash, we highly suggest that you report any street defects or dangerous roadway conditions anyway. You may not have been hurt, but reporting it will help protect your fellow cyclists who will likely face the same defect; cyclists who may not be so lucky.

## Municipal Vehicles

Before understanding the rules and regulations regarding crashes with municipal vehicles, it is important to know exactly what constitutes a municipal authority owned or operated vehicle. Some, but not all, are as follows:

- Fire truck or police car
- Transit authority, MABSTOA, NICE or MTA bus or van
- Sanitation vehicle or street cleaner
- City owned car or truck
- Village or another municipal vehicle
- State-owned car, truck, or construction vehicle
- Access-a-Ride van or bus

If you are involved in a crash with one of these vehicles the 90-day notice of claim rule applies. This means a claim must be filed with the appropriate agency or municipality who owned or operated that vehicle. This can be quite confusing when it comes to municipal buses or access-a-ride vehicles. We strongly suggest contacting an attorney as soon as possible if your crash involves one of these listed vehicles so you can timely file your claim.



## CHAPTER 9: **BIKE SHARE AND CITI BIKE CRASHES**

For those living here or for others while visiting New York, renting a bike from Citi Bike or one of the many bike rental companies can be a fun and healthy way to tour the city. These programs give riders an opportunity to view what the city has to offer in a much more exciting way than by merely taking a bus tour. For New Yorkers, Citi Bike remains a great alternative to mass transit, an Uber or taxi. Unfortunately, visitors who ride in New York share the dangers that New York cyclists deal with on a daily basis. Whether riding in Central Park, the Seaport, the Hudson River Park, or other areas of the city, rental bike riders are exposed to the same risk of injury.

If a cyclist is injured while utilizing a Citi Bike or rental bike in New York, he or she is afforded the same rights and protection as New Yorkers. This includes the right to seek no-fault benefits (medical bills and lost wages compensated), as well as the right to seek compensation for any injuries that were caused by the accident.

As many tourists have taken to the bikes, there are many people utilizing these rental bikes without knowledge of their rights if injured in a crash. If you have been injured while riding a rental bike in New York, but you have left New York and returned to your home state or country, you can still prosecute a claim in the New York courts. Our firm can work by phone, email, zoom, or snail mail, and has done so for our clients all over the world.



Our firm has successfully handled a number of claims against Citi Bike due to defects in the bike that has caused injury to our clients. It was well publicized that the first generation of electric Citi Bikes had a defect in the braking mechanism that caused injury to many of its riders. Even today, defects in the fenders or brakes are still well known to occur with a Citi Bike. If you are injured by one of these types of defects, be sure to document the condition with photos and contact Citi Bike to report the claim. As soon as possible, contact a lawyer so that a prompt investigation can take place and the bike inspected prior to a repair being made and the bike being placed back out on the street.

### **What does Citi Bike suggest you do after a bike share crash?**

The Citi Bike website provides some guidelines for what should be done if involved in a crash while riding on one of their bikes. Citi Bike requires that the cyclist notify customer service (1-855-BIKE311) within 24 hours of the incident to report the crash. Their customer service department will provide the cyclist with a Citi Bike crash report to prepare. Even after a crash has occurred, Citi Bike reminds its users that the renter remains responsible for the bike until it has been properly returned to a dock or turned over to a Citi Bike representative. Citi Bike's rules state that if a cyclist fails to return the bike, he or she will be charged a fee that can be in excess of \$1000.00. The police will typically assist in returning a bike to a nearest Citi Bike station on behalf of the crash victim.

