

MOTORCYCLES AND THE LAW

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MOTORCYCLE ACCIDENTS and the LAW in NEW YORK STATE

A motorcyclist is approximately 16 times more likely to die in a collision than an automobile occupant, and three times more likely to be injured in a crash. Many motorcycle accident victims attempt to handle their own personal injury cases, hoping the insurance companies will settle fairly without the need for attorneys. Unfortunately, this is generally not the case: on average, ***accident victims who retain an attorney receive three and a half times more money than those who do not!*** (source: Insurance Research Council 1999 study). New York State has a complex system of insurance claims and recovery. If you are injured, it is critical to retain a law firm experienced in handling biker & auto specific claims.

WHAT TO DO IN THE EVENT OF AN ACCIDENT AT THE SCENE

Stay calm and do what you can to avoid blocking traffic. Never leave the scene of an accident in which you or your motorcycle were involved, no matter how slight the collision. If you can, pull over to the side of the road as soon as possible without endangering any other person and without obstructing traffic.

Check to see if anyone is injured – Call an Ambulance

If you think you or your passenger are even slightly injured, seek emergency treatment. Since insurance companies and defense attorneys pay close attention to the time between the accident and the first medical treatment you receive, you should seek medical attention as soon as possible if you are injured.

Call the police / Make a Report

An accident should be reported to the police as soon as possible and a police report should be filed. Be aware that what you say to the police will most likely be reflected, in some form or another, in the police report.

You always have the right fill out and file your own accident report. This is essential if no police showed up at the accident or if the police report itself contains or omits important facts.

Make Observations

Identify witnesses so there will be someone to support your claims, even if it does not go to court. Write down names and addresses, and interview them. Ask them what they saw, and make a note of phrases they used like “slammed into,” “plowed,” “speeding” or “he ran the red light.”

IMMEDIATELY AFTER THE COLLISION

See a Doctor

If you are injured schedule an appointment with your own doctor as soon as possible, even if you are not currently in serious pain. Don't let the insurance company choose a doctor for you. You have the right to a doctor of your choice. Each time you are examined by a doctor, make sure you are specific in explaining to the physician and staff how the accident happened and any injuries and problems you sustained as a result.

Photograph Your Injuries

Take photographs of your injuries as soon as possible and continue to take them throughout your recovery process. It is particularly important to take pictures of injuries before they heal. These pictures will help solidify your personal injury claim.

Photograph Your Motorcycle

Take pictures of your motorcycle as soon as possible after the accident. When the insurance company asks for proof of damage, it is difficult to dispute a picture taken of your motorcycle at the collision scene. If possible, take pictures of the other vehicles involved as well. These pictures will help supply information about the severity of the impact associated with your collision.

Don't Sign – Don't Talk

It is likely that an insurance company will call you after the accident looking for you to answer a series of questions. This conversation WILL BE RECORDED. Do not give a statement to anyone without having a proper motorcycle attorney present with you or on the phone. Any statement you provide will be used against you in the future and could seriously damage your case.

If an insurance adjuster shows up at the scene, at your home or work, don't give any statements and don't sign anything.

Do not sign any authorizations. If you do, the insurance company may obtain all of your confidential medical records, tax returns, and lost wage information.

Do not accept any settlement offer unless you get a second opinion from a motorcycle accident attorney. Do not wait until the adjuster makes an offer on your motorcycle claim to call an attorney. You should contact our office as soon as practical under the circumstances.

Inform your insurance company

Make sure that you call *your* insurance company immediately to report the accident. Failing to report the accident in a timely manner could result in the insurance company not covering you for the accident. Contacting your insurance company does NOT require you to give any statements or to sign anything.

Call Kupferman & Fauci, Attorneys at Law

Before giving or signing any statements, consult Kupferman & Fauci, PLLC. We are experienced New York motorcycle attorneys who will tell it to you straight, help you to avoid costly mistakes and to obtain the maximum amount of recovery for your damages possible.

AS TIME PASSES:

Write Down Your Observations

Keep daily notes about your injuries including any pain you are experiencing, difficulty you are having in completing daily activities and any pain medications you are taking. These notes can be very valuable when presenting your claim to the insurance company or (if necessary) to a judge and jury in court.

