Bicycle Accidents, Injuries and Damages

Bike Rider Hits Pothole and Breaks Shoulder- While riding his bicycle downhill on a two lane paved road, Bob hit an open pothole. The bike twisted flipping Bob over the handlebars and onto the hard road surface. Bob’s shoulder was broken and he required surgery to partially repair the damage. To this day Bob still has shoulder problems.

The city responsible for the maintenance of this roadway admitted that it knew about the large pothole but failed to do anything about it. We filed a governmental claim on Bob’s behalf and after a great deal of effort, were able to resolve Bob’s claim for a substantial figure.

Bike Rider Attacked by Dogs and Breaks Shoulder- In another bicycle accident case, we represented an insurance claims manager who was attacked by dogs while training for a triathlon and riding his bicycle. He too experienced severe injuries including a broken collar bone. We pursued a claim against the dog owner’s automobile liability policy and were able to obtain a substantial out of court settlement.

These are only a small sample of the bicycle accident and injury cases we've handled over the past 25 years. If there’s one thing we’ve learned, it’s the fact that when there’s an accident between a bicycle and automobile or truck, the bicycle rider is normally the one who is injured. Without the protection of doors, airbags or metal frame, the roadway normally wins when the human body is slammed against it.

Bicycle Accident Statistics

We’re mountain bike riders and enjoy getting outdoors and riding the backcountry whenever we can. And we’re not alone.

About 30% of people in the United States ride bikes. Some ride bicycles to and from work or school while others for sport or exercise. What this means is that about 60 Million people ride bikes. With more and more people turning to bike riding to save gas, we believe there is a very good likelihood that these numbers will increase over the next decade.

It is estimated that only about 10% of all bicycle accidents are reported. The bike accidents that are reported normally involve emergency room visits and related traffic collision reports with police agencies. Of these reported cases, it is estimated that about 2% of the bicycle accidents result in death to the rider.

The good news is because of safety training, increased awareness by motorist, and helmet use, bicycle accidents are declining in number. The bad news is that when a bicycle
accident does happen, the bicycle rider is usually the one who is seriously injured or worse, fatally wounded.

Of the fatal injuries, more than two-thirds involve bicycle riders 16 years of age or older. A review of the traffic collision reports seems to indicate that most of the more serious bicycle accidents happen at busy intersections and during the night hours.

**What Laws Must Bicyclist Follow?**

Generally speaking, bicyclist must ride their bikes in a safe and controlled fashion. They have a duty not to subject other people or things to an unreasonable risk of harm or damage.

California Vehicle Code Sections 21200 and 21212 indicate that bicyclists must follow the rules of the road for drivers of vehicles. There are various exceptions that normally provide to sections of the various California Codes that by their very nature can have no application to the operation of a bicycle (Peace Officer Exemption 21200. (a) Every person riding a bicycle upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle by this division... except those provisions which by their very nature can have no application.)


**What Causes Bicycle Accidents?**

Bicycle accidents are caused by many different things. For example, inattentive motorist are a big cause of bike accidents.

Potholes, uneven road surfaces, and even inattentive bicycle riders are other causes. Some bike accidents are caused by drunk drivers who are too intoxicated to either see the bike rider or, be able to safely drive past a bicyclist lawfully sharing the roadway.

We’ve represented bicycle riders who have been hit by cars, trucks, and flipped after hitting an open pothole in the road. We’ve also represented bike riders who were attacked and knocked over by dogs or hit by someone opening up their car door while exiting the vehicle. We’ve even represented serious bicycle accident victims who were hit by other bike riders at high speed!

When all said and done, studies have shown that most bicycle accidents fall into the following categories.

