

Litigating Bicycle Crash Cases

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Why are bicycle cases different?

“Assessment of a collision between a motor vehicle and a bicycle can depend on one’s perspective. To someone who perhaps used to ride a bike to school and still owns such a contraption, but who tends in middle age to rely most often on the marvels of the internal combustion engine, it may well appear that a cyclist pedaling away on a busy downtown street is intrinsically a nuisance and probably negligent just because he is there. The guy on the bike...may, on the other hand, feel much like a minnow among sharks, or even among whales when a “Macho Diesel” trash truck is among those travelling...nearby.” Washington v. A&H Garcias Trash Hauling, 584 A.2d 544 (1990) (dissenting opinion)

All plaintiffs’ attorneys deal with increasing public bias against their clients. The media and insurance company propaganda have taught the general public, meaning jurors, that individuals seeking damages for negligence are malingering, money-grubbers seeking to profit from poor, hapless insurance companies and other premium paying policy holders. Those injured in bicycle v.

motor vehicle crashes face an additional challenge – a system-wide bias against cyclists and in favor of motor vehicle drivers.

Police officers and prosecutors often misunderstand and misapply the law governing cyclists' rights and responsibilities. Officers investigating accidents often record the driver's, and not the cyclist's, version of events and prepare their reports from the driver's point of view. In one case we handled, the police officer wrote a very favorable report, stating that the driver, a young, married, student, admitted she was text messaging when she plowed into the cyclist, a college professor, from behind and that the cyclist "had no contributing causes to the accident." Despite the cyclist's serious injuries and several weeks of hospitalization, however, the officer issued no charge against the driver!

Jurors who are not themselves cyclists often share a strong public sentiment that cyclists have no right to share the road and believe the injured cyclist is at fault, not only for assuming the risk by being on the road, but by getting in the way of drivers who are trying to get somewhere important.

There are many different nuances for an attorney to explore and understand in order to successfully represent an injured cyclist. First, it is most helpful for the attorney herself to have some personal knowledge of cycling. The best way to get that knowledge and to really understand the cyclist point of view is for the attorney herself to be a cyclist. This may not be possible for everyone so the attorney should at least make an effort to delve into and gain an understanding of cyclists and the cycling culture. And when I say "cycling culture," I do not intend to limit our scope to spandex wearing recreational cyclists, but to anyone who rides a bicycle for fun, work or just to get from point A

to B. Second, the attorney must understand the laws and principles that apply to cyclists – state statutes and case law as well as local ordinances – and the exceptions to those laws and principles. Finally, the attorney should understand damages components unique to injured cyclists.

Case Investigation

As with any type of litigation, the information gathering phase of the case is one of, if not the most, critical. I include a checklist for bicycle cases (parts of which look the same as your run-of-the-mill personal injury case). Of course, you will request additional information in discovery.

Information:

- Accident report and other documents (photos) generated by investigating officer
- All insurance declaration sheets from client
- Medical records and bills
- Prior medical records
- Photographs of bicycle and vehicle
- View scene, looking for (if relevant):
 - road conditions – debris? Uneven surface? Grates? Other unusual characteristics?
 - bike lanes, bike paths or other bicycle specific features (bike box, etc)
 - width of traffic lanes
 - road markings
 - grade
 - visibility from (1) cyclist's vantage (2) motor vehicle vantage
 - red light trigger?
 - intersection characteristics
 - skid marks
 - accident debris
 - distance from parked cars to traffic lane or conditions of traffic lane near parked cars
- Interview witnesses and get statements
 - eye witnesses to the crash
 - others on ride
 - if helpful, individuals familiar with client's expertise as cyclist
 - if dog attack case, neighbors, animal control (records), other cyclists