### **What we recommend you do after a bike share crash**

The following are the steps that our firm suggests you follow after being involved in a bike share crash:

- Your health is priority one. If injured, seek out medical treatment immediately.
- Call 911 and report the crash. Even if you have not been injured, be sure to call the police and wait for them to take a report. This is extremely important. Our firm has witnessed many cases in which our clients have later regretted not having called the police.
- Contact the company or the program that has rented out the bike. They will assist with the bikes safe return.
- If you are physically able, collect your own crash data. Do not rely upon the police to perform a proper and complete investigation.
  - Obtain vehicle information, driver's name, vehicle owner's name and the license plate number.
  - If there are witnesses, get their contact information as well. The witnesses' information may not be found on the police report when you pick it up a few days later.
  - If the driver will provide it, get the name of the insurance company that insures his or her vehicle. This information will be crucial if you are injured and will need to make a no-fault claim.

All other rules and guidelines of a non Citi Bike crash apply here as well. This includes no-fault, bodily injury claims, hit and run, uninsured as well as underinsured motorists claims.

## CHAPTER 10: **CRASHES WITH TAXIS, UBER, LYFT AND OTHER RIDE SHARE VEHICLES**

While riding in New York, nearly all cyclists have had at least one encounter with a taxicab. Recently, there has been a steady increase in calls to our firm from cyclists who have been injured in crashes with Ubers, Lyfts, black cars, cabs and other ride share vehicles. This follows logically from the fact that the number of cyclists on the road increases daily, and these cyclists have to share these roads with nearly 10,000 cabs and thousands of ride share vehicles who now dominate the New York City Streets.

The most common incidents with cabs include: (i) being “doored” by exiting passengers or drivers, (ii) cabs or Ubers illegally stopping, standing, or entering bike lanes, (iii) cabs turning in front of or into riders, (iv) cabs improperly changing lanes, or (v) cabs making unlawful or negligent turns. All of these scenarios can cause a serious crash and injury to a cyclist.

Unfortunately, the insurance companies that represent NYC yellow taxicabs, black cars and ride share companies are notoriously difficult when it comes to processing and paying claims. American Transit Insurance continues to dominate this market place with some other smaller carriers also having a presence including Washington Mutual and Hereford Insurance. Whether it is your no-fault claim, compensation for property damage for your bike, or even the underlying personal injury lawsuit, all of these carriers and attorneys that represent them will fight and resist on almost every claim. We have handled hundreds of claims involving NYC yellow taxi cabs and these insurance companies.

We have also been successful in obtaining compensation for our clients above and beyond the base policy of insurance issued to cab by filing and litigating claims against ride share companies such as Lyft and Uber. In these circumstances, we were able to obtain recoveries for our clients above the \$100,000.00 coverage typically afforded to NYC livery vehicles.

Outside NYC, the coverage for ride share vehicles change. Recent legislation has bought increased coverage for ride-share and limousines outside the confines of NYC. Coverage, depending upon how the crash occurred, can be up to \$1,000,000.00.

Whether it is a no-fault claim, compensation for property damage to a bike, or even the underlying personal injury lawsuit, the carriers and attorneys that represent these cabs will fight and resist on almost every claim. This is yet another reason to seek out an attorney who is experienced in handling these types of claims.

The following are some New York state laws that all taxicab drivers and passengers, as well as New York cyclists should be familiar with:





- Section 54-13(a) of T.L.C. Rules and Regulations require Taxicab Drivers (and any authorized Driver of a Street Hail Livery) to comply with all applicable traffic laws, rules, and regulations. Taxicab Drivers (and any authorized Driver of a Street Hail Livery) will be subject to additional fines and penalties to be imposed by the Commission for violating the traffic laws as follows:

(4) Report Before Leaving a Scene. A driver who knows or should have known that a traffic accident involving the Driver's vehicle resulted in personal injury to another or damage to another's property, must stop before leaving the scene of the accident, and if the other involved party is present, must:

