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## 10 Mistakes That Can Derail Your Bike Injury Case



DOUGLAS K. W. LANDAU, MEMBER OF THE VA,  
DC, NJ, CT, FL STATE BARS

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# DEDICATION

I dedicate this book to the cyclists and their families who have put their faith, hope and cases in my hands.

I also dedicate it to my parents, who bought me my first Schwinn Stingray, complete with “banana seat” and “Easy Rider” handlebars

I dedicate this book to my biker friends, especially the Worldgate “Team Gold” Masters, who push me out the door, pull me when I’m tiring and help me with repairs, directions and support.

I dedicate this book to my children, who were dragged around via “bugger,” “burley” and “trail-a-bike,” with noisemakers, snacks and plastic containers in their laps for collecting berries, honey suckle, frogs and turtles

And lastly, I dedicate this book to my “cycling partner for life:” who agreed to marry me with a “bicycle built for two” on top of our wedding cake; with whom I have ridden in many states and countries. In addition to 25 years of marriage, she has given me 4 wonderful, happy, healthy potential stokers

Doug Landau, Oak Hill, Virginia, 2009





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# INTRODUCTION

Why I wrote this book?

The first reason is the simplest. I wanted to help. Over my legal career, I have been contacted by injured who have made the mistakes discussed in this book. While one of the best parts of my job as a lawyer is giving good news, the corollary is one of the worst aspects of what I must do is to give bad news. And, when an injured cyclist or their family contacts me and they have not gotten prompt medical and legal help, I must then inform them that there is nothing my firm or I can do for them.

A second reason to write this book is because there is a lot of misinformation circulating in the general public and popular media. For example, I have had many people tell me that the vehicle behind the biker or car in front is always at fault in a collision. This is simply not true. In cases where the leading vehicle stops suddenly, had defective brake lights or is travelling below the minimum posted speed for the highway, the driver in front would likely be found at fault. I'm also writing to warn the reader about lawyers who advertise that if you are hurt, it is always someone else's fault and you will always get lots of money. Again, this is nonsense. These advertisements are put out by lawyers who cannot get good clients by referral from: past, satisfied customers, other lawyers who know their skill level, judges, doctors, and others. These are usually lawyers who do not "walk the walk;" they just talk the talk. What do I have against these lawyers, very little other than they are usually not:

1. Cyclists
2. Competitive bike racers.
3. Multi-sport athletes (such that they can comprehend what it is like to be "sidelined" from one's hobby, means of transportation, athletic "other life" or career)
4. All Americans or race winners (such that they have seen and experienced what it is like from the front, middle and the back of the pack)

5. A-V rated (the highest rating in the Martindale Hubbell National Legal Directory)
6. Insured (so that if they screw up a cyclist's case, there may be no recourse for the "twice-wronged biker")
7. Listed in "The Best Lawyers in America" even though they parade in front of Court Houses
8. Nominated to "Super Lawyers" or other peer-reviewed publications (as opposed to those rags where you pay to be listed that you see in the grocery stores)
9. Appearing in court regularly, such that you could see them "in action"
10. Give back to the cycling community by acting as volunteers at events, flagging, taking registrations, directing, planning and supporting the race staff
11. Teaching (either for their State Trial lawyers Association, Bar Association, Court System or other "not for profit" group, so that other lawyers can learn how to help injured victims)
12. Writing (for peer reviewed journals, i.e., those bar and lawyer publications where they do not publish every single submission or where authors pay to be published, but where there is lengthy and serious review of the quality of the article)
13. Give of their time, effort and expertise by mentoring young and new lawyers, speaking to bike groups and actually visiting bike clubs, bike shops, medical clinics and other victims' rights and advocacy groups
14. Belong or contribute to the American Association for Justice ("AAJ" is the national trial lawyers and victims' advocacy group), Public Justice (the national public interest law firm), the Virginia Trial Lawyers (or other states' Trial lawyers Association that helps injured plaintiffs and their legal counsel through education, legislation and support)
15. Belong to special subgroups, like the AAJ Bicycle Litigation group and AAJ Product Liability ListServ
16. Do Pro Bono (no fee charged) work for cyclists, event directors and planners, or outside their main areas of practice.

# **DISCLAIMER**

The information contained in this book is intended for informational purposes only and is not legal advice. It is not the author's intent that you should use this book in lieu of legal advice or try to represent yourself in a court of law if you are a plaintiff or defendant in a bicycle accident, crash or defective product claim.

The information in this book is not intended to create an attorney-client or similar legal relationship. Please do not send us confidential, sensitive or other information. Past successes cannot be an assurance of future success. Every case is unique and should be evaluated by a competent, experienced, insured and licensed lawyer.

Whether you need legal services and which lawyer you select are important decisions that should not be based solely upon this book.

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# **CHAPTER 1:**

## **Being unprepared**

No Warning, BANG! And the rest is all aftermath.

The shock, the pain that sets in, and the confusion are but some of the early sensations after a bike crash. Whether the injuries are caused by a truck, car, dog attack, stationary object or defective bike or component, the post-impact realization that you have been hurt is traumatic.

With a little foresight and planning, you can hopefully avoid the trauma and compounding of your injuries. We have seen cases where relatively treatable injuries have been complicated or become infected because of delay, lack of preparedness or the inability to communicate to emergency medical rescue personnel.

### **A. The Basics (before you mount your bicycle)**

Always carry an ID. It does not have to be your driver's license or passport, but it should be some easily identifiable document that would tell a stranger who you are, your address, and who to contact in an emergency. For those of us with special medical needs, i.e. penicillin allergy, diabetes, medication requirements and significant medical histories, a "Med Alert" or other warning bracelet, necklace or shoe clip is a good idea. I now carry my cell phone during long rides and when bike commuting. I also carry my digital camera, money, change (in case I need a pay phone !), a multi-tool or Swiss army knife, helmet, zip lock bags, first aid kit and/or antiseptic. I cannot emphasize the importance of plastic or zip lock bags. They keep my phone, money, tissues/toilet paper and ID dry. They also hold snacks, gels, GUs, powders, "EmergenC" and enable me to collect "rare treasures" I might spy while cruising on two wheels. These items can fill your jersey or jacket pockets. Many of my friends store these things in seat bags, bento boxes and even inside specially made, double duty water bottles.

## B. Riding

I have written about early season cycling and the safety found in riding in groups. I practice what I preach, and will often decide to ride with fellow cyclists instead of going solo.

With many regularly scheduled group rides available, being a “solo speedster,” may not be the smartest move. It could be a recipe for a knee injury, back injury, head injury or a fatal bike crash. Very few athletes have the ability to improve as quickly training on their own as with a group. Plus, if you run into an “equipment malfunction” or defective product, as I have, then having mates with spare parts, tools, cell phones, etc., can make the world of difference.

Clients tell me that having multiple sets of eyes, ears, noses, etc. to watch out for attacking dogs, careless motorists and inattentive truck drivers, can mean the difference between “a near miss” and a season ending injury, or worse. Plus the socialization comraderie and friendships you forge in the peloton may carry over to your next race, bike tour or century.

## C. Helmets

I am surprised that I have to write about this, but I’ve seen too many cyclists on the roads and trails without helmets! Having seen the devastating effect of permanent brain injury, there cannot be too many reminders of the importance of helmets. Because entrants cannot participate without approved helmets, I will often bring extra helmets with me to races and other events. In fact, cycling helmets must be clipped on before a racer can mount the bike, and must remain secured until the bicycle is racked in the transition area. Local race directors know that I bring extra helmets and other gear in case another competitor forgets, loses or has a damaged helmet. Once a helmet is damaged, its ability to protect the wearer’s head and brain is compromised. **DO NOT WEAR A DAMAGED HELMET THAT HAS BEEN IN A BIKE CRASH.** Its impact absorbing materials may no longer function and you could suffer a significant head injury or brain trauma.



In this photo I am holding the helmet of a client cyclist who was struck by a taxicab. The helmet protected the biker from more serious head trauma and brain injury.

#### D. Weather

Plan for the weather. Bikers need to be extra careful in the rain. Having crashed on wet pavement and been struck by a car while riding my bike to work, I unfortunately know firsthand how braking distances change and sight lines are affected by rain and wet road conditions.

A recent case arising from an injury in a class for bikers is illustrative: a student fell and broke her leg in a motorcycle training class, requiring surgery. The 31-year-old female was enrolled in a class to learn how to operate a motorcycle. According to the Virginia Lawyers Weekly case report, the class was being taught in the rain. During the course of the class, the plaintiff claimed that her instructor suddenly jumped in front of her causing her to lose control. There were no eyewitnesses to the incident. The instructor claimed that the student simply lost control of the bike.

The plaintiff was taken to VCU Medical Center where she had surgery to repair a knee fracture. She was hospitalized for three days. She made a good but not complete recovery from her right tibial plateau fracture. Her medical bills came to \$48,549.98. The case was resolved for \$120,000, without the expense, inconvenience or aggravation of a full-blown jury trial.

#### E. Pre-Season bike (and body) check-ups

Get your pre-season check ups: for yourself AND your bike!

Getting a regular check up forces you to get an annual examination and may prevent small problems from getting bigger. Likewise, getting your bike checked out can prevent headaches (and head injury).

With the coming of warmer weather and longer days of spring, I get a pre-season check-up for my bicycle. Before the start of the spring racing season, I bring my bike to my trusted, friendly and skilled local bicycle mechanics.

Just as important as making sure your body is ready for intense training and racing, is ensuring that you have a safe ride. Experienced bicycle repair shops, like experienced trial lawyers, know what to look for and usually have several strategies for each problem that arises. One of the ways I have avoided head injury and disabling bike crashes is by letting the experts repair and maintain my and my family's bicycles before, during and after the racing season. If you can find a bike shop and mechanics who are experienced, talented and honest, then you will have greater peace of mind, safety and success. These are the same qualities one should seek out when selecting a trial lawyer for a personal injury, automobile accident, dog bite, animal



attack, head trauma, defective product, disability claim or bike crash case.



Shown here with a professional bicycle mechanic, Doug Landau gets a pre-season bike safety check up.

## F. Pre- and Post-Ride Inspection and Maintenance

So you got your bike checked out, you have had your own physical, and you have been racing. Do not forget to check your bike **BEFORE** and **AFTER** every ride, tour and race. Just like the airline pilots, it is a good idea to have a short “pre-flight” checklist.

After every event, cleaning and drying your bike can extend its longevity, preserve its speed and enhance your safe riding. Remember: A clean bike is a happy bike. Make post-race maintenance mandatory for safety and speed. Jammed gears and rusted parts can cause a biker

to crash. And crashing is not fun. If you ride at all frequently, you will encounter rain, mud and sand. If you want to keep your bike running smoothly, take a moment after each ride and race to dry it off, clean it up and/or re-lubricate it.

Truth be told, this itinerant trial lawyer and triathlete did not buy his infamous bright yellow XTerra for bicycle maintenance purposes, rather his daughters picked it out because it was safe in the snow and ice to transport disabled clients to their Social Security and Workers Compensation hearings during inclement weather. My wife appreciates the fact that I can throw my stinky race shoes on the roof rack, along with my dripping wetsuit. I also found that I can work on my bicycle after racing and riding by hanging my wheels and frame from the handy strap on the trunk door. Just be careful that what you are cleaning or lubricating does not weigh so much that the trunk closes on your head, especially if you are not wearing your bike helmet!



Shown here after the USAT National Age Group Championships, Landau is shown applying grease to the chain of his racing bike. If you can, take a few moments and clean your bike after every ride. You will avoid wasted energy, permanent injury and potentially hurting others in the peloton or charity ride.

## G. Extra safety equipment (lights, reflectors, etc.)

If you ride in the early morning or at night, you must have lights and reflectors and you should probably wear bright colored clothing if you want to be seen by cars, trucks and others on the road. Bikers' lights and reflectors prevent crashes, injuries and death at night; they are generally not required all day. You usually do not need lights on or reflectors from sunrise to sunset. However, I have been stopped by the police for not having reflectors, lights and even mud guards on my old Italian Bianchi racing bike while commuting home from the train station in Cambridge England!

Most racing and triathlon bikes do not have lights, reflectors or mudguards in order to save weight, rotating mass and because most competitions are held in the daytime. If you are a bicycle commuter, long distance bike tour participant or training very early or late in the day, you may need to have lights, reflectors and other safety gear. Here's the relevant Virginia Code section:

§ 46.2-1015. Lights on bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, and mopeds.

1. Every bicycle, electric personal assistive mobility device, electric power-assisted bicycle, and moped when in use between sunset and sunrise shall be equipped with a headlight on the front emitting a white light visible in clear weather from a distance of at least 500 feet to the front and a red reflector visible from a distance of at least 600 feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle. Such lights and reflector shall be of types approved by the Superintendent.

In addition to the foregoing provisions of this section, a bicycle or its rider may be equipped with lights or reflectors. These lights may be steady burning or blinking.

2. Every bicycle, or its rider, shall be equipped with a taillight on the rear emitting a red light plainly visible in clear weather from a distance of at least 500 feet to the rear when in use between sunset and sunrise and operating on any highway with a speed limit of 35 mph or greater. Any such taillight shall be of a type approved by the Superintendent.

H. “Top 10” List of Bone-Headed Things to do if you DO want to be in a crash or get hurt

While we are on the topic of safety, here is my “Top 10” List of Bone-Headed Things to do if you want to be injured in a bicycle crash. Having grown up riding a bike, commuting to school and jobs on 2-wheels and racing in bike road races and time trials, I have seen some of the very best (and worst) of cycling. While most riders observe safety and common sense precautions, other riders and members of the peloton seem to want to increase their chances for crashing, broken bones and brain injury. My “Top 10” list of things to do if you WANT to crash your bike and break some bones includes:

1. Talk on your cell phone, preferably with one or both hands off the handlebars. I rarely ride without my right hand firmly on the bar; I don’t know how to ride with “no hands.”
2. Eliminate your ability to hear people passing or shouting warnings by being completely “tuned out” via the headphones of your iPod, MP3, Walkman (I know, “old school”). You need ALL 5 senses to ride your bicycle safely on the street and on the trail. If you cannot hear, you will miss warnings, instructions and cues that help you anticipate danger.
3. Do not wear a helmet. Who’s afraid of a little traumatic brain injury? A concussion, blunt head trauma or spine injury would just be a “Red Badge of Courage” to these folks who forsake their head protection. I hear the excuse “I’m not going that fast.” Even very low speed impacts can have serious and permanent ramifications.

As an example, my own wife shattered her elbow going no more than 5 mph near the Route 15/Luck Quarry intersection in Loudoun County, Virginia. Surgery by top area orthopedic specialist Tom Fleeter repaired her damaged right arm, but left her missing some bone fragments and with a large scar. Bikers can sustain fractures and head injuries at even very low speeds. Luckily she was wearing her helmet, otherwise she might have had a traumatic brain injury on top of a broken elbow.

4. Text message while pedaling or coasting. If you use both hands, you have no hands on the brakes and you will not be paying “full time and attention” to your bike riding. I have seen people actually doing this, and it amazes me that they can do so, as my fingers are

too big and clumsy to text efficiently and the screens are very hard to see.

5. Ignore the traffic lights. After all, a bicycle is not a car. I have seen bikers “bust through” a light for the thrill of it, and thought it will just be a matter of time before someone bolts as the light changes to green and clips the bike, or worse. Many motorists are not looking for bicycles on the local streets, especially fast moving ones with riders in the tuck or “aero” position. And, if the peloton has just passed through safely, motorists may not think there are any more riders in a chase group or individually, and chances of an impact with a car are increased. I point out to people I ride with in the Herndon/Reston area, that in a crash between a car, truck, motorcycle and a bicycle (and even a large peloton), the bicyclists will get the worst of it.
6. Ride your bike when it is broken, especially the brakes. I have been involved in my fair share of crashes. They are almost all my fault. Pieces of equipment falling into the fork in England; trying to modify my bike going into a hairpin turn in Italy; running into a slick spot in Greenwich, CT all left me with painful reminders of the importance of checking your ride and the course before pedaling. Spend the extra minutes and do what the pilots do, a “Pre-Flight Check” may prevent permanent injuries, head trauma or worse.
7. Pretend you and your companions own the road. Forget the “Share the Road” bumper stickers. Ride your bicycle 4 or 5 abreast. You can do this with or against traffic and make your peloton very popular. Forcing cars and especially trucks onto the median can be fun if you do not mind getting run off the road occasionally and thrown into a ditch.
8. Do not give any audible or visual signals. Do not call out, as you are overtaking walkers, runners, baby strollers, skaters, “Passing on your left.” Instead zoom by them as close as you can so that if you do not clip them, knock them down or cause lacerations, you’ll at least give them a good fright! Not signaling with your arms that you are turning or slowing down will up the odds of your becoming a crash victim and will also ensure that you will not win “Mr. Popularity” in the peloton. I am personally grateful to those bikers who call or point out potholes, gravel and other potentially

dangerous conditions when I am riding with a group. I also appreciate those riders who use bells to signal their passing or turning.

9. Ride at night or in low light conditions, wearing dark clothing with no reflectors or lights. While I admire people who bicycle commute year round, those who do so without proper reflective gear and lights are taking a huge risk of injury and disability. Most criterium racing and triathlon bikes do not have reflectors, because of the weight. If you are using a “high end” bike and aero wheels before dawn or after dusk, consider adding reflectors for better side visibility, as well as helmet and bike lighting systems. Those who know me know that I wear bright colored clothing so that I am visible to motorists, truckers and other cyclists. It amazes me when I see someone riding with little light outside in an all black kit.
10. Ignore the signs. Stop signs apply to all vehicles traveling on the road. “Slow,” “Yield,” “Merge,” and “Road Closed” signs apply to bicycles if they are being ridden on the travel surface of the road. And, if the signs say, “No Bikes,” “Pedestrians Only” or “Walk your Bike” then that is what you ought to do if you want to avoid a terrible bicycle crash, permanent scars, brain or spinal cord injury.

If you do all of the above bone-headed things, then you should seriously think about becoming an organ donor...

# **CHAPTER 2:**

## **Failing to get help**

If you are in a bike crash, or injured in an attack by dogs while riding or your equipment fails and you are hurt, GET HELP. This can be medical aid, rescue personnel, the police, legal help and other assistance. This chapter will discuss the kinds of help to get

Shock can mask clear-headed thinking. Even if you feel like you have all your parts after an impact with a car, truck and/or pavement, get checked out. Call for help from the scene and see your doctor. These seem like simplistic, common sense tips. However, I have met with many people over the years who thought they were “OK” after a crash, only to find out later that they had sustained serious, and permanent injury. This is true in cases of ligament, tendon and other connective tissue injuries, where the real pain and restriction in movement sets in days and weeks after the initial impact.

