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# Litigating E-Scooter Injuries and Deaths: Injuries on and by E-Scooters

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WEDNESDAY, FEBRUARY 19, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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# SHARED ELECTRIC SCOOTER LITIGATION

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# SHARED ELECTRIC SCOOTER LITIGATION

- The proliferation of shared electric scooters has resulted in a rash of serious injuries. A July 2019 Consumer Reports investigation tied eight deaths and thousands of injuries to electric scooters. Science new is reporting a 222% increase in injuries from 2014 – 2018. Personal injury lawyers are grappling with how to provide justice for those harmed by this new technology.
- Our goals should be to improve safety and fairly compensate those who are injured. This must include education and advocacy in addition to litigation. As discussed below, current law is inadequate and often hostile to scooter injury claims.

1. <https://www.consumerreports.org/product-safety/deaths-tied-to-e-scooters/>
2. <https://www.sciencenews.org/article/electric-scooter-injuries-rose-222-percent-4-years-united-states>

# WHAT ARE SCOOTERS?

- This innocuous question has no easy answer. Yet the answer may determine rights and responsibilities.
  - For example, currently in the District of Columbia, where I practice, an electric scooters is defined as a “personal mobility device,” akin to motorized wheelchairs. However, new legislation working its way through the D.C. Council will take them out of the Personal Mobility Device classification and place them in its own newly defined category of simply “Shared Electric Scooters.”
  - When I asked the sponsor of the new bill the effect the change would have on liability and insurance coverage, I got a blank stare.
  - My office has been arguing that personal mobility devices are covered under provisions of homeowner insurance policies, at least for the purposes of medpay coverage. Others have made the same argument in terms of PIP type insurance policies in states where that coverage is primary. Finally, the terms of any umbrella policy should be carefully reviewed.
3. D.C. Code § 50-2201.02(13).
  4. See Electric Mobility Device Amendment Act of 2019

# WHAT ARE SCOOTERS?

- But as to what is a Scooter, you'll have to review your local statutes and case law, as well the terms of any insurance coverage. Indeed, insurance coverage (or more typically the lack of coverage) often drives these litigation.
  - Automobile insurance generally excludes vehicles with less than four wheels, and so we have argued that scooters are not vehicles. Homeowners or renter's insurance may cover traditional bicycle injuries, but not cover motorized bike or scooter trips.
  - State Farm's personal liability umbrella policy may cover electric scooters and Allstate's umbrella covers "recreational vehicles," so there may be an argument there. State Farm has been denying medpay claims by saying scooter is a vehicle.
  - Stand alone insurance policies for Scooter riders are scarce but available. One company, Voom, will insure both your Scooter and your Drone – which does sound convenient. Too bad total coverage caps out at \$5,000.
  - Seattle Washington's new draft scooter legislation requires liability coverage to be included along with the rental price, which is the policy many safety advocates support.
5. [https://www.dailytribune.com/news/nation-world-news/insurance-company-avoiding-medical-bills-by-saying-scooter-is-a/article\\_5dob1a62-da3a-5b07-ae72-2bег67odd2ec.html](https://www.dailytribune.com/news/nation-world-news/insurance-company-avoiding-medical-bills-by-saying-scooter-is-a/article_5dob1a62-da3a-5b07-ae72-2bег67odd2ec.html)

# WHERE DO SCOOTERS BELONG?

- A corollary to the question of what are scooters is where should they be ridden.
- In DC (until the law changes) scooters like may be operated on the sidewalks except in the “Central Business District,” where they may not.

**DC Code § 50–2201.04a reads in relevant part:**

- **Operation of personal mobility devices.**
- A personal mobility device shall not be operated:
- (4) Upon a sidewalk within the Central Business District, as defined by section 9901 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR 9901).