- Wage loss statement from client
- Client's cycling habits and abilities
- Evidence of physical difficulties from family and friends
- Criminal record check on defendant, client and critical witnesses
- Driving history of defendant and client¹
- Lawsuit history against driver/driver's employer
- Asset search on defendant
- Check client and opposing party on Google, MySpace and Facebook, etc
- Driver's vehicle title history
- All evidence of other damages, out of pocket costs, incidental expenses
 - clothing (jersey, shorts, gloves)
 - helmet
 - shoes
 - misc gear
- Check for local ordinance (bicycle related, dogs, etc)
- Check bicycle safety standards (LAB, witnesses), Uniform Vehicle Code and other sources for guidance
- Lien request letters to Medicare and Medicaid if applicable
- Obtain valuation of bicycle
 - purchase receipts
 - ebay, etc
 - bicycle shop valuation
 - replacement value
- If appropriate, accident reconstruction expert
- If motor vehicle is truck or driver is driving within the scope of employment, follow normal procedures for collecting work records and information in trucking case.

Early Activities/Services:

- Collect med pay for clients as bills come in
- Notify liability carrier
- Notify uninsured/underinsured insurance carrier
- Send out protection letters as necessary. Make sure client knows how to protect his credit
- Submit property damage claim early
- Insist client keep pain journal
- Insist that client seek medical attention
- Notify prosecutor's office of representation; attend driver's court date and advocate for client's position
- If driver not charged, find out why and press for charges

¹ Sometimes you have to look further than the Department of Motor Vehicles...Michigan Attorney Scott Goodwin represented an experienced cyclist run down by a city bus. When the bus driver's record came back clean, Goodwin dug further, searching records for litigation against the bus driver, and finally obtaining an unedited version of her record from the Secretary of State. Michigan Lawyers' Weekly, Dec. 27, 2004.

- Persuade prosecutor's office to subpoena driver's cell phone records while they are still available

A recent case of ours demonstrates how investigating officers often regard cyclists and how fact gathering can make a difference and present an entirely different picture from that contained in the officer's report: One clear, bright weekend morning, an experienced cyclist wearing bright clothing was riding his bicycle along a road with two lanes and a turn lane in between. He had been properly riding near the right side of the lane, but wanted to get into the left turn lane to turn into a Hardee's for coffee. He looked over his shoulder and waited until the lane was clear before moving into the turn lane. Witnesses in two other cars said he made his way to the turn lane slowly and deliberately and that his movements were clear and predictable.

The cyclist was in the left turn lane waiting for an oncoming car to pass when a driver in a large pick-up with fringy things hanging from the rearview mirror came barreling down the road in the turn lane and ran over the cyclist, demolishing the bike and throwing the cyclist over his hood and onto the other side of the street. It appeared that the truck driver was trying to pass the cyclist in the turn lane because there was no indication the driver had any intention of actually turning left. The driver did not use a turn signal. Despite these facts indicating that the driver was at fault, the officer's report read, "Vehicle 1 (truck) was changing lanes into the left turn lane when vehicle 2 (bicycle) darted out in front of Vehicle 1." (see attached police report)

The officer never spoke with the cyclist (although he was, miraculously, conscious). The driver was not charged, even though his driving record was

atrocious, including a DUI for which his license had been suspended until two weeks before the crash. Before receiving any demand from us, in fact before the cyclist had even finished his treatment, the insurance company sent a letter saying they were denying liability based on contributory negligence. Our investigation, however, including the statements of witnesses who corroborated the cyclist's account, showed that the cyclist was not negligent and we filed suit.

Making the Case

A significant aspect of bicycle litigation will be countering arguments that the cyclist was negligent. Countering cyclist negligence arguments requires understanding and being able to explain the cyclist's behavior and overcoming juror and insurance company bias. As important as this is in any state, in contributory negligence states like North Carolina, it is indispensable.

The process usually starts with a police officer and possibly a prosecutor, who often display an ingrained bias against the cyclist. Much of the authorities' bias against cyclists in motor-vehicle/cyclist crashes stems from their misunderstanding of laws applying to cyclists. A key part of the cycling attorney's job is to educate these authorities – both on the law and the facts that prove that the law is on your side. This starts with understanding the rights and responsibilities of cyclists.

The Law Applying to Cyclists, or is it?