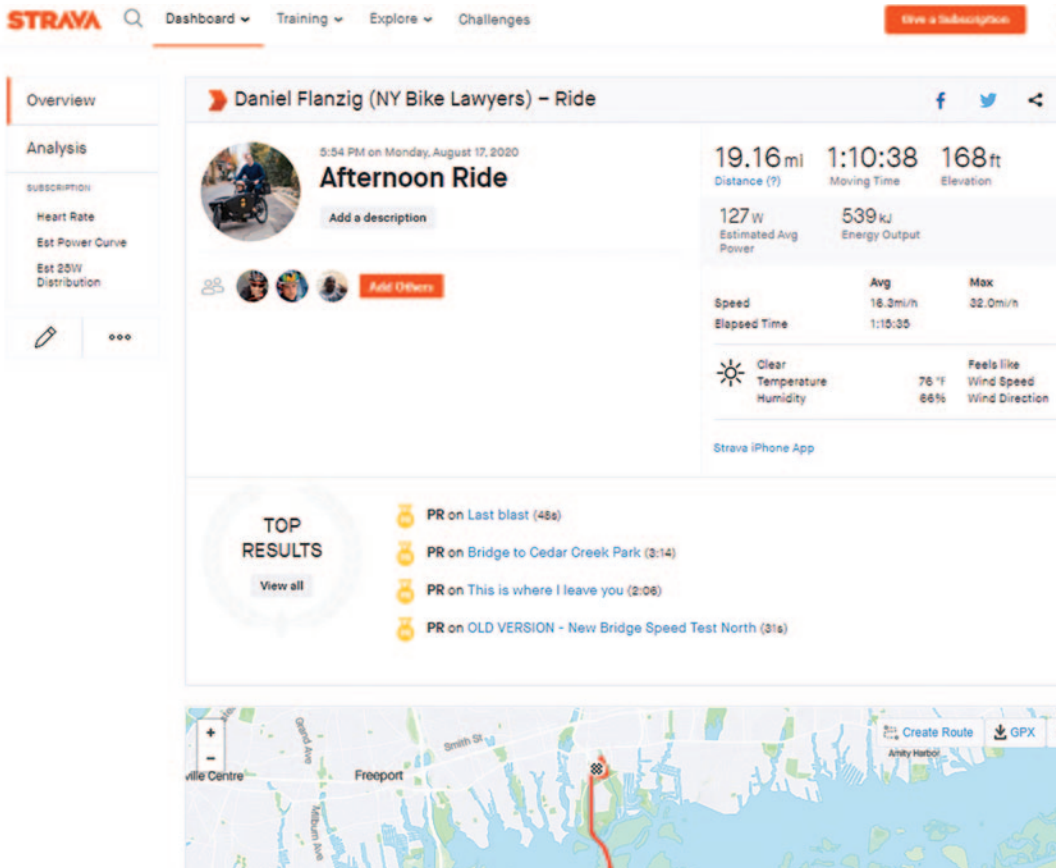
- Show his or her Chauffeur's License. Taxicab driver's license and rate card to the other party involved in the incident,
- Give the other involved party or the police his or her name. Chauffeur's license number, taxicab driver's license (or, as applicable, for-hire driver's license or paratransit driver's license) number, and taxicab medallion number or street hail livery license number, as well as the name of the vehicle's insurance carrier and the insurance policy number.

# Chapter 11: GoPro, Strava and Other Electronic Data

I have now taken to calling GoPro a “trial lawyer’s best friend.” I cannot ask for better evidence than video. Video doesn’t lie, is not open to interpretation and leaves out any guessing. However, if you have video you better hope it shows evidence in your favor as attorneys are required to turn over all evidence, good and bad.

We have also been successful in utilizing data from Garmin and Strava in helping to prove our cases. Data such as direction of travel, points of impact and even roadway position all help counter arguments by the defense of alleged dangerous movements made by the cyclist prior to the crash.

In order to use this data it must be properly preserved, not altered or modified and a chain of custody established. If you have this data after a crash, do not change or alter the video or ride data and promptly turn it over to your lawyer so that is preserved and can be used for trial.



## Chapter 12: **Revel, E-Scooters – What is coming out next...!**

By the time I am done writing this book, we will be seeing the next product in micro-mobility being launched. I am a huge proponent of this technology and favor anything that gets people out of their cars. However, with this technology also comes a responsibility of these companies and their users to operate them safely on our streets. The products themselves must be safe, in good repair, and the users must have proper training prior to the product being placed in their hands. A great example of this failure was Citi Bike's launch of 4000 pedal-assist bikes that needed to be pulled off the street due to defective braking systems. As Revel rolled out their scooters/motorcycles, they failed to have sufficient number of training classes and riders reported problems with their operation.

