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Bike law 101: Four tips for representing cyclists

The growing numbers of urban cyclists create focus on the laws affecting cyclist versus motorist collisions

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Although the number of cyclists in urban areas in California increases each year, with this increase comes an increase in collisions both with other vehicles and single bicycle collisions caused by roadway defects. While some public entities have tried to evaluate increased safety measures to decrease conflicts between cyclists and other modes of transportation, by and large these efforts have not gone far enough. This article will touch on some of the more common types of bike versus motor vehicle collisions and the reasons such collisions happen. In addition, this article will discuss bicycle collisions caused

by roadway defects and how such cases can be identified and pursued against public entities.

As the average insurance adjuster and juror will likely have experience with the handful of cyclists that fail to comply with the vehicle code, there can be an inherent bias against your client. As a result, bicycle cases can be contentious and require a thorough investigation of the facts and the potential client before taking on a case.

Tip No 1: The California Vehicle Code: Yes, it applies to cyclists

California Vehicle Code section 21200 provides: “[e]very person riding a bicycle upon a highway has all the rights and is subject to all the provisions

applicable to the driver of a vehicle.” That sounds simple enough until you delve into the morass of Vehicle Code section 21202 which discusses where exactly a cyclist can ride. Essentially, unless a cyclist can operate the bike at the speed of motor vehicle traffic, a cyclist must ride “as close as practicable to the right-hand curb or the edge of the roadway.” Of course, there are exceptions to this general rule of thumb for overtaking or passing, making left turns, or avoiding hazards, all of which can take a cyclist out of the place a motorist might expect them to be and put them at a potential conflict point.

Thus, it is important to ascertain whether or not your cyclist was in a riding



position that comports with the Vehicle Code.

Tip No. 2: Evaluating the cyclist client

In this new dawn of fixed gear bikes, single-speed cruisers, road bikes of every variation and the good old mountain bike, not all bikes or all riders are the same. For example, in San Francisco fixed gear bikes without a traditional braking mechanism are a growing trend. Thus, in cases where a rider's speed or ability to stop quickly are at issue, the use of a fixed gear bike can pose a significant hurdle.

In addition, while many areas lack a mandatory helmet law for adults, the absence of a helmet on a rider involved in a collision may create the impression of a non-compliant cyclist without due regard for his or her own safety. For cities or counties that do have mandatory helmet laws, the absence of a helmet can constitute negligence per se.

As a result, the best client will be someone who is an experienced rider, riding a bicycle that has all the requisite safety equipment, meeting the requirements of Vehicle Code sections 21201 and 21201.5, and who is wearing bright, reflective clothing (including a helmet) to maximize their visibility.

Tip No 3: How to evaluate the five most common car-versus-bike collisions

In an active bicycle practice, there are five types of collisions which you see frequently. These are:

- 1) A vehicle making a right turn across the cyclist's lane of travel;
- 2) A vehicle executing a left turn at an uncontrolled (or non-dedicated left turn) intersection;
- 3) Dooring;
- 4) The failure of cyclist or motorist to stop at a red light or stop sign, and
- 5) A vehicle or cyclist passing on the right.

It goes without saying that cases involving cyclists that do not stop at stop signs or red lights, barring an obscured sightline issue, are difficult cases.

However, there may be an alternative cause for the collision such as a dangerous roadway design. This is discussed in more detail below.

With respect to right or left-turning vehicles, each of these types of collisions involves one of two issues: 1) motorists do not see (or look for) bicyclists; or 2) motorists misjudge the speed at which a bicycle can travel and try to "beat" the cyclist. A common refrain from defendant motorists is that the motorist "just didn't see the cyclist." Since your cyclist client is not invisible, it is sometimes hard to imagine that an attentive motorist would not have seen your client. An issue to be mindful of is the fact that bicycles, due to their size and relative limited numbers (compared to cars), are more difficult for motorists to perceive and react to than other roadway issues. Many studies have been done relating to "conspicuity" or the ability of a two-wheeled vehicle to be seen by a driver of a four-wheeled vehicle. The studies show that there are many reasons drivers do not see cyclists, including that the image of a bicycle is not as familiar as that of a car, which means that drivers are not always vigilant about watching for bikes. Also, bikes are smaller than cars, making them harder to see.

In evaluating a motorist's ability to see your client, you must also analyze the bicyclist's riding position. A cyclist taking control of a lane of travel will be most visible to oncoming traffic, versus a cyclist who is traveling to the right of a vehicle, especially if the vehicle is an SUV or truck. These larger vehicles can obscure a bicyclist from the view of on-coming or left-turning traffic. Similarly, vehicles turning right across a cyclist's path of travel may fail to look for bicyclists before executing a turn or believe a bicyclist is far enough away such that the motorist has enough time to complete the turn. When evaluating right-turn or left-turn collisions, not only should you evaluate your client's riding position, you must also establish the speed of the rider and the distance at which a motorist should have been able to see the rider under the relevant lighting conditions.

In urban areas where the number of cyclists is increasing, motorists are learning that they must be mindful of bike traffic. However, motorists now are comfortable with the idea that bikes will be as far right on the roadway as possible. This means that if the cyclist is in what a motorist believes is a non-traditional position such as in a passing mode, this can seem unexpected to a motorist and cause a disproportionate response from the motorist such as swerving or braking, which both can, in and of themselves, cause a collision with a cyclist.

In addition, the sheer volume of traffic in some areas creates an almost constant source of potential conflicts between motorists and cyclists. As a result, "dooring" is a frequent collision which occurs in dense urban areas. This type of collision occurs when a rider is riding lawfully as "far right as practicable" as the Vehicle Code provides, and a motorist opens a door into the cyclist's path.