Most, if not all, states include bicycles in their definition of "vehicle."² Cyclists therefore share all of the rights and responsibilities of motor vehicle drivers. On rare occasions, a statute will set forth a requirement specific to

² See e.g., N.C. Gen. Stat. § 20-4.01(49).

bicycles. For example, North Carolina specifically requires bicycles riding “at night” to “be equipped with a lighted lamp visible up to three hundred feet in front...” and “a taillight or rear reflector that is red and visible for up to two hundred feet from the rear when used at night.”³ For the most part, however, it will be up to the cyclist to figure out how the general rules of the road – such as riding as near as practicable to the right hand side of the road, or coming to a complete stop at a traffic light or signal - apply to her.⁴

This task is not as easy as it sounds. For example, the North Carolina statute states:

- (a) Upon all highways of sufficient width, a vehicle shall be driven upon the right half of the highway except as follows:
 - (1) When overtaking and passing another vehicle proceeding in the same direction...
 - (2) When an obstruction exists making it necessary to drive to the left of the center of the highway...
- (b) Upon all highways any vehicle proceeding at less than the legal maximum speed limit shall be driven in the right-hand lane then available for thru traffic, or as close as practicable to the right-hand curb or edge of the highway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.⁵

Clearly North Carolina law requires a bicycle to ride in the same direction of traffic. Beyond that, the requirements are less clear. The statute also seems to imply that bicycles may take the full lane if traveling at or above the maximum speed limit but, if traveling at less than the maximum speed, must stay as far right “as practicable.” Easy, right? Not quite. First, the North Carolina Department of Transportation, in its bicycle guidebook, interprets the statute as follows:

³ N.C. Gen. Stat. § 20-129

⁴ See e.g., N.C. Gen. Stat. § 20-146(a) (right side of the road) and § 20-158 (stopping).

⁵ N.C. Gen. Stat. § 20-146.

...a bicyclist must ride in the same direction as other traffic. Also, the bicyclist must travel in the right-hand lane and should ride as close as practicable to the right-hand edge of the highway.⁶

The guidebook lists exceptions as (1) passing another vehicle in the same direction, (2) avoiding a dangerous obstruction, (3) riding on a one-way street, (4) preparing for a left-turn. Unlike the statute, the guidebook seems to say that the cyclist must travel in the right lane but always as close as practicable to the right-hand edge of the highway.

Where does this leave the cyclist? Does she ride in the lane or in the shoulder? Is the “edge of the highway” the edge of the lane or does it include the shoulder? If she is riding in the lane at less than the speed of traffic, will a jury find her negligent if she is injured? What if there is debris in the shoulder that makes it difficult to maneuver a road bike? Does this make traveling close to the curb “impracticable?” If so, how much debris must there be? These questions do not even take into consideration local ordinances that may either clarify or further muddy up the issue. Things become even more complicated if the state law requires cyclists to use bicycle lanes or adjacent paths.

Of course in the end, the statute would control over a guidebook or ordinance, but it is easy to see why authorities can be confused, and how bias against the cyclist can come into play. A cyclist may need to ride in the lane because of debris or obstacles in the shoulder and, for the sake of safety and visibility, may want to ride some distance into the lane. A police officer, thinking the bicycle should not be in the roadway, may decide not to cite the driver who

⁶ A Guide to North Carolina Bicycle and Pedestrian Laws, NC DOT, Division of Bicycle and Pedestrian Transportation, 2004.

negligently fails to see the cyclist and hits him. Applying the unique facts and circumstances of bicycle crashes to our every-day knowledge of personal injury cases will help to overcome these obstacles.