I was struck by a hit and run driver, and while I felt fine at the scene, the ambulance crew insisted that I go to the hospital. I was examined, x-rayed and told to follow up with my family doctor. The next day and for the rest of the week, I felt like I had been beaten with a sledge hammer! So, whether you are an elite athlete or a recreational rider, how you feel immediately after a crash can be deceiving. I recommend, “When in doubt, get checked out.”

### **A. Medical help**

Traumatic brain injury is more common than you might think. For example, according to the Brain Injury Resource Foundation, approximately 125,000 people suffer some sort of brain injury which requires hospital admission in the United Kingdom each year. Brain Injuries or head injuries can be caused in many different ways: accidents at work on the road, in public places or an assault / attack. Effects of brain injuries and head injuries vary: there could be cognitive difficulties, memory loss and / or poor concentration or, in the extreme, permanent brain damage and / or physical disability.

## B. Legal help

You may be thinking of making a compensation claim for a brain injury or head injury that you, or a relative is coping with and that you feel was caused as a result of an accident. After an injury, the change to one's lifestyle, the cost, the financial strain can be overwhelming; getting involved in a legal battle is often a daunting and unwelcome additional strain. My law office helps individuals make the right decisions and the legal battle is to secure compensation that helps you deal with the changes to lifestyle and the financial impacts.

As personal injury lawyers dealing with claims for compensation in cases where a cyclist has suffered a brain or head injury, we will need to work closely with the family of the injured person. We make every effort to detail the issues in plain English, give explanations in writing and also provide copies of all of the important documents that come into and out of the Landau law Shop. Our efforts are designed to put you and your family at ease during the convalescent process.





I often try cases with my computer in the courtroom, as well as presented computer animations to demonstrate the biomechanics of a crash upon my client.

### C. Traumatic brain injury (TBI)

Traumatic brain injuries (TBI) cause permanent problems, disability and death; but they are often missed or misdiagnosed. Traumatic Brain Injury is defined by the Brain Injury Association of America as a “blow or jolt to the head or a penetrating head injury that disrupts the function of the brain.” While not all blows or jolts to the head from bike crashes result in TBI, it’s sometimes hard to tell the severity of a brain injury right away.

We have helped accident victims who have been diagnosed with head trauma and TBI, days, weeks and even months after a car wreck, truck crash or bicycle-motor vehicle impact. A TBI can result in short

or long-term independent function problems. Each year in the United States, nearly 1.5 million people will suffer a Traumatic Brain Injury (TBI). Causes for TBI vary from falls from bikes, defective sports equipment, to traffic crashes and physical assaults. Additionally, a large number of military personnel returning from active war zones, such as the war in Iraq, suffer from TBIs, as written about on our LandauInjuryLaw site.

It is reported that, of those who suffer TBIs, 50,000 die each year. The latest data show that 235,000 are hospitalized with 1.1 million persons treated and released from an emergency department. The Centers for Disease Control and Prevention estimates that more than 3 million Americans currently have a long-term need, which may be for life, for help in performing daily activities as a result of a TBI. Part of the insidious nature of TBIs is they are often missed in initial medical examinations after a blow or jolt to the head. Symptoms are subtle and can be easily overlooked. Also, the effects of TBI may be delayed and not be evident for days or weeks before they appear. If you or someone you know has suffered from a traumatic brain injury, head trauma or concussion, please call us at ABRAMS LANDAU, Ltd., 703-796-9555 or e-mail us at the Landau Law Shop. Let our team take care of yours.

D. ABRAMS LANDAU clients ask, “Why can’t the doctors see a brain injury after a bike crash?”

When an injured victim of a bike crash is brought into an emergency room, x-rays are often ordered. However, I have noted that while such diagnostic testing, while good for showing broken bones and fractures, does not show many kinds of brain injury. For example, a cyclist or motorist injured in a crash may have a subdural hematoma (sometimes spelled, “haematoma”) which may not show up in the Hospital immediately on a post-accident x-ray.

Subdural Hematoma is a collection of blood that pools under the dura. Because x-rays do not “see” blood as easily as hard, boney structures, these are sometimes missed. The dura is a relatively tough connective tissue (collagenous) membrane, about the thickness of parchment paper. It is firmly attached to the under surface of the skull, and in the spinal canal, it is separated from the bony structure by a layer of fatty tissue. The inner underside of the dura is applied to a much thinner, transparent membrane, the arachnoid, which overlies the

brain and subarachnoid space. This interface is easily separated, forming the subdural space. The subdural space is referred to as a “potential space” because a space is not generally created unless a subdural hematoma or another space occupying mass is formed.

When a subdural hematoma forms, it is generally an indicator of a broken vein on the underlying surface of the brain. Veins draining the surface of the brain pass through the subarachnoid space and then the dura on their way into the sagittal sinus and other intradural venous sinuses that carry the venous blood eventually to the jugular system. If one or more of these veins that “bridge” the dura are injured, bleeding occurs into the subdural “space,” causing a subdural hematoma (clot). Clots, active bleeding and tears in membranes are often “invisible” to standard x-rays, as they are injuries to “soft tissues” that do not show up on the x-ray.

A related question I have been asked is, “How can there be a brain injury if there’s no skull fracture or bleeding on the head?”

There does not have to be a fractured skull, broken bones or even visible bleeding for there to be a severe and debilitating brain injury after an accident. One reason is that the brain can be injured by striking the INSIDE of the skull. We have shown clients that this is possible from what is called a “Contra Coup Injury.” Contra Coup injuries occur when there is an injury to the opposite side of the head from the impact site. Contra coup injuries are generally thought to be an indicator of a moving head hitting a stationary, unyielding force or object. We have demonstrated to judges, mediators and juries that there does not have to be a fracture, bleeding, external head swelling or even discoloration for there to be an internal injury, such as results from Contra Coup.

See: <http://www.neuroskills.com/swfcoup.html> for an excellent movie demonstrating this form of interior brain injury.

E. What about children, do they bounce right back after a head injury from a bike crash?

After brain trauma, concussion experts recommend no sports or school for kids during a healing period. According to the International Conference on Concussion in Sports, children and teens require different treatment for concussions, head trauma and brain injuries

than adults. The guidelines, published in the British Journal of Sports Medicine, say children and teens must be strictly monitored and activities restricted. After a concussion: no return to the field of play, no return to school and no cognitive activity - until fully healed. The developing brain of the child and adolescent requires special consideration. In light of the care required by children with concussions, brain trauma and head injury, it is recommended:

- \* No child or adolescent athlete should ever return to play on the same day of an injury, regardless of level of athletic performance.

- \* Children and adolescents may need a longer period of full rest and then gradual return to normal activities than adults.

- \* For children, “cognitive rest” is a key to recovery. While restrictions on physical activity restrictions are also important, cognitive rest must be carefully adhered to, including limits on cognitive stressors such as academic activities and at-home/social activities including text messaging, video games and television watching.

F. Another legal question: “Should I have different law firms handle different aspect of my accident and disability claims?”

Some injured cyclists have one lawyer for their personal injury negligence case, another for their Social Security Disability claim, and, if the bike crash was in the course and scope of their employment (as is the case for bicycle cops), then a different office handling their workers comp case. Having one law firm handle all of your related cases saves time, effort and money. For example, the medical records prescriptions and bills are relevant to all your injury and disability cases. Once I learn a client’s medical history, I can apply that knowledge to their car crash, dog attack, product liability or slip and fall case, as well as their related on the job injury claim, and also their Federal Social Security Disability claim. We only have to pay for these records ONCE, and we can use one of these cases to help the other.

Coordination of state and Federal benefits is becoming increasingly more complex, and law firms that claim to handle injury cases are settling the motorcycle crash, dog bite or premises liability claim and then failing to properly protect the client on the workers compensation or Social Security claims. Plus, ABRAMS LANDAU

gets calls all the time from distraught injury victims who have a good lawyer, but that lawyer does not handle their related cases, and the legal time limit is about to run against them.

My advice: “Don’t be a dummy and split up your negligence, workers comp and Social Security cases.” Keep them “under one roof” with an experienced law firm that regularly handles permanent injury, lifetime disability and fatal accident claims before the trial courts, compensation boards and Federal Social Security Administrative Law Judges

#### G. Other kinds of help:

If you are the primary caregiver for children, elderly adults or even pets, and you have sustained a serious head injury or brain trauma, get help at home. Some doctors will recommend home services, home nurses and other assistance to those patients with broken bones that disable them from caring for themselves and their loved ones after a bike crash or dog attack. Many insurance plans will cover this kind of help as long as there is a referral from a treating or attending physician, the length of time is reasonable and the services are related to the covered event.



# **CHAPTER 3:**

## **Not having any witnesses**

### A. Prompt Investigation can Make or Break a Case

One of the reasons to retain experienced legal counsel as soon as possible after a catastrophic bike accident, dog attack, bicycle crash or fall is because a qualified trial lawyer will start investigation so that your case can be presented with the evidence necessary to win.

What kinds of things will counsel do for you after you've been smashed, crashed, bashed or trashed?

The experienced trial team at Abrams Landau, looks to secure such evidence as:

Pictures of the vehicles,

Photographs of the accident scene,

Images, with scale markers, of the defective product(s),

Medical illustrations and/or photos of the injuries and medical apparatus used to treat the injured plaintiff,

Receipts, photographic records and perhaps the items themselves for the property damage claim.

Weather reports, news clippings, and other relevant notes from periodicals and local newspapers.

The Defendant's other infractions, convictions, litigation history and case histories.

As part of my investigation into the circumstances of a case, I will visit the scene and meet with the police officer who investigated the client's accident. It is not unusual for these meetings to result in additional information not contained in the official "Police Accident Report." My in-person discussions with the investigating officers sometimes reveal facts not even found in the Traffic Court trial transcript. Plus, it is important to meet with every witness well

BEFORE they take the witness stand and testify in an Abrams Landau trial.

### B. Obvious witnesses

Some witnesses are obvious. The other cyclists are usually your “first line” of helpful witnesses. A peloton should stick together during the ride and after a crash. (See, in the Appendix, our Federal Court bike crash case example.) Bystanders who identify themselves or leave their identification are also a good source of information. Rescue and emergency personnel, while not witnesses to the impact, can testify as to the aftermath and the efforts undertaken to treat the injuries and secure the scene of the bike crash. Police are also good “scene witnesses,” especially if they arrive on the scene of a bicycle accident soon after the event.

### C. Not so obvious witnesses (Intersection and parking lot videotapes)

Split second car crashes can cause traumatic brain injuries and long-term problems for cyclists and other athletes. I have been asked, “If I do not see anyone, does that mean I will have no witnesses?”

Not necessarily. With the advent of intersection cameras, an injured cyclist may have another way of proving his/her case. Where a car or truck has run a red light or is speeding, this recklessness may be captured on film. It is imperative to preserve the film, DVD or other visual media. We won both the car crash case and workers compensation claim for a hospital nurse who was struck in the crosswalk in front of the hospital where she worked. After “clocking out,” she proceeded out the door to the parking lot. When she awoke, her legs were smashed and she had no idea who had hit her, as there were no skid marks and no driver stopped. My investigation revealed that there were surveillance video cameras set up to watch over the doctors’ expensive sports cars. I sat and watched hours of parking lot videotape. Then I saw my client walking out of the hospital, whereupon she was struck down by a station wagon that just kept going. Arriving almost instantly were other doctors and nurses. They helped me to identify the defendant’s car, and we were able to disprove the allegations by the insurance companies that my client was not walking, not within the pedestrian cross walk and that she was not



looking where she was going. Plus the videotape gave us relative speed and the fact that the defendant never stopped or slowed down.

We have also seen camera phone recordings of crashes. In one case, teenagers were seeing how fast they could go on a rural road. They also wanted to test their vehicle to see how much “air” it could get on the jumps. After the first two runs, they lined the SUV up for the third try. Unfortunately, as they were getting to jumping speed, another car appeared on the road in the opposite direction. Unable to control their speed, the teens’ car smashed and rolled. The video, and the audio were captured on one of the teenager’s cell phones. It made for compelling watching and chilling evidence for the innocent injured victims of their reckless behavior.

D. Aftermath witnesses can support the harms that the doctors may miss

We have helped injured victims whose head injury and brain trauma were missed at the hospital after a crash. After a truck or car crashes into a cyclist, the biker may hit the ground and hit their head on the pavement. When initially examined by emergency personnel, they often seem relatively intact. There may be cuts to the head but they may not appear “serious.” Often E.R. doctors conclude the athlete was not seriously injured and assure the patient that he/she will be fine. But within the next 24 hours, the injured athlete can wake up vomiting blood. Standing up causes dizziness and nausea. Doctors may then discover fractures in the cyclist’s or runner’s skull and jaw, and damage to the nerves in the ear. I am aware of cases where the injured victim has been transferred to the Intensive Care Unit, where they stayed for days under close observation in the neurology ward.

Although many young athletes do recover from car and truck crash injuries, and the cuts and “road rash” heals, they are often left with a Traumatic Brain Injury (“TBI”). There are often long-term effects. Athletes with TBI may experience cognitive defects including difficulties with attention and memory, confusion, sleep disorder, emotional disorders, speech and language problems, and sensory and perceptual problems. They also might experience physical problems such as chronic pain and seizures. TBI also can increase the risk of developing conditions like Alzheimer’s disease, Parkinson’s disease, and other brain disorders that can become more prevalent with age.

If you or an athlete you know has been in a crash and suffered a head injury or brain trauma, please secure competent, experienced legal counsel. The gathering of information from post-crash witnesses who can talk about what has been taken from the cyclist due to their brain injury is something that a bicycle crash lawyer can help develop.

#### E. Another source of witnesses

When there are no witnesses that come forward and no videotape, is all lost? No. Our law firm has hired private investigators to go door-to-door in order to find people who may have heard screeching tires, horns or the impact itself. Perhaps they saw the bike crash, but thought the authorities would “take care of it.” In other instances, they have rushed inside to call 911, but then did not return to the scene for fear of what they might see or be asked to do. We have found that canvassing scenes can produce information about the habits of drivers in the area and whether a particular intersection or stretch of road has been the scene of other accidents. This is especially helpful when the bike crash is caused by a dangerous road or surface that has been improperly maintained. Bottom line, just because nobody runs up and gives you their information after a bike crash, it does not mean that you, the bicyclist, are out of luck with regard to having witnesses “on your side.” Our experienced team at ABRAMS LANDAU, Ltd. has found witnesses when the injured cyclist thought there were none to be had.

# **CHAPTER 4:**

## **Not having any evidence**

### A. Physical Evidence

Getting physical evidence to support your bike injury case is important after the medical care has begun. There are simple, common sense actions that should be taken after a bike wreck, dog bite, defective bike crash or other personal injury causing event. We recommend:

1. Broken bike helmets should be saved (but NOT worn again; they are not safe after a crash).
2. Photographs should be taken as soon as possible.
3. You should save the defective product or parts (put them in a zip lock bag, seal it, date it, sign it and keep it in a safe place).
4. Write down what happened: include names, addresses and phone numbers of the other people involved in the accident and all witnesses at the scene.
5. Identify the vehicles involved or the injury causing product.
6. Make a diagram of your location before, during and after the accident.
7. Include measurements of such things as skid marks, landmarks and warning signs.
8. Preserve the evidence: do not wash bloody clothing, broken footwear or throw out a cracked bicycle helmet. Label these things, put them in zip lock bags and give them to your lawyer.

### B. Head injury cases do not need external indicators

I have been asked, “How can there be a brain injury after a crash if a helmet was worn and there was no blood or skull fracture. This can be due to what is known as “coup/contracoup” and subdural hematoma.

**Contracoup Brain Injury:** A specific area of brain injury located directly opposite to the site of impact to the head that results from linear violent collisions of the brain with the skull. In other words, the brain, surrounded by fluid, moves through the fluid and strikes the inside surface of the hard, unyielding skull. This “internal impact” can cause a “bruise” or hematoma on the surface of the brain. Experienced cyclist and sports injury trial lawyers and doctors know that this “inside impact” can then lead to swelling and other symptoms. The brain can swell, but the skull in adults, does not get bigger after a bike crash or car accident. The trial team at Abrams Landau has seen examples where the brain swelling in this fixed, finite space, can lead to headaches and more serious consequences after a seemingly innocuous head injury.

### C. Defective Bike Product cases

Sometime the cyclist is injured not because of the negligence of some truck driver or a dangerous road, but because the bike has a defect or was improperly assembled or repaired. In those cases where the bike was negligently manufactured, assembled and/or fixed, it is critical that the parts or bike in question be preserved as important evidence in the case. If the bike is altered or repaired before it has been inspected, the potential product liability may be lost before it has begun. “Spoliation” is the legal term used when critical evidence has been lost, changed or destroyed.

### D. Product liability case example: Bike Stem Break Causes Injury – theories of recovery

Our law firm was recently contacted by Maryland attorneys regarding a client who was seriously injured when an aftermarket bike stem snapped. The stem likely snapped due to negligent installation, a manufacturing or design defect, or some combination of these factors. The attorneys for the injured bicycle rider were looking for a general forensic firm so that they could retain an engineering expert to explain and support their theories of the case. It is not uncommon for a case involving a serious bike crash to involve several theories as to what causes lead to the cyclist’s or peloton’s injuries. Theories in the bike stem fracture claim, like the “working diagnoses” on the popular television shows “House,” “CSI” or “E.R.” include:

1. “Negligent installation” means that when the stem was attached to the bike, it was done so improperly, which caused the injuries to the purchaser or user.
2. “Manufacturing defect” means that the bike stem was designed properly, and installed properly, but some step(s) during the manufacturing process caused product failure and rider or peloton injury. An example is where the metal contains defects or is not heated/cooled to the correct temperature and thus is not as strong as called for in the bicycle design specifications.
3. A “design defect” means that the bicycle stem was negligently designed, such that even if correctly assembled, it would still break and cause harm to the ultimate user.

E. Bad dogs, “yip-yip dogs” and crazy canines; In these cases we collect physical evidence to prove cyclists’ dog bite or animal attack occurred

Because a cyclist's cuts and scars can heal and footprints disappear, TAKE PICTURES !

In addition to audio evidence, collecting physical evidence can also support a case of violent dog attack against a biker or peloton. Our team and private investigators seek and collect hair, skin or fur from the attacking animal. These tissue samples can be matched just like DNA evidence in a rape or assault case involving humans and introduced in Court.

Another piece of evidence that can help an injured biker’s case is a report from an “expert witness.” A bike mechanic’s report that the damage to the bent bike frame is consistent with a dog attack from the side as opposed to a fall or bicycle crash can help prove an animal attack case where the only witness is the cyclist herself.