We have handled a number of claims against these entities for their failure to provide safe products as well as allowing unsafe operation. While promoting alternative transportation, these companies must also recognize the inherent danger in their use, especially in an environment like New York City.

We have handled—and continue to handle—claims on behalf of cyclists and pedestrians struck by Revel users. Revel provides insurance on behalf of its operators. If injured by a Revel, this insurance provides a method of compensation via both no-fault and for bodily injury claims, including pain and suffering.

If you are riding a Revel and are injured by a motorist, we can assist you as well. These claims follow a similar course as those injured on a bicycle. These types of claims involves those struck by trucks, cars or livery vehicles while riding a Revel or even being “doored” while riding a Revel. However, under the current law in New York, Revel's are considered a class B motorcycle and no-fault benefits are not available.

As of the writing of this book, electric scooters are now legal in New York, and pilot programs for e-scooter share programs are being launched. Riders of e-scooters involved in a crash will be entitled to no-fault and also able to make a claim against a negligent driver who causes a crash.

## CHAPTER 13: E-Bikes in New York

Something that is common in the rest of the world had remained controversial in New York for the past decade. That is the use, ownership, and sale of electric bicycles—more commonly known as e-bikes. For the past decade, they remained illegal in New York City, whereas the rest of the state failed to address the legality of their use. While they were technically never “legal” they were also technically never “illegal”—they just remained in a grey area without any clear definition of their use.

However, in April 2020, all that changed. The law now permits New Yorkers to ride e-bikes throughout the state. Following that state amendment to the Vehicle and Traffic Law to define and legalize e-bikes, New York City followed suit passing similar legislation for the use, sale and operation in the city.

### **What Is An E-Bike & Why Do People Want to Ride Them?**

E-bikes are bicycles equipped with a small motor, usually 750 watts, that assists a cyclist's forward movement. While many cycling purists don't believe them to be bikes, there are equally as many people who love their e-bikes. E-bikes provide access to cycling for people who may not have the physical ability to ride a bike. An e-bike offers access to our steep roads or a return from a downhill trip that may be too difficult an ascent for a traditional bike. It allows friends and significant others to join each other on rides when one may be a stronger rider than the other. And, to be honest, they are just fun to ride.

### **What Changed in New York?**

The amendment to the state's budget included an agreement that was a provision to legalize e-bikes, following a veto from the governor. The updated language and conditions helped the new proposal to be approved.

The budget language created three classes of e-bikes:

- Class 1 is pedal-assisted with no throttle;
- Class 2 is throttle-assisted with a maximum speed of 20 mph;
- Class 3 is throttle-powered with a maximum speed of 25 mph.

Helmets are required for riders of Class 3 e-bikes. For further clarification, “throttle bikes” have a lever or throttle that allows the bike to be propelled forward without pedaling. The motor on a “pedal assist” bike only activates once the rider starts moving.

It is important to know that the new law prohibits operation by anyone under the age of 16. It is now also illegal to operate an e-bike while intoxicated.

E-bikes now are a legal and viable alternative method of transportation in New York.



## CHAPTER 14: **Bike Tickets in New York**

Another frequent call received by our office is by a cyclist receiving a bike ticket. Currently, New York Bike Lawyers does not focus on representing cyclists who are ticketed, we do offer free advice and can connect with a traffic lawyer, with whom we have a close working relationship to undertake your bike summons case.

If you ride in New York you are aware of the NYPD's push to write more cycling tickets. Cyclists, for the most part, are obligated to follow the same rules of the road as motorists. Within the confines of the City of New York, the New York state Vehicle and Traffic Law allows the City of New York, as well as other municipalities, to substitute certain portions of the VTL for its own traffic rules and regulations.