6. DC Code § 50–2201.04a

# WHERE DO SCOOTERS BELONG?

- Trouble is that the boundaries of the Central Business District are neither marked nor intuitive. The CBD does include the busiest downtown streets, but all the National Mall and other low traffic zones. One scooter trip can enter and exit the CBD without the operator ever knowing.
  - The theory behind the CBD limitation is to protect pedestrians using business downtown sidewalks. The limitation however would force scooter users to ride in the even more dangerous roadway.
  - Further confusion is found in rules for bicycle facilities, such as trails, lanes and paths. Scooters may be ridden in DC in dedicated bike lanes and trails, but only if they belong to the local DC bike infrastructure. Scooters are prohibited on bike paths and trails managed by the National Park Service, including our busiest bike path, the Rock Creek Park trail.
  - The lack of infrastructure and conflicting regulations adds to the dangerousness of the undertaking.
7. <https://www.google.com/maps/d/viewer?hl=en&ie=UTF8&msa=0&ll=38.8978469999999985%2C-77.032871&spn=0.03026%2C0.042915&z=14&mid=1qzfQJVOiA3oiTF4YPfb6zVd-r8U>

# TYPE OF LITIGATION

- Generally we have been involved in two types of litigation, negligence actions and products liability.
  - Negligence parties can include the scooter rider, other scooter users, pedestrians, cyclists, motor vehicle operators, public transport, and the municipality itself.
  - The most common cases we are screening involve falls and collisions with pedestrians. Allegations of scooter malfunction are common, as are actions against the municipality for road defects.
  - Indeed, in DC the municipality is often the defendant of last resort when a road defect causes an upset. Advocates for mandatory insurance coverage argue that the loss for injuries should fall on the scooter companies instead of the taxpayer.
  - At least one plaintiff has filed under the *Americans with Disabilities Act* ("ADA"), 42 U.S.C. § 12101, arguing that "electric vehicles either travel on the sidewalks or block paths of travel because the vehicles are discarded in the middle of sidewalks or at other rights of way, making it difficult for people with disabilities to safely traverse the pathways." A 12(b)(6) motion is pending.
7. <https://www.google.com/maps/d/viewer?hl=en&ie=UTF8&msa=0&ll=38.8978469999999985%2C-77.032871&spn=0.03026%2C0.042915&z=14&mid=1qzfQJVOiA3oiTF4YPfb6zVd-r8U>
  8. Montoya v. City of San Diego (S.D. Cal. 2020)

# WHAT MAKES SCOOTERS SO DANGEROUS?



- Scooters create a mind blowing list of hazards.
- Novice users are the first risk, and it has been reported that 50% of the serious injuries occur on the user's first ride. Thus we see the Darwin Effect, where only the capable make it to a second ride.
- The electric scooter design itself makes it way more dangerous than a bicycle, the conveyance many associate with scooters. Compared to bikes, scooters have a higher center of gravity, have no seat to use for balance, and a tiny front wheel. The small pothole or road defect which can be traversed with a bicycle will take down a standing scooter rider.
- Scooter maintenance is also an issue. Early scooter designs were not robust and efforts to develop new models have not addressed the issue. In 2019, Lime rolled out its Generation 3 model with a bigger (somewhat) front wheel and upgraded braking