I have introduced physical evidence in bicycle accident cases in Leesburg, Fairfax, Loudoun and Washington, D.C. In one case, pictures of the bike tires’ grooves in the soft shoulder of the road helped prove the cyclists’ direction of travel and position right before the injury producing “point of impact.” We have also used photos of animal footprints in the soft sand and wear patterns in the grass and trail.

If there is paint from the car on the bicycle or paint or scrape marks from the bike along the side of the truck, these may help buttress the injured cyclist's claims as to the driver's negligence. Likewise, pieces of physical evidence can also help "prove the case." We had a client who was run off the road by an irate motorist. We were able to prove how close she was to the cyclist and that she was unaware of the location of the line of riders when, after she denied contact with anyone, the rider BEFORE our client produced her right side mirror, which came off when it struck and cut his hand, leaving a permanent scar from where it was stitched! Sometimes we will get the results from the examination of the turn signals, brake lights and dash board in order to prove (or disprove) some aspect of the case.

We have cases where clients have also downloaded information from their Garmin GPS units, Polar Electro monitors and other data collection and electronic exercise equipment to show their bike speed was not unsafe or excessive; that they were not at an "excited" heart rate until the very moment of the attack or impact; or the location of the point where the dogs or other animals started their "chase" before pouncing on the cyclist.

There are other methods of proving these violent cases, including measuring skid marks and yaw marks; mapping debris fields; locating blood stain and spilled liquids; and, marking foot and paw prints in appropriate cases. Photographs with digital cameras, cell phones and PDAs can be very helpful, before wet paw prints or sweaty foot prints (like those in the photo) evaporate, are covered or the accident scene is compromised. If you, or someone you know, has been injured by a dog or animal attack, please contact us.

Nothing ruins a good bike ride like a nasty dog with a brain the size of a kumquat. Dogs that bark from their own yards, inside their owners' homes or running along fences do not shake most bikers. But bad dogs, "yip-yip dogs" and crazy canines that are untrained, unsecured or who have bitten and tasted flesh and blood are another story entirely. While you may encounter a large growling dog head-on, it's usually the small to medium sized dogs that come at you from behind that can be the most dangerous. Like "heat seeking missiles" these animals can cause fatal crashes. My wife has been known to set land speed records on her bicycle when a pack of "yip-yip" dogs chases her down a rural road. It can be terrifying, dangerous and even

deadly. We have helped cyclists, postal workers, police officers, deliverymen, swimmers and children who have been attacked and savagely bitten by dogs. These cases almost always involve permanent injuries, scarring and a lifelong fear of dogs.

Bike crashes caused by dog bites and animal attacks can cause permanent injury and scarring.

While the injuries in dog attack and animal bite cases are usually objectively verifiable and the scarring permanent, proving legal causation in an “unwitnessed dog attack” can be more difficult. When a cyclist, runner or delivery worker is chased, attacked and bitten by a dog (or pack of dogs), and there are no other identified witnesses, the Defendant dog owners’ homeowner and other insurance companies will deny the injured victim’s claim. The Landau personal injury team investigates these cases in order to overcome the insurance companies’ denials and defenses.

The “911” tapes of the emergency calls can yield helpful information and witness identification information, especially where the biker has sustained a head injury, been knocked out or sustained a traumatic brain injury. We have seen cases where the bicyclist has had a concussion or gone into shock from blood loss, and not regained consciousness until inside the ambulance or helicopter during transportation to the Emergency Room. The police, fire and rescue teams arrive long after the dogs have disbursed and the attack on the cyclist, postal worker or deliveryman has ended. Physical data can help support the audio evidence of a vicious dog or other animal attack on a peloton, lone cyclist, jogger or pedestrian.

#### F. The posted speed limit IS NOT the same as “Maximum Safe Speed”

When there is inclement weather or construction, the posted speed may not be appropriate. In places where the roads are slick, or the road is being repaired or resurfaced, motorists need to slow down. Truck and car drivers can be ticketed for travelling the regular speed limit under these conditions. Car and bicycle crash clients have sections regarding these issues on their official Police Accident Report. There are also three boxes for speed. There is the box for the “posted speed limit” and the speed at the time of the impact. But there

is also a box for “maximum safe speed.” This can be less than the posted speed limit when there is:

- \* Inclement weather,
- \* Construction in the road,
- \* A special event ( a parade, running race or triathlon!),
- \* Snow or ice on the road surface,
- \* Sand from washout or a prior accident,
- \* Some other road defect.

In some cases, even where the Defendant motorist was going the posted speed limit, he/she can be found liable for his/her negligence when it exceeds the safe speed under the circumstances. Likewise, an injured Plaintiff can lose his/her case when the speed was in excess of the safe speed at the time of the crash. That is why it is important to check the official Police Report before going to the Traffic Court trial or other Hearing in order to make sure the facts are correct. When there are police barriers or cones or construction crews, **REDUCE YOUR SPEED.**

When we need to prove the weather conditions at the time of the crash, there are many ways to do so. We can get the newspaper record of the weather, the official National Oceanic and Atmospheric Administration (“NOAAA”) report, and, in the DC Metro area, the weather from the local subway or commuter train stations. Showing that there was ice or snow may help a claim that the motorist could not stop as quickly as on a dry roadway. Likewise, weather reports will often contain information about the times of sunrise and sunset and other conditions that affect visibility. One case that we won for a brain-injured client involved the photos of a “fishtailing” rear tire of a bicycle that was travelling on the sidewalk in the vicinity of the car that went off the road due to the slippery road surface.



# **CHAPTER 5:**

## **Not contacting the authorities**

### A. Police, Sheriff's Office, Troopers and other Law Enforcement Authorities

"I was injured in a crash, but the other driver admitted it's was his fault, should I still call the police?"

"YES." At Abrams Landau I have seen too many cases where the driver who caused the crash says "It's my fault." at the scene, only to recant later at Traffic Court after a lawsuit is filed, and even at the trial of our client's injury case. I have also seen cases where the facts seemed clear at the crash site, only to be disputed later by the negligent (and sometime drunk !) Defendant driver and his insurance company and their lawyers.

When in doubt, call the cops. The police can make a full investigation, get witness information and take measurements at the scene before the vehicles are moved and the "debris field" is disturbed. Plus, if the police are not contacted, it is unlikely that there will be any Traffic Court hearing, with the potential for a helpful Court transcript. "When in doubt, call them out." If your injuries are too severe to call for help, have the first responders call law enforcement. When you are injured in a car crash, you have other things on your mind other than investigating the causes of the crash and who is at fault. The police accident reconstruction teams have special training. Let the pros investigate the crash while you focus on getting prompt, helpful medical care.

### B. "Why didn't the Police write an Accident Report about my crash?"

Most car crash cases I accept each year have a "Police Accident Report," "Police Investigation Report" or "Police Accident Reconstruction Report." An example may be seen in the APPENDIX. These are usually compared to the ambulance emergency and first

responder reports in order to verify key facts about the wreck. However, there are incidents where there are no official or law enforcement documentation. Instances where we have observed no reports included cases:

- \* where the crash happened on private property (i.e., a shopping mall parking lot, unpaved road or farm);
- \* where the damage to the vehicle or cost to repair was under \$500; or,
- \* where the police were immediately called away to another emergency and those involved in the first wreck denied any injuries at the scene and were not blocking traffic or in peril.

If you have been involved in a crash with a car, truck, motorcycle or other motor vehicle, and there are no investigating officers, take notes, pictures and witness information. Otherwise, you may find it difficult, if not impossible to prove your case.

### C. Animal control

You are attacked by a dog. You are knocked off your bike. You have called the police and the rescue squad. Cops and ambulance, that is all you need, right? Wrong. In many jurisdictions the Department of Animal Control may have jurisdiction. The animal warden may investigate, make a report, take witness statements and even prosecute and fine the animal's owners. We have sent Court Reporters to make a transcript of these proceedings, as we can then get important information to use in our civil (non-criminal) case against the dog or other animal owner on behalf of our injured client. Plus the Animal Control Department may have pictures useful to our case and records of PRIOR bites, attacks or warnings. In one case, the dog that bit our client, a varsity swimmer, lifeguard and restaurant hostess, on the face, had been adjudicated as a dangerous dog. The dog owners were to have put a special sign in front of their house, muzzle the dog when it was around people, and use a special warning collar. The case was settled on behalf of our client against the dog owners' homeowners insurance company after she had plastic surgery, scar remediation and dermabrasion such that she could return to her varsity swimming team, working at the pool as a lifeguard, and as a hostess in a restaurant.

#### D. Car + Bike + Horse = Devastating Injuries for Bikers (There can be more than one cause of a bike crash)

In a case from Middlesex County, New Jersey, a man and a woman riding on a motorcycle were injured when their bike was hit by a car that was swerving to avoid a horse in the roadway. The plaintiffs claimed the horse caused the bike crash. The 59-year-old plaintiff, was riding as a passenger on a motorcycle driven by her 56-year-old husband and plaintiff. The motorcycle was hit by a car, and the bike crash caused significant personal injuries. The case resulted in \$4,275,000 for the injured plaintiffs.

ABRAMS LANDAU has represented injured car crash victims, athletes in bike wrecks, victims of animal attacks, people scarred by dog bites and the survivors of multiple vehicle crashes. Sometimes there are several causes of a bike crash and the injuries sustained. There can be more than one cause of a crash. In the above case, claims against the horse owner and car driver could be maintained in the same lawsuit. Where the Defendants have caused an indivisible injury, it is for them to explain to a judge and jury why they should not be held responsible for the Plaintiff's injuries. I recommend that injured victims of bike crashes get experienced legal counsel as soon as possible to protect their rights, investigate their claims and resolve any disputes within the time limits set by law.

In a case that I personally observed, the grieving family of a young boy brought a lawsuit against two drivers for the death of their son. The boy was travelling on Route 1 at night in dark clothing when he was struck by the Defendant car driver. The impact threw the boy's body into the air. Whereupon, a truck, travelling in the opposite direction, struck him again. The boy was pronounced dead at the scene. It was unknown which impact killed him. The family brought a "wrongful death" claim in the Circuit Court of Fairfax County. The Defendants were represented by different law firms on behalf of their respective insurance companies. After an emotional trial, the jury returned with a verdict in favor of the plaintiffs against the Defendant car driver, but found "no liability" on the part of the truck driver. The truck driver's lawyer did an excellent job explaining to the members of the jury that this was an "unavoidable accident" and that the Defendant truck driver was acting in a reasonable and prudent manner when the child's body came flying at him that fateful night.

E. Not only law enforcement and medical assistance, but also consumer safety and other groups

While the police and medical professionals should be contacted first, there are other organizations that may be contacted as the result of a bike crash. If the crash was caused by a defective or dangerous bicycle (or components), then the Consumer Product Safety Commission (“CPSC”) should be alerted in case others are similarly being injured. The CPSC notifies the public about Recalls and Product Safety News. These news releases and recall notices help keep your family safe by checking product recalls and safety news from CPSC. Their website even has an area where you, the consumer, can “Report an Unsafe Product.”

Members of the general public are encouraged to report an incident with a product that caused an injury. Medical Professionals and Fire/Police Investigators are also asked to file incident reports. If the CPSC sees a trend of accidents (or “near misses”) involving the same bicycle or bike product, they may investigate, request a recall or take other actions.

# **CHAPTER 6:**

## **Failing to follow up**

This seems so basic, but so many injured people neglect to do this: Diary, follow up, and remember, the “squeaky wheel gets the bicycle grease.” Time is almost always on the side of the insurance company.

Time is usually not the injured cyclist’s friend.

As the sign on my sister’s desk states, “TIME is the death of all deals.”

In dog bite, car crash, bike accident and brain injury cases, Insurance Companies and Defense Lawyers like delays, extensions and continuances. Why?

In a word, “money.”

The Insurance Company has collected premiums that are invested in order to make more than just simple bank account interest. And Insurance Companies are not taxed like you and me. If a car crash causes \$1 million dollars in damages, and the negligence (fault) is not disputed, if the Insurance Company and its Defense Lawyers can delay the case by 2-3 years, then the Insurance Company can earn several hundreds of thousands of dollars. And, if the innocent plaintiff dies, gives up, or critical evidence necessary to the case disappears, the Insurance Company may end up keeping all the money.

Defense lawyers, who do not bill their clients on a contingency fee basis, typically bill hourly. So, the more time a case takes, the more money the Insurance Defense Lawyers make. There is no incentive for Insurance Companies and their Defense Lawyers to fairly evaluate and settle cases quickly. That is why the Trial Team at ABRAMS LANDAU, Ltd., takes on meritorious cases of permanent injury and prepares them for trial from the very beginning. I have no patience for Insurance Company and Defense Lawyer delay tactics and stalling. Once the Insurance Company fails to move forward or respond in a timely manner, the Landau Law Shop files a lawsuit. And if the Insurance Company’s Defense Lawyers try to further delay the

case, I go to Court in order to keep the case moving forward to a fair and timely conclusion.

# **CHAPTER 7:**

## **Not having “show & tell”**

### A. Pictures speak a thousand words.

Photograph the scene! If you have been in a motorcycle crash, bike accident, car wreck, truck pile up or bicycle collision, get pictures of the scene, your injuries and losses right away -- not the next week, month or year. I have lost track of the number of cases where there were no contemporaneous pictures taken that could have helped the case and client.

### B. Example where a picture of the crash scene may be case dispositive

We were contacted as the result of a car crash at an intersection in New Jersey. The Defendant driver was charged with running a stop sign. However, a claim was made against the homeowner on the corner because the Plaintiff alleged that the car crash was the fault of the property owner because he failed to maintain the property such that low hanging trees and high bushes obscured the stop sign, causing the car wreck. However, without pictures to prove that aspect of the case, a Court would likely rule against the Plaintiff. And, taking pictures several years after the car crash would not be helpful, as a judge would not likely let them into evidence. Evidence must be timely and accurate. If there has been change to the scene since the cars crashed into each other (i.e., new bushes, widening of the street, different placement of the sign, etc.), then a trial judge will not let such photos be shown to the jury. Therefore, we recommend that you, or someone you know, take pictures of you, the scene and your losses IMMEDIATELY, if not sooner.

### C. Photographs of injuries and scars

Pictures of permanent scarring and injuries are helpful, but photos with scale are better, according to judges and arbitrators. At ABRAMS LANDAU, Ltd., we bring cases where there are permanent scars. Pictures

of the scar sites are important exhibits at trial. When there is a permanent injury, the judge must consider additional legal remedies and give special jury instructions that are critically important if the victim is to get full restitution. Exhibits that illustrate the injured victim’s scars become part of the “record” if there is an appeal. Photographs of scarring also enable the Landau injury law team to settle cases in advance of trial since the insurance company, its defense lawyers and the Defendant can all “see” the injury that their negligent conduct has caused. In cases that are mediated or arbitrated, the judges have appreciated our method of photographing our clients’ permanent scar and injury pictures.



Documenting the injuries with photographs, medical records, journal entries and receipts starts on the day of the crash, and continues until the bike crash case is concluded



However, photographs are more helpful if there is something showing scale in the picture. That is why the ABRAMS LANDAU trial team will frequently take pictures of clients' scars with a ruler, grid, quarter or other item of known dimensions also in the photo or digital image. By using a ruler or yard stick, the judge and jury can look at the picture and immediately ascertain the length and width of a scar. We have been successful in getting restitution for our injured clients in our cases involving permanent scarring. If you or someone you know has a case with permanent scarring, please have them contact us at once.



After a bike crash, the injured victim can have surgical scars, scarring from skin grafts, and other permanent disfigurement. An experienced personal injury trial lawyer will know how best to present evidence of this element of damages to a judge and jury.

D. “My injury has healed; can I get compensation for the scar?”

I have won cases for scarring in states that allow awards for “severe marked disfigurement.” Frequently, when on the job injuries result in scarring, there is a method to rate and recompense permanent scarring. In order to win, I must prove to the Workers Compensation

judge three key elements. As counsel for the injured worker, I must show that the scarring is:

1. permanent;
2. marked, unsightly, severe; and
3. is directly related to the on the job accident or disease.

While some states do not allow for scarring awards if there has already been an award for permanent injury to the same body part, I have won cases where there was scarring to the buttocks, thighs and hips, as these were the skin donor sights in life-threatening and de-gloving injury cases. If you have permanent scarring and disability as the result of an on the job incident, crash, disease, dog attack or other accident, the ABRAMS LANDAU law firm may be able to pursue permanency benefits for you.

#### E. Illustrations, diagrams, drawings,

There are instances where photographs have not been taken and the scene has been materially changed. In those cases, My office works with the injured victims to draw a diagram or work off aerial images to set the scene. We have also successfully used “blow ups” from Police Accident Report diagrams. (The report itself is not allowed into evidence.) Clients who have skills in architectural drafting, computer drawing and ‘arts and crafts’ have provided us with excellent diagrams, models and renderings of their accident scenes. Sometimes these diagrams are even to scale!

Diagrams are especially important in premises liability cases. These are cases where the place has caused the injury, such as an unmarked speed bump that throws an elderly plaintiff down onto the cement; a pothole that swallows a wheel; a bump that has been carpeted over so as to disguise its existence; a defective awning that causes water to drip and form ice near a dangerous turn; where the shrubbery obscures cars leaving a shopping center such that a biker was struck broadside by an exiting vehicle; etc.

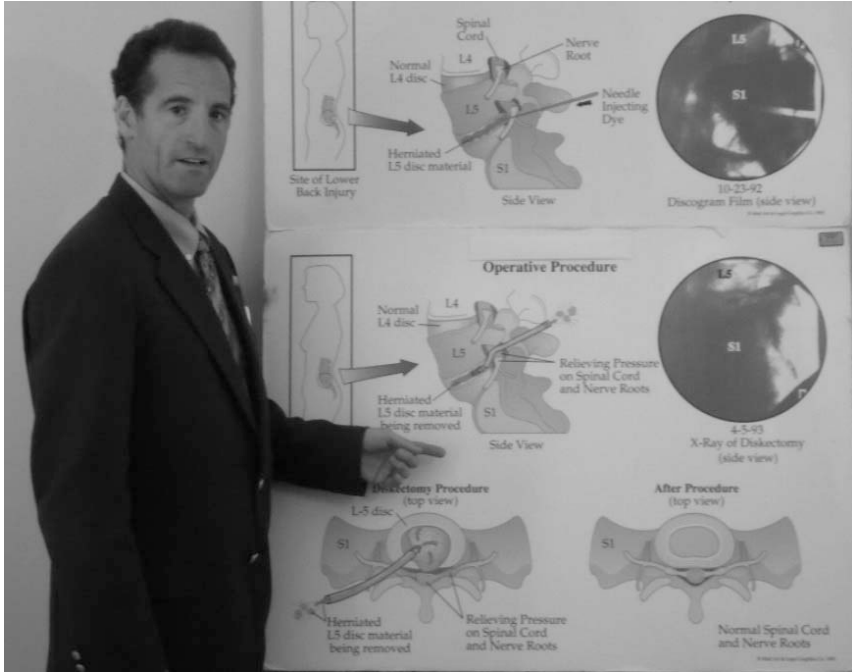
Even when we’re on vacation, a bike tour or other recreational adventure, we do not expect the owners or operators to be “on a vacation” when it comes to safety. Early in my legal career, I contributed hundreds of pages to the three volume PREMISES

LIABILITY books published by Lexis-Nexis. Under premises liability law, every property owner has a legal obligation to keep its premises reasonably safe and protect customers from danger. This applies to hotel, motel, resort, spa, camps, golf resorts, and park owners. Premises Liability law also generally holds that the premises owner or operator must also warn guests of any potential dangers or defects. This may mean signs, directions, warnings, sand over spilled oil, salt over winter ice or barriers to block entry into a dangerous area or “Detour” signs and signals.