The most common bike summons given are:

1. Riding on the sidewalk
2. Failure to have proper lights or bell
3. Failure to use and/or ride within available bike lanes
4. Failing to obey a traffic control device (red light tickets)
5. Riding against traffic.



When given a ticket, most people are understandably angry and are in shock that they actually received a "bike ticket. The next feeling that pops into their head is, "I am going to fight it!" Depending upon the ticket and the penalty, this may make sense. You can fight alone, or you can hire a lawyer to fight it for you. The reality is, in the City of New York, your chances are slim.

Unlike other jurisdictions, there is no plea bargaining with a prosecutor in a traffic violations bureau. There's just you, the officer, and the administrative law judge. Also, given a "ticket fixing" scandal that occurred in the N.Y.P.D., officers are being watched and come prepared for trial. Your hope that you will tell your sob story is never going to happen because there is no one to hear it. You will have the right to confront the officer, and offer evidence and testify, but this is only after you plead not guilty and proceed to trial. The trial will be short, and the Administrative Law Judge (ALJ) will make his or her finding.

Outside NYC, that will most likely be a prosecutor and a village or county judge. in this setting, the opportunity of plea bargain is much more likely.

### **Common Questions about Bike Tickets in NY**

#### ***Is it worthwhile to hire a lawyer to fight a bike summons?***

The answer to this question depends upon a number of circumstances, including the type of ticket issued. Is the summons a violation of the Vehicle and Traffic Law or Environmental Control Board (ECB)? Is it a misdemeanor or violation of the Administrative Code? Do you have an adjournment in contemplation of dismissal (ACOD) or other adjudication that requires you to remain out of the court system? What is the cost and penalty of the ticket vs. the cost of the lawyer? All of these are factors to consider when deciding to retain an attorney to fight the ticket and should be considered before you decide to hire a lawyer. A lawyer will not be cheap, and also does not guarantee a dismissal. It does, however, give you the advantage of having someone who has done this before, is familiar with the process and burdens of proof, and is there to fight on your behalf.

#### ***Does a bike ticket in New York mean points on your license?***

Answer: No. Under Sec 131.3 of the NYCRR, bike and pedestrian violations are not subject to the N.Y. State Point System

#### ***Am I obligated to pay a surcharge?***

Answer: No! Under the law, the current surcharge for traffic violations only applies to motorists, not cyclists.

#### ***Can I get a ticket for riding on a sidewalk in New York City?***

Answer: Yes! The relevant text of the statute (§ 19-176) states that bicycle operation on sidewalks [is] prohibited.

Bike tickets are expensive. Please be vigilant and avoiding riding in a way that will subject to you a violation of a state or city law.

## Chapter 15: **Can drivers be held criminally responsible for a crash**

The bulk of this book speaks to civil liability of drivers and vehicle owners flowing from a crash or accident. Another issue that often arises is whether a driver can also be held criminally responsible for causing a crash resulting in serious injury or death. The burden between criminal responsibility and civil responsibility are quite different. Civil responsibility requires proof of negligence, whereas criminal responsibility requires some proof of intent or a reckless disregard for the safety of others.

In the last several years we have finally seen district attorneys' offices being more aggressive in prosecutions against drivers who cause serious injury or death. In the past, prosecution was limited to cases with evidence of alcohol or drug use by the driver. Now cases with evidence of reckless driving are being pursued.

One of the best tools given to NYC is the passing of 19-190 or NYC's "Right of Way" law. New York City Administrative Code 19-190, generally defined as failing to exercise "due care" and violating the right of way of pedestrians and cyclists. This law is limited to New York City.



The most common section charged is AC 19-190[b], which makes it a crime punishable by as much as thirty days in jail for any driver to cause contact with his or her motor vehicle to a pedestrian or bicyclist which causes physical injury as result of the driver's failure to exercise due care. One of the useful features of this statute is that it allows the officer to issue a summons without actually having to witness the event, something that is normally required for the officer to issue a traffic summons.

