As an avid cyclist, I understand not only the benefits of cycling, but also the dangers. In my personal injury law practice, I represent people who have been injured and the survivors of those who have died riding bicycles. Our climate in Florida encourages cyclists to be out on the road. But few of our roads have been designed with the safety of cyclists in mind. In addition, too many drivers are unaware of or indifferent to their responsibility to avoid endangering cyclists.

I am deeply committed to preventing these needless injuries and deaths and to holding drivers accountable when their negligent and irresponsible behavior on the road harms a cyclist, who has every bit as much right to the road as a motor vehicle.

Over the years, I have learned a great deal about how these accidents occur and how they can be prevented. I have written this book to help people who ride bicycles to avoid injury and also to let readers know what to do if the worst happens. –Jim Dodson

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Printed in the United States of America
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DISCLAIMER

Even lawyers have to include these disclaimers, so here are mine. This handbook
is not legal advice to you the reader. No attorney-client relationship is formed by
your receiving and reading it. Legal information is not legal advice. It is intended
as general information for cyclists in Florida. You are welcome to contact me to
discuss your case and the legal remedies you have available.
WHY BICYCLE/MOTOR VEHICLE COLLISIONS HAPPEN

Drivers can be dangerous

Here are some of the common mistakes drivers make that cause collisions with cyclists:

- Drinking and driving
- Speeding
- Running red lights or stop signs
- Disregarding or turning across bike lanes
- Making improper lane changes
- Failing to yield the right of way in a crosswalk; driving onto a sidewalk
- Impatience with the slower speed of a bicycle
- Distracted driving

Distractions come in many forms. People eat while driving, turn to speak to someone else in the car, change the radio station, or focus on the GPS. A growing cause of driver distraction that has been the subject of legislation in many states is cell phone use while driving, and even worse, texting. Drivers dialing cell phones are reportedly four to six times more likely to be involved in a crash, while texting drivers increase that risk by twenty-three times.
HOW YOUR RIDE CAN COST YOU

Common mistakes cyclists make that contribute to accidents:

- Stopping or riding to the right of a car, in the driver’s blind spot
- Group riding more than two abreast
- Disregarding stop signs and traffic signals
- Riding under the influence of drugs or alcohol
- Failing to signal; making unsafe lane changes
- Riding on a sidewalk on the left side of the street, opposite from traffic. A driver looking for traffic coming from the driver’s left hits a cyclist coming from the driver’s right. (Riding on the sidewalk is legal, but has its own dangers.)
COMPARATIVE FAULT IN FLORIDA

The insurance company or a jury will look closely the actions of the driver and the cyclist in deciding who was at fault. Fault or liability for an accident can be entirely on the driver, entirely on the cyclist, or partly on each. Cyclists want to minimize any argument that they were partly at fault in the accident. Here’s why: Let’s say the value of a cyclist’s injury after an accident is $100,000 but the cyclist was thirty percent at fault in causing the accident. The value of the case would be reduced by thirty percent, making it $70,000 in our example.

Gathering and presenting the evidence

Most crashes have a combination of causes. An experienced bicycle accident attorney will be able to identify the strongest arguments to prove the driver’s fault. They work with accident reconstructionists and other experts to prove what the driver did to cause the accident. Sometimes other parties bear responsibility as well; an investigation for such things as road construction, misplaced or missing barricades or signage, or debris on the road will determine who is liable.
WHAT TO DO WHEN AN ACCIDENT HAPPENS

If you have been involved in an accident, there are important steps you should take to document the circumstances surrounding the crash. These will become important if you need to make a claim for damages.

1) **Report the accident to the police and be factual**

Never take the word of a driver who promises to handle it without reporting it to the police or the insurance company. Injuries and damages to your bike may not be apparent at the scene. Having a police investigation provides independent confirmation of what occurred.

2) **Obtain the driver’s identifying information**

Some drivers will stop momentarily and then leave without warning. Some fail to stop at all. In those situations, a description of the vehicle and a tag number may be all you have. When the driver stops and remains at the scene, get the driver’s license information and any other available identifying information.

