

The Virginia Motorcycle Accident Injury Guide



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Introduction

If you're reading this guide, it probably means you or a loved one was seriously hurt in an accident while you were operating a motorcycle and the accident was caused by the carelessness of another person or company. We are here to help and this guide is definitely for you. We will review the applicable laws, how to deal with your insurance company, and why you should strongly consider hiring an injury attorney so you can pursue damages against the at-fault party. So, without further ado, let's get started.

Recurring Situations Our Firm Encounters

Our attorneys routinely encounter accident situations where the motor bike rider was doing everything right, but the other vehicle simply ignored or outright disrespected the presence of the motor bike on the road. By disrespect, I mean the car or truck driver failed to use their blinker when changing lanes or were following too closely to the motorcycle as if the motor bike should move out of the way of the larger vehicle.



Motorcyclists have equal rights and other vehicle operators have equal responsibilities. As long as a motorcyclist is operating within the motor vehicle laws and within the speed limit, their rights as a cyclist are equal to that of the operator of a sedan or SUV. Some people do not realize that if they are a passenger on a friend's motorcycle, their own car insurance policy may apply just as if they were seated in a car operated by their friend.

Also, if you have a passenger on your motorcycle who is a relative in your household, you may be able to pursue "secondary insurance coverage" through your own family car policy, which is in addition to the motorcycle operator's insurance coverage.

Sometimes motorcyclists are hit by a car or caused to spin out of control by a car, causing serious injury. But what happens if the car driver does not stop at the scene to provide assistance? This is the classic hit-and-run accident. In many states, depending upon the car insurance policy, there is still insurance coverage available even when a hit-and-run driver has disappeared and evaded liability. This coverage usually falls within the under insured motorist coverage of your insurance policy.

Another recurring scenario our firm is contacted about is where the motorcycle does not have a policy issued on it, and someone has borrowed the motorcycle. If an accident is caused by another car driver and there is not enough insurance from the car driver who caused the wreck, you may be wondering if there is additional insurance through the motorcycle operator's own policy or a family member policy. The answer - possibly yes. Though, it requires hiring an experienced attorney to get access to all available potential insurance policies. Sometimes insurance is mandated by state law and other times state laws require that family members and resident relatives are covered whether they are listed on a policy or not.

Applicable Virginia Laws

Virginia is an at-fault state, which means that the law of negligence governs. The person who is found to be "at fault" for the accident can be held accountable for your injuries and damages associated with the wreck. However, Virginia is also a contributory negligence state. Basically, this means that if the defendant can establish that you contributed to the

accident, even only slightly, then you can be denied compensation.



For example, let's say a motor bike rider was hit by a drunk driver, but the motor bike rider was speeding when the crash occurred. The drunk driver's lawyer will point to the motor bike rider's speed as a contributing factor to the wreck and argue that the victim should be denied any form of compensation. This is why it is absolutely critical for you to be as upfront and honest with your attorney about what happened in the accident. If something happened that

could be construed as you contributing to the accident, tell the lawyer during your first meeting so the lawyer can appropriately strategize. If you withhold this type of information it will only hurt your potential claim.

Many defense lawyers will attempt to argue that you violated Virginia's helmet or eye protection laws. Yes, Virginia requires you to wear protective eye wear, unless your motorcycle is equipped with a windscreen. Here is the applicable statute:

Va. Code Ann. § 46.2-910

Motorcyclist to wear helmets, etc.; certain sales prohibited; penalty

A. Every person operating a motorcycle shall wear a face shield, safety glasses or goggles, or have his motorcycle equipped with safety glass or a windshield at all times while operating the vehicle, and operators and any passengers thereon shall wear protective helmets. Operators and passengers riding on motorcycles with wheels of eight inches or less in diameter or in three-wheeled motorcycles which have non-removable roofs, windshields and enclosed bodies shall not be required to wear protective helmets.

The windshields face shields, glasses or goggles, and protective helmets required by this section shall meet or exceed the standards and specifications of the Snell Memorial Foundation, the American National Standards Institute, Inc., or the federal Department of Transportation. Failure to wear a face shield, safety glasses or goggles, or protective helmets shall not constitute negligence per se in any civil proceeding.

The provisions of this section requiring the wearing of protective helmets shall not apply to operators of or passengers on motorcycles being operated (i) as part of an organized parade authorized by the Department of Transportation or the locality in which the parade is being conducted and escorted, accompanied, or participated in by law-enforcement officers of the jurisdiction wherein the parade is held and (ii) at speeds of no more than fifteen miles per hour.

Types of Compensation You Can Pursue

A motor bike rider who is involved in an accident in Virginia can pursue compensation for injuries that were caused by another driver's negligence. Damages (i.e. money obtained via a personal injury claim) can include pain and suffering, permanent scarring and disfigurement, decrease in quality of life, lost wages, and so forth. There is also the possibility of obtaining punitive damages. These are damages on top of the damages listed above. Punitive damages are available when a defendant caused a serious injury through reckless or wanton conduct. For example, if a motorcycle rider was seriously hurt because a driver was under the influence of alcohol or drugs, a judge could allow punitive damages to be pursued. However, the availability of these damages depends greatly on what jurisdiction your case is filed in and which judge hears your case.