9. <https://www.denverpost.com/2019/11/04/lime-scooters-denver-gen-3/>

# WHAT MAKES SCOOTERS SO DANGEROUS?

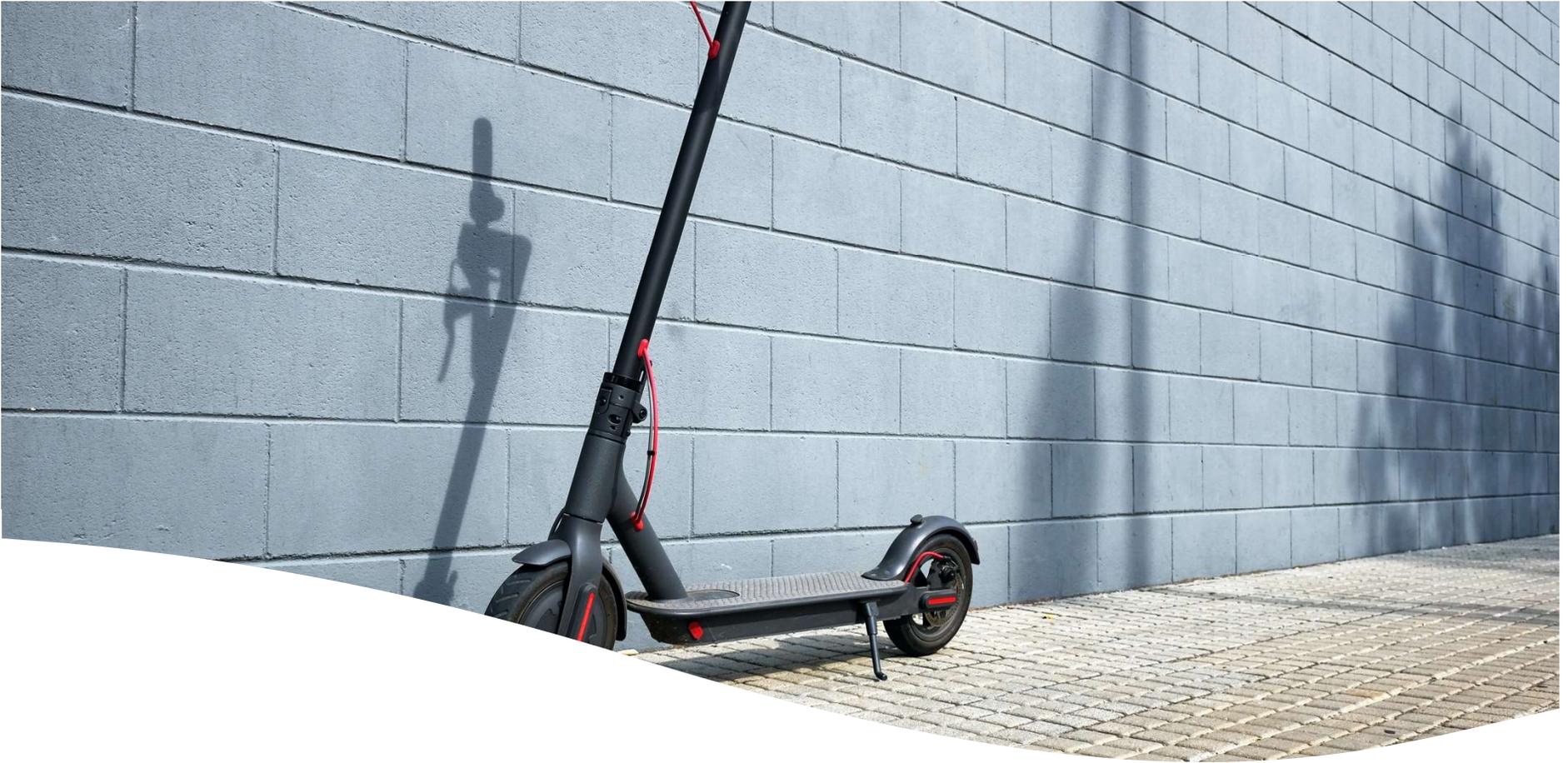


- But reports of problems and breakdowns dog the new fleet. Scooter components are often not designed for commercial use, or being left out in the elements.
- Additional problems come from maintenance, or the lack thereof. The average life expectancy of a shared electric scooter has been reported to be about 28 days. With such a short lease on life, Scooter companies have little incentive to inspect or repair them. This is essentially disposal transportation often used until they break or disappear.
- Skip Scooter, which operates in DC reports that repairs and maintenance of its original model 627 Ninebot ES4 have been eating up its profits. Bird reported losing \$100 million in the first quarter of 2019. After a brief honeymoon, scooter investors are now demanding these companies turn a profit. Rental prices has skyrocketed. Rising operational costs will put more pressure on scooter companies' maintenance budgets.

10. <https://www.theinformation.com/articles/scooter-breakdowns-weigh-on-lime>

11. <https://www.theverge.com/2020/1/21/21072785/skip-electric-scooter-life-cycle-maintenance-costs>

12. <https://www.washingtonpost.com/transportation/2019/10/18/that-scooter-ride-is-going-cost-you-lot-more/>



# E-SCOOTERS

Prof. Tamara M. Kurtzman, Esq.