3) **Identify any witnesses**

It is quite common for witnesses to fail to stop and identify themselves. Obtaining independent witness identification can make an enormous difference in proving the fault of the other driver. Give any witness information you or someone else obtains to the police, but keep a copy for yourself.

4) **Document the scene**

The exact location of the point of impact, the direction and movement of any vehicle involved, as well as any physical debris or marks on the roadway or surrounding surfaces can be critically important evidence. Have someone make note of this kind of information, diagram it for yourself, make sure the police are aware of it, and take any photos you can. Use your cell phone camera, if necessary.

5) **Seek needed medical treatment**

Failing to do this is one of the most common mistakes people make, and it will hurt an otherwise valid claim. Make sure you describe to any doctor or medical provider that you were hit on your bike by a car. Describe all of your injuries. Many times, initial doctor reports are inaccurate or incomplete. These inaccuracies can hurt a valid claim.
6) **Report the accident to each insurance company**

Do not assume the other driver will report the accident to their insurance company. They frequently do not, even in serious accidents. In Florida, your medical bills can be paid by your own automobile insurance company under your no-fault (PIP) coverage. You will need a claim number from your insurance company to give to medical providers. If you do not own a motor vehicle or have no-fault coverage available to you, the no-fault coverage on the car that hit you will be available for your bills instead. In this situation, you will need their claim number.

7) **Preserve evidence**

Damage to your bike needs to be documented by a repair shop and photographed in order to preserve evidence of the accident. You should ask your lawyer whether the damaged bicycle should be repaired or preserved as evidence. Save all damaged items you were wearing, such as helmet, gloves, clothing, backpacks, etc. Make sure the evidence is well photographed and preserved.

8) **Consult with a personal injury lawyer**

If you’ve been injured, never forget that the claims adjuster’s goal is to pay you as little as possible to settle your bodily injury claim. Some may even tell you that you don’t need a lawyer. The adjuster knows that when you deal with the company directly, without a lawyer, you are at a disadvantage. Consult with an experienced personal injury lawyer before you speak with an adjuster or sign any forms.
BEWARE THE INSURANCE ADJUSTER! TRICKS OF THE TRADE

The insurance adjuster’s job is simple—to save the company money. They do not want to pay your claim. If they pay, it will be as little as they feel they can get away with. The first thing the adjuster for the driver’s insurance company will do is call you and ask for a recorded statement. If you agree to give the statement, the adjuster will try to get information from you to minimize your injuries or make it sound like you did something to cause the accident. Adjusters are skilled in phrasing questions in such a way as to elicit answers that will be used to harm your case. These people are well-trained in getting the responses they want. You’d be surprised at how statements you make can be used against you later.

An insurance adjuster can appear to be very sympathetic and will promise to do right by you, often telling you that there is no need to retain a lawyer, and that the insurance company will make sure you get a fair settlement. Adjusters love to point out that a lawyer will charge you a fee, and that you can avoid all that by dealing with them directly. What they fail to mention is that they don’t want you to have a lawyer because they know they will pay more to settle your claim when you have legal representation.

Some research has shown that cases settle for two to three times more when the claimant is represented by a lawyer. Rest assured, the at-fault driver’s insurance company does not have your best interests in mind. What they have in mind is saving the company money on your claim. Period.

You are not required to give the driver’s bodily injury adjuster a recorded statement. When the adjuster calls, politely but firmly refuse to give a statement about the accident or your injuries until you speak to an experienced bicycle accident attorney.

An experienced Florida bicycle injury attorney deals with these companies every day and knows how to handle them to best protect your interests.
GETTING YOUR MEDICAL BILLS PAID

In Florida, no-fault insurance, also known as Personal Injury Protection or PIP, pays for medical expenses and lost earnings, regardless of who was at fault in any accident involving a motor vehicle. Even if a cyclist is entirely at fault for the accident, no-fault benefits will be paid. There are several sources of no-fault coverage:

- If you own a car and have it insured, your own no-fault coverage is primary and will cover roughly eighty percent of your medical bills and sixty percent of your lost wages, based on your average weekly pay. No-fault coverage follows the policy holder, even in the case of a car injuring a bicyclist or pedestrian.

- If you don’t have your own no-fault coverage but live with a family member who does, that person’s no-fault insurance may cover you.