Cyclist's Duty to Act as a Reasonable Person

A cyclist, like any other vehicle driver on the road, is required to act as a reasonable person. See, e.g. Ipacs v. Cranford, 65 Conn. App. 441, 783 A.2d 1044 (2001) (plaintiff cyclist had duty to use care under facts she perceived or should have perceived); Valenzuela v. Bracamonte, 126 Ariz. 472, 616 P.2d 932 (1980) (“a bicyclist, like a driver having the right-of-way at an intersection has a duty to exercise the degree of care which a reasonably prudent person would use under the circumstances...”); Cupp v. Kudla, 158 Ohio App. 3d 728, 822 N.E.2d 392 (2004) (cyclist could be found negligent if he failed to employ care of reasonable person); Washington, infra (dissenting opinion) (happening of accident does not establish that cyclist failed to act with reasonable care; jury question as to whether cyclist acted prudently under all the circumstances.)

Violation of a statute does not necessarily mean the cyclist acted negligently. For example, whether riding on the shoulder or a designated bicycle lane is “practicable,” although required by statute, may depend on: traffic speed, bicycle speed, lane width, wind, drop-offs, lane surface, debris, parked cars and cyclist ability.⁷ The law must be applied in light of the prevailing conditions. A pair of Michigan cases recognized the realities of bicycle riding in deciding two

⁷ Bicycle Accidents, Broker and Hill, Lawyers and Judges Publishing Co., Inc., 2006, p. 269

cases where the driver argued that the cyclist was negligent for failing to obey the right-side of the road rule.

In Winter v. Perz, 335 Mich. 575; 56 N.W.2d 276 (1953), the driver hit the cyclist from behind. The traffic lane was 11 feet wide, the car 6 feet and the bicycle, at most, 2 feet. The driver testified that he did not see the cyclist until he was immediately in front of him and then swerved to his left to avoid him. However, the cyclist also swerved to the left and the driver hit and killed him. The Court relied heavily on its previous ruling in Stockfish v. Fox, 275 Mich. 630 (1953):

A bicycle is a vehicle, and its operator entitled to reasonable use of the highway. The law provides no groove in which it shall travel and a driver coming from behind without warning may not rely upon the bicycle remaining at a specific distance from the edge of the road. Safe distance is not measured by cold inches but by circumstances and the variations from perfectly straight driving or riding which may be anticipated from ordinary careful persons. It cannot be said as a matter of law that 4 or 6 feet from the right edge of an 18 foot pavement is a safe distance to pass a bicycle when the truck steals up without warning at a speed of 25 or more miles per hour, although the bicycle occupied only 18 inches or 2 feet of the space and is traveling close to the edge. The distance allows too little margin for possible change of position or because the bicyclist may be startled by the unheralded appearance of the truck, to be legally sufficient.

Agreeing with the holding in Stockfish, the Court in Winter said that safe distance and proximate cause were questions for the jury and upheld the verdict for the plaintiff.

In Stover v. Northcott, 1999 Neb. App. LEXIS 254 (1999), the Court held that the issue of the cyclist's negligence should not have been submitted to the jury. In that case, the driver of the automobile making a left turn onto the road

where the cyclist was riding toward the intersection was clearly negligent – he crossed the lines on both sides of the intersection and was in the cyclist’s lane when he hit him. The cyclist could not have avoided the crash by moving to the right because there was a storm drain with sand debris in the way and the cyclist was afraid he would fall and be run over by the driver if he rode into the sand. Under the circumstances, the cyclist acted reasonably as a matter of law.

Normally, however, the reasonableness of the cyclist’s actions should be left to the jury. In Pote v. City of Norwalk, 1993 Conn. LEXIS 2257, for example, the cyclist was hit by an oncoming car that crossed over the center line to avoid hitting parked cars in her lane of traffic. Plaintiff complained against the city for allowing the cars to park in the way of traffic. The city claimed the cyclist was negligent per se because the collision occurred 13 feet from the right edge of the roadway and the cyclist must have failed to “ride as near to the right side of the roadway as practicable...” The Court disagreed, holding “practicable” was a question for the jury to decide.