Keep Records of Expenses

Insurance companies always ask for proof of anything you claim as an expense. Be sure to keep receipts for prescriptions, household services like lawn-mowing, cooking, cleaning, transportation and so forth.

MOST IMPORTANTLY:

Consult an Experienced Personal Injury Lawyer

A New York motorcycle accident attorney like **Kupferman & Fauci** can help you determine the real value of your claim. There is no cost for a consultation and you pay nothing unless we recover something for you.

INSURANCE CLAIMS

No "No-Fault" Coverage for Motorcycles

The Bad News:

The No-Fault law in New York governs automobile related accidents. The No-Fault law provides coverage under a vehicle's policy regardless of fault for necessary medical treatment and a portion of lost wages. Motorcycle riders in New York however do NOT have No-Fault insurance to cover the cost of medical treatment or lost wages if they are injured in a motorcycle accident. This means the injured motorcyclist has to pay for all injury-related medical treatment out of his or her own pocket (or other health insurance), and must personally absorb the cost of lost time from work. These costs can reach tens-of-thousands of dollars. Unfortunately, insurance companies know this. Not all of them respond in a prompt and fair manner, and many will try to take advantage of these special rules applicable only to motorcycles. Insurance companies' obligations are to their stockholders and policyholders, not to people injured in a motorcycle accident. Insurance companies have enormous advantages: vast wealth, sharp experienced adjusters and attorneys with dozens of legal reasons to reduce or deny compensation in motorcycle accident cases.

The Good News:

In order to successfully bring an auto-accident lawsuit in New York, the injured person must show that they have sustained a "serious injury," as that term is defined by New York's No-Fault Laws. Exactly what constitutes a "serious injury" is a highly litigated area in which Courts have, in the last five years or so, taken a less plaintiff friendly approach and are dismissing cases more than ever. The "serious injury" requirement is probably the largest obstacle to recovery in auto accident cases.

However, New York's No-Fault Law does not apply to motorcycles.

Since the law does not require a "serious injury" to be shown in motorcycle accidents, the largest bar to recovery is removed.

Liability for Bodily Injury

Generally, in order to recover damages for an injury, someone other than yourself has to be found at fault. It could be the other driver, the municipality responsible for the road, a pedestrian, etc. This reflects New York State as a pure comparative negligence system for recovery. This means that the trier of fact (jury or judge) decides liability AND RECOVERY based upon relative degree of fault. For example: RED CAR is found to be 75% at fault and BLUE motorcycle 25% at fault. If your damages (injuries) are \$300,000, then you receive 75% of that amount, or \$225,000. Also, under the rules of Joint and Several Liability, a motorcyclist may seek to recover the entire amount of their damages against the owner/operator of any vehicle involved as long as that particular vehicle is found to be at least 1% or more at fault. This is a critical rule of law when a particular vehicle does not have sufficient insurance coverage to adequately cover the loss.

Sum / Supplemental Motorist Claim:

An important aspect of insurance coverage is SUM coverage (Supplemental Underinsured/uninsured Motorist coverage). This kind of claim is against your own policy and the amount you can recover is determined by many complex factors including:

- The severity of your injuries;
- The dollar limits of the "at fault" parties insurance policy;
- The dollar limits of your SUM policy;
- Whether you have properly and timely given notice of a SUM claim to your insurance company;

SUM coverage is optional, it's not required in order to register your bike, and the limits of it are chosen by you. **You should however think very seriously of obtaining sufficient SUM coverage if you ride a motorcycle given the modest increase to your policy premium versus the chance of becoming seriously injured with inadequate or no other insurance to be found.**

Uninsured Claims

If you are involved in an accident in which a vehicle has no insurance, the bodily injury portion of the claim can be recovered by making an Uninsured Motorist Claim. This claim would be made against the carrier that insured the motorcycle (if that vehicle is uninsured - then a vehicle in your household - a household vehicle is defined as any vehicle within your household registered to either you or someone related by blood or marriage). In an Uninsured Motorist Claim, the biker's insurance company essentially "steps into the shoes" of the at-fault uninsured vehicle. As a consequence, your own company benefits from all the same defenses that the offending vehicle would have including potential liability apportionment.