#### F. Medical illustrations

What if the injuries are all internal? Then how does an injured cyclist show the harm caused by the negligent or reckless motorist? How can you get a picture of a cyclist’s ruptured spleen or other internal organ damage? While traditional photographs would not help a jury to “see” these kinds of internal injuries, our law firm has used professionally made medical illustrations to help “prove” these conditions. They can be expensive, sometimes costing several thousands of dollars. However, a good medical illustration can enable the treating doctor or surgeon to clearly explain their treatment, the injuries caused by the bike crash and the permanent damage that the Defendant’s negligence has caused.

In order for a medical illustration to stand up in court, there are several important steps that must be taken. First, the medical illustrators must be provided with the key records, films and diagnostics studies. Then, the doctor, through whose testimony the exhibit is sought to be admitted, should review, correct and edit the draft exhibit, so that she has a hand in its creation. Lastly, if actual films can be incorporated in the exhibit itself, it may help the judge and jury to understand what they are looking at when it is enlarged and placed on poster board. In other words, we will put a copy of the x-ray next to the medical illustration of the injury. In other cases, we will put the normal anatomy on the post board, and then put the damage caused by the bike crash as an overlay, so the judge and jury can compare the “normal” and “pre-crash” condition to the “post accident” changes.



Professional medical illustrations, with actual x-rays, CT Scans, MRI and other films, help trial lawyers like Doug Landau to ‘show’ a judge or jury the harm caused by the crash, defective product or dangerous road.

## G. Aerial views

When there are no street scene photographs, police photos or measurements, then aerial pictures can be very helpful. We have used aerials downloaded from the computer to lay out the intersectional crash site. These trial exhibits cost very little money, and can be quite effective. While they may not be admitted by some trial judges as “real evidence,” they can still be used as “demonstrative aids” to help educate the jury and save the court’s time. I have even hired a private investigator to go up in a helicopter to take pictures of the exact spot at which my client was thrown to the pavement by the “black ice” in a large apartment complex parking lot. These photographs demonstrated that the residents used the same route my client used, such that the defenses raised were rendered meaningless.

In this case, which was brought against the apartment complex, the management company and the parking lot maintenance people, the

insurance defense lawyer charged my client with having taken a dangerous and unnecessary route to get to her son's unit. Defense counsel had fancy, expensive computer diagrams made up of the parking lot and the safe ramps that could be used by our client, had she so chosen. However, our aerial pictures, taken in the summer, showed that the grass was worn away along the route she was injured, proving that many other residents used the same path and that the apartment complex and parking lot maintenance company had "constructive notice" of the way people would traverse the property. The computer diagram was out, the aerial photos were in, and we won the case!

#### H. Computer animations

Sometimes there are no pictures, diagrams or aerials that can adequately explain the mechanism of the crash or the biomechanics of the injury causing events. We have used computer animations to show a judge, jury and mediator how the accident occurred and how our client was injured by use of computer animations and modeling. In one case, we used two different kinds of computer animations to demonstrate the forces on our client's body caused by the crash.

The case involved a client who had been in a terrible crash as a teenager, so her wheel chair bound body did not react as would yours or mine in a subsequent motor vehicle accident. In one computer animation, schematic drawings of a body were utilized to show how her body reacted to being thrown backwards when her wheels were not locked in place. In another, "crash test dummies" were shown experiencing the same forces as were exerted in this van accident. We put this on DVD for the retired chief judge of the local circuit trial court, and he reviewed this evidence before our mediation. We achieved a good result for a client who had previously been damaged in another accident, as the computer animations demonstrated how her body reacted differently than an uninjured person's would under the same or similar circumstances.



# **CHAPTER 8:**

## **Failing to Document**

The truth of the matter is insurance companies thrive on paper. Even in the age of the “paperless file,” most liability, automobile and homeowners insurance companies require documentation before they can consider settling a bicycle crash or dog attack case. They typically want paper proof of property damage, wage loss, medical, prescription, and other out of pocket expenses. They are not simply going to take your word for it. So, it is a good idea to start your own file to collect all the paper that you will accumulate after a bike crash.

### **A. The Insurance Contract**

One of the most important pieces of paper in a bike crash case where the cyclist has been struck and injured by a truck, car, motorcycle or other motor vehicle is the cyclist’s own insurance policy. While the health and disability insurance policies seem like obvious documents to assemble, the car insurance policy may be the most important for potential coverage of the losses caused by the bike crash. And there may be more than one car or motor vehicle insurance policy in the household that may afford benefits to the injured cyclist.

At ABRAMS LANDAU, Ltd., we ask our clients to furnish us with ALL the applicable insurance policies. Their Short Term Disability (“STD”) and Long Term Disability (“LTD”) may help them with lost earnings and other benefits. The health insurance policy may help pay medical bills, but most plans have co-pays, deductibles, limits and do not cover all forms of care or health care providers. The car insurance policies may provide for “No Fault,” “PIP” “Medical Payments” or other similar first party insurance benefits. These first party benefits can pay the injured cyclist, regardless of fault, under the appropriate circumstances, for medical care that is: reasonable, related to the crash and by referral.

## B. Other Insurance Contracts

Why do I ask clients for their CAR INSURANCE POLICY(s) when the Defendant driver crashed into them ?

I can tell you this, it's not because I like to read insurance policies! I ask for copies of MY OWN CLIENT'S Insurance policies is so that I can see what coverage is available in case the driver who crashed into them has no insurance (or very low limits of liability coverage). The insurance policies on other cars and vehicles in my client's household are also important. There may be additional insurance protection from a spouse, parent or other relative's insurance. In those cases where the Defendant driver has no car insurance, the insurance my clients and their families may have is critical. It may enable my clients to get full or more complete compensation. The insurance company pays the judgment and then can pursue the negligent defendant for its money in what is known as a "subrogation claim." So, that is why I ask to look at ALL the insurance policies to see what coverages may be available to help pay for what has been broken, repair what needs to be fixed and provide resources for healing and care.

## C. Types of documentation used to support losses after a bike crash

There are a number of categories of losses that an injured cyclist is allowed to claim in a civil action for damages. In the APPENDIX I have included a sample jury instruction on Damages. It lists those things a jury (or judge in a bench trial without a jury) would be allowed to consider in Virginia court when assessing damages in a bike crash case against a negligent Defendant.

### 1. Lost wages and earnings

To prove lost wages, it is important to show a solid earnings history. Proof of wage loss can be accomplished by use of past W-2s, 1099s and other Internal Revenue Service forms and receipts. Another method is to use tax returns. We also ask clients to get copies of their Social Security Confidential Report of Earning which shows a history of earnings as reported to the Federal Government on a single page; this may then show a decrease or drop off after a bike crash or dog attack. Letters from an employer specifically listing the dates of



disability are also helpful, as are job descriptions and performance reviews, personnel files and commendations.

Future wage loss requires the input of the doctor to support the disability from some or all future employment and/or the need for significant medical care, hospitalization and surgery that will interfere with earning money after the case is concluded. The expert medical opinions on permanent deficits and disability are then used by an economist to make future projections as to wage loss and loss of earnings capacity. These calculations are then presented to the judge or jury and supported though the evidence in the case. Economics and vocational experts are one of the major expense items in a trial, and like the medical doctors, such witnesses expect to be paid well in advance of court, whether the injured cyclist wins or loses. Unlike the biker's personal injury lawyer, the experts in a case are not on a contingency fee retainer.

## 2. Medical expenses

Just like the vocational, economics and wage loss evidence, the opinions as to the injured bicycle rider's medical care, diagnoses, prognoses and expenditures require competent expert testimony in order to be presented to the jury. The injured rider is generally not permitted to express opinions as to these elements of the case. So another major expense encountered in cyclist's personal injury trials is the retention of the medical doctors to testify as to causation, treatment, diagnoses, prognoses, permanency, cost of medical care and reasonableness of the treatments. Since the doctors' report cannot simply be given to the jury because of the "hearsay rule," most bicycle riders' injury cases require a doctor to appear "live" or via videotape to testify, under oath, about these medical issues and opinions. In some injured cyclists' cases, the medical expert and illustrations are the single largest expense for trial, as most doctors charge several thousands of dollars to prepare, appear in court and testify at trial.

A caveat: There are some so-called personal injury lawyers who will attempt to try a crash case on the cheap. They will try to do so without a medical expert. They will go to court without medical illustrations, expert witness testimony and without properly preparing the cyclist's case for presentation to a judge and jury. Avoid these

kinds of lawyers. If they cannot properly investigate, prepare, document and staff up your case, go somewhere else.

### 3. Bike replacement, repairs and parts

In some of our bike crash cases, the amount of money necessary to replace lightweight carbon racing wheels or a high end touring bike can run into many thousands of dollars. With the most recent issue of *Bicycling* magazine testing a \$17,900 Italian bike, insurance adjusters had better get used to the fact that there are many bikes that cost more than a number of cars on the road in America today. When my own beloved Kestral KM-40 and Nimble tri-spoke racing wheels were crushed, the risk management investigator for the Defendant was shocked when he realized how much the claim would cost his company.

The general rule on property damage claims is that the Defendant, or more properly, the Defendant's insurance company, can be held responsible for the fair replacement value or repair, whichever is less. So it is important to have proof of the components, improvements and purchase price of the wrecked bike, helmet, clothing, glasses, cyclometer, wheels and other personal items (like cell phone, GPS, power meter, etc.). In one case, our client had all the documentation for his Italian touring bike which had been "totaled" as the result of being knocked off the road by an irate and reckless motorist. However, as the paperwork was from Italy, we had to get the costs converted from Euros to dollars before the insurance company would pay for his loss and restitution.

### 4. Home care

The goal of tort law is to put the injured plaintiff in the position they were in before the crash. If an injured cyclist cannot care for her children because of injuries and treatment sustained in a crash, then this element of damages may be claimed. Keeping records of the expenditures, types of services provided and backing this up with supporting medical evidence can all lead to full compensation for these losses. If the treating doctor gives a disability note that indicates the patient needs home care, cleaning services, and/or cannot drive while

on strong pain killers or must keep legs elevated, then a judge and jury are likely to be more receptive to a claim for these items of damage.

## 5. Trips, races, and other special events

For some clients, the loss of special events in their lives are more important than the wage loss, property damage and other more easily provable elements of their damages claim. One example that comes to mind is of a father and his sons who were struck by a school bus. They had planned a big family trip that summer to go hiking in the national parks. They had prepaid a fairly substantial (and non-refundable) amount of money. By providing the receipts, canceled checks and testimony about this missed trip, we were able to recover compensation for this family's loss. We showed that the negligent Defendant bus driver took the family's long-planned vacation and gave them, instead, a summer filled with pain, inconvenience, aggravation and convalescence. The jury agreed and rendered a substantial verdict for the plaintiffs.

In other cases, a bike crash ruins a cyclist's plans for future tours, races and other events. If non-refundable entry fees, hotel reservations and airplane tickets are involved, then documenting these losses can help buttress the claims. Some events and races fill up right away and require large, non-refundable payments. Many athletes spend years preparing for events like the Ironman, a cycling century or multi-day bike tour. A crash can ruin these plans. Some of my athletic clients have then gone on to show that their rankings, finish times and/or other objective physiological markers all suffered as the result of the crash, even after they were released from their doctors' active care.

## 6. Documenting other losses

I garden, coach soccer, collect coins, stamps and postcards from places I have visited. While I do not derive any income from these hobbies, they help to make me who I am. If I could not do them, because of an injury, I would be a different person. Clients who have been impacted in this manner can often document their participation in hobbies by showing memberships, expenditures for supplies and photographs of them doing those activities that brought them joy and satisfaction.

A life activity chart is one method we use at ABRAMS LANDAU, Ltd. to demonstrate these kinds of losses. A time line is another way to graphically illustrate the “before” and “after” of these more intangible losses. Attendance at (and cooking for) club meetings, bowling league matches, bridge club rankings and decrease in one’s knitting output are just some of the means by which this is accomplished by our trial team. Using some forethought and creativity can help an injured cyclist to present and recover damages for these kinds of losses.

# CHAPTER 9:

## Talking too much...

“Anything you say...”

Can and WILL be used against you.

If I had a nickel for every time an injured Plaintiff told me that he did not say anything wrong and then had the insurance company use the statement against him, I would have a collection that would rival that of the U. S. Mint!

Let’s get this straight: Insurance companies do not take taped or written statements to help YOUR case. They take this action to look for reasons to DENY YOUR BIKE CRASH CASE OR DENY COVERAGE TO THEIR OWN INSURED. Period.



I have reviewed many cases where the injured victim ‘talked too much.’ While being talkative is OK when you are on a ‘live’ radio show, it can be lethal to your bicycle accident case

A. Tape recorded conversations.

“EVERYTHING YOU SAY...WILL BE USED AGAINST YOU.” Insurance companies routinely pressure people into giving taped or written statements shortly after an accident. Insurance claims adjusters know that injured victims are at their most vulnerable at this time. They know that when the injured person is unrepresented, in pain, on strong medications, confused and unsure of his/her legal rights, and bills are coming in and income is not, that all the cards are stacked in the insurance company’s favor.

Remember –

**ANYTHING YOU SAY WILL BE USED AGAINST YOU !**

In some states, the insurance company DOES NOT NEED YOUR PERMISSION TO TAPE RECORD YOUR TELEPHONE CONVERSATIONS ! While a Court’s permission may be needed to record the telephone conversation between two people who are unaware of the taping, in Virginia, if one party knows about it, Court permission is not required.

B. Written statements

Insurance Companies also seek written statements in many cases. Your handwritten statement can be “Exhibit A” for the defense at trial. It is very hard to argue that the statement is inaccurate or that you have been misquoted if it is in your own handwriting. Likewise, the typed transcript of your tape-recorded statement can be used against you to deny your claim and defend the case in Court. While the team at the Landau Law Shop has won a number of claims where clients have mistakenly given statements, the cases are made much harder to win.

Note that no insurance company adjuster has ever sent me a copy of any law that REQUIRES a taped or written statement by the innocent injured victim. Not in over 25 years of practicing law have I ever been provided with a copy of any law in any state that requires my client to talk to anyone from the insurance company. I often call their bluff when they call us to get a statement from my client, the injured cyclist. Do not succumb to empty threats. Often the only reason an Insurance Adjuster wants a taped or written statement after

investigating the claim with their insured, the police, eyewitnesses and others is to get more material with which to deny a claim.

The team at ABRAMS LANDAU recommends that clients, if contacted by noseey, pushy Insurance Company representatives, refer these callers and intruders to us. Let us “take the heat” for you. After all, I already have curly hair! What more can they do ?





# **CHAPTER 10:**

## **Losing track of time**

Legal time limits can end a case before it has even been started. TIME is not on your side. There are strict time limits for car crash and bicycle crash lawsuits. These time limits differ from state to state. You should consult a lawyer to determine the applicable time limit in your case. These are often called the “Statute of Limitations.” If you try to file a lawsuit AFTER the Statute of limitations has run, even if the Defendant motorist was ticketed and plead guilty and admitted it was all his fault, the court may not let the case proceed because it is just too late to do so.

### **A. Time limits in injury cases**

At ABRAMS LANDAU, Ltd., we are often asked how long an injured victim has to bring their car crash or bike crash lawsuit. Most personal injury cases in Virginia have a 2 year time limit. Wrongful death and intentional tort cases may have a shorter time limit after which the case may forever be “time barred”. Statutes of limitations provide an important defense for insurance companies who would otherwise have to pay for damages caused by their insured. Limitations periods are designed to bar untimely and stale claims. The rationale is that as time passes, evidence is lost, witnesses leave the area, and memories fade, decreasing the likelihood of a fair trial.

### **B. Childrens’ injury cases**

Children may have a longer time to file their cases since they are considered “incompetent” to bring a legal action. They generally have until their 18th birthday before the time begins to run on their claim.

### **C. Latent injuries**

Others deemed “incompetent” may have a longer time period, as may those who sustain a severe brain injury, latent injury or one not

susceptible to “discovery” until many years later. An example of this would be asbestos disease, like mesothelioma or asbestosis. My father Norman Landau tried many of these cases decades after the last injurious exposure to this toxic substance. It is important to examine the specific time limit with a competent lawyer in the jurisdiction where the claim is to be brought to determine the correct “Statute of Limitations.”

#### D. Medpay or Medical Payments coverage

The time period during which an insurance claim may be brought can be set by contract rather than statute. We have seen cases where the medpay coverage was only available for medical bills incurred within a year of the crash. Where bills were submitted too late or for a period after that year, even though there was plenty of time to file a lawsuit against the Defendant driver, the insurance company’s policy clearly set forth this time limit, and these first party insurance payments did not have to be made to the injured victim. Do not give up rights you may have (and have paid for!) by letting time pass. Contact a lawyer who is experienced in handling serious and permanent injury bicycle crash cases before it is too late to get the benefits you may already have paid for and would otherwise receive.

#### E. Statutes of repose,

Statutes of repose provide an important possible defense to those in the building trade when sued. Virginia has a five year statute of repose that runs from when a party finishes its work on a construction project. Virginia's repose statute is limited to personal injury and property damage claims. The District of Columbia has a ten-year statute of repose on construction projects running from project completion. The repose statute again applies to only personal injury and property damage cases as opposed to contract. Maryland's statute of repose is ten years from when the structure is fit for its intended purpose. The statute applies to wrongful death, personal injury and property damage claims.

