

# ADVOCATE

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## Electric Scooter Liability

By Jonathan Negretti, Esq.

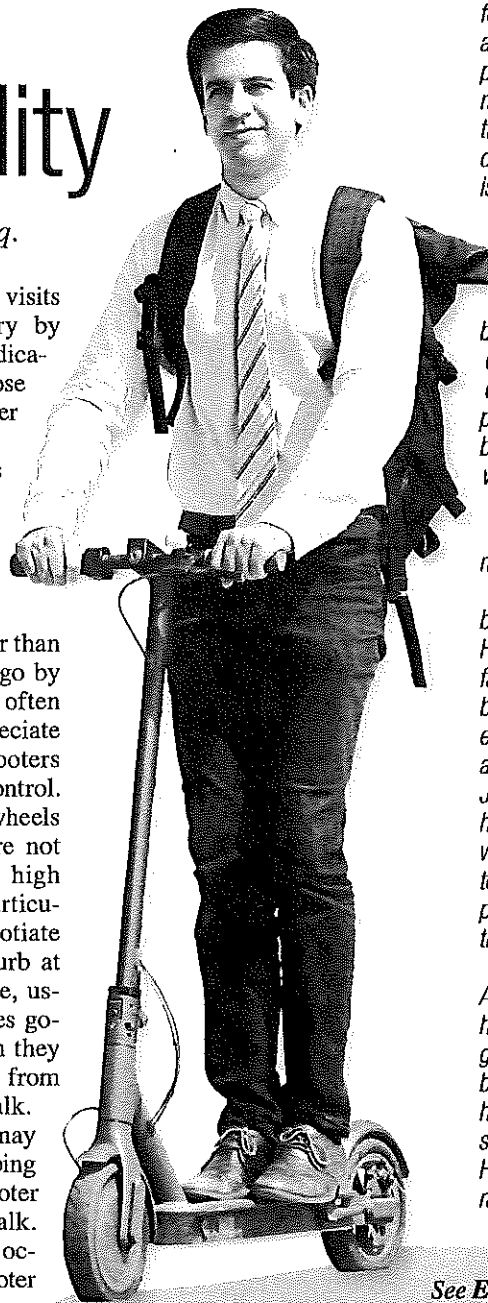
The number of electric scooter accidents has exploded since they hit the scene in 2017. Companies such as Bird, Lime, Lyft, Razor and Spin have placed thousands of electric scooters on city sidewalks throughout the country. Cities are scrambling to enact legislation to regulate electric scooters and provide protections to those who are injured by or because of them. Determining responsibility and finding coverage for electric scooter accidents can be challenging.

Perhaps the most common claim arising from the use of electric scooters is when the user of the electric scooter is injured while riding or falling off of the scooter. The CDC released a study that says that almost half of all injuries involving an electric scooter are head injuries. A reason for this is because most users do not wear helmets when they ride. Other factors such as a lack of familiarity with the scooter and the high speed at which they travel also contribute to injuries. A UCLA study found one-third of scooterer-re-

lated emergency-room visits have involved delivery by ambulances — an indication of how serious those injuries related to scooter accidents can be.

Electric scooters often go 15 miles per hour or more. While that may not seem fast, it equals the top speed of most golf carts and is likely faster than any skateboard could go by human power. People often don't — or can't — appreciate the speed of these scooters and can quickly lose control. In addition, the small wheels on these scooters were not designed to travel at high speeds and are not particularly equipped to negotiate a half-inch lip on a curb at a fast speed. Therefore, users may find themselves going end over end when they transition at full speed from a city street to a sidewalk.

Potential clients may also be injured by tripping and falling over a scooter left lying on a sidewalk. Trip and falls typically occur because electric scooter



*Jonathan wears multiple hats for Negretti & Associates, including assisting with both litigation and pre-litigation cases. Jonathan also manages the overall direction of the firm, focusing on new business development. Jonathan's belief is that if you hire good people and represent good people, then good things will happen.*

*Jonathan directed the firm into personal injury because he believes that people should have equal standing with the insurance companies. He does not like that people get taken advantage of simply because they don't have a familiarity with how a personal injury claim works. Jonathan's goal is to provide a resource to people in a way that makes a difference in their lives.*

*Jonathan was born in New York, but now calls Phoenix his home. He grew up quite impoverished. His family was one of those that would be adopted for the holidays. That experience has helped Jonathan appreciate the little things in life. Jonathan is also committed to helping the less fortunate. This is why he launched a charitable aspect to Negretti & Associates. Jonathan's promise is to pay forward the help that he has received in life.*

*Jonathan graduated from Arizona State University for both his undergrad and law school. That gives him the rare distinction of being called a "Double Devil." When he is not working, Jonathan enjoys spending time with his wife and kids. He also competes in obstacle course racing and ultramarathons.*

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# Electric Scooter Liability

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companies do not police where scooters are left. In Phoenix, electric scooter companies are required to use geo-fencing technology to preclude riders from ending a ride outside of a designated zone. This means the user would have to transport the electric scooter to certain area before they would be allowed to end their ride. However, it does not appear that the electric scooter companies enforce this requirement. A micro study done by the Phoenix New Times found users were able to park electric scooters outside of the designated zones, leading to electric scooters being left haphazardly in harm's way.