If a passenger on a motorcycle is injured and there is no household vehicle, then a claim can be made against the Motor Vehicle Accident Indemnification Corporation - an insurance industry safety net created by and run by New York State.

Underinsured Claims:

Underinsured Motorist Claims are also known as a Supplemental Claims. This is an optional provision with the policy covering the motorcycle you ride or within a policy covering a household vehicle. It may provide extra insurance over and beyond that of the offending vehicle. In other words if the offending vehicle has a limited policy and the

value of your injuries exceeds the policy limits of that vehicle, then a claim can be made against your own policy under the Supplemental Provision to the extent your Supplemental Provision exceeds the total coverage of the offending vehicle. Since motorcycle injuries can be very serious, and the minimum amount of coverage that an automobile policy in New York must provide for is only \$25,000 per injured person, **it is important that every motorcyclist carry sufficient SUM coverage to cover themselves in the event they get hit by this underinsured or no-insured driver.** Unfortunately, most motorcycle riders (and motorists) have no idea what, if any, SUM coverage they have.

Paying the small increase of a policy premium for extra SUM coverage is one of the most important things you can do to protect yourself.

Property Damage Claim:

Damage to your motorcycle can be covered in two ways. First is collision coverage, or a "first party" claim if you paid a premium for such coverage. This will provide coverage regardless of who is at fault. Your insurance company will pay the cost of repair or the value of the motorcycle as it was immediately before the loss, whichever is less. The amount paid is further reduced by the amount of the deductible in the policy.

The second way the property damage claim can be asserted is against at fault party. Just as in a personal injury claim, the other carrier may raise the issue of comparative fault. In other words, to the extent that you are partially at fault for the happening of accident, the other carrier will attempt to reduce the payment by the percentage of fault that you contributed to the happening of the accident.

Often the carrier for the other party does not willingly offer the fair market value of the damaged motorcycle. In that case, a claim can be added to the personal injury claim as a second cause of action, or pursued separately.

Supplemental Spousal Liability Coverage:

New York State law now requires that upon request of an insured, and upon payment of the premium, an insurance company must provide Supplemental Spousal Liability insurance coverage. This coverage provides bodily injury liability coverage under a motor vehicle insurance policy (or motorcycle policy) to cover the liability of an insured spouse because of the death of or injury to the other spouse, even where the injured spouse must prove the culpable conduct of the insured spouse. For example, Husband and Wife are riding along on the same motorcycle. Husband thinks he sees something in the road and swerves to miss it. He loses control, crashes and burns. There turned out to be nothing in the road after all. Both Husband and Wife are seriously injured. Because Husband was 100% at fault, Wife can rely on Supplemental Spousal coverage to recover for her injuries.

This is why husbands and wives who ride together should always obtain the maximum amount of Supplemental Spousal Coverage.

This coverage is included within the policy's bodily injury liability limits and does not increase the amount of those limits. An example showing how this might work is:

- Insured's bodily injury policy coverage limit: \$100,000/\$300,000
- Insured's bodily injury damage claim paid to spouse: \$75,000
- Insured's bodily injury policy coverage limit available to all other claimants subject to a maximum of \$100,000 per person: \$225,000

This example assumes the spouse and other claimants involved in the accident have a right to sue the insured for economic loss or for non-economic loss (i.e., pain and suffering) sustained as a result of a "serious injury" as defined in the Insurance Law.

This is not a guarantee, representation or warranty of any outcome of any case. The foregoing paragraphs are but a short introduction to this type of coverage and should never be construed to obviate the need to seek direct legal advice.



TRAFFIC STOPS

HOW SHOULD YOU ACT WHEN STOPPED BY A COP? What should you say or not say? To increase your chances of getting away with a warning and not being ticketed, read on.