## Terms of Use

- Long terms of use that riders rarely read.
  - e.g. often 18,000+ words
- Disclaim responsibility for nearly everything.
- Severely limit options for anyone injured or who sustains damage.

## Training

- Many users have little to no experience using the equipment.
- No formal testing or training required.
- While many states require riders to have a driver's license, not equivalent to traditional driving.

## Safety/Equipment

- Helmets required by some jurisdictions for some age groups.
- Riders meant to follow traffic rules but aren't always sure what they are.
- Danger in following traffic rules in certain circumstances.
- Lack of rule enforcement.

# TERMS OF SERVICE: FROM SHRINK-WRAP TO CLICK-WRAP

## Shrink-wrap

- Widely used before apps and online services.
- Applied principally to physical products (i.e. software)
- Users deemed to accept license terms by opening or using product.
- Largely enforceable.

## Browse-wrap

By using the Program you agree that you have read and understood our [Terms of Use](#) and you agree to be bound by such terms. IF YOU DO NOT AGREE TO BE BOUND BY OUR TERMS, DO NOT ACCESS OR OTHERWISE USE THE PROGRAM.

- User is directed via a link to webpage to review (browse through) terms of use.
- User not necessarily required to engage with TOS agreement.
- Judicial reluctance to enforce.

## Click-wrap (aka click-through)

Please review the agreement(s) below and agree by selecting the checkbox(es) at the bottom of the page. You must agree with the terms of these agreements to continue.

### SUBSCRIBER AGREEMENT

Table of contents:

1. Registration as a subscriber; application of terms to you; your account
2. Licenses
3. Billing, payment and other subscriptions
4. Online conduct, cheating and illegal behavior
5. Third-party content
6. User generated content
7. Disclaimers; limitation of liability; no guarantees; limited warranty & agreement
8. Amendments to this agreement
9. Term and termination
10. Applicable law/mediation/jurisdiction/attorney's fees
11. Dispute resolution/binding arbitration/class action waiver
12. Miscellaneous

This Subscriber Agreement ("Agreement") is a legal document that explains your rights and obligations as a subscriber. Please read it carefully.

I agree AND am 13 years of age or older

Continue

# WAIVERS: LIFE AT YOUR OWN RISK

- Terms place liability of operation and safety on untrained riders.
- Only generally require riders to be 18+ years old and have a valid driver's license.
- No insurance requirements.
- Riders (especially visitors) may not know local rules and even those who do may not feel safe obeying them.
  - e.g. e-scooters shouldn't be ridden on sidewalks since they could pose a risk to pedestrians; in reality, however, e-scooters are often found on sidewalks because that is where riders feel safest.
- Lack of enforcement by providers
  - Strict enforcement not in providers' best interest as may limit users.



## From Bird Terms of Use:

**Rider is a Competent Vehicle Operator.** Rider represents and certifies that he/she is familiar with the operation of the Vehicle, is reasonably competent and physically fit to ride the Vehicle, and has reviewed the safety materials provided in the Bird App and/or Bird's website. By choosing to ride a Vehicle, Rider assumes all responsibilities and risks for any injuries or medical conditions. You are responsible for determining whether conditions, including, without limitation, rain, fog, snow, hail, ice, heat or electrical storms, make it dangerous to operate a Vehicle. You are advised to adjust Your riding behavior and braking distance to suit the weather, visibility, surrounding environment, and traffic conditions.

**Safety Check.** Before each use of a Vehicle, Rider shall conduct a basic safety inspection of the Vehicle, which includes inspecting the following: (i) trueness of the wheels; (ii) safe operation of all brakes and lights; (iii) good condition of the frame; (iv) sufficient battery charge power; and (v) any sign of damage, unusual or excessive wear, or other open and obvious mechanical problem/maintenance need. Rider agrees not to ride the Vehicle if there are any noticeable issues, and to immediately notify customer service to alert Bird of any problems.