Cyclist’s Violation of Statute not Necessarily Contrib

Often a cyclist may be riding along committing some technical statutory violation that has nothing to do with the cause of the crash. For example, when a driver hits a cyclist from behind at night, a properly functioning headlight on the bike would not likely have prevented the crash. The attorney may be confronted with these arguments when, for example, (1) the cyclist does not have the appropriate lighting; (2) the cyclist was not wearing a helmet; (3) the cyclist fails to stop or come to a complete stop at a light or stop sign; (4) the cyclist is riding

in some portion of the road the driver/police officer believes is not sufficiently far to the right.

In Spence v. Rasmussen, 190 Ore. 662, 226 P.3d 819 (1951), the cyclist was riding along the right-hand side of a highway in the dark when he was struck from behind by a truck and killed. At trial, defendant argued that plaintiff was negligent for failing to use his front light and for wearing dark clothing. Plaintiff's accident reconstructionist testified that the bicycle had a front light and rear reflector. Another driver who had passed plaintiff testified that the front light was off. However, that driver, even with his lights dimmed, saw plaintiff from 100 feet back.

The court held that neither plaintiff's failure to use his front light, nor the fact that he was wearing dark clothing, mattered. The law did not require a particular type of clothing and the lack of a front lamp had nothing to do with the accident. The Court cited an earlier case for the position that the plaintiff's rights, as a cyclist, "were no less than those of a motorist who is proceeding along the highway in violation of some section of our motor vehicle act...a motorist or a bicyclist, who violates some section of the motor vehicle law, does not thereby forfeit his civil rights. His disregard of the law affects his rights against another only if it contributed to his injury." The mention of the clothing is interesting, since there is no law, to my knowledge, as to the type of clothing a cyclist must wear. Police reports and news accounts, however, frequently dwell on this fact.

Similarly, in Tsering v. Breault, 2001 Minn. App. LEXIS 641 (2001), the cyclist was riding in a bicycle only lane when he came head to head with a taxi driver who had swerved out of the taxi lane to avoid another cab that was illegally

parked there. The jury found the cyclist negligent because he had no headlight, but found that the cab driver's negligence, not the cyclist's, proximately caused the accident. The jury's finding was plausible, the appellate court held, since the area of the crash was well-lit.

Stopping is often a point of contention between cyclists and drivers, who often feel that cyclists fail to follow the rules of the road, particularly at signs and signals. One problem is that few state laws specify what a stop is for a bicycle. Is the cyclist required to put his foot on the ground or can he simply stop, look and go? Many cyclists use clipless pedals (a device by which the cyclist's shoe is attached to the pedal, for efficiency) and tend to avoid unclipping, unless necessary. The question becomes: what action does the cyclist have to take to avoid being found negligent if hit by a motor vehicle in an intersection?

In Piquette v. Stevens, 128 Md. App. 590, 739 A.2d 905 (1999), the cyclist came to a stop sign at a T intersection and rolled through to make a right turn. At the same time, the driver was on the dominant road to the cyclist's right and making a left onto the road the cyclist had come from. The evidence, including the cyclist's accident reconstruction expert, showed that the driver crossed over into the cyclist's lane when making the turn and hit cyclist. The trial court held that the cyclist assumed the risk of being hit by failing to come to a complete stop. The appellate court reversed; although the cyclist violated the law by failing to come to a complete stop, his failure to stop had nothing to do with the accident.

Proper review of the facts and investigation, therefore, can save the day even when the cyclist has or may technically have violated the law. See also Farole v. Eichman, 39 Cal. 2d 822, 249 P.2d 261 (1952) (lack of lights on bicycle

and fact that child was riding illegally on the handle bars did not cause accident when truck driver came through intersection too fast to avoid bicycle in crosswalk; cyclist had right to be on crosswalk and that fact that the plaintiff was illegally on the handlebars was “merely an accompanying circumstance.”); Ipacs infra (cyclist’s recovery not barred by failure to stop when driver would have had sufficient time to react, had driver not been driving close to the curb at a high rate of speed).