The specific time periods allowed to file suit vary from state to state as well. Virginia law permits a plaintiff five years to file suit for breach of a written contract and three years on an oral or implied

agreement. For personal injury cases, a plaintiff has two years to file suit. Property damage claims have a five year statute of limitations. Maryland law generally applies a three year statute of limitations to all of the above claims. Some other claims are governed by specific statutes, such as the four year breach of warranty statute in the Uniform Commercial Code. The District of Columbia has a three year statute for contract, personal injury and property damage claims. Again, consulting with a qualified lawyer is imperative to understanding the many time limits that may be involved in a single bicycle crash case.

F. "If healing after back surgery takes months, why should I get a lawyer right away?"

This was the question posed by a damaged disc injury victim before retaining me. While it is a good idea to get the property damage and car repairs taken care of right away, the injuries from a bicyclist's car crash or dog attack can take months to heal.

Nevertheless, retaining a lawyer to protect your interests is important, and the earlier, the better. In many cases, an experienced lawyer can make sure the liability investigation is performed in a timely fashion, records are preserved and evidence is not destroyed. Trial lawyers can help with coordination of benefits and collection of medical and other records of losses such that insurance reserves can be adequately set. At ABRAMS LANDAU, Ltd. we protect our clients from inquisitive adjusters and investigators, and being taken advantage of by the insurance companies.

Our law office educates clients as to their rights, monitors their claims and medical care, and helps them conclude their injury claims in a timely fashion. In fact, we will often decline to represent injured persons who come to us long after their car crash, dog attack or other accidental injury because many prejudicial actions may have already taken place. Just as a master builder prefers to build their own sturdy foundation, our law firm prefers to start the case at the beginning, not at the end. No matter how good a lawyer may be or how much time, effort and personnel they commit to a case, if the case was not properly begun and its foundation is "shaky," then the end result may not meet with the client's expectations.

### G. While waiting to heal

Was your leg broken? Don't sit around; make the most of the time. One of the questions I am regularly asked is, "What do I do while my case is pending and my doctor has me off work?"

First, concentrate your efforts on getting well. Second, once you catch your breath after a crash or other major injury, think about what you CAN do during this time away from your job. We have had clients get their GEDs (high school equivalency exam), take community college classes, and electronics and computer training.

No matter how good your lawyer is, he/she can NEVER get you back the time you have missed. At ABRAMS LANDAU we encourage EVERY client to work hard while they are out of work. That is why we provide clients with information about state, local and federal agencies that can help with education, (re-training and placement). That way, when the client is released to light duty or part time work, he/she can "hit the ground running." Looking at what kinds of work can be done after an injury should be made a priority after the condition is stabilized. So, instead of sitting on one's rump, use the time to look around, and "get the jump!"



Ever mindful of the importance of time, in this photo I maximize my time while serving as a volunteer at a local race. I rode his turbo trainer and read the newspapers and legal periodicals while waiting for the participants to get to my turnaround point, whereupon I directed the racers where to go-and perhaps gave them a giggle in the process.

## Timing may be everything

Why a good settlement may be a better idea than the chance of a great verdict. Here are some reasons we at ABRAMS LANDAU, Ltd. may advise a client that it is in his interests to enter a compromise settlement rather than risk a jury trial:

1. Time - you get compensation faster,
2. Cost - you save on the expenses of trial,
3. Emotional cost - you eliminate the uncertainty of trial,
4. Patient-Physician relationship not subject to cross-examination, in public, causing your doctor to have doubts or unpleasantness,
5. Privacy - "What happens in Vegas stays in Vegas," but what comes out in discovery or Court, does not always "stay put,"
6. A jury may award you less,
7. A jury may award you nothing,
8. A judge may take away the jury's verdict,
9. The Defense may appeal the verdict, causing more time loss, expense and stress,
10. If the defendant or insurance company goes into bankruptcy, the proceedings are stayed and there is often more delay.



# **APPENDIX**





# **VIRGINIA CYCLISTS: LEGAL RIGHTS AND REMEDIES**

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With the change of seasons here in the Commonwealth, many Virginians and out of state tourists take to the roads by bicycle to see, smell and experience our spectacular spring blossoms and fall foliage. There are large group road rides, centuries, races, charity and other events of every size and distance. The conversion of “rails to trails” and the creation of bike paths in new neighborhoods are among the developments that make cycling ever more accessible to all Virginians. Yet the large number of cyclists in the Commonwealth can also lead to accidents involving motor vehicles, roadways and defective bikes. [Bicycle product liability cases are beyond the purview of this article, however, two Virginia cases involving catastrophic injuries from defective bikes are: *Abel v. Montgomery Ward* and *Asahi Enterprises Corp.*, U.S. District Court for the Eastern District of Virginia, Newport News Division, VLW 93-T71, and *Doe v. XYZ Corp.*, VLW 98-T699 (12/07/98).] This article will address a Virginia cyclist’s rights, responsibilities and remedies.

Bicycle riding is a popular sport and recreational activity in Virginia. The Commonwealth is the home of the Washington and Old Dominion (“W&OD”) path, one of the most popular rails to trails project in the country. The 1992 Virginia Outdoors Survey ranked bicycling as the seventh-most popular recreational activity, with 31

percent of households participating.<sup>1</sup> Unfortunately, though biking is a very popular activity, it can also be very dangerous. In 2004, 9 bicyclists ranging in age from 10 to over 70 were killed in accidents in the state of Virginia, and 834 bicyclists were injured.<sup>2</sup> Every year, our office represents riders who are permanently injured in bicycle accidents. Given the high incidence of accidents and the potential for significant physical injury, it is important for bicyclists and Virginia lawyers to understand the applicable legal rights and responsibilities.

### Motorist Duties

Motorists have a legal duty to drive at a reasonable speed<sup>3</sup> and to keep a reasonable lookout for other vehicles.<sup>4</sup> They must also take care to pass bicycles at a safe distance and speed. The Virginia Code provides that: “[a]ny driver of any vehicle overtaking a bicycle . . . proceeding in the same direction shall pass at a reasonable speed at least two feet to the left of the overtaken bicycle . . . and shall not again proceed to the right side of the highway until safely clear of such overtaken bicycle.”<sup>5</sup>

When a cyclist is cut off or driven off the road, problems of proof can prevent an injured plaintiff from legitimate recovery for their loss. Objective proof, eyewitness testimony and/or physical evidence can help in a bicycle negligence case where the 2 foot zone and/or contact is disputed.

In one case handled by the author, the Defendant motorist denied contact with the injured cyclist, who was traveling in the second position in a line of three cyclists on a two-lane road. *Fleeter v. Cawthorn*, Loudoun Cir. Ct. #28808 (2004). Fortunately for the biker with the broken ankle, the third/trailing rider had the rear view window from the Defendant’s car. That last rider of the trio, had been struck

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<sup>1</sup> Virginia Department of Conservation and Recreation, <http://www.dcr.state.va.us/prr/trails.htm#Bicycling> (last visited June 19, 2006).

<sup>2</sup> 2004 Virginia Traffic Crash Facts, [http://www.dmv.state.va.us/webdoc/citizen/drivers/crash\\_facts\\_04.asp](http://www.dmv.state.va.us/webdoc/citizen/drivers/crash_facts_04.asp) (last visited June 19, 2006).

<sup>3</sup> WASHINGTON AREA BICYCLIST ASSOCIATION, *BICYCLING LAWS IN THE METROPOLITAN AREA* (1992).

<sup>4</sup> *Bohon v. Manning*, 210 Va. 173, 175 (1969).

<sup>5</sup> VA. CODE 46.2-839, <http://leg1.state.va.us/000/src.htm> (last visited June 19, 2006).

just moments prior to the tortious impact, as the driver did not pass with the two foot minimum safe distance. When cyclists are riding, as is often the case, in a pace line or “peloton,” another issue that arises is whether there is “one accident or incident” or two. This issue was addressed in *Sabol v. American Alliance Ins. Co.*, Loudoun County Cir. Ct., Chancery #14838 (J. Horne, 6/29/94) VLW 094-8-204. The Fleeter case settled after that evidence came to light and several “scene depositions” showed the topography of the roadway, which was an important element of the case. As in most car versus cyclist cases, visibility and lines of sight are important issues.

In a case where a Virginia Community College physical education professor was injured on a “Maine to Miami” bicycle tour, the fact that the motorist had a clear line of vision and decided to try to “beat” the cyclist to the one lane bridge, where critical to the ultimate, and favorable disposition of the case. *Hoffman v. Sinclair*, Robeson County, N.C. #96 CVS 1553 (1998), VLW 00-T-78 (4/3/00) Even where the cyclist has the “clear line of sight,” recovery can still be had where the motorist is in violation of statute or other rules of the road. During the cycling portion of a well-known triathlon, a competitor was struck by a car within sight of the finish line. *Colosi v. Willis*, Cambridge, MD (2004) The motorist chose not to continue waiting despite signage and race volunteers. The resulting personal injury claim was not against the race directors or event promoters, but solely against the Defendant driver. Fortunately, as the plaintiff was in top physical shape, like many of our other client-athletes, he made an almost full physical recovery. Critical to the success of both cases were personal inspection, familiarization, photographing and measurement of the scene as well as preservation of the physical evidence. It is also important to have documentary proof of the worth of the bicycle, as top end models can cost more than the cars that struck them ! See, e.g, *Kastberg v. Milagros*, U.S.D.C., E.D.,Va., Alexandria (J. Brinkema, 5/29/96)(Bicycle cost more than plaintiff’s car ! Case settled for policy limits for cyclist who was cut off while training in peloton in Reston, Virginia.)

## Minors and Major concerns

Many bicycle accidents each year involve those under eighteen years of age. Children may lack experience riding on the road, may overreact, may be easily distracted and lack appreciation of dangers on the street. Motorists, when confronted by youthful cyclists, should use their “defensive driving” skills in order to avoid impact and injury.

In addition to the basic duties owed to bicyclists, motorists owe a heightened duty of care to children.

“Where the driver of a motor vehicle sees, or should see, a child in or near a street or highway he must exercise that degree of care not to injure [the child] that a person of ordinary prudence would exercise under similar circumstances, taking into consideration what is common knowledge- that the actions of children are erratic and unpredictable and that a child may act thoughtlessly and upon childish impulses.”<sup>6</sup>

In other words, in determining the level of care that must be exercised, motorists must take into account that “kids will be kids.”

## Bicyclist Duties

Bicycles are legally classified as vehicles in Virginia; thus, bicyclists have all of the legal rights of a motorist.<sup>7</sup> However, bicyclists must also be aware of their statutory and common law responsibilities. Otherwise, their behavior may be held to be contributorily negligent, in which case they are barred from recovery even against a negligent motorist. Like motorists, bicyclists are responsible for obeying traffic lights and signs, yielding to pedestrians

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<sup>6</sup> *Endicott v. Rich*, 232 Va. 150, 153 (1986).

<sup>7</sup> WASHINGTON AREA BICYCLIST ASSOCIATION, *BICYCLING LAWS IN THE METROPOLITAN AREA* (1992); VA. CODE 46.2-800, <http://leg1.state.va.us/000/src.htm> (last visited June 19, 2006) (“Every person riding a bicycle . . . shall have all of the rights and duties applicable to the driver of a vehicle.”)

in crosswalks and sidewalks, yielding to traffic going straight when turning left, and signaling when stopping or turning.<sup>8</sup>

In addition to complying with the rules of the road, bicyclists must ensure that they have the statutorily required equipment. Virginia law requires that bicycles be equipped with brakes that will skid the wheels on dry, level, clean pavement, a front white light, and a rear red reflector.<sup>9</sup> The absence of a light could prove fatal to a claim for injuries in VLW 94-T184 (7/18/94) It may come as a surprise to avid cyclists, but many racing and triathlon bikes are not compliant, as the reflectors have been taken off in order to save weight and reduce wind resistance, which becomes a significant factor at speeds exceeding 18 miles per hour. Bicyclists should be aware that, as with all statutory requirements, failure to obey the equipment requirements could constitute negligence per se and may be a complete bar to recovery. However, as will be discussed in greater detail below, in order to establish the bicyclist's contributory negligence, the defendant motorist must still prove that the statutory violation was a proximate cause of the accident.<sup>10</sup>

Other statutory provisions pertain to responsibilities that are specific to bicyclists. For example, bicyclists may not carry anything that prevents them from keeping at least one hand on the handlebars,<sup>11</sup> and they may not operate a bicycle on the highways while using

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<sup>8</sup> WASHINGTON AREA BICYCLIST ASSOCIATION, BICYCLING LAWS IN THE METROPOLITAN AREA (1992). For a detailed explanation of the required hand signals for turning, slowing down, and stopping, see VA. CODE 46.2-849, <http://leg1.state.va.us/000/src.htm> (last visited June 19, 2006). For directions as to turning left, see VA. CODE §§ 46.2-846 to 847, <http://leg1.state.va.us/000/src.htm> (last visited June 19, 2006).

<sup>9</sup> WASHINGTON AREA BICYCLIST ASSOCIATION, BICYCLING LAWS IN THE METROPOLITAN AREA (1992); VA. CODE § 46.2-1015, <http://leg1.state.va.us/000/src.htm> (last visited June 19, 2006) (lights); VA. CODE § 46.2-1066, <http://leg1.state.va.us/000/src.htm> (last visited June 19, 2006) (brakes).

<sup>10</sup> Karim v. Grover, 235 Va. 550, 552 (1988) (Even though fourteen year old plaintiff's bicycle had no front lamp as required by statute, error to grant summary judgment for defendant as reasonable minds could differ as to whether the lack of a lamp was a proximate cause of the accident.)

<sup>11</sup> VA. CODE § 46.2-906, <http://leg1.state.va.us/000/src.htm> (last visited June 19, 2006).

earphones on or in both ears.<sup>12</sup> They are not permitted to have more passengers than the bike was designed to carry, with the exception that an adult may carry a child less than 6 years of age if the child is in a seat or trailer.<sup>13</sup> Additional laws vary by jurisdiction. For example, counties, cities, and towns may or may not require children under 14 to wear a helmet,<sup>14</sup> and they may or may not prohibit bike riding on sidewalks and in crosswalks.<sup>15</sup> If bicyclists are permitted to ride on sidewalks and in crosswalks, they must yield the right of way to pedestrians and must give an audible signal before overtaking and passing any pedestrian.<sup>16</sup>

## Contributory Negligence

### Applying the Contributory Negligence Rule

Contributory negligence is a complete bar to recovery in Virginia.<sup>17</sup> It is imperative that bikers understand their common law

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<sup>12</sup> *Id.* § 46.2-1078.

<sup>13</sup> *Id.* § 46.2-906.

<sup>14</sup> *Id.* § 46.2-906.1.

<sup>15</sup> *Id.* § 46.2-904.

<sup>16</sup> *Id.*

<sup>17</sup> Note that the last clear chance doctrine, though disfavored in Virginia, may be available to mitigate the harsh application of the contributory negligence rule. As the Virginia Supreme Court has explained, “[t]he doctrine of last clear chance presupposes a situation where there is negligence on the part of defendant and contributory negligence on the part of plaintiff, which upon ordinary and purely legalistic principles would result in a finding in favor of defendant.” *Jones v. Aluminum Window & Door Corp.*, 110 S.E.2d 531, 536 (Va. 1959). The doctrine allows two types of negligent plaintiffs to recover in spite of Virginia’s contributory negligence rule. *Id.* First, “[w]here the injured person has negligently placed himself in a situation of peril from which he is physically unable to remove himself, the defendant is liable if he saw, or should have seen, him in time to avert the accident by using reasonable care.” *Id.* Second, “[w]here the plaintiff has negligently placed himself in a situation of peril from which he is physically able to remove himself, but is unconscious of his peril, the defendant is liable only if he saw the plaintiff and realized, or ought to have realized his peril in time to avert the accident by using reasonable care.” *Id.* In applying the last clear chance doctrine, it is imperative that the plaintiff establish that the defendant had adequate time to react and avoid injuring the plaintiff. “The doctrine of last clear chance presupposes sufficient time for effective action,” and does not apply “when the time is too brief for the defendant to avoid the mishap by the exercise of reasonable care.” *Id.* at 537.

and statutory duties, as failure to obey statutory requirements may constitute negligence per se.<sup>18</sup> However, in order to bar an injured biker's recovery, the biker's negligence must be a proximate cause of the accident.<sup>19</sup> In one Virginia case, a motorist making a left turn hit a fourteen-year-old plaintiff riding his bike.<sup>20</sup> The plaintiff's bike was not equipped with a front lamp as required by statute.<sup>21</sup> The trial court granted summary judgment for the defendant, having concluded that the plaintiff's statutory violation constituted negligence per se.<sup>22</sup> The Virginia Supreme Court reversed, explaining that contributory negligence will not necessarily bar recovery by the plaintiff. The Court explained that "[w]hen a defendant relies upon contributory negligence as a defense, he has the burden of proving by the greater weight of the evidence not only that plaintiff was negligent but also that his negligence was a proximate cause, a direct, efficient contributing cause of the accident."<sup>23</sup> Since reasonable minds could differ as to whether the plaintiff cyclist's lack of a front lamp was a proximate cause of the collision, it was error for the trial court to grant summary judgment for the defendant motorist.<sup>24</sup>

### Contributory Negligence and Children

Children present a special case when applying Virginia's contributory negligence rule because of the existence of certain conclusive and rebuttable presumptions. A child under the age of 7 is conclusively presumed to be incapable of contributory negligent. <sup>25</sup> A child between the ages of 7 and 14 is presumed to be incapable of exercising care and caution for his or her own safety, but that presumption may be rebutted by sufficient proof to the contrary.<sup>26</sup> In order to rebut the presumption that a child between 7 and 14 is incapable of contributory negligence, a defendant must show that "in

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<sup>18</sup> See *Karim v. Grover*, 235 Va. 550, 552-53 (1988).

<sup>19</sup> *Id.* at 553.

<sup>20</sup> *Id.* at 551-52.

<sup>21</sup> *Id.* at 552.

<sup>22</sup> *Id.* at 551-52.

<sup>23</sup> *Id.* at 552 (internal quotation marks and citations omitted).

<sup>24</sup> *Karim*, 235 Va. at 555.

<sup>25</sup> *Grant v. Mays*, 204 Va. 41, 44 (1963).

<sup>26</sup> *Id.*

light of [the child's] age, intelligence, and experience, [the child] was capable of understanding and appreciating the nature of the danger and the peril associated with his conduct."<sup>27</sup> It must be shown that the child is aware of the danger of the specific conduct that resulted in the accident.

