

In the Event of a Bike Crash, What Every Rider Should Know



Bike riding or “cycling” is a fun, exciting and environmentally friendly pastime. Whether it’s a means of travel to and from work, a jaunt around the neighborhood by oneself or with the family, or a breakaway from the peloton, bicyclists and motor vehicles do not always pair well. Safety considerations are critical. However, even with defensive riding on quality equipment, we can’t control others on the roadway.

Pedestrians and vehicles can venture into our lane in a split second. “Share the road” is the motto, but not everyone is listening or paying attention. Sound systems, mobile devices, GPS displays. Who is watching the road? When did STOP signs and traffic lights become optional?

Even the “best” equipment can be troublesome. Products can be defective. When you literally hit the road, what can you do?

We cyclists do our best to protect ourselves and our family when riding bikes. We learn and teach the rules of the road (or we should). We purchase decent equipment, sometimes shelling out a small fortune. Hey, it’s not a toy, but a tool for good health, a way of life, right? Because of our vulnerability between us and the ground, we ride defensively, always on the lookout for a danger. We also keep a close eye on our bikes, helmets, and other important pieces of gear. A broken wheel, a stuck gear, an ineffective brake, it could all mean disaster. What happens when we’ve done all we can do, yet the Fates prevail and down we go.

Crashes can result in broken equipment, broken and serrated bodies, scars as permanent tattoos, plates and screws holding us together, medical bills, and lost income from periods of disability. Those responsible for causing these damages can be held accountable. All states require motor vehicle liability insurance. You have the same rights to make a claim for your injuries and damages as a motorist. If a driver negligently operated his vehicle and as a result you’ve sustained damage, he’s on the hook. His insurance must contractually defend and indemnify him. In most states, like Nevada, the negligent party is responsible for compensating you for your harms and losses, like medical bills, lost income, disfigurement and pain, regardless of whether you have insurance to cover these expenses. Why should your insurance pay the cost of someone else’s wrongdoing?

If your insurance does pay, you get the benefit of having paid the premiums, not the tortfeasor (i.e., bad guy). Most laws allow your health insurance a right of reimbursement if there's a recovery, but an attorney can often negotiate this amount. Using all the insurance that's available to best benefit you is vital.

Most cyclists also own motor vehicles, and that auto insurance often applies when a motorized vehicle vs. non-motorized vehicle (i.e., bike) is involved. Coverage you absolutely want to have under your car insurance is Medical Payments (aka "Med Pay") and uninsured motorist/underinsured motorist (UM/UIM). Both are relatively inexpensive. UM/UIM will provide coverage in the event the at-fault driver didn't have coverage or didn't have enough. Statistics are high, especially in this economy, for people driving with little or no insurance. Besides putting on a helmet, it's another way to protect yourself.

States often require meager coverage. Nevada mandates liability insurance of only \$15,000 per person and \$30,000 per accident. The latter applies if more than one person is injured. \$15K doesn't go very far. A broken shoulder's medical costs and lost time from work, let alone ongoing disability, will have a value far exceeding the minimum limits. If your liability coverage is more than your UM/UIM, why would you insure others better than you insure yourself? Get those UM/UIM and medical payments coverages up! Don't worry, most states, Nevada is one, will not allow your insurer to raise your rates when the accident wasn't your fault, no matter how much the insurer pays.

Homeowner's insurance can apply if a pedestrian or non-motorized vehicle acts negligently. Businesses can be held responsible if a danger is created through road debris, unsecured loads, construction, lack of warnings, negligent drivers, etc. Manufacturers, distributors and retailers can be liable for selling defective biking equipment caused by manufacturing defects, design defects and failing to warn of foreseeable dangers. Holding shop owners responsible may be necessary when bikes are improperly assembled, modified or serviced.

Doing events like Centuries, Crits and other social or competitive rides is a blast. All that hard work in training can pay off with a well-organized bike event. You get the cool swag bag, maybe a t-shirt or finisher's medal, well-stocked aid stations along the course, and a party at the finish. The tanned and toned legs are a bonus. These events most often require liability waivers. However, don't be fooled into thinking that you have no recourse against that event planner. Liability waivers must be specific and frequently aren't interpreted to relieve someone of negligence. If you've assumed the risk of the activity, was the specific risk or danger that caused you harm known? Could it/should it have been prevented through reasonable effort?

No one wants an injury and no one wants an insurance claim. However, responsible individuals and businesses purchase insurance to protect ourselves and others. Sadly, bicycling usually gets a bad rap. It's an uphill road. We're presumed to be going too fast, taking over the road, and ignoring traffic laws. Claims are regularly denied. It

is not an easy process to overcome bias, especially when a multi-million or billion dollar insurance company tell you to go pound sand, let alone a motorist that refuses to give his insurance information. There are ways to fight fire with fire and get around these roadblocks.

Cyclists who are involved in accidents should gather as much information as possible. Use your phone to record the scene. Obtain license plate numbers, party and witness names, and phone numbers. Retain all the evidence. Call the police, as they will help do the same. Take photographs and video if possible. Don't delay in seeking help at the scene and after. Evidence can disappear. The scene can change. Insurance will deny claims due to delay in reporting accidents, presenting claims and seeking medical treatment, as well as failing to preserve evidence. Keep the equipment as is until it can be inspected. A good idea is to download a free Application from bensonlawyers.com that guides you through this process.

It is important to know your rights as a cyclist. Whether you are a beginner or a seasoned athlete, you are entitled to hold someone accountable for their negligence. We know too well what can happen when the rules of the road aren't followed. When traffic laws are violated and defective products subject a cyclist to a foreseeable and preventable danger, speaking to an attorney may be the best way to find out if there's a responsible party for your injury. If nothing else, you're informed.

Pedal well my friends.

For more info, visit
www.bensonlawyers.com
or call 702-228-2600

Author: Brett Carter, Esq., of the law firm of
Benson Bertoldo Baker & Carter;
carter@bensonlawyers.com