As to helmets, states have varying helmet requirements. North Carolina requires only bicycle operators and passengers under age 16 to wear helmets.⁸ Yet, even if a cyclist’s only injury in an accident is a broken hand, the accident report is likely to state whether the cyclist was wearing a helmet. Be prepared to argue (maybe making analogy to seatbelt cases) that your jury should not hear evidence of helmet use, or lack thereof, if there is no head injury. Even if head injury occurs, depending on the speed and type of impact, a helmet may have been irrelevant. Of course you will likely need an expert to explain this.

Finally, the cyclist’s obligations under the statutes cannot be construed in such a way as to prevent the cyclist from being able to exercise his rights to use the road like any other vehicle. See City of Trotwood v. Selz, 139 Ohio. App. 3d 947, 746 N.E.2d 235 (2000) (cyclist not in violation of prohibition against operating a vehicle at such a slow speed as to impede traffic, even though in middle of lane; cyclist is not in violation of the ordinance when he is traveling as fast as he reasonably can). In Selz, the Court emphasized that an “ordinance cannot reasonably be read as prohibiting bicyclists from using a public highway.”

⁸ N.C. Gen. Stat. § 20-171.7 (b)

Just the Facts...

Often the case just comes down to competing facts. Nowhere is this truth more evident than in crashes that occur in intersections, statistically the most dangerous part of the cyclist's ride.

Cyclists frequently encounter motor vehicles who race past the cyclist, only to make a sharp right turn, causing the cyclist to slam on his brakes, or, leaving no time for the cyclist to react, slam into the turning car. Although the motor vehicle is obviously at fault, the cyclist may be blamed for this type of accident for failing to yield or failure to stop. Liability in these cases is always hotly contested. See Washington infra (Court held cyclist at fault for failing to anticipate that the truck he was riding next to would turn in front of him).

In Suhre v. Jefferson Parish, 601 So. 2d 718 (La. 5th Cir. 1992) the cyclist was riding to the right of the lane next to a bus. The bus turned right, cutting her off and forcing her into traffic. There were varying accounts as to whether the bus passed the cyclist before cutting her off or whether the cyclist passed the bus on the right. The defendant hired an accident reconstructionist and the judge attributed a greater degree of fault to the cyclist. In Moliere v. Wright, 487 So.2d 587 (La. 4th Cir. 1986), however, under a similar set of facts involving a bus, only 25% percent fault was attributed to the cyclist, who was thrown under the bus when it cut him off and clipped his rear tire. Plaintiff presented to two accident reconstruction experts at trial. See also Virginia Lawyers' Weekly, January 14, 2008 (settlement reached where triathlete injured by motor vehicle who cut off cyclist before turning into a parking space.); Chicago Daily Law Bulletin,

September 1, 2006 (Jury found plaintiff partially negligent because she was passing a truck on the right and the truck turned into her).

In some cases, the motorist has the right of way but, based on the particular facts, is negligent for failing to anticipate the cyclist's negligent behavior. See Biggs v. Verbois, 151 So. 2d 172 (1963) (driver should have anticipated that the minor cyclist was going to ignore the stop sign); Ribble v. Cook, 111 Cal. App. 2d 903, 245 P.2d 593 (1952) (although driver had the right of way, she may have abused the right if she could have avoided hitting the cyclist); Lindsay v. Cantrell, 649 So. 2d 1277 (Ala. 1994) (question whether minor who had right of way crossing intersection exercised it carelessly by not heeding car that had stopped before making left turn); But see Valenzuela v. Bracamonte, 126 Ariz. 472, 616 P.2d. 932 (1980) (13 year old minor cyclist negligent in crossing intersection at crosswalk, even though he had time to cross, because he should have anticipated that turning driver would swerve to avoid hitting his three year cousin who was following him on a tricycle).

Finally, drivers overtaking cyclists from behind have a duty, either according to statute or simply because of their duty to use reasonable care, to pass safely. See Smith v. Stopher, 125 Ill. App. 2d 378, 261 N.E.2d 16 (1970) (sufficient evidence for jury to conclude that driver failed to pass at safe distance or that he negligently failed to maintain a lookout). The driver may be negligent even if the cyclist's actions are not necessarily appropriate. Moak v. Black, 230 Miss. 337, 92 So. 2d 845 (1957) (motorist negligent when overtaking cyclist from behind, even though cyclist swerved to his left, because motorist "did not do all

that he could have done, or all that the law required him to do, to avoid the accident,” including braking or honking his horn); Stockfish and Winter, *infra*.