After a child reaches the age of 14, he or she is "presumed to have sufficient capacity to be sensible of danger and to have the power to avoid it."<sup>28</sup> "[The] presumption will stand until overcome by clear proof of the absence of such discretion as is usual with infants of that age."<sup>29</sup> However, even though there is no presumption that a child over the age of 14 is incapable of contributory negligence, that does not mean that the child's conduct is measured by adult standards.<sup>30</sup> To the contrary, "the standard by which his conduct is to be measured is that degree of care which children of the same age, experience, discretion and knowledge would exercise under the same or similar circumstances."<sup>31</sup>

Interestingly, Virginia Code provides that a child's failure to wear a helmet is not contributory negligence.<sup>32</sup> Although any county, city, or town may require children under the age of fourteen to wear helmets whenever they are riding a bicycle, "violation of any such ordinance shall not constitute negligence, or assumption of risk, be considered in mitigation of damages of whatever nature, be admissible in evidence, or be the subject of comment by counsel in any action for the recovery of damages rising out of the operation of any bicycle."<sup>33</sup>

### Statutory Limitations on Bicyclist Recovery

There are two important statutory limitations on recovery by injured bicyclists. First, under Virginia law, landowners owe no duty

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<sup>27</sup> *Endicott v. Rich*, 232 Va. 150, 156 (1986).

<sup>28</sup> *Grant*, 204 Va. at 44.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 45.

<sup>31</sup> *Id.*

<sup>32</sup> VA. CODE § 46.2-906.1, <http://leg1.state.va.us/000/src.htm> (last visited June 19, 2006).

<sup>33</sup> *Id.*



of care to keep land or premises safe for use by bicyclists.<sup>34</sup> They are not required to give any warning of hazardous conditions on their property.<sup>35</sup> Further, even if they give a biker express or implied permission to ride on their land, they do not thereby represent that the property is safe for that purpose.<sup>36</sup> In addition, the biker does not become an invitee.<sup>37</sup> However, Virginia law does not limit the liability of a landowner when it arises from gross negligence or a willful or malicious failure to guard or warn against a dangerous condition.<sup>38</sup>

Virginia law also provides immunity for cities and towns operating recreational facilities. The Code provides that “[n]o city or town which operates any park, recreational facility or playground shall be liable in any civil action . . . or proceeding for damages resulting from any injury to the person . . . caused by any act or omission constituting ordinary negligence on the part of any officer or agent of such city or town in the maintenance or operation of any such park, recreational facility or playground.”<sup>39</sup> They may, however, be liable for the gross negligence of officers or agents in maintaining or operating recreational facilities.<sup>40</sup> This Code section was applied in a recent Virginia Supreme Court case involving bike paths in a park owned by the City of Richmond.<sup>41</sup> One path sloped downward and, as it emerged from a wooded area, curved suddenly and sharply to the left along the edge of steep cliff.<sup>42</sup> The plaintiff was riding a bike along the path and fell over the cliff, injuring himself.<sup>43</sup> There were no barriers, guardrails, or signs posted warning of danger.<sup>44</sup> Citing the

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<sup>34</sup> VA. CODE § 29.1-509(B), <http://leg1.state.va.us/000/src.htm> (last visited June 19, 2006).

<sup>35</sup> § 29.1-509(B).

<sup>36</sup> § 29.1-509(C)(1).

<sup>37</sup> § 29.1-509(B)(1).

<sup>38</sup> § 29.1-509(D).

<sup>39</sup> VA. CODE § 15.2-1809, <http://leg1.state.va.us/000/src.htm> (last visited June 30, 2006).

<sup>40</sup> *Id.*

<sup>41</sup> *Hawthorn v. City of Richmond*, 253 Va. 283, 285 (1997).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

Code section quoted above (which at the time was § 15.1-291), the Court affirmed the trial court's judgment sustaining the City's demurrer to plaintiff's negligence count.<sup>45</sup>

In a case involving a private construction company whose road work was inspected and accepted by the City, the Circuit Court of Virginia Beach struck the plaintiff's claim. The injured cyclist claimed to have struck a raised manhole cover at 22 mph. The evidence also revealed that her vision was obstructed by her husband, who was riding six feet in front and to the side of her as she trained for a triathlon. The court struck the plaintiff's evidence, finding: (1) no actionable defect (2) contributory negligence as a matter of law, and (3) since the defendant's work was inspected and accepted by the city, the defendant was not liable pursuant to *City of Richmond v. Branch*, 205 Va. 424 (1964). *Chalmers v. Falcon*, Virginia Beach Cir. Ct. #CL97-1063, VLW 98-T527 (6/22/98)

## Releases

Following on the discussion regarding no liability for landowners in cycling accident cases is the issue of the releases that are required in nearly every bicycle race, century ride, back roads tour and triathlon. In a case handled by renowned Alexandria Virginia Trial Lawyer Bernard Cohen, an injured triathlete sued the homeowners association, race organizers and directors. Typical of most adult fee and charitable sporting events in the Commonwealth, the entry form the athlete signed contained a release of the "organizers and sponsors" of any rights and claims for damages from injuries suffered by the competitors. The Virginia Supreme Court in *Hiatt v. Lake Barcroft Community Assoc.*, 244 Va. 191 (1992) agreed with the plaintiff, that the pre-injury release was void because it violated public policy. *Hiatt* was cited with approval in *Aldridge v. Atlantic Rural Exposition*, Richmond Cir. Ct. #LS-2226-4 (6/13/05), VLW 005-8-110 (7/18/05). In the *Aldridge* case, Judge Johnson brought out that *Hiatt* repeatedly stressed the distinction between provisions in indemnity agreements, releases and waivers involving personal injury and those involving property damage only. In this case, which arose at the Richmond

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<sup>45</sup> *Id.* at 285-86, 289.

International Raceway, the indemnification agreement with the lessee (the Virginia State Fair) for personal injury claims was void as it violated Virginia public policy under *Hiett*.

## Conclusion

The Commonwealth has some of the most scenic and popular bike routes in the United States. This activity promotes healthy exercise, environmental awareness and causes no pollution. Unfortunately, a person riding a bicycle is always at risk of a collision with a motor vehicle. And, in a match between a car or truck and a bicycle, the bicyclist usually winds up on the losing end of the proposition. Likewise, with immunities, the affirmative defenses of contributory negligence and assumption of the risk, an injured cyclist can find a rocky road in court. Despite the potentially harsh application of Virginia's contributory negligence rule, an injured bicyclist may still be able to recover if she can show that any contributory negligence was not a proximate cause of the accident or that the defendant had a "last clear chance" to avoid the collision. However, given the fact that Virginia law provides a very clear limitation on the liability of landowners and grants cities and towns statutory immunity for negligence in maintaining and operating recreational facilities, there may be cases where it is impossible for an injured biker to recover for personal injuries. Critical to success in an injured cyclist's case is early investigation, securing the physical evidence and analysis of the applicable Virginia law. In any case, bikers should take care to educate themselves regarding their statutory responsibilities in order to maximize the protection to which they are entitled under the law.



# **SAMPLE VA JURY INSTRUCTIONS**

INSTRUCTION NO. \_\_\_\_\_

If you find your verdict for the plaintiff cyclist, then in determining the damages to which she is entitled, you may consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the defendants.

1. any bodily injuries she sustained and their effect on her health according to their degree and probable duration;
2. any physical pain and mental anguish she suffered in the past and any that she may be reasonably be expected to suffer in the future;
3. any disfigurement or deformity and any associated humiliation or embarrassment;
4. any medical expenses incurred in the past and any that may be reasonably expected to occur in the future;
5. any inconvenience caused in the past and any that probably will be caused in the future;
6. any earnings she lost because she was unable to work;
7. any loss of earnings and lessening of earning capacity, or either, that she may reasonably be expected to sustain in the future;

Your verdict should be for such sum as will fully and fairly compensate the plaintiff cyclist for the damages sustained as a result of the defendant's negligence.

# SAMPLE POLICE REPORT

Commonwealth of Virginia - Department of Motor Vehicles  
**Police Crash Report** FR300P (Rev 7/07) Page 01 of 04

Revised Report **ORIGINAL**

Crash Date: 08/24/2008 Day of Week: SUNDAY Military Time (24 clock): 0907 GPS Lat: -27.51129115 GPS Long: -29.111410116

County of Crash: LOUDOUN (Landmarks at Scene) Local Case Number: 2008 04541

City of: LAUREL Mile Marker Number: 01 Number of Vehicles: 02

Location of Crash (road/street): 43022 EDWARDS FERRY RD Railroad Crossing ID no. (if within 150 ft.): \_\_\_\_\_

At Intersection With: None Location of Crash (route/road): \_\_\_\_\_

**DRIVER**

Driver's Name (Last, First, Middle): \_\_\_\_\_ Driver's License Number: \_\_\_\_\_ State: VA DL: DL CDL: CDL

Address (Street and Number): \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Birth Date: MM/DD/YYYY Drivers License Number: \_\_\_\_\_ State: VA DL: DL CDL: CDL

Safety Equip. Used: 3 Air Bag Ejected: 1 Date of Death: \_\_\_\_\_ Injury Type: 6 EMS Transport: 3

Offenses Charged to Driver: 1 46.2-82.5

**VEHICLE**

Vehicle Owner's Name (Last, First, Middle): \_\_\_\_\_ Same as Driver:

Address (Street and Number): \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Vehicle Year: \_\_\_\_\_ Vehicle Make: \_\_\_\_\_ Vehicle Model: \_\_\_\_\_ Disabled:  CMV:  Towed:

Vehicle Plate Number: \_\_\_\_\_ State: VA Approximate Regs. Cost: \$ 500

VIN: \_\_\_\_\_ Name of Insurance Company (last agent): \_\_\_\_\_

Speed Before Crash: 3 Speed Limit: 35 Maximum Safe Speed: \_\_\_\_\_ Under 18-21:  18-21:  21:

**PASSENGER (only if injured or killed)**

Name of Injured (Last, First, Middle): \_\_\_\_\_ EMS Transport:  Date of Death: \_\_\_\_\_

Position In/On Vehicle: \_\_\_\_\_ Safety Equip. Used: \_\_\_\_\_ Airbag Ejected: \_\_\_\_\_ Injury Type: \_\_\_\_\_ Birthdate: \_\_\_\_\_ Gender: \_\_\_\_\_

Name of Injured (Last, First, Middle): \_\_\_\_\_ EMS Transport:  Date of Death: \_\_\_\_\_

Position In/On Vehicle: \_\_\_\_\_ Safety Equip. Used: \_\_\_\_\_ Airbag Ejected: \_\_\_\_\_ Injury Type: \_\_\_\_\_ Birthdate: \_\_\_\_\_ Gender: \_\_\_\_\_

Name of Injured (Last, First, Middle): \_\_\_\_\_ EMS Transport:  Date of Death: \_\_\_\_\_

Position In/On Vehicle: \_\_\_\_\_ Safety Equip. Used: \_\_\_\_\_ Airbag Ejected: \_\_\_\_\_ Injury Type: \_\_\_\_\_ Birthdate: \_\_\_\_\_ Gender: \_\_\_\_\_

Name of Injured (Last, First, Middle): \_\_\_\_\_ EMS Transport:  Date of Death: \_\_\_\_\_

Position In/On Vehicle: \_\_\_\_\_ Safety Equip. Used: \_\_\_\_\_ Airbag Ejected: \_\_\_\_\_ Injury Type: \_\_\_\_\_ Birthdate: \_\_\_\_\_ Gender: \_\_\_\_\_

**Codes**

**POSITION IN/ON VEHICLE**

1. Driver
- 2 & 4. Passengers
3. Cargo Area
4. Riding/Hanging On Outside
- 5-8. All Other Passengers

**SAFETY EQUIPMENT USED**

1. Lap Belt Only
2. Shoulder Belt Only
3. Lap and Shoulder Belt
4. Child Restraint
5. Helmet
6. Other
7. Hooper Seat
8. No Restraint Used
9. Not Applicable

**AIRBAG**

1. Deployed - Front
2. Not Deployed
3. Unavailable/Not Applicable
4. Keyed Off
5. Undeployed
6. Deployed - Side
7. Deployed - Other (Knee, Air Belt, etc.)
8. Deployed - Combination
9. Pending

**EJECTED FROM VEHICLE**

1. Not Ejected
2. Partially Ejected
3. Totally Ejected

**INJURY TYPE**

1. Dead Before Report Made
2. Visible Signs of Injury, as Bleeding, Wound or Distorted Member or Had to be Carried From Scene.
3. Other Visible Injury, as Bruises, Abrasions, Swelling, Limping, etc.
4. No Visible Injury, But Complaint of Pain, or Momentary Unconsciousness.
5. No Injury (Driver only)

Investigating Officer: COYER W.V. Badge/Code Number: 2595 Agency/Department Name and Code: LOUDOUN COUNTY S.O./033 Reviewing Officer: [Signature] Report File Date: 08/24/08

# SAMPLE INSURANCE DECLARATION



Liberty Mutual Auto Policy Declaration  
Liberty Mutual Fire Insurance Company  
Boston, Massachusetts

YOUR POLICY NUMBER:  
NAME, ADDRESS AND MAILING ADDRESS:

YOUR DECLARATION'S EFFECTIVE DATE:  
FOR SERVICE PLEASE CONTACT:

www.libertymutualinsurance.com SERVICE: 407-833-3685/800-541-6196  
CLAIMS: 800-2CLAIMS (800-225-2467)

Policy Period: 05/05/08 to 05/05/09 12:01AM Standard Time at the Address of the Named Insured as Stated in the Policy.

**Reason For This Notice: Your Renewal Policy Declarations**

PERSONAL AUTOMOBILE COVERAGE, LIMITS, AND PREMIUMS					
Coverages and Limits Under Your Auto Policy:		Coverage Is Provided Where A Premium Is Shown For The Coverage			
		Veh 1	Veh 2	Veh 3	Veh 4
<b>A. Liability</b>					
Bodily Injury	\$ 25,000 Each Person	\$ 903	294	294	307
	\$ 50,000 Each Accident				
Property Damage	\$ 25,000 Each Accident				
<b>B. Medical Payments</b>					
	\$ 2,000 Each Person	\$ 61	22	22	22
<b>C. Discovered Motorists</b>					
Bodily Injury	\$ 25,000 Each Person	\$ 137	137	137	137
	\$ 50,000 Each Accident				
<b>Personal Injury Protection (PIP)</b>					
		\$ 542	123	123	128
<b>D. Coverage For Damage To Your Auto</b>					
<b>Collision</b>					
Actual Cash Value Less Deductible Shown:		\$	277	185	276
Veh 2 \$ 500      Veh 3 \$ 500					
Veh 4 \$ 500					
<b>Other Than Collision</b>					
Actual Cash Value Less Deductible Shown:		\$	96	65	90
Veh 2 \$ 100      Veh 3 \$ 100					
Veh 4 \$ 100					
<b>Optional Coverage</b>					
Towing And Labor Cost - \$50 Each Disblement		\$	6	6	6
Transportation Expenses		\$	35	35	
\$30 Per Day      \$900 Per Accident					
<b>Annual Premium For Vehicles:</b>		\$ 1643	990	867	966
<b>Charges Mandated by Florida for State Use:</b>					
Florida Hurricane Catastrophe Fund Charge:		\$ 45.00			
<b>Total Annual Policy Premium &amp; Charges</b>		\$ 4511.00			

AUTO 1099BL 4-02

The policy, including all endorsements, attached is countersigned by:

*Dexter R. Lapp*

*Edward F. Kelly*

*James J. Pappas*  
AUTHORIZED REPRESENTATIVE

**bartyGuard Auto Policy Decl ations**  
**Liberty Mutual Fire Insurance Company**  
**Boston, Massachusetts**

YOUR POLICY NUMBER: AO2-251-047781-108 9

THIS DECLARATION IS EFFECTIVE: 05/05/08

(Continued from Previous Page)

**VEHICLES COVERED BY YOUR POLICY**

Veh Year Make		Model	Vehicle ID Number
1	1990 ISUZU	TROOPER	JACCH58RXL8912404
2	2004 VOLKSWAGEN	JETTA	3VWSK69M64MI29114
3	1999 CHEVROLET	SUBURB15	3GNFK16RXKG268924
4	2005 NISSAN	XTERRA	5N1AN08W85C626010

Loss Payee: **VEH 2 VOLKSWAGEN CREDIT** Month/Year Expires: **09/2013**

Safe Driver Insurance Plan: **Violation SCC No Charge Accident SCC No Charge**

**DRIVER INFORMATION**

Driver Name	DOB	State	License Number
RICHARD BENSON	02/10/62	FL	B52574062050
DOMEA BENSON	08/17/56	FL	B52517156797
RICHARD DEVIN BENSON	04/05/88	FL	B525744881250

To Ensure Proper Coverage, Please Contact Us To Add Drivers Not Listed Above.

**VEHICLE DISCOUNTS INCLUDED IN YOUR RATE**

Discounts	Veh 1	Veh 2	Veh 3	Veh 4
Anti-Lock Braking System	No	Yes	Yes	Yes
Anti-Theft Device(s)	No	Yes	Yes	Yes
Passive Restraint - Requires PIP or Med Pay (Motorized Seat Belts and/or Air Bags)	No	Yes	Yes	Yes

**OTHER DISCOUNTS INCLUDED IN YOUR RATE**

Driver Training	Good Student
Multi-Car Driver)	Preferred Auto Rating Plan (Preferred

AUTO 879 (04-08)

This policy, including all endorsements attached is countersigned by:

*Dexter B. Lapp*  
AGENT

*Edward F. Kelly*  
AGENT

*James J. Dwyer*  
AUTHORIZED REPRESENTATIVE



**berthyGuard Auto Policy Decl ations**  
**Liberty Mutual Fire Insurance Company**  
**Boston, Massachusetts**

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YOUR POLICY NUMBER: A02-251-047781-108 9

YOUR DECLARATIONS EFFECTIVE: 05/05/08

(Continued from Previous Page)

VEHICLES COVERED BY YOUR POLICY					
Veh	Year	Make	Model	Vehicle ID Number	
1	1990	ISUZU	TROOPER	JACCE58RXL8912404	
2	2004	VOLKSWAGEN	JETTA	3VWRS69M64ML29114	
3	1999	CHEVROLET	SUBURBN15	3GNFK16RXK2268924	
4	2005	NISSAN	XTRERRA	5N1AN08W85C626010	
Loss Payee:					Month/Year Expires:
VEH 2 VOLKSWAGEN CREDIT					09/2012
Safe Driver Insurance Plan:					
Violation	SCC	No Charge	Accident	SCC	No Charge

DRIVER INFORMATION					
Driver Name	DOB	State	License Number		
RICHARD BENSON	02/10/62	FL	B52574062050		
DORNA BENSON	08/17/56	FL	B52517156797		
RICHARD DEVIN BENSON	04/05/88	FL	B525744881250		
To Ensure Proper Coverage, Please Contact Us To Add Drivers Not Listed Above.					