Since the passage of this section, there have many attempts to challenge its constitutionality. Currently, the courts appear to be accepting this code as constitutionally valid.

Other sections of the VTL often used for prosecution are VTL 1212, Reckless Driving, VTL 1146(a), which makes it unlawful to strike a pedestrian or cyclist on a roadway. These are two broad VTL sections that help with criminal prosecutions.

The criminal prosecution begins in the hours after the crash with the arrival of the Collision Investigation Squad or other crash investigators. Quite often, a successful prosecution turns on the timeliness and competency of these investigators. All too often, we see the failure of these agencies to find important and relevant evidence that limits a district attorney's ability to bring a successful prosecution further frustrating victims and their families.

However, this does not bar these victims or their families from justice. More often than not, these families retain a personal injury attorney to represent their rights and to be compensated for their tragic losses. It is the role of that attorney to promptly investigate the crash. Our firm has represented hundreds of seriously injured motorists, motorcyclist, cyclists, and pedestrians. In many cases we have bought evidence to a prosecutor or court overlooked by the police or investigators.

A competent attorney will retain investigators within days of being hired. The investigators will canvas the scene, look for video, secure photographs, and interview witnesses to build the case. If necessary, the attorney will spend money to retain an accident reconstructionist to use this data to reconstruct the crash. A competent attorney cannot, and would never, wait for the police do their job for them. Even if a report and investigation are completed, an attorney who is experienced in this field will never rely upon that alone, as the police and attorneys are looking for different things. The police are interested in criminal fault, while a personal injury attorney needs to prove negligence. It is, and has always been, the job of the victim's lawyer, and his or her investigators, to help find justice for the victim and his or her family.

We hope to see New York continue with the trend of the rest of the nation in pursuing criminal responsibility for those who cause serious harm behind the wheel.



## Chapter 16: **NYS and NYC Traffic Laws** **Most Relevant to Cyclists**

Here is a list we compiled of the most applicable New York State Vehicle and Traffic Laws and New York City Administrative Codes relevant to cyclists and drivers. Some sections of the VTL are superseded by the Administrative Code of the City of New York and not applicable within the City. This authority is *provided by §1642 of the Vehicle and Traffic Law. Pursuant to this section the following sections of the NYS Vehicle and Traffic laws are not effective in the City of New York: §1112, 1142(b), 1150, 1151, 1152, 1153, 1156(b), 1157, 1171, 1201, 1202, and 1234.*

### **Why Are These Rules Applicable to Cyclists?**

- **VTL § 1231** Bicyclists are granted all of the rights and are subject to all of the duties of the driver of a motor vehicle.
- **RCNY § 4-02 (a)** The provisions of NYC traffic rules are applicable to bicycles and their operators.
- **RCNY § 4-12 (h)** Cyclists involved in accidents resulting in death or injury to person or damage to property must stop and give name, address, insurance information, etc. and must report to the police department.

### **What Rules Help Protect Cyclists?**

VTL 1214 No person shall open the door of a motor vehicle on the side available to moving traffic, and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall a person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.”

- **RCNY § 4-08 (e)(9)** It is against the law to park, stand or stop within, or otherwise obstruct bike lanes.
- **RCNY § 4-12(p)** Other vehicles shall not drive on or across bike lanes.
- **RCNY § 4-12(c)** It is illegal to get out of a vehicle in a manner which endangers cyclists (often referred to as "dooring").
- **VTL § 1146** Drivers to exercise due care to avoid colliding with any bicyclist, upon any roadway and shall give warning by sounding the horn when necessary.

### **Equipment Required for Cyclists:**

- **VTL § 1236 (a) and (e)** Bicycles must have a white headlight, a red taillight and reflectors between dusk and dawn.
- **(b)** Bicycles must have a bell or other audible signal
- **(c)** Bicycles must have working brakes.
- **(d)** Bicycles must have reflectors, reflective tires and/or other reflective devices.



- **VTL § 375 (24)(a)** Cyclists may not wear more than one earphone attached to a radio, tape player or other audio device while riding.