- Bicyclist are injured when the other driver fails to yield the right-of-way.
Bicyclist are injured when they fail to yield the right-of-way (the bicyclist loses this battle every time)
Bicyclist are injured when another automobile or truck unsafely attempts a turn directly in front of the rider
Bicyclist being hit by another vehicle unsafely overtaking or passing the bike rider
Bicyclist are injured when they unsafely merge lanes in to other traffic that has the right-of-way
Bicyclist are injured when another vehicle unsafely merges into the lane being used by the bicyclist
In sport and mountain biking, riders are injured when they attempt a free style trick or while mountain bike riding, hit a rock, ledge, root, or some other object
In a small number of cases, bike riders are injured when their bikes are not repaired properly by the bike shop or, unsafe bicycle’s are sold with a defective design.

What Type of Injuries Do We See in Bicycle Accident Cases?

Because of the lack of protection like steel doors, a car frame, or air bags, obviously bike accident injuries can be and usually are serious. Each year there are approximately 45,000 bicycle injuries and about 800 bicycle deaths in the U.S. This number is climbing.

In almost all of the bicycle death cases, the rider was not wearing a helmet.

Most bicycle injuries include one or more of the following: head and facial injuries, brain trauma, broken bones, neck and back injuries, spinal cord injuries, severed arms or legs, substantial bruising, wounds and abrasions commonly referred to as “road rash”.

Unfortunately, in many cases, these injuries cause lifelong health problems. Physical problems such as permanent scarring and the lack of use of a missing limb are not uncommon. Bicycle accident cases resulting in head trauma often result in loss of memory and in very bad cases, a complete loss of brain function.

What Compensation are Bicycle Accident Victims Entitled To?

When it’s all said and done, a personal injury or wrongful death case is all about compensating the victims for their loss. It’s about maximizing the money damages that you are entitled to by law. In a civil case, no one is going to jail and no one is going to be found guilty of a crime.

Having said that, the question we normally get is, “What compensation am I entitled to in my personal injury or wrongful death case?”
Before sharing our detailed response, we do want you to know that in our opinion, the ability to maximize the amount of compensation you receive in a case has more to do with the experience and reputation of your lawyer than it does with the rules and laws discussed below.

What we mean is that good lawyers know what legal “buttons need to be pushed” to get the insurance company for the other side to offer their insurance policy limits during settlement negotiations. If a jury trial becomes necessary, these same lawyers know how to effectively present evidence and argue your case to maximize your chances of the jury returning with a high verdict in your favor.

Frankly, it’s as much of an art as anything else. Good lawyers are perceptive and know how to “read” the witnesses, opposing party, and even a jury of 12 strangers. While all cases are different, experienced trial lawyers know how to develop rapport with your jury so that early in the trial, the jury is already on your side and the only question remaining is how much are they allowed to award you in their verdict.

Having briefly touched upon the very real “art” of maximizing your compensation, let’s talk a bit about what the law provides for.

In most California cases and at the very least, a person who has been injured or a family who has lost a loved one through the fault of another is entitled to "be made whole" or to be restored insofar as is possible to his or her pre-injury status through "compensatory" damages. In California, this right is established by Civil Code Sections 3281 and 3333.

Generally speaking, this includes being fully compensated for all economic damages such as medical bills, property damage and lost wages and non-economic damages such as emotional distress and pain and suffering. Past, present and future damages are normally discounted to their present lump sum value. In many instances, experts are used to help establish and prove these damages.

Depending on the facts of your case, these damages might include one or more of the following...

**Medical Expenses**

An injury victim is entitled to the reasonable value of all medical expenses that have been incurred, and are reasonably expected to be incurred in the future, as a result of the injury or death. Medical bills, diagnostic tests, medical reports and doctors' testimony are all used to prove these damages.

**Loss of Earnings**
When your injury prevents you from being able to work, you are generally entitled to the reasonable value of working time lost or expected to be lost on account of the injury or death. Wages, commissions, bonuses, fringe benefits and all other earnings are compensable damages. This also includes an "impaired earning capacity" which simply refers to the extent to which the injury has interfered with an injured person's ability to advance to a better paying position or alternative career.