**Rider Must Follow Laws Regarding Use and/or Operation of Vehicle.** Rider agrees to follow all laws pertaining to the use, riding, parking, charging, and/or operation of the Vehicle, including all state and local laws and the rules and regulations pertaining to Vehicles in the area where You are operating the Vehicle, including any helmet laws. Rider also agrees to act with courtesy and respect toward others while using the Bird Services.

# WAIVERS: LIFE AT YOUR OWN RISK CONT'D.

- Liability waivers (aka "hold harmless" provisions) are used to limit a business' liability for risks associated with an activity or service.
- Minors cannot generally release their own rights which is why, in part, scooter companies require riders to be 18+ year old.
- What exactly are riders often releasing?
  - all express and implied warranties
    - equipment is provided "as is" and "as available"
  - obvious and not-so-obvious risks, dangers, and hazards that may result in injury or death or damage to property
  - vehicles malfunctions
  - any other claims that arise from or relate to the provider's services, including vehicle, placement, equipment, maintenance, related information, or the rider's use of any of the foregoing.
- The enforcement of exculpatory clauses is very state-specific.
  - i.e. Virginia "universally prohibits" any "provision for release from liability for personal injury which may be caused by future acts of negligence" and only allow releases of liability for property damage.
  - i.e. Wisconsin generally invalidate them if they are presented on a "take-it or leave-it" basis, with no opportunity to bargain.
- Even if the waiver is held valid, it will generally apply only to ordinary negligence; most states do not enforce waivers in the face of gross negligence or intentional misconduct.

# MANDATORY ARBITRATION

- Businesses like arbitration clauses because arbitration often benefits the business.
  - Some studies suggest that as many as 9/10 disputes submitted to arbitration are resolved in favor of the business.
- The Federal Arbitration Act (FAA) governs arbitration contracts nationwide and pre-empts state laws that discriminate against arbitration.
  - BUT U.S. Supreme Court: “permits agreements to arbitrate to be invalidated by generally applicable contract defenses.” *AT&T Mobility LLC v. Concepcion*.
  - 9<sup>th</sup> Circuit: Arbitration is in “many ways ... well suited to resolving complex disputes, provided that the parties are free to decide how the arbitration will be conducted.” *Sakkab v. Luxottica Retail N. Am., Inc.*

## From Bird Terms of Service:

Binding Arbitration. PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

If the parties do not reach an agreed upon solution through the support process, then either party may initiate binding arbitration as the sole means to resolve claims, subject to the terms set forth below. Specifically, all claims arising out of or relating to these Terms of Service, and the parties’ relationship with each other shall be finally settled by binding arbitration administered by a mutually agreed upon arbitrator or arbitration service.

The arbitrator, and not any court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms of Service, including, but not limited to any claim that all or any part of these Terms of Service are void or voidable, or whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator’s award shall be written, and binding on the parties and may be entered as a judgment in any court of competent jurisdiction . . .

# NO JURY TRIAL

- Jury waiver clauses represent a middle ground between arbitration and a jury trial, in that the parties are agreeing to a bench trial by a judge.
- Most states, however, have a strong public policy in favor of the right to a trial by jury.
- Many courts (i.e. CA) will not enforce a jury waiver except under limited circumstances such as where resolution takes place in a *nonjudicial* forum, like arbitration or binding mediation.
  - Some courts (i.e. CA) will not enforce pre-dispute jury trial waivers even where agreement is governed by the law of a state which permits such waivers.

## California Code Civil Procedure §631:

(a) The right to a trial by jury as declared by Section 16 of Article I of the California Constitution shall be preserved to the parties inviolate. In civil cases, a jury may only be waived pursuant to subdivision (d).

...

(d) A party waives trial by jury in any of the following ways:

(1) By failing to appear at the trial; (2) By written consent filed with the clerk or judge; (3) By oral consent, in open court, entered in the minutes; (4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation; (5) By failing to deposit with the clerk, or judge, advance jury fees as provided in subdivision (b); (6) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, the sum provided in subdivision (c).