The Vehicle Code provides:

No person shall open the door of a vehicle on the side available to moving traffic unless it is reasonably safe to do so and can be done without interfering with the movement of such traffic. (Veh.Code, § 22517.)

However, many motorists routinely open car doors without a second thought as to who or what might be impeded by such a movement. If a rider is experienced, and there is enough room, he or she will be riding, ideally, several feet from parked cars such that a cyclist may have a chance to avoid impacting the open door. More often than not, the suddenness of a door being flung open, coupled with traffic walling in the cyclist make it difficult, if not impossible, for the cyclist to avoid this obstacle. An experienced rider will do all that is possible to avoid being in such a situation such as riding a distance from parked cars, and scanning the parked cars ahead to watch for people exiting their vehicles. However, even these actions are usually not enough to prevent a collision as it is difficult for a rider to see into the rear of vehicles or to anticipate what



an occupant in a parked car will do at any given time.

The resulting collisions will either be effectively a “T-bone” between the bicycle and the open door, in which the rider then goes over the handlebars, or a crush or pinch type injury between the rider’s hand and the edge of the open door. Both types of collisions often result in serious injuries including comminuted fractures to fingers, hands, or wrists.

The recurring defense in all such collisions is the motorist’s perspective that the rider could not have been seen or, alternatively, that the rider was going too fast. While speed may be an issue in some cases, during daylight conditions the visibility of a rider can be evaluated easily by going out to the scene with a car and a bike and running through the potential scenarios. Collisions involving nighttime conditions will require further analysis by an expert.

Tip No. 4: Identify other causes of the collision, including defective roadway collisions

Many single-bicycle collisions are caused by common roadway issues which may pose no hazard to cars but present a significant hazard to two-wheeled vehicles. Such conditions may include potholes, uneven conditions, improper trenching, loose debris, poor pavement transitions, poor roadway design and visibility impairments such as overgrown foliage, or shadowing issues. Moreover, in cases involving collisions with motorists it is worth taking the extra steps to evaluate the location of the collision to determine if some external roadway defect contributed to the collision.

• *Dangerous conditions of public property*

If you can identify a dangerous roadway condition, you will need to pursue a claim against any public entity that owned, possessed or maintained the roadway. If the public entity retained a private contractor to perform the road work which gave rise to the defect, the contractor will also be a defendant.

Pursuant to California Government Code section 835:

...a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and either (a) [a] negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or (b) [t]he public entity had actual or constructive notice of the dangerous condition under Section 835.3 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

(Gov. Code, § 835.)

In any case involving a dangerous roadway condition, an immediate site visit is necessary in order to preserve evidence and photograph the conditions as they existed on the date of the incident. Such early inspections can be especially valuable if you travel the scene on a bicycle to get the cyclist’s perspective.

There are numerous cases in this area which are instructive in presenting such a case in the most effective manner. In *Hilts v. Solano Co.* (1968) 265 Cal.App.2d 161, the Court found that the conjunction of factors, which included a curved, unmarked condition of a roadway and a lack of a traffic control devices, difference in elevation and the method of striping, constituted sufficient evidence of a dangerous condition, thereby rendering Government Code sections 830.4 and 830.8 immunities inapplicable. The case of *Bakity v. Co. of Riverside* (1970) 12 Cal.App.3d 24 is useful in cases involving some type of visual obstruction. In *Bakity*, a driver failed to stop at a stop sign at an intersection which was obstructed by foliage, causing a collision. The Court concluded that the jury could

reasonably have determined the existence of a dangerous condition at the intersection due to the visual obstruction.

When examining potential hazards, it is also important to look at conditions of adjacent property. The holdings of both *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139 and *Branzel v. City of Concord* (1966) 247 Cal.App.2d 68 address the issue of public property through which users are subjected to hazards on adjacent properties. In *Bonanno* the Court reviewed the issue of whether or not the location of a county bus stop constituted a dangerous condition of public property pursuant to Government Code sections 830 and 835. Of particular interest was the fact that the bus stop was located near a busy intersection which neighborhood residents complained made it difficult to cross the roadway to get to and from the bus stop. In response to the residents’ complaints, the county installed a crosswalk which did nothing to increase pedestrian safety. Thirteen years after the installation of the crosswalk, a pedestrian was hit by a car while crossing to the bus stop. The Court held that the location of the bus stop was a dangerous condition due to the hazards on the adjacent property.

Of course, many dangerous condition cases involve readily apparent hazards such as uncovered trenches, sinkholes or otherwise poorly maintained roads. In such cases a public records act request will generally yield information about any private contractors that may have performed work on the premises. Identifying a private entity will generally make such a case a much easier pursuit. Additionally, in evaluating the potential defect it is crucial to consider whether the potential defect could pose a hazard to a two-wheeled vehicle. The Caltrans Highway Design Manual, the Greenbook, and the WATCH manual all have specific requirements for roadway transitions, including how such transitions or deviations must accommodate both pedestrian and bicycle traffic. Moreover,



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many public entities have devoted civil engineering resources to devising written standards and protocols to maintain roadways in a manner that is not only safe for cars but also for cyclists.

Conclusion

Although the Vehicle Code treats cyclists and motorists similarly in many instances, a case involving a bicycle collision has many nuances not often found in

motorized vehicle cases. Bicycle cases require a thorough investigation and should be approached with an eye toward the specific hazards that are presented to cyclists.

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