Why Top-Notch Insurance Coverage is Important

Unfortunately, many motorcycle riders take to the open road with minimal and/or shoddy insurance coverage. This is primarily because the minimum insurance coverage required for a North Carolina motorcycle rider is 25/50/20 coverage. This breaks down to:

- Bodily Injury Liability: (1 Person): \$25,000
- Bodily Injury Liability (All Persons, 1 Accident): \$50,000
- Property Damage Liability (1 Accident): \$20,000

But that is just liability coverage, which covers you in situations where you, the driver may have caused an accident. There are two other types of coverage on the typical motorcycle insurance policy: uninsured motorist (UM) coverage and underinsured motorist (UIM) coverage. UM coverage is for when another driver causes a wreck and they have no insurance coverage. When using UM coverage, your insurance carrier basically steps in and provides coverage to the victim.

For under insured motorist (UIM) coverage, this is used when the at-fault party has insurance, but their coverage is minimal and really not adequate to compensate the victim. UM/UIM insurance is the most misunderstood insurance of all types. It does not "cover" the uninsured—it actually provides coverage to you or a family member if the uninsured driver causes your injury!

This is why you and your loved ones should get more than the minimum amount of insurance coverage, because the insurance laws do not allow the UM/UIM coverage to exceed your liability insurance—it can be equal coverage only, or the UM/UIM can be set lower. Never set your UM/UIM lower than the liability coverage as the monetary difference is generally small. This principle applies to virtually all vehicles, but it is especially true for motor bike riders. Why? Because your risk of severe injury is much higher than the driver of a car. Your body is fully exposed and if you are hit by a car,



truck, SUV, or other motorcycle, you will probably suffer injuries that are much more serious than if you were in a car where there are air bags, seat belts and other safety devices.

Our recommendation is to get as much insurance coverage as you can afford—at least 100,000 dollars in liability/UM if not more. What many people do not realize is that increasing your coverage is actually not that expensive. In fact, many insurance agents consciously do not promote increasing coverage limits because the amount you pay for the improved coverage compared to the amount of coverage the insurance company would have to provide in an accident is a major bargain for you, the insured.

Why Hiring an Attorney is So Important

It is extremely risky to try and bargain with the insurance company yourself. Insurance adjusters prey on victims who attempt to go it alone and do not consult with an injury attorney. In fact, many insurance adjusters will outright lie to people and say, “You don’t need a lawyer, just negotiate with us and we’ll be fair with you.” Never fall for this ruse and always remember that the insurance company is not your friend. The adjuster has one goal – reduce or deny your claim. Why? Because that is how they make money. What you should do is hire a lawyer and when the insurance company contacts you, simply direct them to your counsel.

When looking for a lawyer to represent you, do not simply go to the phone book and pick someone out of the blue. Also, do not be seduced by lawyer TV ads featuring “big cash settlements” and growling bears in the background. What you want is the best motorcycle accident injury lawyer in Virginia to handle your case. Ideally, your lawyer should have actual experience handling motorcycle accident injury claims. Our firm, for example, was able to successfully obtain a \$450,000 settlement for a motorcycle accident victim who had his leg amputated. We represented this client despite learning that he had alcohol in his system. Many lawyers would have said no to the case as soon as they discovered the alcohol. However, given the severity of our client's injuries, we knew we needed to represent him and ensure he received adequate damages for the trauma associated with the accident and the life-altering effects of suddenly losing your leg. We later learned that the client’s blood alcohol content was far below the legal limit. We strategized the best way to convey this information and contacted several toxicology experts to determine how one could establish what our client's blood alcohol level was at the time of the crash. We figured if our client had lost his leg, gone into shock and suffered significant blood loss due to his injury, there must be some impact on his body's ability to eliminate alcohol from his system.

After two years of fighting numerous battles with the defense attorneys, we presented evidence through mediation that our experts would testify that no doctor could say with certainty what our client's blood alcohol level was at the time of the wreck. This is largely due to the fact that he suffered posttraumatic shock, acute anemia due to significant blood loss and the left leg amputation. We eventually arrived at the aforementioned settlement

figure of \$450,000 which pleased our injured client greatly.

Why You Should Not Wait to Speak to a Lawyer

There is a statute of limitations to file a motorcycle accident injury claim. This statute requires the claim to be filed within two years of the date of your accident. We recommend you get the process started as soon as possible. Why? Because waiting until the last minute to actually speak to a lawyer means the research and preparation for filing your claim will be rushed. You don't want that and your attorney certainly doesn't either. There needs to be a proper examination of your medical records, the accident scene, the police report and so forth. This is why hiring an attorney sooner rather than later can actually help you potentially receive a larger recovery from the defendant. A well-prepared and thoroughly vetted case increases the odds of success for an injured plaintiff. Economically, there are no upfront costs to speak to our personal injury attorneys as we charge the contingency legal fee only upon a recovery for you or your family member. We provide free confidential initial consultations also.

Conclusion

We hope you found this guide to be helpful. If you would like additional information about applicable laws in Virginia and whether you have grounds for a motorcycle accident injury claim, contact our firm today.