# CLASS-ACTION WAIVER

- A class action waiver is a contract provision that attempts to restrict a person's right to file or participate in a class action proceeding.
- In the past, several states (i.e. CA) regularly invalidated class-action waivers as unconscionable contracts of adhesion.
- With the recognition, however, that the “times in which consumer contracts were anything other than adhesive are long past” courts generally enforce class action waivers.
  - Courts still closely scrutinize drafting and presentation.
    - Has been challenged where notice didn't hit the consumers over the head. e.g. Although TransUnion used click-through notice, customers were not sufficiently put on notice that they were agreeing to the terms of service because (in part) scroll-box showed only first few lines

From Lime Terms of Service:

**Class Action Waiver.** We each mutually agree that by entering into this agreement to arbitrate, we both waive our right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action (“*Class Action Waiver*”). In any case in which (1) the dispute is filed as a class, collective or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration. Notwithstanding any other clause contained in this Section 17 or the JAMS Rules, as defined below, any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

# OPTING-OUT?

- In response to some states' refusal to enforce draconian provisions, some providers allow riders to opt-out of certain restrictions such as arbitration and/or class action waivers.
  - Bird allows but Lime does not.
- Users must be aware of opt-out policies and act quickly in order to take advantage of this opportunity.

- From Bird Terms of Service:
- **Right to Opt Out.** You have the right to opt-out and not be bound by the arbitration and class action waiver provisions set forth above by sending written notice of your decision to opt-out to the following address: Bird Rides, Inc., 406 Broadway, #369, Santa Monica, California 90401. The notice must be sent within 30 days of the effective date or your first use of the Service, whichever is later, otherwise you shall be bound to arbitrate disputes in accordance with the terms of those paragraphs. If you opt-out of these arbitration provisions, Bird also will not be bound by them.

# INSURANCE



## The Giant Insurance Pothole.

Scooter companies generally place responsibility for accidents on riders via rental agreements that relieve the companies of liability. Customers must agree to those terms to ride.

- Platforms typically only insure against defective machinery where required by law. Many are self-insured.
- Most traditional insurance products do not cover scooter injuries or damages. (i.e. auto, home, renter)
- Specialty insurance companies for drones and mobility applications (i.e. Voom) may offer coverage. Likewise, umbrella policies can possibly defray liability for damage/injury.

**NEXT: Liability to Third Parties . . .**

These issues only relate to the arrangement between riders and providers. So what about third parties who are injured by riders or see their property damaged?



# LITIGATING E-SCOOTER CRASHES

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# ARE SCOOTERS INHERENTLY DANGEROUS?



## HERE IS THE MOST RECENT DATA

- Scooter injuries are up more than 200 percent over the last four years
- According to the Jan. 8<sup>th</sup> report [from JAMA Surgery](#), there is a 222-percent increase in scooter fatalities between 2014 and 2018.
- The rise of the e-scooter has been enormous, eclipsing bike share usage nationally in 2018.
- Just a year after gaining widespread availability, according to [a recent report by NACTO](#), a national association of city officials, there is no increase in infrastructure commiserate with its growth.

## THREE RECENT STUDIES

- A Los Angeles [recent study](#) looks at 249 patients with injuries associated with electric scooter use in two emergency departments of a UCLA medical center in southern California. Within a one-year period, 32% of these scooter-injury patients had fractures, 40% had head injuries, and 28% had soft-tissue injuries. Only **4%** of patients were wearing a helmet at the time of their injury, but most patients (94%) were discharged home from the emergency room. Only 2 of 15 admitted patients had severe injuries. This study captured how riders were injured. **Eighty percent** fell off their scooters, 11% collided with an object and **9% were hit by a moving vehicle or object.**
- The Centers for Disease Control and the city of Austin, Texas, recently released an [epidemiological study](#) looking at scooter-related injuries over a three-month period in the fall of 2018. The sample of scooter riders studied yielded an injury rate of 20 per 100,000 rides, **meaning that a person taking four scooter trips a day could expect to be injured [once every 3.5 years](#).** Fifty-five percent of riders were injured on the street, 33% on the sidewalk and 12% in other locations. The study found that **16% of incidents involved motorized vehicles, whether colliding with them or swerving to avoid a collision.** Another 17% involved a curb, an object or a manhole.