Pain and Suffering

Physical and emotional pain and suffering can be devastating to a personal injury victim. In many instances, this is usually the most valuable element of a bodily injury claim and includes compensation for the past, present and future pain and suffering an injured person goes through or is expected to go through because of an accident. Reasonableness is the only limit on the amount of pain and suffering damages which can be awarded. Civil Code Section 3259.

Emotional Distress

In some cases, an injured party may be entitled to reasonable compensation for all fear, anxiety and other emotional distress suffered or to be suffered in the future. Additional related "intangible damages" may also be awarded to compensate an injured victim for the impaired enjoyment of life (an inability to enjoy life), disfigurement and the shorting of life expectancy.

Property Damage

Property losses such as damage to personal property or to an automobile in a vehicle collision are also recoverable damages. Civil Code Sections 3281. If property is lost, completely destroyed or beyond repair, damages are usually based upon the fair market value at the time of the loss. However, if the property can be repaired, then the proper damages are either the cost of repairs or the difference in the property's value before and after the accident.

Punitive Damages

If it is proven by clear and convincing evidence that the responsible party is guilty of oppression, fraud or malice, an injured party may also be entitled to punitive damages in an amount to punish the defendant. Civil Code Section 3294(a). Developing case law is setting limits at to the amount of punitive damages that can be awarded in any given case.

Wrongful Death Cases

When negligent or wrongful conduct causes a wrongful death, the damages are slightly different. For example, each wrongful death claimant is entitled to damages for all detriment suffered and is likely to suffer in the future. This not only includes the
"necessities of life" (food, clothing, shelter) but also any financial contributions the decedent would have made.

Lost services, advice or training are compensable damages in a wrongful death case. Out of pocket funeral and burial expenses are also normally included in most wrongful death cases.

Most families who experience a wrongful death are surprised to learn that a claimant's grief, sorrow and mental suffering relating to the wrongful death are not compensable damages. Having said that, these victims are entitled to receive compensation for the loss of love, companionship, comfort, affection, society, solace or moral support.

Punitive Damages

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Bicycle Accident Case Overview

When you or a family member is involved in a personal injury or wrongful death case, it's extremely important to act quickly and make smart decisions from the very beginning of your case.

Being seen and properly diagnosed by an experienced and well respected health care provider shortly after your accident is important for two reasons. First, making sure you get proper medical treatment is important to your short and long-term recovery. Second, it's absolutely necessary in personal injury cases to have your doctors properly document (medical records, reports, photographs, x-rays, CT/MRI scans...) all of your injuries and treatment. This record or history will be used to confirm all of your injuries and injury related issues later in the claim, litigation, or trial process.

Doctors such as orthopedic surgeons, neurologists, physical therapists and chiropractors may be needed to help you recover as fast as possible. Economists, life-case planners, as well as experts in vocational rehab are sometimes necessary to help calculate, explain and prove your financial losses.

Investigation and Protecting Evidence

When it comes to investigating the incident that caused your injuries and damages, it's important to keep in mind that evidence can be difficult to locate as time passes. Objects
get moved or removed from the accident scene. Skid marks wash away with rain and other evidence such as broken asphalt, walls, and buildings get repaired or replaced. Damage to vehicles may get repaired before being photographed and the memories of defendants and witnesses fade over time (or after being coached by the other side). In some cases these people simply “disappear.”

To avoid having this happen to you, photographs and video should be taken and all evidence preserved. Investigators should be used to talk to and record the statements of the people involved in your incident and to interview all witnesses.

In most cases, experts in areas such as accident reconstruction or bio-mechanical engineering should be retained and used to review the facts and help establish liability, force of impact, and damages in your case.

Claim and Lawsuit Filing Deadlines

In almost every case, you only have a certain period of time to file a claim or lawsuit. If you fail to properly file or serve the required legal documents in a timely fashion, you will forever lose your legal right to pursue a claim or case against the responsible party. The requirements and time period you have to file a claim against a governmental entity such as a city, county or state is different than when dealing with a private party or company in a slip and fall or automobile, motorcycle, or large truck accident case. Medical malpractice cases also have their own unique requirements and limited time periods to take action.

