



Proving the defect in a bicycle

Products liability can be the underlying cause of an accident

By Matt Davis and Tamila Gresham

A bicycle is a human-powered vehicle. A prospective case involving a serious injury to a cyclist should therefore be evaluated and investigated like any vehicle case. The possible causes of a bike accident will generally fall into one or more of the following three categories:

• **The people who operated the vehicles involved in the accident**. The most typical case alleges that a motorist negligently operated a car and struck a cyclist.

• **The environment where the accident occurred**. A case may be brought against the entity responsible for a dangerous condition on the roadway that caused the accident.

• **The vehicles involved in the accident**. A suit alleging that a defect in the bicycle or the equipment caused the accident.

The careful practitioner should consider each possible cause of the client's injury, and be mindful of the possibility that there may be multiple causes.

Products liability

This article focuses on the third category of lawsuits brought on behalf of injured cyclists, the *products liability* case.

A manufacturer may be held strictly liable for its product if the plaintiff was injured while using the product in a reasonably foreseeable way. In order for there to be strict liability, the product does not have to be unreasonably dangerous – just defective. Products liability may be premised upon a theory of design defect, manufacturing defect, or failure to warn. Defective design may be established under two theories: (1) the consumer expectations test, which asks whether the product performed as safely as an ordinary consumer would expect when used in an intended and reasonably foreseeable manner; or

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(2) the risk/benefit test, which asks whether the benefits of the challenged design outweigh the risk of danger inherent in the design.

(*Romine v. Johnson Controls, Inc.* (2014) 224 Cal.App.4th 990, 1000 [citations and internal quotation marks omitted].)

A strong working knowledge of both bicycle mechanics and the sport of cycling will help to identify possible defects in the bicycle or equipment, and how the defect contributed to the plaintiff's injury. The major components of a bicycle include the frame, fork, cranks, pedals, wheels, brakes, neck, handlebars, seat and post, chain and derailleurs.

If a defective part is suspected in a bike crash, then that part and all related evidence must be meticulously preserved. No products case can be made without qualified experts. For example, our firm has handled two major injury cases in which the bicycle's fork was found cracked apart after the crash. The chicken- and-egg question in each case was whether the fork cracked first and caused the plaintiff to crash, or whether the client crashed first and forces of the crash cracked a non-defective fork. Qualified experts must inspect and evaluate the parts and evidence. Do not conduct any destructive testing until the defense has a chance to comment and participate. These are typically engineers in the fields of design, materials and accident reconstruction. Biomechanical engineers and human factor experts are also sometimes used.

Get the video

The number of bicyclists has skyrocketed in my hometown of San Francisco and other congested urban settings. Thus more and more accidents are being captured on surveillance video. Have an investigator look for and obtain any such videos the moment you are retained. Don't delay else the video may be erased.

Any video will likely be crucial. My colleagues recently settled a products liability case against the maker of a snowboard binding that allegedly failed during a routine run and left our client a paraplegic; the critical evidence was a GoPro video, which showed him suddenly crash for no apparent reason during an innocuous turn. We are currently prosecuting a wrongful death case on behalf of the family of a young cyclist who was run over by a garbage truck, and seven different surveillance videos captured relevant evidence.

The chain of production and distribution

You should expect a bicycle products case to be defended vigorously and expensive to prosecute. From a business point of view, it would be difficult to justify taking on a bicycle products case when the plaintiff sustained modest or even moderate injuries and damages. Most bicycles and bike parts are made overseas, and so there may be challenges presented by suing a foreign defendant. Coverage may, as usual, also be an issue.

An injured bicyclist may bring a strict liability products claim against any business entity in the chain of production and distribution of the allegedly defective product, from the original manufacturer to the distributor to the bike shop. (*Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 627.) Mere participation in the chain of production establishes fault necessary to assert a defendant's liability and all chain participants "are held fully responsible for damages caused by a defective product as a matter of public policy." (*Id.* at 627.)

The following is a list of potential defendants in a bicycle products defect case:

- The designer and manufacturer of bicycle/part.
- The entity that specified the materials to be used in manufacture of bicycle/part.
- The entity responsible that selected the parts to be incorporated into subject bicycle.
- The distributor of bicycle/part.
- The assembler of bicycle/part.
- The shop that sold the bicycle/part.

Finally, do not overlook the possibility of a defect in the bicycling *equipment*. One of the largest jury verdicts our firm ever obtained came in a case brought on behalf of a cyclist hit by a car coming out of a driveway. It was a low-speed collision, but our client hit his head on the windshield and suffered paralysis and a devastating brain injury. The car driver was woefully underinsured, and the primary defendant at trial was the maker of the bicycling helmet that our client was wearing at the time of the accident. The helmet "looked cool," but failed to protect the parts of the head that were the most vulnerable in an accident. The jury awarded an eight-figure verdict against the helmet maker.


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