VEHICLE DISCOUNTS INCLUDED IN YOUR RATE				
Discounts	Veh 1	Veh 2	Veh 3	Veh 4
Anti-Lock Braking System	No	Yes	Yes	Yes
Anti-Theft Device(s)	No	Yes	Yes	Yes
Passive Restraint - Requires PIP or Med Pay (Motorized Seat Belts and/or Air Bags)	No	Yes	Yes	Yes

OTHER DISCOUNTS INCLUDED IN YOUR RATE	
Driver Training	Good Student
Multi-Car Driver)	Preferred Auto Rating Plan (Preferred Driver)

AUTO REV (04-0-03)

This policy, including all endorsements attached is countersigned by:

*Dexter R. Long*  
AGENT

*Edward F. Kelly*  
AGENT

*Edward F. Kelly*  
AUTHORIZED REPRESENTATIVE

LibertyGuard Auto Policy Decl. 01/05/08  
 Liberty Mutual Fire Insurance Company  
 Boston, Massachusetts

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POLICY NUMBER: AQ2-251-047781-108 9

THIS DECLARATION EFFECTIVE: 05/05/08

(Continued from Previous Page)

## ENDORSEMENTS ATTACHED TO YOUR POLICY

2364	LMSC Membership
AS2090 08 07	Personal Injury Protection Coverage-Florida
FP 04 07 01 88	Split Uninsured Motorists Limits (Stacked) - Florida
AS2029 02 05	Uninsured Motorist Coverage - Stacked
AS2257 10 06	AMENDMENT TO POLICY PROVISION - FL
FP 03 05 08 86	Loss Payable Clause
AS2208 02 85	Towing and Labor Coverage
FP 03 09 04 86	Split Liability Limits
FP 03 25 06 94	Liability Coverage Exclusion Endorsement
AS1046 02 85	Automatic Termination Endorsement
FP 03 25 08 86	Full Windshield Coverage
AS2225 06 05	Optional Transportation Expenses Coverage
AS2112 10 99	New Vehicle Replacement Cost Coverage
AS2199 02 85	Automobile Mandatory Endorsement
FP 13 01 12 99	Coverage For Damage to Your Auto Exclusion Endorsement

## PERSONAL INJURY PROTECTION

For personal injury protection insurance, the named insured may elect a deductible and to exclude coverage for loss of gross income and loss of earning capacity ("lost wages"). These elections apply to the named insured alone, or to the named insured and all dependent resident relatives. A premium reduction will result from these elections. The named insured is hereby advised not to elect the lost wage exclusion if the named insured or dependent resident relatives are employed, since lost wages will not be payable in the event of an accident.

AQ2 009 08 4-00

The policy, including all endorsements attached is countersigned by:

*Dexter R. Lapp*

*Charles F. Hoff*

*James J. Dwyer*

ACTING GENERAL AGENT

# SAMPLE INTERROGATORY QUESTIONS

VIRGINIA :

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

Billy Biker, ]

] ]

Plaintiff, ]

] At Law No. 12345

v. ]

] ]

Tommy Trucker and Trash Trucks Corp., ]

] ]

Defendant ]

] ]

\_\_\_\_\_ ]

## DEFENDANTS FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. Describe in detail the Incident that is the subject of this bicycle crash, including all of your activities and all events that you perceived from the time you arrived at the intersection in question, until the time you left.
2. Identify all persons with knowledge or information concerning, directly or indirectly, the facts alleged in the Complaint that started this lawsuit. For each person identified, state the substance of the knowledge of each.
3. Identify each and every expert witness who may testify on your behalf in this case, and for each such expert state the subject matter of the expert's expected testimony, the substance of the facts and opinions to which each expert is expected to testify, and a summary of the grounds of each opinion.
4. Identify each and every statement made by you relating to the Incident, including but not limited to statements which are recorded in writing, by stenographic means, by tape or other sound

recording, by videotape or by any other means. For each such recorded statement, identify the person or entity that has custody of the statement.

5. Identify each and every statement made to you relating to the Incident by any employee, agent or other representative of the Defendant Trash Truck Corporation, including but not limited to statements which are recorded in writing, but stenographic means, by tape or other sound recording, by videotape or by any other means. For each such recorded statement, identify the person or entity that has custody of the statement.
6. Identify each and every statement whether relating to the Incident or otherwise made to you by defendant truck driver, including but not limited to statements which are recorded in writing, by stenographic means, by tape or other sound recording, by videotape or by any other means. For each such statement, identify the person or entity that has custody of the statement.
7. With respect to the allegations in the Complaint, state in detail all facts upon which you base your allegation that “Defendant Truck Driver negligently performed these duties.”
8. Please identify the specific statute, Code, law or Order of Court that the Defendants allegedly violated.
9. Provide your complete employment history up through and including the date of this response, including the name and address of each employer, each position held, dates of employment, the duties of the position, the person or persons who supervised you, your starting and ending salary, and your reason(s) for leaving.
10. Describe your complete educational history up through and including the date of this response, to include each educational institution attended, earned degrees and graduation dates, or dates of attendance, or any courses taken or studies undertaken.
11. Identify each and every symptom, illness, injury or condition which you attribute to the emotional distress you allegedly suffered as a result of the Incident, and further identify each and every physician, nurse, hospital, therapist, clinic or other healthcare provider who has examined, tested, treated, advised, consulted,

diagnosed or otherwise provided services to you as a result of each such symptom, illness, injury or condition.

12. Please list the name and address of each and every physician, nurse, hospital, therapist or other healthcare provider which has examined, tested, treated, advised, consulted or otherwise provided services to you for any reason whatsoever during the period from (10 years prior to this crash) until the present, including, for each such person identified, a description of each injury, illness or condition for which you sought or received such healthcare services.
13. Itemize all monetary damages that you have incurred as a result of the Incident, including, but not limited to medical expenses, lost wages, loss of earning capacity or other monetary losses or expenses.
14. Identify each and every person, other than your healthcare providers, who is knowledgeable about your injuries, pain, suffering, mental anguish, rehabilitation, recovery and loss of time from regular activities resulting from the Incident as alleged in the Complaint.

#### Request for Production of Documents

All documents used in preparation of your answers to the interrogatories propounded herein.

All documents pertaining or relating to the facts alleged in your Complaint.

All documents reflecting or relating to the damages allegedly sustained by you.

All documents referenced in the answers to interrogatories propounded herein.

All documents reflecting, relating to or constituting statements made by you concerning any of the facts alleged in the Complaint.

All documents provided to you in response to any subpoena or other discovery requests propounded by you.

All documents provided by you to any person whom you intend to call as an expert witness at trial.

All documents and things relied upon by any person, whom you intend to call as an expert witness at trial, in forming any opinion that they hold, held or may hold relating to the subject matter of this suit.

The curriculum vitae of any person whom you intend to call as an expert witness at trial.

Any reports, whether in draft or final form, prepared by any person whom you intend to call as an expert witness at trial.

All medical records, including but not limited to admission notes, physicians orders, post-operative reports, progress notes and discharge instructions, relating to the injuries you allegedly suffered as a result of the Incident.

All documents which support or evidence your claim for monetary damages that you have allegedly incurred as a result of the Incident, including, but not limited to medical bills, pay stubs, time sheets, and federal and state tax returns for the years 1999 to present.

# **ILLUSTRATIVE CASES HANDLED BY ABRAMS LANDAU**

A. Can you really make a Federal case out of a bike crash ?

Reston Bicyclist Successful in Alexandria Virginia Federal Court

Riding with his buddies on a tertiary road in Reston, Virginia, a young cyclist was suddenly writhing in pain on the pavement, struck by an inexperienced driver who was confused by the sight of the peloton. His leg was shattered and his top of the line bicycle was crushed. His mates stopped immediately, shocked by this peloton injury. He was lucky he was not more seriously injured; he was wearing his helmet and there was no brain injury, head trauma, concussion or loss of consciousness associated with traumatic brain injury ("TBI"). Peloton accidents such as this, even though not the fault of any cyclist, are unhappy reminders of why we must always wear helmets when riding our road bikes, mountain bikes, tri bikes and track bikes.

The driver gave no warning. There was no honking of her horn. There was no flashing of lights. There was no calling out or other audible or visual warning. After his discharge from the hospital, the Reston bicycle rider, tired of getting the insurance company runaround and realizing that his injuries were permanent, called experienced legal counsel for his personal injury case.

Acting as "local counsel" for former "D.C. Trial Lawyer of the year Aaron Levine, I helped this cyclist who was struck while training with his teammates in Reston. Mr. Levine is as knowledgeable in medicine as he is in law, and his brilliance at trial and in negotiation is unparalleled. Senior counsel Levine was my first boss in the legal field after graduate school in Applied Anatomy & Physiology back in 1981! In this job before law school, I was brought on as an assistant to the Levine office's medical personnel!

While riding in a peloton off of the main roadways, the group was surprised by the unsafe actions of the inexperienced young driver who plowed into our client, shattering his leg. The case was filed in the United States Federal Court for the Eastern District of Virginia, Alexandria Division. The insurance company hired one of Virginia's most aggressive and antagonistic defense lawyers. This lawyer ridiculed the injured cyclist for paying thousands of dollars for his bike. "What kind of person pays five thousand dollars for a bicycle?" this bombastic blowhard demanded to know. Our client looked him the eye, unafraid, and answered simply:

I have never had the "best" of anything. I am out of college, with a good job, and little overhead. I am single, with no dependents, and have a short commute to work and simple needs. But my recreation, my favorite activity, is cycling with my friends and racing. I found that I could have the "best" bicycle, which I could ride every day after work. So I bought this bike, which was the best and which was worth more than my car, until your client smashed into us.

I traveled to New York City in order to take the deposition of the young Defendant driver, who was attending college in "The Big Apple." After the pre-trial "Discovery" process was completed in this automobile negligence action, the case came before United States Federal District Court for the Eastern District of Virginia, Alexandria Division's Judge Brinkema. This experienced federal judge let her displeasure with the defense lawyer's antics be known. We had shown little patience for insurance defense counsel's shenanigans during their client's testimony. We recovered the full \$300,000 car insurance policy limits for this innocent young cyclist struck while training with his teammates in Reston.

## B. Eagleman Triathlon finish line crash

### Eagleman Triathlon Case

As he approached the end of the Eagleman Half Ironman Triathlon bike course, with the finish line in sight, our client was struck broad side by a motorist who just could not wait...

The Eagleman Half Iron Man Triathlon has competitors from all over the world and is one of the top races in the country. The race sells out almost as soon as registration opens, and many athletes plan their



season around this popular and challenging event. There were ample volunteers, and the Columbia Triathlon Association (CTA) does a wonderful job of marshalling its courses and putting on safe races. [For CTA events and information, go to [www.tricolumbia.org](http://www.tricolumbia.org)]

I have participated in shorter CTA races such as the Blackwater Duathlon (run-bike-run). The Triathlon Trial Lawyer has also completed the ultra-competitive Columbia (MD) Olympic Distance Triathlon several times. Race Director Bob Vigorito is nationally known for putting on world class events and giving back to the triathlon and multisport community. He is generous with his time and resources but even the most prescient RD cannot prevent every mishap, injury or intentional recklessness.

SO, no matter how fantastic the race and its reputation, race volunteers on foot are no match for inconsiderate and negligent drivers. It is incumbent upon every competitor to use ALL THEIR SENSES so that accidents can be avoided and injuries prevented.

The Plaintiff is a friend, teammate and training partner of mine and has since the case settled, relocated from Sterling to California, in order to attend law school ! Because he was able to produce documentation as to the cost of his racing bike, he was reimbursed in the property damage claim fairly soon. However, the injuries to his body took longer to heal and the bodily injury claim settled after he had surgery and physical therapy. Representing injured athletes poses special challenges and rewards for me. One of the hard parts of these cases is keeping the impatient client "on the sidelines" so that he does not undo the good work that has already been done by the treating doctors and therapists. My client in this Maryland bike crash case was treated by the excellent doctors and sports medicine specialists of Town Center Orthopedics in Reston, Virginia. Drs. Thal, Fleeter, Kartalian, et al., volunteer their time and services at the Reston Triathlon every year, and are also a sponsor of this event.

I was able to negotiate a settlement of the bodily injury case with USAA, the negligent Defendant's automobile insurance company. The Abrams Landau client had wage loss from his job, permanency to the left shoulder post anterior capsulorrhaphy surgery (for the large flap labral tear, glenohumeral capsular tear and rotator cuff tendonitis); as well as other items of loss such as medications, travel expenses for medical treatment, etc. Because of his aggressive post-operative

therapy and exercise regiment, and in no small part due to his excellent physical shape pre-crash, the Plaintiff had only a 5% permanency rating to the shoulder according to Dr. Thal. This board certified orthopedic surgeon has operated successfully on other Landau Law Shop clients, including other multi-sport athletes and cyclists. Dr. Thal has also been seen on television with Dr. Kartalian on the sidelines as the Washington Redskins team physicians.

### C. College Professor's sabbatical bike tour cut short by truck driver

#### I. Facts

A professor at a local community college in Virginia was on the 13th day of a bicycle tour from Maine to Florida. This was his "dream vacation." This ultra-fit middle-aged cyclist had worked for many years in order to earn the Sabbatical Time to ride the length of the East Coast. He was struck by the Defendant's truck and "thrown 107 feet coming to rest in the roadway" according to the Police Report. The Defendant's Ford pickup truck sustained significant damage skidding and slamming into the bridge guardrail. The impact occurred as the Defendant's car tried to go around the bicycle between two bridges.

#### II. Liability

The Defendant acknowledged traveling too fast for the road conditions that day. He was issued a ticket for driving his pickup truck "at a speed that was greater than was reasonable and prudent under the conditions." [N. C. Uniform Citation]

My research revealed that the Defendant driver plead guilty to "excessive speed." This driver, who acknowledged striking the innocent cyclist, did not seek an appeal of his Traffic Court conviction. The injured bicycle tourist was traveling at slow speed.

The Plaintiff was not riding in a peloton when he was injured, as the tour riders were spread out. This fit, middle-aged Professor was on the right side of the roadway at the moment of impact between his touring road bike and the truck. The vulnerable cycle tourist had nowhere to go because of the bridge guardrails when the Defendant's truck struck him without any warning.

### III. Damages

The cyclist sustained multiple injuries. The bike-riding professor also had a loss of consciousness when struck by the defendant who was traveling 45 m.p.h. or more. This crash caused the following problems for the injured bicycle rider:

- a) Post-concussive syndrome and closed head injury;
- b) Posterior neck pain and a central HNP (herniated cervical disc) at C6-7;
- c) Permanent partial disability rating to the dominant upper extremity;
- d) Multiple abrasions, contusions and permanent scarring;
- e) Arthritic changes and weight gain;
- f) Depression;

This Abrams Landau client was a physical education teacher at a local Community College. I knew the client from his second job at a Loudoun County Health Club. The injured cyclist had been with the school since 1974 ! At the time of the bicycle crash, he was earning an annual salary of \$45,000.

The Community College's documentation indicates their professor lost \$4,457.33/month for the 7 month period the cross country cyclist was disabled. After his orthopedic treatment ended, the injured athlete and bicycle tourist had episodes of memory loss and loss of balance. However, the Insurance Company for the guilty driver would not accept full responsibility for the all of the injured bicyclist's injuries.

### IV. Alternate Dispute Resolution; bicyclist;s case referred to Mediation

The injured Virginia bicycle tourist's bike crash case was referred to Mediation in North Carolina. The trial team at Abrams Landau, Ltd. treats mediation of bike crash, head concussion injury and brain trauma cases like trial, preparing exhibits, evidence and testimony in order to get the best result for their injured cyclist clients. The "Special Damages" in the case were:

Wage loss.: \$32,385.09

Medical bills: \$25,601.11

I flew to North Carolina with his client and presented the case at Mediation. I explained that his client had to work 7 years in order to earn the Sabbatical. I further told the Court that this bicycle tour was the culmination of a life dream for the bicycle riding professor.

I pointed out that to his client (and many others) the time spent AWAY from work may be more precious than the time spent at work. While this Abrams Landau client had made excellent progress from his closed head injury, brain trauma and herniated cervical disc, he still had residual pain, for which compensation was also sought. The Court agreed with the plaintiff's lawyers' arguments, and I collected \$150,000 for the disabled cyclist. This result was all the more remarkable as the Defendant truck driver only had \$25,000 in car insurance coverage. The Abrams Landau trial team's preparation and hard work enabled the injured cyclist to get full compensation for his injuries AND wage loss.

#### V. Wage loss damages allowed even when cyclist on sabbatical

I knew I had a strong case of liability (negligence) against the truck driver who hit his bicyclist client. The cyclist's injuries were serious, and a lawsuit for the negligence of the driver was filed by Abrams Landau, Ltd., with local counsel, in Robeson County, North Carolina.

When the Insurance Company refused to pay for all of the injured athlete's damages, I filed the case in the local State Court. I presented all of the evidence of the injured cyclist's losses, in an effort to reach a fair compromise settlement. However, the Insurance Company refused to consider the injured cyclist's loss of earnings. Because the bicycle tourist was "on sabbatical," the Insurance Company for the negligent driver maintained that there was no "wage loss." Defense Counsel for the trucker who hit my client argued that since the Professor was not "at work," there could be no wage loss for the disabled cyclist.

My legal team and I assembled the proof, exhibits and testimony necessary to defeat these defenses on behalf of the disabled biker. The professors who worked with the injured bike rider were prepared to testify that my client was previously: motivated, very active (he

actually participated in the sports he was teaching) and physically fit (he would ride his bike to and from work, a round trip of over 50 miles!).

Since the accident, he had: gained weight, become depressed, and curtailed his activities. The injured bicycle rider also worked the night desk at a Loudoun County athletic club near his home, prior to the accident. After the crash, the injured Phys.Ed teacher was unable to return to that position, or join in the sports and social events that he was accustomed to participating in prior to the crash. This disabled biker had continuing symptomology as the result of this accident. I learned from the treating doctor that my injured client would need for future medical care as the result of his closed head injury. Cyclist brain injury cases present difficult issues, even when the bike rider is wearing an appropriate helmet and riding with reasonable care.

#### D. Teen driver strikes not one, but 2 bikers in Loudoun County

Type of Action: Motor Vehicle strikes bicyclists

Injuries alleged: Broken ankle, abrasions

Verdict or Settlement: Settled for \$60,000

Plaintiff's Counsel: Douglas Landau, ABRAMS LANDAU, Ltd., Herndon, Virginia

Defense Counsel: Nationwide Staff Counsel, Fairfax,

Facts: Plaintiff was cycling with friends in Loudoun County on an early morning weekend training ride. The Defendant struck one of the group (causing minor injuries), did not stop and then struck the plaintiff, causing him to hit the roadway, break his expensive European bike and fracture his ankle. The Defendant denied contact, but the plaintiff's witness had her side mirror !

