



# LAW OFFICES OF ERNEST HOLZBERG & ASSOCIATES, P.C.

1700 Broadway, 14th Floor • New York, NY 10019

**(212) 391-1139**

# LEGAL UPDATE

SUMMER 2011

HIGHLIGHTS OF LEGAL NEWS & INFORMATION

## In This Issue

This issue of our newsletter discusses recent New York cases making it easier for recreational bicyclists hurt in accidents to make claims and recover compensation for their injuries. It also gives tips for safe bicycling.

If you have a question about any article, please call us.

**Ernest Holzberg  
& Associates**

## Areas of Practice

- Auto, Motorcycle & Truck Accidents
- Bicycle Accidents
- Slips and Falls
- Medical Malpractice
- Product Injuries
- Construction and Work Accidents
- Falling Ceilings
- Building and Sidewalk Defects
- Lead Poisoning
- Nursing Home Cases

**Free Consultation  
(212) 391-1139**

**Serving Injured New Yorkers  
For Over 50 Years**

**www.holzberglaw.com**

## New Cases Make It Easier For Injured Recreational Bicyclists To Win Claims

**T**here has been some good news recently for recreational cyclists injured due to negligence in New York State. Several recent court decisions have ruled that the risk of an accident is not automatically assumed by someone who is simply riding his or her bicycle on a paved road.

Generally, the law states that someone who voluntarily participates in a sporting event or athletic activity, like bicycling, assumes the risk of injury and cannot receive money for an injury caused by normally expected conditions or risks. This is

called the "doctrine of primary assumption of risk."

However, the courts are now recognizing a distinction between bicyclists participating in "sporting" versus "leisure" or "recreational" rides. In several recent cases, New York courts have allowed lawsuits brought by "leisure/recreational" bicyclists who were injured due to someone else's negligence. The courts ruled that when it comes to leisure/recreational bicycle riding, the assumption of risk doctrine does not apply.

This new exception to the doctrine of assumption of risk for recreational cyclists is based on the principal that

*Continued on other side*

## Tips For Safe Bicycling

**W**ith summer here, more people will take to the road on bicycles. Each year, there are nearly 1000 bike-related deaths and 500,000 serious injuries. Here are tips to make sure you and your family's bike rides are safe:

- Wear a helmet. Bike helmets can reduce head injuries by 85 percent. Your helmet should fit snugly and flat on your head.
- Make sure your bike is in good working condition. All parts should be secure and work properly.

• Use the right size bike. You should be able to stand over the top tube.

• Wear bright clothes. This helps drivers see you.

*Continued on other side*

### **Referrals Welcome!**

When friends, family members or co-workers are in an accident and need legal help, please give them our name and phone number. Thank you.

## Cases Help Injured Recreational Bicyclists, *continued*

biking on a paved public roadway is similar to other leisure activities such as walking, jogging or roller skating on roadways, and it would not be reasonable to assume that participants in these activities consented to, or assumed the risk of, others' negligence simply by participating in these activities.



However, if a cyclist was injured during a bicycle race, which would be considered a "sporting" activity, the assumption of risk doctrine would still apply because, unlike "leisure/recreational" bicycling, bicycle racing is considered a sporting activity. Also, if a cyclist -- whether "sporting" or "leisure/recreational"-- is

injured on an unpaved dirt path, the doctrine of assumption of the risk would apply since the existence of tree roots or holes is a hazard one might expect to find when riding on an unpaved path.

In more and more decisions, New York courts are beginning to recognize that the assumption of risk defense does not apply when someone is injured while simply riding a bicycle on a paved road.

Bicycling is great exercise and can be a safe and economical means of transportation. With summer here and the courts now recognizing and expanding the legal rights of riders, it's time to get on your bikes and ride!

## Tips for Safe Bicycling, *continued*

- Check brakes and use them properly. If your bike doesn't stop quickly, have the brakes adjusted. If your bike has hand brakes, apply the rear brake slightly before the front.
- Be careful of traffic. Over 70% of car-bike crashes happen at driveways or other intersections.

Before entering a street or intersection, always check for traffic.

- Obey traffic laws. Bicyclists must follow the same rules as motorists.
- Make sure your bike has proper safety equipment. Some key safety equipment includes front and rear reflectors, reflectors on

## IF AN INJURY OCCURS

If you are hurt in an accident, call us. We are dedicated to providing the highest quality legal representation to accident victims. We represent only accident victims — we do not represent insurance companies. We fight for your rights and try to quickly resolve your claim, with the goal of obtaining the maximum compensation for you.



**LAW OFFICES OF  
ERNEST HOLZBERG &  
ASSOCIATES, P.C.  
(212) 391-1139**

This newsletter is published for this firm's clients and friends. It has general information. Due to changes in the law, exceptions to general rules of law, and variations of state laws, seek professional legal advice before acting on any matter. ©2011 ANSI

**LAW OFFICES OF  
ERNEST HOLZBERG & ASSOCIATES, P.C.  
1700 Broadway, 14th Floor  
New York, New York 10019**

*Return Service Requested*

PRESORTED STD.  
U.S. POSTAGE  
**PAID**  
Los Angeles, CA  
Permit No. 2455