Best's Insurance Law Podcast

Navigating Through Bicycle Claims - Episode #220

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John Czuba: Welcome to Best Insurance Law podcast, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, manager of *Best's Insurance Professional Resources*. Very pleased to have with us today, Alex LaRivière from qualified member company, Bicycle Accident Investigations.

Alex provides expert witness testimony and professional consultation in regards to design, construction, repairing of bicycles, bicycle safety, and operation of bicycles, and the cause of bicycle failure. He has over 40 years of experience in the retail bicycle business and has testified as an expert witness in federal, superior, and municipal courts since 1982.

Alex is a member of the Society of Forensic Engineers and Scientists and the League of American Bicyclists, where he also serves as lead certified instructor. Alex, very pleased to have you with us today.

Alex LaRivière: Thank you, John.

John: Today's topic will be navigating through bicycle incidents and claims. Alex, for our first question, what are some typical bicycle mechanical failures you've seen?

Alex: The most common would be brake failures because brake failures, at least with regards to defense representing a company, the brake failures involve automobiles, where the bicycle can't stop in time, runs out into the path of a car.

In that sense, the insurance company would be, say, defending the automobile driver, or they could be defending the bicycle shop, say the allegation the brakes weren't working correctly, and the bicycle shop didn't adjust the brakes right, or whatever. Then the bicycle shop gets sued. Then I'd go in and represent the bicycle shop, or I could represent the automobile driver.

The brakes can go wrong anywhere from an adjustment to there actually being a design defect. Brake failures are really common. Recently, the hot topic is bicycles, especially the electric bikes, basically having mechanical problems where the attachment hardware is coming loose.

When I get hired on, it isn't like the most common accident, I'd say. It would be the magnitude of the injuries and the exposure for the client. Every single accident that happens has to be evaluated on individual basis. I could initially get retained by a public entity, and it turns out that it wasn't the roadway at all. It could be a mechanical problem with the bicycle.

For example, if the person hits a little bump on the road, your front wheel is not supposed to fall off, but if your front wheel falls off and you're a public entity, you're going to get sued because the plaintiff attorney is going to think, "Well, the roadway caused his wheel to come off."

The reality is that now you have a multitude of people that share responsibility, everybody from adjusting the quick release to maintaining the quick release, who put the wheel on last? Was there something mechanically wrong with the quick release? Was there a backup system for it?

Here you have a situation whereas the public entity's being sued, but actually you have a products liability case that would involve anybody from, say, the bicycle shop, the importer, manufacturer of the bike. Then you get into all of your warnings and all that other stuff, and you do your ISO and your CPSC, all of the regulations that fill in to that.

Every accident involves a surface that the bike is being ridden on. There's basically different types of accidents. There's multiple collision, which multiple collision can be auto versus bike, bike versus pedestrian, bike versus bike, bike versus dog. There's so many different combinations, so each one of those has to be dissected. Bicycle safety is huge.

You would think that there'd be a lot more cases for me regarding bicycle safety, but most of the time there isn't because there isn't a real need for somebody with my expertise because the answers are blatant. It's blatantly clear as to what went on.

If the bicyclist runs a stop sign and ends up getting hit, you don't need a bicycle expert, per se, for that. You may, depending on what's going on, but most of the time, you don't. You don't need an expert all the time for every single case.

If you have a really big case and you need to have a clear understanding of all the potential liability to be able to divvy it up and to be able to make it so all parties can come together and have a clear understanding of what the issues are, typically, the case isn't going to go to trial. The case is going to settle.

A problem that I've been seeing is, at least it's just my opinion, a lot of cases settle that shouldn't settle. They should bring these things to trial, but that's not my expertise. My expertise is I'm not an adjuster, and I don't know what the adjuster's job really is, and I'm not the insurance company.

I had a case recently where the public entity needed my help to be able to...I wasn't hired on the public entity's case, but it was a public entity case. I was hired by the bicycle shop. The bicycle shop had a million-dollar policy, and there was a doctor who ended up getting severely injured. He made up this whole claim, saying that the bicycle shop fixed the brakes wrong. It wasn't true.

I was able to prove absolutely that the bicycle shop did absolutely nothing wrong, absolutely nothing wrong. They had zero liability. I signed a declaration to it, the judge accepted everything, and the case was able to be settled.