- The insurance of the driver who caused the accident can also cover you.

What about pain and suffering and other damages caused by the accident?

If the driver or owner of the vehicle involved was at fault in causing the accident, that is who will be held responsible. The insurance that pays your pain and suffering and other financial losses is called bodily injury insurance. But there is a catch: the driver who caused your injury must have purchased bodily injury insurance, which is entirely optional in Florida.
WHY YOU NEED UNINSURED MOTORIST INSURANCE

If the car that caused the accident does not carry bodily injury insurance or doesn’t carry enough to pay the full value of the claim, your attorney will need to look for any uninsured motorist insurance that may be available. Uninsured motorist coverage enters the picture when the driver who is at fault has no bodily injury insurance or has some small amount that is not enough to cover all your losses. If you have this coverage on your own auto insurance policy, it can pay your claim. It will be important to find out what coverage you have on your car. Alternatively, UM coverage may be available to you if you live with certain family members who have it on their policy.

In Florida, if you own a car and purchase bodily injury insurance, it is assumed that you intended to purchase the same amount of Uninsured Motorist coverage. But you can waive your right to this valuable insurance. If your insurance company says you waived UM insurance, your lawyer will need to require them to provide a copy of the signed waiver. If they can’t, the presumption is that you did not waive UM insurance, and the company must cover you.

For more information about why every cyclist should have uninsured motorist coverage on their policy, request a copy of Florida Uninsured Motorist Insurance—Don’t Leave Home Without It, available on my website.
CAN I SETTLE MY BICYCLE CASE ON MY OWN?

A bicycle accident victim is certainly entitled to negotiate a settlement directly with the insurance company. The adjuster will encourage you to do just that. Nothing could make the company happier.

A Florida bicycle injury attorney protects the rights of people who have been injured due to the negligence of another party, as is often the case when you are seriously injured or a family member is killed in a bicycle accident. While anyone who has been injured is free to try to negotiate a settlement directly with an insurance company, you need to realize that a person who does so is not playing on a level field when dealing with an experienced claims adjuster. This is exactly what the insurance company wants.

They know an unrepresented injury victim has never negotiated a bodily injury settlement and will have no knowledge about

- What similar injuries have settled for
- What juries have awarded in similar cases
- How much bodily injury coverage the driver has
- How to effectively present evidence describing injuries, future medical expenses, the need for future treatment, or physical limitations and restrictions
- Reimbursement rights, which may be required if medical expenses were paid by Medicare, Medicaid, or private health insurance
- How to require the insurance company to pay uninsured motorist benefits if they can’t prove you waived the right to the benefits in writing, as Florida law requires.

On the other hand, an experienced personal injury attorney will prepare and present your case in such a way as to maximize your compensation, whether this happens in or out of court. A lawyer who restricts his or her practice to personal injury cases has the in-depth knowledge of Florida law and the workings of the insurance industry that is needed to successfully pursue a claim for damages. Seasoned accident attorneys have access to the kinds of engineers and other experts needed to prove your case. They will also know the medical and financial experts who can testify regarding the extent and expected future consequences of your injuries. They understand how bicycle accident cases are valued, how comparative fault comes into play, and how to pursue uninsured motorist benefits.
Three elements must be present to make a successful bicycle accident injury or death claim:

- First, the driver must have been partially or entirely at fault in causing the accident.

- Second, the driver’s fault must have caused injury to the cyclist.

- Third, the cyclist or the cyclist’s survivors suffered physical or emotional pain, suffering and other losses. Lawyers refer to these as damages, which I discuss in the next section.