WHEN YOU SEE LIGHTS FLASHING BEHIND YOU

If a police car pulls up behind you with lights flashing, the next few minutes is key in whether or not you will be ticketed. Keeping things safe for you and the police officer is of most importance. At the minimum:

- Slow down and turn on your right turn signal or hand signal to the right;
- Pull over to the right shoulder – as far as you can and as safe under the circumstances. The police are trained to leave their vehicle further out into the shoulder/road than yours so as to leave a barrier against passing traffic.
- Stay on your bike unless you are told to get off. It's a challenge to the officer if you get off since officers are very cautious because of the high rate of attacks in these situations.
- *Keep your hands in view and on the handle bars.* If the police ask for your driver's license, registration or insurance card, tell the officer where the items are before you reach for them.
- Look the officer in the eye at all times you are speaking to him/her. Show them the utmost respect and be courteous.
- Do NOT at any time, especially while the police are approaching you, reach for, or PLACE anything in your coat, in saddlebags, etc. Even if you are trying to hide something, the police are trained to think that you are reaching for a gun and they will draw their guns, pull you off your bike, search you, and possibly arrest you.

The key is to play it cool and keep it safe. The easier and safer you make the process for the officer to approach you the more likely the officer will let you go just with a warning and not assign you a speeding ticket.

What to say/not to say to the police officer

As the officer approaches you, ask "what's the problem?" The first thing the police officer will respond or ask you is whether you know why you have been stopped.

Do NOT admit anything at anytime. Do not admit "I was speeding" or respond "I think I was going 79 miles an hour." Even if you think you were speeding, you truly and honestly do not really know why you were pulled over. The Police will want you to admit that you were speeding and that is what most drivers do - they admit it and then receive a speeding ticket for their honesty and helping the police.

Don't admit that you were speeding but don't deny it either if you really were. When the officer says that you were stopped for speeding you can respond by: "I'm sorry officer, I was not paying attention to my speed. I'm not in any hurry, I was just lost in thought. I'm sorry, I will pay attention, slow down, and take it easy. Do you think you can let me go with a warning?"

Remain calm and quiet while the officer is reviewing your documents. If the officer writes you a ticket, accept it quietly and never complain. Listen to any instruction on paying the fine or contesting the ticket, and drive away slowly.

Most people get pretty nervous when they got stopped by a cop. The secret is to stay calm, speak to the officer in a respectable tone and politely ask whether the officer can let you go with a warning.

ASSERT YOUR FOURTH AND FIFTH AMENDMENT RIGHTS

The Fourth Amendment: “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.”

The Fifth Amendment Self-incrimination Clause: “..No person... shall be compelled in any criminal case to be a witness against himself or be deprived of life liberty or property without due process of law..”

Keep Private Items Out of View. Always keep any private items that you don't want others to see out of sight. Legally speaking, police do not need a search warrant in order to confiscate any illegal items that are in plain view.

Say “No” if the police request they Search the car or you personally. If the police ask your permission to search, you are under no obligation to consent. The only reason he's asking you is because he doesn't have enough “probable cause” to search *without* your consent. If you consent to a search, the police WILL search you and your car. If they find anything illegal, you (and perhaps your passengers) will be further ticketed, arrested, and thrown in jail depending on what they found. **YOU DO NOT HAVE TO CONSENT TO ANY KIND OF SEARCH.** This is the one area where most people fall victim to not asserting their Fourth Amendment Rights. They feel that because it's a police officer who's asking, they are compelled to consent to a search, or, if they don't consent, the police will find “it” anyway and their situation will be worse. This is false. **YOU DO NOT HAVE TO CONSENT TO ANY KIND OF SEARCH – ESPECIALLY IF YOU HAVE SOMETHING THAT YOU DO NOT WANT THE POLICE TO FIND.**

If the police request your consent to search, and you refuse,

but they go ahead and search anyway and find some illegal item(s), you would, under these simple circumstances, have grounds to suppress whatever they found due to a violation of your Fourth Amendment rights.

A majority of avoidable police searches occur because citizens naively waive their Fourth Amendment rights by consenting to warrantless searches. As a general rule, if a person consents to a warrantless search, the search automatically becomes reasonable and therefore legal.

Consequently, whatever an officer finds during such a search can be used against you to convict you.

Don't expect the police to tell you that you have a right to refuse consent. The police are not required to inform you of your rights before asking you to consent to a search. The police are actually trained to use their authority to get people to consent to a search.