Liability / Damages: Liability was contested, since this is a narrow, rolling two-lane roadway near Watson Road where there are many accidents each year. However, the Defendant was returning home in the early morning after visiting her boyfriend and had struck another cyclist in the group before the plaintiff. The plaintiff had pins in his ankle and a surgical scar. There were \$18,038.88 in medical specials, wage loss was claimed at \$24,055.67, though the Plaintiff received his regular pay and property damage \$3,520.79. The plaintiff returned to work shortly after the accident, had a stellar year and even

rode his recumbent bike to the Traffic Court hearing. His property damage claims were paid separately, well before trial.

Special Comments: Scene depositions of the Defendant and the investigating officer helped preserve the topography for the jury at trial. It also enabled measurements to be taken of the width of the roadway and vehicles. The court upheld this unusual stratagem despite objections by the Defendant's counsel. While more expensive, a deposition at the scene of an accident can help to give the jury and trial judge a view of the place where the events in question occurred.

#### E. Taxi cab driver plows into experienced cyclist & triathlete in bicycle lane

Not 100 yards from his home, wife and two small daughters, the plaintiff triathlete was run down by Red Top Cab driver who gunned his engine, accelerated, turned and ran him down in the bicycle lane. According to the eye witnesses, the cab driver cut him off and cut him down in front of the Starbucks. The cab passed a construction zone in front of the coffee shop and tried to turn into the handicap parking spot. The cabbie was: charged at the scene with "Failure to yield the right of way" and convicted in the Arlington General District Court.

As the result of the impact with the taxicab minivan, the side window was shattered. Pieces of glass needed to be surgically removed from this elite athlete's scarred body. Bleeding from his face, arms, knee and body, nerves were severed around his orbit. The injured cyclist was taken by ambulance from the scene, to George Washington University Trauma Center, where he underwent six hours of emergency surgery. The patient underwent repair of multiple complex lacerations to the face, arms, chest, and leg.

The injured athlete, who the year prior had competed as part of the USA Triathlon team at the quaddrennial Maccabiah Games in Israel, is left with: scarring, glass still migrating about his arm, decreased grip strength, forearm weakness, lessened range of motion, reduced sensation in the elbow, numbness and tingling. This injured triathlete represents the top athletes in the world. I was able to settle the case for policy limits. The injured triathlete was able to resume some training after his lacerations had healed sufficiently, and he even managed to take part (though not race all out) in several events for which he had

registered pre-accident. The plaintiff was eventually able to resume triathlon competition in earnest, and a year post-accident, he was even beating his counsel, the „Triathlon Trial Lawyer“(That’s me) !

Fatal triathlon bike-car crash where both the motorist and the cyclist’s family won their cases

The verdict from Montgomery County, Virginia underscores a point that I have been emphasizing for years: that the amount of medical bills and lost wages are not subject to some formula to calculate settlement or likely verdict outcomes.

In the Blacksburg Virginia Triathlon case, a bicyclist crashed into a car when it ran the stop sign on the local college Campus. The triathlete smashed into the passenger’s side of the car, shattering the glass and knocking fragments onto the driver. The cyclist, racing in the second leg of the triathlon, was heard gasping for breath at the scene. The triathlete was rushed to the local hospital but died there shortly after the impact.

The driver suffered no physical injuries. Apparently, there were no cuts or bruises from the broken glass. The bike crash caused no outward, objective injuries. There was nothing that could be seen, felt or heard that was different about her body after the bike crash. However, the expert witnesses in the case testified that she suffers from post-traumatic stress disorder as a result of the fatal bike crash. The lawsuit was filed seeking damages for negligent infliction of emotional distress resulting from the bike crash that killed the triathlete and the glass that hit her.

At trial, the plaintiff presented no evidence of special (itemized) damages other than the \$2,300 cost of repairing her car after this triathlon bike crash. The driver, the counselor and the psychiatrist gave evidence as to her nightmares, insomnia, fatigue and an inability to focus as the result of the trauma of the fatal bicycle accident. The lawsuit was filed against the race sponsor and director, and not the deceased triathlete. The Circuit Court jury’s verdict was for \$350,000 and post-trial motions to set aside the verdict are pending. For other triathlon, bike crash and sports injury cases, including the cyclist’s family’s claims, go to my website at [www.TheAthletesLawyer.com](http://www.TheAthletesLawyer.com).





# **CONCLUSION**

Don't get in a bike crash! Follow the rules of the road and make sure you are using and wearing your safety equipment. Pay attention to the motorists and road conditions. If there is going to be an impact, you are going to get the worst of it. If you do crash, get prompt medical attention, alert the authorities and seek competent, experienced legal counsel.

Enjoy the ride and safe cycling !



# **ABOUT THE AUTHOR**

Doug Landau, the “Triathlon Trial Lawyer,” is listed in “The Best Lawyers in America,” “Super Lawyers” and A-V rated.

A USAT All-American, USA Maccabiah Gold Medalist and 2009 Bethesda Sprint Triathlon champion, Landau has been an age group winner in the Penn-Jersey & Virginia Triathlon Series.

He rides regularly from the ABRAMS LANDAU, Ltd. “Law Shop” at the 20 mile marker of the W&OD Trail in Herndon, just up the street from the Caboose !

He represented the “MS-8 Charity Bikers,” the “Speedo 6” swimmers and cyclists, racers and athletes injured by crashes, dog attacks, dangerous roads and defective products in Virginia, New Jersey, North & South Carolina, Maryland, Connecticut, New Hampshire, Florida, Georgia, Washington, D.C.

A sports event volunteer himself, Landau does not sue race organizers and he does not represent insurance companies.

Douglas K. W. Landau

Founding partner, ABRAMS LANDAU, Ltd., Old Town Alexandria, Virginia, 1990 (Now located in Historic Down Town Herndon, 2000-present)

Bar Memberships:

State:

Virginia (1985)

Connecticut (1985)

District of Columbia (1985)

Florida (1986)

New Jersey (1986)

Federal:

Eastern District of Virginia

District Court for the District of Columbia

Court of Appeals for the 1st, 2nd, 4th, D.C. and 11th Circuits

District Court, Colorado

United States Supreme Court

AWARDS, RATINGS:

Martindale-Hubbell directory of Lawyers, “A-V” highest rating for legal skills and ethics

“Super Lawyer,” The Washington Post

“The Best Lawyers in America,”

National College of Advocacy: Advocate – 1993, Fellow - 1999

Who’s Who Among American Law Students, Summa Publishing, 4th Ed., 1984

American Jurisprudence Award, Contracts, 1983

Professional Organizations:

Association of Trial Lawyers of America, (ATLA), now American Association for Justice (AAJ), 1982 – present, Sustaining Member

Social Security and Disability Law Section, Secretary 2003, Treasurer 2004, Vice Chair 2005, Chairman, 2006; Newsletter Editor in Chief, 2006

Bicycle Litigation Group

National Organization of Social Security Claimant’s Representatives (NOSSCR), 2000 - present

Virginia Trial Lawyers Association (VTLA), 1985 – present

Workplace Injury Law & Advocacy Group (WILG)

Litchfield County, CT, Bar Association

Virginia State Bar

Fairfax, VA, Bar Association

Court Tour Guide

Fairfax County Public School speaker, Panelist, Law Day participant,

Alexandria, VA Bar Association

Mentor and Lawyer Referral Service

Foundation of the Alexandria Bar “F.A.B.5” Race Director

Other Memberships and Affiliations:

USA Triathlon: Gold Member, Age Group “All American” in Sprint and Olympic Distance Triathlons; Qualifier, 2008 World Aquathlon Championships; qualified and competed in USAT Olympic Distance Triathlon and Aquathlon and Duathlon Age Group National Championships. Have competed in over 20 states in the continental United States, and Canada, England, Israel, Dominican Republic, Italy, Sweden, Germany,

United States (quadrennial) Maccabiah Games Team qualifier, 1997, 2001, 2005, 2009. Gold Medalist Triathlon, 2005, Ashkelon, Israel; also competed at Half Marathon, Ashdod, Israel.

Penn-Jersey Triathlon Series age group award winner; Virginia Triathlon Series, 2007 age group winner. 2009 overall winner: Bethesda, MD “Cure Autism Now” Super Sprint Triathlon; DCRRC One-Hour Track Run, VA; Playa-del-Rey CA beach mile sprint; as well as several Masters and Age Group awards in running races and triathlons this year.

SPORTS ASSOCIATION MEMBERSHIPS: Reston Bike Club, Washington Area Bicyclist Association, Potomac Peddlers, USA Triathlon, USA Track & Field, D.C. Road Runners Club, United States Masters Swimming, USA Sports for Israel

Sport & Health Club Masters Swimming Team; 3 time Champion, Sport & Health Clubs “Super Sprint Triathlon,” Herndon, VA; 2007 Sport & Health Clubs “Super H” 5km. road race champion, McLean, VA.

The Hotchkiss School, Lakeville, CT: Alumni Board of Governors, 1997-2005; Atlanta, GA event planning, 2001-2005; Hotchkiss Reunion Run, 1979-present; Reunion Committees, 2003, 2008; Maria Hotchkiss Society.

The Madeira School, McLean, VA: Science Fair, Judge, 2002-present; parent volunteer; 2001-present; cheerleader

Virginia Poverty Law Center, Instructor, “Trial Techniques,” Richmond, VA

# **BOOKS, SPEECHES, ARTICLES, INTERVIEWS & PRESENTATIONS**

2009

NBC Channel 4 Interview, July 9, 2009, 6 O'clock News, repeated over the weekend

The Connection Newspapers, "Herndon Attorney Defends 'MS-8'," M. DiCicco, (July 15-21, 2009, p.3)

The Loudoun Times Mirror, "Cyclists' case spotlights rules of the road," Jana Wagoner, July 8, 2009

Spokes Magazine, "Ticketed Cyclists in Loudoun," August, 2009, pp.22-23

TRIAL MAGAZINE, "Elderly clients' falls and hip fractures: Fatal, preventable and misunderstood" April, 2009

2008

How Swimming Illegally Can Land You in Hot Water (or worse)!, Swimmer's Ear, Newsletter of the Potomac Valley Masters Committee, December, 2008

Virginia Trial Lawyers, "Law Office Interchange and Management," Annual Convention moderator

Supreme Court of Virginia, "New Judges' Training"

2007

Time Saving Tips for the Aquadynamically Challenged, Swimmer's Ear, Newsletter of the Potomac Valley Masters Committee, September 2007

Supreme Court of Virginia, "New Judges' Training"

2006

Association of Trial Lawyers of America, ATLA Law Journal, Volume 49, No. 9, November 2006 Spotlight Case. Doug Landau,

Lead Counsel demonstrates how hotel van driver's negligence worsened passenger's disabilities. *Alexander v. Doubletree Hotel*, U.S. Dist. Ct. E.D. Va. No. 1:03-cv-00887, June 22, 2006

VTLA 2006 Annual Paralegal Seminar, "What pitfalls should a paralegal look for when handling liens?" Richmond, VA, October, 2006

Best of AAJ Section Newsletters 2006. SSA Policy Alarms — Jump the Hurdles Social Security Disability Law Section, Spring 2006 | Vol. 8, No. 3

Virginia Trial Lawyers Association (VTLA), Annual Convention, Sponsor and Moderator, "Law Office Interchange," Warm Springs, VA

Supreme Court of Virginia, "New Judges' Training," March 29, 2007, Office of the Executive Secretary, Supreme Court of Virginia, Educational Services Department, Richmond, VA

2005

TRIAL MAGAZINE, Association of Trial Lawyers of America, ATLA, "Pick Your Battles," "Gaining the advantage on enemy turf," by Douglas K. W. Landau, Volume 41, Issue 7, July 2005

Association of Trial Lawyers of America (ATLA), Annual Convention, Speaker, "Litigation at Sunrise," Toronto, Canada, July 23-27, 2005

ATLA Social Security Section Vice Chair and Newsletter Editor

Virginia Trial Lawyers Association (VTLA), Annual Convention, Sponsor and Moderator, "Law Office Interchange," Hot Springs, 3/31-4/3/05

VTLA Annual Tort Law Seminar Committee, May, 2005

Supreme Court of Virginia, "New Judges' Training" Richmond, March 23, 2005

2004

Association of Trial Lawyers of America (ATLA), Annual Convention, Speaker, "Litigation at Sunrise – Wheelchair passengers



and accidents in hotel courtesy vans and shuttles"” Boston, MA, July 5, 2004

ATLA. Social Security Disability Law Section, Presenter, “Preparing & Presenting Your Case Before the Administrative Law Judge,” Boston, MA, July, 2004

Virginia Workers Compensation Commission (VWCC), 7th Annual Seminar, PANEL TOPIC: “Elaboration on the concepts of “arising out of” and “in the course of,” presentation on “Exposure to Heat, Cold, Weather and Contagious Diseases,” September 14-15th, 2004

Virginia Trial Lawyers Association (VTLA), Annual Convention Committee and Sponsor Moderator, Warm Springs, WV

VTLA Advanced Auto Retreat, Presenter, “Proof of Pain at Trial,” Boar's Head Inn, Charlottesville, July 23rd, 2004

Supreme Court of Virginia, “New Judges’ Training” Richmond

2003

Association of Trial Lawyers of America (ATLA), Mid-Winter meeting, Speaker, “Litigation at Sunrise – Are these the "LIEN" years ? SETTLEMENT LIENS & STRATEGIES” Maui, HI, February, 2003

Virginia Trial Lawyers Association (VTLA), Annual Convention, Sponsor and Convention Committee, The Homestead, Hot Springs, March, 2003

Supreme Court of Virginia, “New Judges’ Training” Richmond,

VIRGINIA STATE BAR, “Jury Selection,” Young Lawyers Conference Professional Development Seminar, at the University of Virginia Darden School of Business, March, 2003

2002

Association of Trial Lawyers of America (ATLA), Annual Convention, Speaker, “Litigation at Sunrise,” Toronto, Canada, July 23-27, 2005

Virginia Trial Lawyers Association (VTLA), Annual Convention, Sponsor,

VTLA Fall Fiesta 2002, Presenter, "Inexpensive Ways to Get Reports and Information in Social Security and Workers Compensation Cases"

VTLA Annual Tort Law Seminar, "PRACTICAL TIPS FOR REDUCING WORKERS' COMPENSATION LIENS," Norfolk, Richmond, Roanoke and Fairfax, May, 2002

VTLA Annual Paralegal Seminar, speaker, "Liens: Unraveling the Maze," December, 2002, Richmond

Virginia Workers Compensation Commission (VWCC) 5th Annual Seminar, presentation "WORKING WITH THE COMMISSION" Richmond, September 18, 2002

Supreme Court of Virginia, "New Judges' Training," Richmond

Northern Virginia Attorneys Herndon luncheons, presented and sponsored (with Injured Workers Pharmacy) by Abrams Landau, Ltd., March 6 and November 13, 2002

## 2001

Virginia Trial Lawyers Association (VTLA), Fall Fiesta WORKERS COMPENSATION PROGRAM, Co-presenter with D. McNamara, "Permanent Total Disability: The Exception to the Rules" Richmond, September 29, 2001

VTLA Fall Fiesta, Social Security Committee, Richmond, September, 2001

Supreme Court of Virginia, "New Judges' Training" Richmond

## 2000

VTLA FALL FIESTA 2000, Workers Compensation Section, Presentation "Keep the liens from eating up the recovery and landing you in an ethical minefield: Medicare, ERISA, & 714 fees"

VTLA FALL FIESTA 2000, Moderator, Social Security Section Experts' Panel

Virginia Trial Lawyers Association (VTLA), Annual Convention, Sponsor

1999

VTLA Fall Fiesta, Presenter, SOCIAL SECURITY SECTION, September 17, 1999

1998

Association of Trial Lawyers of America (ATLA), Annual Convention, Speaker, "Litigation at Sunrise," Presenter, "UNSAFE AT ANY SPEED...AIRPORT GROUND TRANSPORTATION CASES", Washington, D.C., July 14th, 1998

1996

VTLA "Try It, You'll Like It: Trial of the Automobile Personal Injury Case" Presenter, MOTIONS IN LIMINE - Excluding the Poisonous and the Irrelevant," May, 1996

1994

"What's the Right Goo for Blisters and Shoes ?" 22 The Physician and Sports Medicine, No.7, p. 23, 7/94

1992

JOURNAL OF THE VIRGINIA TRIAL LAWYERS ASSN.: Lining it up for Trial (Summer, 1992)

JOURNAL OF THE VIRGINIA TRIAL LAWYERS ASSN.: How to Use Requests for Admission (Spring, 1992)

1991

TRIAL MAGAZINE: Establishing Emotional Distress Damages for Children (1991)

JOURNAL OF THE VIRGINIA TRIAL LAWYERS ASSN.: Pre-Judgment Interest, Post Judgment Costs (Fall, 1991)

1989

TRIAL MAGAZINE: Establishing the Viable Elements of "Invisible Torts" (1989)

JOURNAL OF THE VIRGINIA TRIAL LAWYERS ASSN.: Liability of Counties and Municipalities in Tort (Fall, 1989)

1988

VIRGINIA LAWYER: Virginia Runners' Rights & Remedies (August, 1988)

1985

PREMISES LIABILITY: Practice and Procedure (3 vol. set), Mathew Bender & Co. (1985, bi-annual supplements and CD)

1984

RES IPSA LOQUITUR, Editor in Chief, Coral Gables, Florida

Entertainment and Sports Law Journal, Articles and Comments Editor, Coral Gables, Florida

Association of Trial Lawyers of America (ATLA) Environmental Law Essay Contest, University of Miami School of Law winner

Annual Law Day USA speaker, Dade County Bar Association, Florida,

1983

With the Greatest of Ease..." Gymnastics Products Liability," Sports & Recreational Equipment, Practicing Law Institute (PLI), 1983

Statistical Proof in Toxic Tort Cases, Landau & Landau, Hazardous Waste Litigation, PLI, CCXV, 1983

ATLA Environmental Law Essay Contest, University of Miami Law School winner

Professional Sports: The Owner's Responsibility to Athletes, Team Doctors & Spectators, Sports and Recreational Equipment, PLI, 1983

Annual Law Day USA speaker, Dade County Bar Association, Miami, Florida

1982

Recovery in Hazardous Waste Cases, ATLA Convention Book, Toronto, Canada, Landau & Landau, 1982