Bicycle Cases Outside the Motor Vehicle Laws

Because of time constraints, these topics are outside the scope of this paper. However, an attorney representing an injured cyclist should be on the lookout for these other potential grounds for liability:

Dog attacks: Loose dogs are a major hazard to cyclists. Even friendly but exuberant dogs can knock a cyclist off his bicycle, causing serious injuries. Case law in many states requires owners to be on notice of the dog’s propensity to attack or to run off the property after cyclists or others passing by. Local ordinances, however, may provide a basis for a negligence per se argument. Also, gathering the information listed in the section on Case Investigation will help prove the case. The dog does not necessarily have to bite. See The Daily Record of Rochester, February 21, 2003 (Woman stepped backwards into street to avoid attacking dog and was hit by a truck. Defendant homeowner liable; knew dog had history of attacking pedestrians).

Products Liability (bike, helmet, assembler): If some part of the bicycle gives way, causing or contributing to the crash or increasing damages, have the bicycle examined by an expert instead of just sending to a bicycle shop for an evaluation; the bike manufacturer or the assembler may be responsible. Of course this means asking your client early on whether there was any equipment malfunction (ie., brake failure; failure of pedal to release properly). Be sure to rule out the possibility that the malfunction was the cyclist’s fault (ie., installed new shoe cleats incorrectly). As with any expert witness involvement, the

attorney will have to determine whether the potential value of the case warrants spending money on such an evaluation.

Harassment: Cyclists, particularly the spandex-wearing recreational kind, or racers, are frequently subject to harassment by drivers. Harassment can range from shouts of “get on the sidewalk!” and cursing, to such dangerous behavior such as “buzzing” (passing too closely) and throwing objects at the cyclist. South Carolina recently passed a law specifically prohibiting harassment of cyclists and making certain harassing behavior criminal.⁹ In the absence of such a specific prohibition, drivers or their passengers may be guilty of assault and/or battery. If such behavior causes injury to the cyclist, there may be coverage pursuant to the harasser’s homeowners insurance. Motor vehicle insurance policies may exclude intentional acts. Moreover, in some instances, like the throwing of objects, courts have held such behavior is not related to the operation of the motor vehicle and therefore not covered by the motor vehicle insurance policy.

Property owners/municipalities/ride organizers: There are numerous cases dealing with the liability of municipalities for road defects, obstructions and other infrastructure problems. Proper case investigation should reveal whether any such conditions may create a source of liability.

For example: (1) Developer and others sued by deceased cyclist’s parents for building an excessively steep roadway, in violation of national standards and county ordinance. Missouri Lawyer’s Weekly, August 25, 2008; (2) City sued when plaintiff injured by driver in dangerous intersection. Business Wire, May 27, 2008; (3) City sued for dangerous bicycle lane, The Orange County Register,

⁹ 2008 S.C. Acts 317

December 20, 2007; (4) County and ride organizers sued for failure to designate safe route and alert drivers to presence of cyclists, The Evansville Courier, October 2, 2007.

Damages

I mentioned at the beginning of this paper than an attorney representing cyclists should understand damages components unique to cyclists. Time constraints prevent an in-depth discussion of this topic. A couple of issues, however, are worth mention. First, cyclists, even seriously injured ones, often ride away from the scene of a crash. In numerous cases, my clients have picked themselves up and finished their 60 mile rides, only to later need hand, shoulder or knee surgery. The reasons for this are a combination of physical and cultural.

Secondly, the cyclist will have special damages considerations that may not be present in other personal injury cases; for example, property damage to the bicycle (very different calculation from that of an automobile) and lost ride time and permanent diminished riding ability.¹⁰

¹⁰ Bicycling and the Law, Mionske, Velopress, 2007