#### **Rules for Children:**

- **VTL § 1238 (a)** Children under 14 but older than 5 must wear an approved helmet. Nassau County has recently amended this code to make helmets mandatory to the age of 18.
- **(b)** A child under one is not permitted to ride on a bicycle.
- **(c)** A child one or more years of age, but less than 5, must wear an approved helmet and be carried in a properly affixed child carrier.

#### **Cycling for Work, Delivery and Other Commercial Purposes:**

- **AC § 10-157** Bicycles used for commercial purposes.
- Working cyclists must wear business identifying information on bike and body, including operator's identification number.
- Business must provide working cyclist with a helmet, according to A.N.S.I. or Snell standards.
- Working cyclists shall wear the helmet provided by business.

- Working cyclists must carry, and produce upon demand, a numbered ID card that includes operator's photo, name, home address, and business' name, address, and phone number.
- Working cyclists must abide by all equipment requirements stated in VTL 1236.
- Business must maintain log book that includes the name, identification number and place of residence of each working cyclist; and the date of employment and discharge. The log book must also include information on daily trips, identifying the working cyclist's identification number and name; and name, place of origin, and destination. Owner of business must file an annual report with the Police Department identifying the number of bicycles it owns, the identification number, and identity or any employees.

### **Rules for you while you ride in NYC**

- **RCNY § 4-12 (p)** Bicyclists may ride on either side of one-way roadways that are at least 40 feet wide.
- **RCNY § 4-12 (p)** Bicyclists should ride in usable bike lanes, unless they are blocked or unsafe for any reason.
- **VTL § 1234** Cyclists must ride by the right hand curb and no more than two abreast. Does not apply in New York City. It is specifically superseded by 34 RCNY 4-02 (e).
- **AC § 19-176** Bicycles ridden on sidewalks may be confiscated and riders may be subject to legal sanctions (see also: RCNY § 4-07(c)(3)).
- **RCNY § 4-07 (c)(3)** No driving bikes on sidewalks, unless sign allows or wheels are less than 26 inches in diameter and rider is twelve years or younger (see also: AC § 19-176).
- **RCNY § 4-14 (c)** No person shall ride a bicycle in any park, except in places designated for bike riding; but persons may push bikes in single file to and from such places, except on beaches and boardwalks.
- **RCNY § 4-12 (o)** Bicycles are prohibited on expressways, drives, highways, interstate routes, bridges, and thruways unless authorized by signs.
- **VTL § 1237** When turn signals are required, left turns shall be signaled with the left hand, and right turns may be signaled with either hand.
- **VTL § 1233** Clinging to vehicles, or attaching bike to another vehicle being operated on a roadway is prohibited.
- **RCNY § 4-12 (e)** Cyclists must have at least one hand on handlebars at all times.
- **VTL § 1232** Cyclists must ride on a permanent seat, feet must be on pedals, and bike must carry only the number of persons for which it is designed and equipped.

Under other facts and circumstances, other sections of the Vehicle and Traffic Law can be applicable. This is just a short list of the most common and relevant ones that you will most likely need to reference.



## Conclusion

There is no way this book can capture all we see in the cycling world in New York. The laws can not keep up with the rapidly changing and expansive growth of this vital alternative transportation and recreational event. In the year this book is finished we will see first e-bike legislation in New York State and have just seen the passing of cyclist allowed to follow Lead Pedestrian Indicators (LPIs) in New York City. Bike share programs continue to flourish in metropolitan areas and are now pushing out to the suburbs. Sadly, this past year we have also seen the highest number of bicycle fatalities in New York City. Nassau and Suffolk still top the state with the highest number of cyclist and pedestrian fatalities. However, in the end the benefits to yourself and the planet far out way and the potential danger in cycling.

Like so many other places around the world, time, acceptance, tolerance, education and infrastructure will make New York a safe and enjoyable place to ride. As always continue to ride vigilantly and be safe on the roads. Hope to see you out there!









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