As mentioned, sometimes the insurance company will argue that the cyclist contributed to causing the accident and is partially or mostly at fault. When this happens, your attorney needs to be experienced in applying the law of comparative fault, proving the fault of the driver and minimizing arguments that the cyclist shared the blame.
Your attorney will work to recover all of your losses. While not all of these apply to every case, your economic losses could include

- Total medical expenses, including emergency medical treatment, costs of all hospitalizations, surgeries and post-operative care, and projected future medical expenses related to the bicycle accident
- Physical, occupational, and psychological therapies and rehabilitative services
- Costs incurred to enable access to medical treatment or rehabilitative therapy, such as transportation costs and other expenses
- Lost income, including compensation for future loss of ability to work or earn income
- Costs of outfitting the home to meet special needs related to a disability caused by the accident, such as installing wheelchair ramps or making other living accommodations
- Cost of purchasing and installing adaptive devices, such as equipping a vehicle with hand controls or a wheelchair lift to accommodate the needs of the disabled victim

Non-economic losses, include

- Physical pain and suffering resulting from injuries
- Loss of enjoyment of life; being unable to do things you enjoyed doing before the injury
- Emotional distress, mental anguish, and other psychological consequences of the injury
- Scarring, disfigurement, disability, or loss of mobility

In addition, a spouse may have a claim for loss of consortium when the disabilities the victim suffered make it impossible to carry on with the marital relationship in the customary manner.

Another type of damages is punitive damages. These can only be awarded in situations where the action of the person causing the accident was outrageous and extreme. Punitive damages would be more likely in a case in which an accident was caused by a corporate defendant's dangerous policy or by a drunk driver, for instance.

Bicycle accident injuries can be severe and life-altering. With so many variations in individual circumstances, these cases are often extremely complicated and are best handled by an experienced Florida bicycle injury attorney.
WHEN A BICYCLE ACCIDENT IS FATAL: WRONGFUL DEATH IN FLORIDA

Because of the vulnerability of a bicycle rider relative to a car or truck, the most serious of these accidents all too frequently result in the death of the rider. When this tragedy occurs in Florida, the survivors of the bicyclist may file a wrongful death claim. This type of claim is controlled by Florida’s Wrongful Death Act. Survivors may include a spouse, minor children, adult children, and parents. The Wrongful Death Act outlines the types of recovery that can be made on behalf of each survivor. Generally, these losses include

- Emotional pain and suffering
- Loss of companionship, instruction, and guidance
- Loss of support and services
- Loss of future earnings
- Last expenses, such as medical expenses and funeral expenses

All claims under the Wrongful Death Act on behalf of survivors are pursued by a person chosen to be the personal representative, who is appointed by the court to represent the claims of the estate as well as the claims of each individual survivor. Your attorney will understand how this process works and who is eligible to serve as the personal representative.

In Florida, there are strict limits on the time survivors have to pursue a claim for wrongful death. For more information about wrongful death claims, I invite you to request a copy of my book, Survivors’ Guide to Florida Wrongful Death Claims.
THE BEST ATTORNEY FOR YOUR BICYCLE ACCIDENT CASE

When you’ve been injured in a bicycle accident, you should seek professional legal advice as soon as possible and avoid speaking to any insurance adjuster or signing any statement about the accident without first consulting with an attorney. You want to locate the attorney best equipped to handle your case, and you don't want to delay.

You want an attorney who gets referrals from satisfied clients and other members of the legal community. You want someone experienced in handling bicycle cases, one you feel you can trust, and who will return your phone calls, someone who will get to know you, work personally on your case, keep you informed on the progress of your case, and answer your questions. You want an attorney who will work hard to protect your rights, and who is willing to go to trial on your case if it is required.

So, how do you approach the search?
Check out the lawyer's website. Does it provide you with useful information about law, about accidents and injuries, about things you need to know about a bicycle accident case, or is it just a big sales pitch for the lawyer. Has the lawyer written any consumer guides for bicyclists? If so, you should request a copy.

You can find out whether the lawyer is respected by other attorneys and judges by going to www.martindale.com. Look for the lawyer with the highest rating for ethics and legal ability, AV Preeminent. Then check the lawyer out on AVVO.com. You’re looking for a lawyer rated Superb 10.0, the highest possible rating.

The lawyer should speak to you either in person or on the phone, and if out of the office when you phone, should return your call promptly.
QUESTIONS TO ASK ATTORNEYS BEFORE HIRING ONE FOR YOUR BICYCLE ACCIDENT CASE:

- What kinds of cases to you handle in your practice? (Look for someone who handles only personal injury cases.)

- How many years of experience do you have in personal injury law? Do you handle bicycle cases? Are you a cyclist yourself?