If, for any reason you don't want the officer digging through your belongings, you should refuse to consent by saying **something like, "Officer, I know you want to do your job, but I do not consent to any searches of my private property."** If the officer still proceeds to search you and finds illegal contraband, your attorney can argue that the contraband was discovered through an illegal search and hence should be thrown out of court. You should never hesitate to assert your constitutional rights.

Do Not Answer Questions without Your Attorney Present.

Anything you say can, and probably will, be used against you. In just about any case imaginable, a person is best off not answering any questions about his involvement in anything illegal. Assert your Fifth and Sixth Amendment rights by saying: **"Officer, I have nothing to say until I speak with a lawyer."** **If you do choose to answer any of the officer's questions, always be honest. Police are not easily tricked. If you feel it is best not to answer truthfully, then don't say anything at all.**

Do Not Physically Resist. If the police proceed to detain, search, or arrest you despite your wishes—do not physically resist. You may state clearly but non-confrontationally: “Officer, I am not resisting arrest and I do not consent to any searches.” Or you may assert your rights by simply saying nothing until you can speak with an attorney.

Frequently Asked Questions

1. When are police legally allowed to search me?

Searches with a Warrant: Police are legally allowed to search your home or your property if they obtain a search warrant. To obtain a warrant, the police or an informant must sign an affidavit — a written statement under oath — to convince a judge that the police have probable cause that criminal activity is occurring at the place to be searched or that evidence of a crime may be found there.

No Search Warrant: Most searches occur without warrants because the police take advantage of many legal exceptions to the Fourth Amendment’s requirement:

Consent Searches If the police ask your permission to search you, your bike, your home, purse, or other property, and you freely consent, their warrantless search automatically becomes reasonable and therefore legal. Consequently, whatever an officer finds during a consent search can be used to convict you.

Plain View Rule: Any object police see in their plain view is fair game. For example, if you have illegal contraband on the front seat of your car and the police can plainly see it while they have pulled you over and are questioning you, they can question you about it and seize it if they feel it is illegal. So it’s common sense: keep private items you don’t want others to see out of sight.

Searches Made in Connection with a Legal Arrest Police do not need a warrant to make a search “incident to an arrest.” After a legal arrest, police can legally protect themselves by searching the person and the immediate surroundings for weapons that might be used to harm the officer. Consequently, whatever an officer finds during such a search can be used to convict the person.

Exigent Circumstances. Police may conduct a warrantless search or seizure if “exigent circumstances” exist. Exigent circumstances are emergency situations requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence.

NOTE: If you ever face a real-life police encounter where the officer is urging you to consent to a search, do not try to figure out whether or not the search is legally permissible. You must assume that the search is *not* legally permissible and that the search will only be legal if you consent. If an officer is in fact legally allowed to search you, you have nothing to lose by refusing consent.

2. What is “probable cause”?

Many factors contribute to police authority in a given situation and making up what is probable cause. Understanding the what, when, why, and how of police conduct during a stop is complex and varying standards of proof exist to justify varying levels of police authority during citizen contacts.

Generally, before the police find probable cause, they look for **Reasonable Suspicion**: facts or circumstances which would lead a reasonable person to suspect that a crime has been, is being, or will be committed. At this stage, police may detain a suspect for a brief period and perform a frisk. In some cases, drug-sniffing dogs may be called, although officers must cite a reason for suspecting the presence of drug evidence in particular. Refusing a search does not create reasonable suspicion, although acting nervous and

answering questions inconsistently can. For this reason, it is best *not* to answer questions if you have to lie in order to do so. Police authority increases if they catch you in a lie, but not if you refuse to answer questions. As a general rule, reasonable suspicion applies to situation in which police have reason to believe you're up to something, but they don't know what it is.

If the police find Reasonable Suspicion, then they most likely have **Probable Cause**: facts or evidence that would lead a reasonable person to believe that a crime has been, is being, or will be committed **and the person arrested is responsible**. At this stage, police may perform a search, and often an arrest. Probable cause generally means police know what crime they suspect you of and have discovered evidence to support that belief. Common examples include seeing or smelling evidence which is in plain view, or receiving an admission of guilt for a specific crime.

