

WHAT TO DO IF YOU ARE IN A CYCLING ACCIDENT

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As a cyclist in South Carolina, you know the many perils that exist on our roads. Our state is usually 2nd or 3rd worst nationally in bicycle accident rates. SC law directs motorists to exercise "due care" around cyclists. But all too often, these laws are ignored. As the number of automobiles and cyclists on our roadways is increasing, there are more and more cycling accidents.

I'm a trial lawyer in Charleston. Fueled by my life-long passion for cycling and a family cycling tragedy, I have dedicated a portion of my practice to representing cyclists' rights and cycling groups. I have launched the website scbikelaw.com to promote the legal rights of cyclists. As PCC continues its excellent work to reform our cycling laws, I hope scbikelaw.com will become a useful resource.

The topic of this column is an unpleasant one, but very important: what to do if you are a victim of a cycling accident. Here are some general observations gleaned from my experience representing cyclists:

First, cyclists make terrible victims. Think about it: we deal with adversity in the saddle every ride. Headwinds, nagging aches, and blistering heat are all part of our beloved sport. Complaining is not. Our traits – self-sufficiency, stoicism, and strength – may make us great riders, but make us bad accident victims. I have represented many cyclists who have ridden away from falls, only later to discover they have major injuries. I have had to cajole my clients to see doctors; invariably, my clients understate their injuries, refusing to admit that they are in pain. One client lived with debilitating pain for months, unwilling to accept any weakness in body or spirit. The first advice I give my clients is to recognize that an accident is a traumatic event. Don't be ashamed or embarrassed. Accept it.

Second, do not take no for an answer. Countless times I have heard about police officers who simply don't know how to handle bike accidents. Last month, I was retained by a cyclist who was hit by a car on his way to work. While waiting for the police to arrive, the motorist admitted that she had failed to look before pulling out and that she was responsible. The officer incorrectly informed the motorist that she was not at fault and refused to write an accident report. Consequently, the motorist refused responsibility. It is not your fault if the police officer and motorist do not know the laws! If you are in a bike accident, you can do something about it, even if the police officer is ignorant of your rights. The accident report, the police's determination of fault, and the findings of the traffic court, while all potentially helpful to your case, are not what determines your rights.

Third, don't negotiate with the driver or the insurance company, as tempting as that might seem at the time. Since you may not know the extent of your injuries or even the damage to your bike, do not negotiate with the driver. Likewise, soon after an accident, you may get a call from the motorist's insurance company. Their goal is to get you to settle and compromise your claim as soon as possible, usually before you are armed with adequate knowledge. It is only rarely appropriate for an accident victim to negotiate directly with an insurance company. This advice is particularly directed at cyclists. While stoicism may be a personal virtue, it will not serve you well in negotiating your own case.

Fourth, get connected. When you are in an accident, communicate with the cycling community, such as the PCC, the League of American Bicyclists, your local club, scbikelaw.com, and other advocates. You are not alone, as many of us have dealt with accidents before. It is important to get the advice and support of the cycling community.

Fifth, no accident is too small to do something about. Many times, cyclists are reluctant to contact me because they believe their accident is not important enough. For the cycling community to advance our rights, I believe it is important to protect those rights whenever they are infringed. If we wait only until the most serious cases, we miss opportunities to stand up for our rights, to educate the general community, and maybe even to prevent future accidents from occurring.

Sixth, it probably was not your fault. SC cycling laws (as inadequate as they are) put the obligation on the driver to exercise due care to avoid a cyclist, regardless of what the cyclist is doing. Recently an experienced cyclist failed to call the police after an accident (in which he broke a bone) because he assumed it was his fault. On hindsight and after reviewing his legal rights, it turned out that the driver was probably the one at fault, not him. But since he did not call the police or get the name or license tag number of the driver, he was unable to do anything about it. He later said that he was too embarrassed to call the police. In reality, he probably was in shock from the trauma of the accident and was not thinking clearly.

The lesson is not to make assumptions at the scene of an accident. Instead, here is a simple checklist to follow:

Ride with a cell phone, personal identification, emergency contact, and something to write with.

Dial 911: call the police or an ambulance immediately. If you are unable to do so, ask someone to help. Always wait for the police to arrive and file an official accident report. A police report provides documentation detailing the incident, including the identity of witnesses.

Get the business card of the officer.

Leave your bike in the same state it was after the accident, if possible. It is best if the police see the accident scene undisturbed.

Obtain the contact information of any witnesses.

Immediately seek medical attention, either at the scene, the emergency room, hospital or doctor's office. When in doubt go to the ER! Give all complaints to the doctor. Medical records are proof that you were injured and documents the extent of your injuries. Take photos of injuries and keep a diary of how you feel after the accident.

Never negotiate with the driver of the vehicle, regardless of who may be at fault. Get the driver's name and his or her insurance information, along with the names of any passengers.

Give no written or recorded statements to anyone.

I do not want to sound overly pessimistic. Cycling is a safe, healthy and cherished way of life. But we have a long way to go in South Carolina to create a truly bicycle-friendly community. I hope that scbikelaw.com can play a part in getting us there. If you have any questions or need assistance, please call me at 843/723-9804 or e-mail me at pwilborn@scbikelaw.com. Although my offices are in Charleston, I am available statewide to represent cyclists and cycling groups, and to talk about bicycle laws and safety.

Peter Wilborn, a partner of the Charleston firm of Derfner, Altman & Wilborn, is a founding board member of Charleston Moves, whose mission is to promote cycling, walking, and transit use for a healthier communities and healthier lifestyles. He is a daily bicycle commuter, has raced, and tours extensively.