# PORTLAND..

- **Portland, Ore.**

In a 120-day pilot program for scooters, data provided by scooter companies, emergency visits and a citywide representative poll.

- Findings include:

- Most scooter-related injuries were minor.
- Scooter-related injuries accounted for 5% of total crash injury visits.
- Of these injuries, **84% were the result of an individual falling off a scooter**. 13% resulted from scooter collision with a car.
- Streets with bike lanes saw the highest scooter usage.
- People rode on the sidewalk less when the road had low speed limits or protected bike lanes,
- This demonstrated the importance of protected infrastructure and safer vehicle speeds to minimizing conflict between scooters and pedestrians and cars.

## WHAT IS THE DATA SHOWING?

- Most people are falling off vs. crashes with vehicles
- Infrastructure Keeps rider safe.
- Overall Injuries are not serious with little long term hospitalizations.

## WHO IS USING THEM?

- Generally they are part of Share Programs
- Still, there are plenty of private owners (myself included)
- Low cost of entry (Ownership or Share)
- Primarily Young Operators
- Primarily Inexperienced Operators
- Younger Operators = Alcohol related crashes

## DEFINING E-SCOOTERS

- Micro mobility. What is it?
- E-Scooters
- Bike Share (Electric and Traditional)
- Revel Scooters
- Shared Mobility Devices
- There is no real definition yet of micro-mobility but the “1<sup>st</sup> mile - last mile” devices are in our Towns and Cities

# ARE OUR LEGISLATORS DEFINING THEM ??



## THEY ARE TRYING BUT...



- Being rolled out with not a lot of advance warning
- No Studies being done before roll out....
- Devices are not fitting into traditional legislative definitions
  - Are they a *Motorcycle, Bicycle, Pedal Assist Device*???
- Are being pulled off the streets after fatal crashes (Jersey City)

## EXAMPLE OF DEFINITIONS:



## TAKE A LOOK AT NEW YORK. WHERE DOES A SCOOTER FIT IN?

- S 125. Motor vehicles. Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power,
- S 159. Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

## ALTHOUGH NOT LEGISLATED DMV AND OTHER AGENCIES HAVE GUIDE LINES

- In NYS the Dept. of Motor Vehicles provides guidance on vehicles that cannot be registered or operated on New York State Streets and Highways.
- It lists a Motorized Scooter as “ a device with a motor attached and a handlebar for a standing rider, An example of a motorized scooter is the device called a Go-ped.”
- Lawful use of devices with motors usually turns on whether they have a vin # and can be registered.

# IF WE CAN'T DEFINE THEM THEN HOW DO WE USE THEM?

- Without clear cut definitions of these devices these questions remain?
- Where can we ride them? Bike lanes, road position,...
- Who can ride them? Age requirements, licenses..
- What do we need to ride them? Helmets, etc..
- Some of this will go to the issue of whether a rider is comparatively negligent in not following the rules of their use.

# WHAT BENEFITS ARE AVAILABLE?

- What benefits can we get?
  - No-Fault (PIP);
  - Uninsured and Underinsured coverage?

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NY is a no-fault State that requires a serious injury in order to bring a claim in a auto crash. If no no-fault available, then no need for serious injury.

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Policy language exclusions in Uninsured and Underinsured Motorist Coverage.

Are these covered devices?

Pedestrian?

Cyclist?

Are we going to see insurance policies re-written to address E-Scooters?

## WHY YOU NEED TO UNDERSTAND THESE LAWS

- When litigating these cases you need to have a clear and concise understanding of the law regarding their use.
- You also need to have a clear understanding of what is not legislated? If not legislated how can their use or method of use be unlawful?
- Do the research! Take this argument away from the Defendants and know the law better than them!