3. Is refusing to let the police search me an admission of guilt?

No. If the police ask your permission to search, you are under no obligation to consent. Refusing a request to be searched does NOT give the police reasonable suspicion or probable cause, as those phrases are discussed above. If charges are eventually brought against you, the fact that you initially refused consent is no basis for any additional charges, i.e., asserting your Fourth Amendment rights is not a crime.

4. Are police required to read me my rights, and if they don't, can I go free?

No. The police do not have to automatically read a person his or her Miranda Rights as part of performing an arrest. From the police perspective, the time when they *should* read a person his or her Miranda rights is when: 1) the person has been taken into custody, 2) the police then questions the person about a crime, and 3) the information

obtained is sought to be used against them in court, or, the information leads to new information about other evidence or other crimes. If you are taken into custody and the police do not read you your rights and you make certain statements that are later sought to be used against you, you *may* have grounds to make a *motion to suppress* those statements and any evidence obtained as a result of making those statements. If the motion to suppress is successful, it does not necessarily mean the case against you is dismissed, just that the evidence illegally obtained can't be used. The police can always use legally obtained evidence to convict you.

Pretext Traffic Stops

A "pretext stop" is when the police detain a person for an apparent minor crime (e.g. traffic offense) but they actually suspect the person of being involved in a major crime (i.e. drug possession).. There are numerous minor infractions that the police can legally pull over a car. Thus the police frequently choose to pull over cars based on suspicions that something more serious might be going on. Frequently, police officers decide who to pull over based on age, race, and appearance. This is unconstitutional, but impossible to prove.

The best way to avoid a pretext stop is to avoid violating any traffic laws. This includes, but is not limited to, obeying speed limits and traffic signs, signaling properly before making turns, and keeping your car in working order. If the officer can't form a convincing explanation for why you were pulled over, any seizure becomes illegal, and any evidence found during a traffic stop can't be used in court. Of course, a legitimate traffic stop always remains a possibility, thus it is important to keep private items out of sight and never consent to searches.

BASIC REQUIREMENTS FOR MOTORCYCLES IN NEW YORK STATE

ON-ROAD

Helmet	Required
Brakes	Required for both wheels
Speedometer/Odometer	Speedometer required if manufactured after 9/80
Eye Protection	Required
Daytime Use of Headlight	Required-modulating headlight permitted
Passenger Seat	Required if carrying a passenger
Passenger Footrest	Required if carrying a passenger
Passenger Age Restriction	None
Helmet Speakers	Single earphone only
Periodic Safety Inspection	Required
Mirrors	Required for BOTH sides
Radar Detector	No Restriction
Turn Signals	Required if manufactured in 1985 or after
Muffler ..	Muffler required; no straight pipes; no removal of baffles; no modification of exhaust system that increases noise beyond exhaust system originally installed. Ref: NYS V&T Law, Article 9, Sec 381

Maximum Sound Level

Max Allowable A-Weighted Sound Levels at Speed: 35 mph or less, 82 dB(A); over 35 mph, 86 dB(A), measured at, or adjusted to, a distance of fifty feet from the center of the lane in which the motorcycle is traveling: NYS V&T Law, Article 10, Sec 386.

Insurance Requirements

Compulsory Liability (Minimum Limits)(25/50/10)

Handlebar Height

Handle bars or grips cannot be more than the height of the operator's shoulders.

Rider-Education WaiverSkill Test

Accept Motorcycle Endorsement FromYes

Two abreast in same lane

Yes, but only two. § 1252. Operating motorcycles on roadways laned for traffic(a) All motorcycles are entitled to full use of a lane and no motor vehicle or motorcycle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. However, this subsection shall not be construed to prevent motorcycles from being operated two abreast in a single lane.

Lane Splitting

NO. § 1252. Operating motorcycles on roadways laned for traffic(b) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken. (c) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

OFF ROAD

Safety HelmetRequired

Eye ProtectionNot Required

Minimum Operator Age

Direct supervision of a person 18 or older if under the age of 16

Rider Education Certification

Required if operator is at least 10 years old, but less than 16

Operator LicenseMust carry liability insurance

HeadlightRequired after sunset

TaillightRequired after sunset

MufflerRequired by law

Maximum Sound LevelNo Limit

Spark ArrestorRequired by law

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