Legal Documents

Legal documents called claims, pleadings, and motions are normally prepared to file with the court to protect your rights and maximize your chances of obtaining a full and complete settlement or verdict. Settlement demand packages are also sometimes necessary to attempt settlement of a case before the need for a lawsuit becomes necessary. Mediation, arbitration and trials are all used to obtain a final decision in a personal injury and wrongful death case.

Who Pays in a Personal Injury or Wrongful Death Bicycle Accident Case?

When it comes to recovering damages in most vehicle accident cases, most experienced personal injury law firms look to the responsible party’s automobile liability insurance or homeowners insurance. If the person who caused your injuries was employed with a company at the time he or she caused the accident and, was in the scope and course of employment, we may also pursue a claim against the employer company based upon a legal theory of respondent superior (the employer is liable for the wrongful conduct of its employees while on the job).
Other theories of liability may also be reviewed and pursued which might include a dangerous or defective product claim against the manufacturer or a maker of one of the vehicles parts or components (defective brakes, tires, unsafe/exploding gas tank design…).

If the other party has insufficient insurance or no insurance at all, you may be entitled to bring an uninsured motorist or underinsured motorist claim available against your own insurance company. In these circumstances, we will also use experts to undertake an asset background check to see whether or not there is any real property, bank accounts, home equity, or other significant assets to cover your losses. In many cases where the other party was either uninsured or insufficiently insured, we’ve been able to use these techniques to get payment on a large judgment against the other side.

The bottom line is that no settlement should take place and no settlement releases should be signed until you have full and complete answers to all of the above questions and issues.

**Bicycle Accidents- Get Your Questions Answered Today!**

Since 1986, we’ve truly enjoyed helping people, not big corporations and insurance companies. Our daily focus involves protecting the injured, the wronged, and the voiceless, not large businesses that routinely trample, abuse, and exploit the rights of the less fortunate.

Our drive and motivation has always been devoted to leveling the playing field for our clients and families against the self-serving goals of corporate greed and higher corporate profits.

We truly look forward to answering any questions you may have about your personal injury or wrongful death case. Please do not hesitate to pick up the phone and give us a call at 800-661-7044. If you like, you may also contact us via chat, the convenient web form below or through our main web site at www.JacksonWilson.com
More About How and Why We Can Help You with Your Bicycle Accident Case…

Jackson & Wilson has been helping victims of personal injury and wrongful death since 1986. The firm and partners have received numerous awards over the past 25 years including a top “AV” rating by Martindale-Hubbell (highest rating in ability and ethics) and a prestigious listing in the Bar Register of Preeminent Lawyers.

Senior Partner, Jon Mitchell “Mitch” Jackson, is proud to have been named Orange County Trial Lawyer of the Year for his successful jury verdict in a very difficult wrongful death case and, has repeatedly been named a Southern California Super Lawyer by Law and Politics Magazine.

Senior Partner, Lisa M. Wilson, has secured one of the largest first party insurance bad faith settlements in Southern California and is a multiple time member of the Million Dollar Advocate Club which is an organization reserved for only those who have obtained a settlement or verdict in excess of One Million Dollars.

Jackson & Wilson is a top-rated personal injury and wrongful death law firm. Since 1986, we’ve been helping personal injury and wrongful death victims put their lives back together. Both Lisa and Mitch have received the top “AV” rating for ability and ethics by Martindale-Hubbell and their firm is listed in the prestigious Bar Register of Preeminent Lawyers. They are also proud to be multiple time members of the Million Dollar Advocates Club with membership limited to only those lawyers who have achieved a settlement or verdict of $1,000,000 or more.


Also feel free to call with your legal questions or needs: **800-661-7044**

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