- Will you review and evaluate my case without charge or obligation?

- Do you offer a no-fee promise? (The fee should be on contingency—a percentage of the settlement or verdict, with no up-front charges and no legal fees or costs if no recovery.) Will you put that in writing?

- What large-value cases have you settled or tried successfully? Are you a member of the Million Dollar Advocates Forum (limited to attorneys who have gotten their clients settlements or verdicts in excess of a million dollars)?

- What is your rating with Martindale-Hubbell? What is your AVVO rating?

- What personal involvement will you have in my case? Who else in your office will be involved? How long have those people worked for you.

- What assurance can you offer that my phone calls will be returned promptly? By whom will they be returned?

- What have you written or published about bicycle accidents?

- What professional organizations do you belong to? What other activities are you involved with in the community?

- Can you show me testimonials from other clients?

A lawyer is more than a pretty face on a bus stop. By asking these questions and conducting your due diligence, you will get the information you need to hire a skilled professional to represent your best interests in your bicycle accident case.
BICYCLE ACCIDENT STATISTICS

The National Highway Traffic Safety Administration reports that in 2009, 630 cyclists were killed nationwide and an additional 51,000 were injured in motor vehicle crashes involving cyclists, accounting for two percent of all motor vehicle traffic fatalities and two percent of all the people injured in traffic crashes during the year.

Seventy percent of cyclist fatalities in 2009 occurred in urban areas, most at non-intersections. Seventy-four of the fatalities were children age fourteen or younger.

According to Florida’s Department of Highway Safety and Motor Vehicles, 99 bicyclists were killed in 2009 in Florida, and 4,376 were injured in a total of 4,774 crashes.

The Insurance Institute for Highway Safety reports that 91 percent of bicyclists killed in 2009 were not wearing helmets and estimates that helmet use reduces injury by around 85 percent.

Safekids.org estimates that universal use of bicycle helmets by children ages 4 to 15 could prevent between 135 and 155 deaths, between 39,000 and 45,000 head injuries, and between 18,000 and 55,000 scalp and face injuries annually; helmet use can reduce the risk of head injury by 85 percent and severe brain injury by 88 percent.
SAFETY FIRST

Whether you are riding for fun or necessity, it is important to have the proper safety equipment and to know the rules of the road to follow to ensure a safe ride.

Helmets rule!

The first piece of safety equipment every cyclist needs is a helmet. Helmets are available in a range of styles and prices, but you have little to gain by going for a more expensive model. Research has shown that there is essentially no difference between the protection offered by a high-end helmet and the protection you’ll get from a discount store helmet. Just check to make sure the helmet has a CPSC sticker, which demonstrates that it meets national safety standards. These are required on all helmets being sold in the United States.

To choose the best helmet for you or a family member, here are a few things to consider: Above all, it must fit properly if it is to provide the best possible protection. It should be level on your head, touch your head all around, and fit snugly without being tight. Try to move the helmet in all directions. If it moves more than an inch in any direction, it is too loose. Now see if you can get it off without releasing the buckle. This should be nearly impossible if the helmet fits correctly.

A helmet in a lighter and brighter color is a better choice than a dark one. Light colors make you more visible to drivers, and visibility is important in avoiding accidents. Helmets with rigid visors were trendy for a while, but stiff are best avoided, along with anything else that sticks out, because any type of projection can snag and cause injuries. A better and safer choice is a helmet with a rounded shell, and this is actually becoming the trendier style among those in the know.

Vents keep your head cool and are an important comfort feature, but there shouldn’t be so many vents that the padded area of the helmet is substantially reduced.

Make sure the straps are not too thin and that they are easy to adjust to ensure a proper fit—not so tight as to cause discomfort, but tight enough to hold the helmet securely in place.
Mirrors, reflectors, and lights

A key element in safe cycling is seeing and being seen. A rear-view mirror keeps you informed about vehicle approaching from behind. This is invaluable when making lane changes and can give you a heads-up on the behavior of an approaching motorist. Mirrors can be attached to the handlebars, to a helmet, or to eyeglasses or cycling glasses. Each style has advantages and disadvantages. For example, vibrations can obscure the image on a bar-mounted mirror, and it is possible for a helmet-mounted mirror to snag. Also, be aware of possible blind spots.