**Before accepting representation on an injury claim involving an electric scooter, here are some things you should consider:**

## A. The User Agreement

In order to ride an electric scooter, the user has to download an app from the scooter company. The app requires the user click and agree to an agreement drafted by the company, and some user agreements are quite lengthy. For example, the user agreement for

Bird is 58 mobile pages long! Buried within those pages are things like liability waivers, disclaimer of warranties, and binding arbitration agreements. Some companies even accelerate the deadline by which the user has to file their claim from two years to one year. Other companies attempt to put a cap on damages by limiting them to \$100. In a recent decision by the United States District Court in the Northern District of Texas, the Court enforced an arbitration provision in the user agreement on a wrongful death claim related to an electric scooter. *Phillips v. Neutron Holdings, Inc.*, No. 18-3382, 2019 WL 4861435 (N.D. Texas, October 2, 2019)

## B. Applicable Laws

Even though the user is riding an electric scooter, they are bound to follow the rules of the road in the city or state where they are riding the scooter. However, most cities and states require electric scooters be ridden in bike lanes, not on city roads. The City of Tempe recently enacted laws stating an electric scooter must be used in a bike lane

if one is provided, but the user must ride in the street when the speed limit is below 25 mph. The intent is to keep electric scooters off sidewalks as much as possible.

One problem with this law is that the user is required to use turn signals as if driving a vehicle without blinkers. This means they are required to take one hand off of the handlebars to make the signal. Yet, the user manuals for these electric scooters state one should never remove either hand from the handlebars. Removing one hand makes it extremely difficult to control the electric scooter. Clearly, a conflict exists between the intent of the manufacturer and new laws being enacted. In California, CA Vehicle Code §21228 requires that the user dismount an electric scooter and walk it across the road when making a left left-hand turn. Most users are unaware of this law and even fewer abide by it. It is important to educate yourself on the laws applicable in the jurisdiction where the accident occurred to defeat any affirmative defenses.

*See Electric Scooter Liability, page 17*

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## C. Scooter Defects/Malfunctions

Malfunctions like faulty brakes or sticky accelerators may cause riders to jump off their scooters, leading to injury. Other malfunctions include baseboards breaking, handlebars detaching, and front wheels rotating 90 degrees. If the claim were to develop into a products liability claim, it is important to preserve the evidence. Encourage your clients to call the police and have a report made in the hopes the electric scooter will be impounded until further inspection can be performed. Also, research any recalls of the model used in the incident. For example, Lime issued a recall of its scooters in January of 2019 as a result of scooters reportedly braking abruptly mid-ride. This appeared to be due to a software update triggering the scooter's anti-theft braking system.

Another danger to be aware of is insufficient headlights or a lack of headlights. Most, if not all electric scooters are available to ride after dark but without sufficient lighting, the user could encounter a dangerous condition and not have the last clear chance to avoid it.

Electric scooter companies are required to maintain and fix any defective scooter. However, some scooters may be poorly maintained and not removed from service when an issue is discovered. Some electric scooter companies have knowledge of vandals cutting break lines and rendering the braking system on the scooter completely useless, but it is unclear whether they take appropriate steps to either prevent the practice or resolve the issue when reported. Some electric scooter companies are also able to remotely slow down the scooter once it enters a geo-fenced area, but no warning is given to the user and the rider can lose control of the scooter when the speed changes and fall off of it.

**Once you determine fault, your next step is figuring out who is responsible to pay for your client's injuries.**

As you probably guessed, many insurance policies were drafted well before the proliferation of the electric scooter. The language in a policy will be critical to determining coverage.

**If your client is riding a scooter and they are hit by another vehicle,** that vehicle's insurance company may cover your claim. Additionally, your client's own auto insurance coverage may apply, depending on the language in your policy. Homeowners insurance could also apply, depending on the policy.

**If your client is hit by a scooter user,** and you want to bring a claim against the electric scooter company. Most, if not all, electric scooter companies are denying liability contending their insurance doesn't cover the harms caused by the user. Potential theories against the scooter company are for negligent failure to train/warn/educate the user in the rules & safe operation of the scooter.

**In a scenario in which a pedestrian trips over a scooter that was abandoned,** the pedestrian might have a claim against the electric scooter company, as well as the city or private property owner where the scooter was located when the pedestrian fell. However, most cities are now requiring indemnity agreements with electric scooter companies to limit exposure.

**If the scooter user hits a pothole and suffers injuries,** the city could be a culprit. You would treat this like any other

See *Electric Scooter Liability*, page 19

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governmental claim. Beware of the governmental negligence standard as well as the time frame in which to bring these claims.

If a scooter rider is injured because of a defective scooter, that could trigger a products liability claim against the manufacture of the scooter. These claims can be complicated and expensive to pursue. Preserving the electric scooter as evidence is likely a key component to your claim but can be tricky because it is not owned by your client. User agreements typically state the electric scooter is the exclusive property of the electric scooter company and that one may not retain possession of the scooter. However, there is also a provision in most agreements stating the user will be charged for the value of the electric scooter plus administrative and processing fees if the electric scooter is not returned within 48 hours. Make of that what you will!

At the end of the day, we are seeing more and more insurers denying coverage for both auto policies and homeowner policies. Even UM carriers are denying coverage in certain situations. It is important to get a copy of the policy to review it for potential coverage.

Electric scooter accident claims aren't the easiest to navigate but they are not going away any time soon. In fact, earlier this year, the amount of electric scooter accidents in metro Phoenix exceeded the triple digits. It is important to educate yourself on the laws that may apply and think critically about how to approach these claims if they come your way. ■



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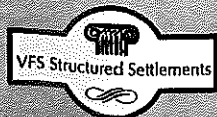
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