## TYPES OF CRASHES

- Scooter vs. Motor Vehicle
- Road Defects
- Scooter vs. Pedestrian
- Scooter vs Cyclist
- Defects in the Scooter
- Trip and falls over Scooters



## SCOOTER V MOTOR VEHICLE

Generally speaking these crashes will be the same as on a bicycle. These include:

- Conflicts at intersections
- Vehicles exiting driveways and parking lots
- Lane changes
- Entering protected lanes
- “Doorings”

## SO WHAT IS UNIQUE ABOUT AN E-SCOOTER?

- Smaller in Size; ( typically the rider will lose the conflict)
- Lower center of gravity than bikes;
- Relatively high speeds (15-20 MPH);
- Inexperienced riders in traffic;
- Drivers not used to co-existing with E-Scooters on the Road.

All of this is going to make their use amongst vehicles more dangerous to the user.

## SCOOTER VS. ROAD DEFECT

- Pot holes – Given the nature of the device, wheel circumference, size, inflation, will all effect stability when encountering these conditions
- Road Hardware – Also a risk, manhole covers, street plates, (improper ramping)
- Road Construction – Failure of Municipality or private contractor to safe guard site and make it passable to all forms of transportation
- Speed Bumps/Humps- An often over looked but dangerous street calming device for cyclists and scooters;
- Rider Inexperience: This will play a significant factor in handling these conditions

## IN THE AUSTIN STUDY:

- 55% of riders were injured on the road;
- 50% of interviewed riders believed that pavement surface conditions led to their injuries;
- Most injuries occurred away from protected infrastructure.

## SCOOTER VS. PEDESTRIAN

- Here is a scenario for two potential claims
- Operator striking pedestrian
- Pedestrian walking into path of Scooter Rider
- From my experience in NY, no coverage for the operator by the company.
- Successful claims have come from home owners or renters insurance indemnifying the operator or pedestrian
- Same issues with Scooter vs. Cyclist, is there coverage.

Cyclist a delivery worker, bike messenger, things to be investigated in the claim

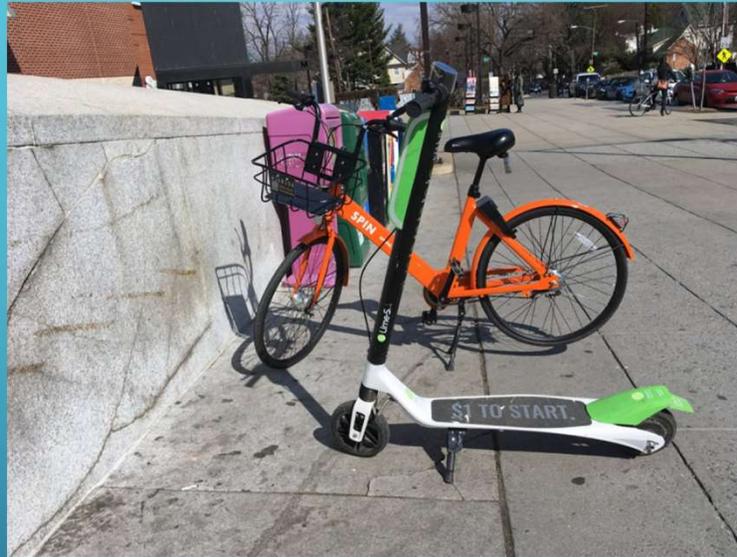
## DEFECTS IN THE SCOOTER

- The issue of the ride agreement is addressed by Tamara and the limitations therein
- In February 2019 Lime reported a defect in their braking mechanism resulting in sudden braking.
- I have handled a number of claims against Citi-bike in NY and currently handling Citi Bike E-Bike claims. Claims arose out of defects in the bike including dislodged fenders.

### You need to:

- Secure the Bike,
- Letter of Preservation and email to customer service
- Expert to examine the Bike ASAP,
- Is mechanism of injury consistent with defect (Citi bike E-Bike cases, over the handle bars with brake malfunction)

## TRIP AND FALLS OVER E-SCOOTERS?



# POTENTIAL LIABLE DEFENDANTS

- In NY I am aware of successfully litigated claims over trip and fall over Citi-Bike Stations
- Targets?
- Share company?
- Scooter owner?
- Municipality ?

# THANK YOU



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