Florida law requires that bicycles being ridden between sunset and sunrise be equipped with a white light in front, visible from at least 500 feet, and a red light and reflector in the rear, visible from at least 600 feet. Additional lights and reflectors are allowed and recommended. Reflective clothing and accessories greatly improve a rider’s visibility at night. My law firm offers a free bicycle safety kit that includes a reflective backpack and really cool reflective slap bracelets that enhance your visibility. If you ride at night, this is a must-have. Many fatal bicycle accidents take place at night or in the very early morning, before the sun offers much light.

Optional accessories

I’ve covered the necessities for safe biking. Other accessories are optional and may add to your riding enjoyment. An under-seat pack with a spare tube and repair kit and a frame-mount pump will keep you covered in the event of a flat or the need for an adjustment to your bike. For comfort and convenience, jerseys with pockets, gloves with padding to prevent hand numbness, and shorts with seat padding are accessories worth considering.
The bicycle is legally defined as a vehicle under Florida law. This means that bicyclists have the same rights to use the roads and are required to obey the same traffic laws as drivers of other vehicles. This means you stop at stop signs and red lights, ride in the proper lane with the flow of traffic, and yield the right of way at intersections and when entering a road. Here we provide some highlights of the law as it pertains to cyclists. For a detailed discussion of Florida bicycle law you can download the Florida Bicycle Law Enforcement Guide courtesy of the Florida Bicycle Association at http://floridabicycle.org/resources/pdfs/PEGLEG_2010.pdf

Your bicycle must have a regular fixed seat; you may not carry additional people beyond the number for which the bicycle was designed. This usually means one person on the bike, unless it is a tandem bike or has an approved child seat installed. You must keep at least one hand on the handlebars at all times, and the bike must be equipped with brakes that will stop the bike within twenty-five feet at a speed of ten miles per hour on a level, clean, dry pavement.

In Florida, unless prohibited by local ordinance, you may ride a bike on the sidewalk, in which case you are required to yield the right-of-way to pedestrians and give an audible signal before passing. Cyclists using a sidewalk have the same rights and responsibilities as pedestrians.

When you ride on the road, if a bike lane is available, you must use it; if not, you should ride as close as practicable to the right side of the road. There are times when you will need to move further into the lane, however, such as when passing, turning left, avoiding hazards in the road, or when the lane is too narrow to accommodate a bicycle and a car side by side, in which case, for your safety, you will need to claim the lane by moving to the center. This will force drivers to slow down.

If you are riding on a one-way street with two or more traffic lanes, you may ride as close to the left-hand edge of the roadway as practicable.

When riding with others, you are not permitted to ride more than two abreast except on a bike path, and if riding two abreast interferes with the normal speed of traffic, you are required to ride single file.

You should signal your intention of making a turn 100 feet in advance.

You may not wear a headset, headphone, or any listening device other than a hearing aid when riding a bike, because you need to be able to hear approaching traffic.
BIKES AND KIDS

Bicycle riding is a great activity for children, to promote health, fitness, responsibility, and independence. It is essential, however, for parents to teach children safe riding skills and the rules of the road, and to set age-appropriate limits for cycling. Here are some additional suggestions for parents of young cyclists:

- Children under 10 should only be allowed to ride on sidewalks or bike paths.
- Ride with your children and observe until you are certain they understand and can follow the rules.
- Model safe cycling behavior. Always wear your helmet. Stop at all stop signs and lights. Emphasize that just because some people ride through stop signs does not make it acceptable. You wouldn’t dream of failing to stop, nor should they!
- Enforce the rules consistently. There may come a day, often in early adolescence, when your child decides wearing a helmet just isn’t cool. This is a time to be especially firm and vigilant. Let your child know that the rules must be followed, or the bike stays in the garage.
- Find bicycle education classes and events in your community that teach kids riding and traffic skills. Participate in community Safe Routes to School activities and events.

CONTACT INFORMATION

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We represent accident victims all over the state of Florida. For your convenience, we have several other satellite offices where we meet clients by appointment or we will come to your home.

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