

L. Micha Ordway, Esq.

Bousquet Holstein PLLC



Did You Know?

Legal Insights that All Bicycle Riders Should Know.

December 2015

Volume 1 • Issue 3

Recently I picked up on a story about bicyclist who recently won a negligence suit against a runner for injuries sustained in a collision between them. The accident occurred three years ago in Virginia. A jury awarded the bicyclist \$300,000 in damages plus \$55,000 of interest after determining that the runner was at fault. The bicyclist and runner were on a mixed-use paved pathway (similar to New York's Erie Canal pathway) at the time of the accident. Apparently, the collision occurred when the runner stopped suddenly to turn around at the same time that the cyclist was attempting to pass. Although the bicyclist was wearing a helmet, she suffered significant head trauma when her head struck the pavement. The cyclist also suffered amnesia as a result of the crash and could not recall details from the accident, including whether she warned the runner before attempting to pass. The cyclist could only testify that it was her habit to call out "on your left" before passing pedestrians.

This story was interesting to me as a cyclist and a runner. While cyclists and runners generally get along just fine, there is a tension when it comes to "sharing the road" - especially when we are enjoying mixed use pathways where cyclists, runners and all pedestrians have the same right of access. This tension came to light recently in Syracuse when a section of the Erie Canal path was being paved. Although I am adamant that cyclists and all types of pedestrians have a right to enjoy public pathways, I have come so close to being in the very same crash at issue in this case - way too many times – and both as a cyclist and as a runner. I recall nearly colliding with a runner who veered off her line unexpectedly while I was riding on a mixed use pathway. It would have been ugly. As a runner, I have been clipped and nearly struck down by bicyclists trying to pass, but without ever announcing themselves. Scary for the runner when a cyclist suddenly buzzes you from behind while riding at 20 mph or more. Both sides have to be more aware or the crashes will continue.

This story also caught my eye because it is the opposite of what one would expect from a collision between a bicyclist and a pedestrian. The average person might expect the pedestrian to get hurt (and maybe sue). Not the other way around. After all, the bicycle is the vehicle. The cyclist has a helmet. The cyclist should not get hurt, right? I have personally handled cases where the runner was seriously injured but the cyclist walked away unharmed. In reality, I think that cyclists are just as likely to get hurt in such a collision. I shudder to think about such a crash. It could be anyone of us.

Continued on Back...



BOUSQUET HOLSTEIN PLLC

110 West Fayette Street, Suite 900 • Syracuse, New York 13202 • 315.422.1391 • www.bhlawpllc.com

L. Micha Ordway, Esq.

Direct: 315.701.6441 • lordway@bhlawpllc.com

Attorney Advertising

L. Micha Ordway, Esq.

Bousquet Holstein PLLC



This story also interests me as an attorney. Unlike, New York, Virginia is a pure contributory negligence state - meaning that plaintiff does not recover at all if found to be at fault in any amount. In this case, the cyclist would not have recovered if the jury determined that she was even 1% contributorily negligent. As such, the jury must have determined that the runner was 100% at fault - even though the cyclist could not recall whether she warned the runner and even though the Guidelines posted for use of the pathway state that pedestrians have the right-of-way and that bicyclists must yield to all other trail users. The Guidelines also require cyclists to notify other users when passing. To say the least, it is very interesting that the jury found the runner to be completely at fault.

In order for the cyclist to have been successful with her negligence claim, the runner also must have owed a duty of care to the cyclist (the existence of a duty is one of the elements that the plaintiff must prove in a claim for negligence). Perhaps, the Guidelines created such a duty as they require all users to travel in a predictable and consistent manner so as not to cause accidents? Regardless of how created, however, the Court must have determined that a legal duty of care existed. (The existence of a duty is a question of law for the Court to decide rather than the jury which decides questions of fact.) In order to have rendered a verdict in the cyclist's favor, the jury must have determined that the runner breached this duty and then failed to exercise "ordinary care" (defined as the care that an ordinary person would have used in similar circumstances) when he stopped and turned suddenly. While the jury verdict seems to ignore the issue of contributory negligence by the cyclist and any obligation on part of the cyclist yield to the runner and to warn the runner when passing (arguably created by the Guidelines), there is a clear, practical lesson for the cyclist and the runner: WATCH OUT!!! Be aware of your surroundings and show some courtesy to others who are also exercising their right to enjoy public pathways. If we don't, collisions will occur and people will continue to get hurt.

Until next time.

Do you need legal counsel?



Bicyclists have unique rights and duties under the New York Vehicle and Traffic law. As such, bicycling accidents are not exactly the same as the average automobile accident or negligence claim and they should be evaluated thoughtfully and handled in light of these differences. Resolving a bicycling accident claim can be an arduous and challenging undertaking that requires dauntless advocacy. After all, at the end of the day no one hires the litigation attorney to be a nice guy. Success requires setting realistic goals, intelligent tactics, meticulous preparation and seasoned, confident counsel. My experience representing both plaintiffs and defendants in and out of the courtroom along with my ferocious advocacy have made me a sought-after attorney for corporations and individuals alike. I assist my clients with determining their needs and goals. Together we generate strategies designed to achieve the best outcomes possible – all the while keeping the economics of litigation in mind.



DID
YOU
KNOW
?

How can I be of service to you?



BOUSQUET HOLSTEIN PLLC

WWW.BHLAWPLLC.COM

L. Micha Ordway, Esq.

Direct: 315.701.6441 • lordway@bhlawpllc.com