The plaintiff attorney didn't want the case to settle because the insurance company had a lot more money, so they wanted to go after them. [laughs] Anyway, the insurance company offered the policy limits, and the judge approved that part of the settlement.

The bicycle shop's attorneys, the insurance company, was happy to get out of the case, even though there was zero liability. It's a real shame when you have a case where you know your client didn't do anything wrong, but because of the damages being so high that if they didn't settle it, then they would have a potential problem themselves, and the plaintiff attorneys know this.

On cases that have nothing, they just make up their facts as they go. What I do, I don't make up facts. I'm really good at doing an investigation, gathering up the facts, putting them in order, making them easy for not only a jury and judge to understand but for the attorneys to understand.

I work very well with engineers of all types, and there's a good balance between my hands on expertise as to how the case could flow. What's common sense out of this? What can we show? What can we display? What can we model out? What's repeatable?

If there is a problem with the brakes or not, being able to articulate and demonstrate there isn't a problem with the brakes. In fact, the preponderance of the evidence shows that it's the rider himself. It's the rider operation.

Sometimes the ways of the world, the way they work, the best you can do is to get out with your skin, so give them the policy limits if that's what they say. Personally, I would rather go to trial, but it's not my money. [laughs]

John: When a case does play out, explain to us what are some of the common chains of events in bicycle accidents.

Alex: I'll give you an example. Let's say I was hired by a trucking company and their truck ran over and killed a cyclist, so you have horrific injuries, and you have big exposure.

What I would do in the chain of events on something like that, I would go out to the accident site area, see if there was anything like a vertical step on the roadway, anything about the roadway which could have caused the accident. Then I would also look at the bicycle, and I would look to see if on the side of the tire and maybe the rim, there's vertical striation marks.

If there are, then I duplicate the type of rim and the tire, go out to that area, and duplicate the exact type of striation marks that are created by that surface condition on the roadway. Then I can compare those to the subject bicycle without harming the subject bike at all.

Anyway, then if the mechanism, if the injuries to the person, to the body, the contact when you line up the part of the truck that actually hits the person and you line up the damage to the bicycle and you line up the damage to the person, you line everything up, at that point, getting them down.

I take the bike from a vertical position, a safe position. I go into the mechanism of loss of control, and then, in the chain of events, the very first thing would happen is what caused the person to lose control, to fall off the bike, and fall into the path of the truck to be ran over.

At that point then, you have to also figure out your distances. In other words, how far is the bicycle, the roadway condition from the truck? Was there an unsafe passing by the truck, or did the bicyclists just simply go out of control and fall and slide right into the path of the truck?

That's what, basically, I do, the chain of events based on the evidence. That's one example of if you were representing a truck driving company and you had a cyclist that was ran over. If the cyclist was run over from the rear, there would be obvious damage from the rear that he was rear ended.

Sometimes, the chain of events, let's say, a vehicle moves out of the travel lane, for whatever stupid reason, moves into the bike lane, rear ends the bicyclist while he's in the bike lane and runs him down and causes his terrible injuries to him. He hits him at 40 miles an hour.

What happens at that little snapshot of time is that the front of the vehicle, say, it's a van, there's mud or dried mud or caked dirt that's inside the wheel well and oftentimes in the bumper area, say, on the old van.

When the van impacts the rear end of the bicycle and the body, and the body's thrown up onto the vehicle, it jars the vehicle and causes a release of this dirt, which is known as the debris field, and it drops down.

It can tell you right where the vehicle was at the time that the vehicle impacted the cyclist. It would tell, was the cyclist in the bike lane, or did the bicyclist veer out of the bike lane and then get hit?

Another sequence that you could have as far as a chain of events, let's say you have a front wheel disengagement case, and you want to know, did the wheel come off as a result of the crash, or did the wheel come off and caused the crash?

On the fork dropouts, there will be these markings, and there will be exiting markings on the face and on the inboard and outboard faces of the dropouts. Those will basically show the exiting of the axle and the clamping, the inside nuts, and the outside clamping of the quick release, and what happens with the quick release as it exits. As it exits, it will leave marks as it goes.

One of the things that happens, which is quite remarkable, is most of the time, the front of the bike drops down onto the tire. Underneath the fork, there's markings there. Oftentimes the wheel comes back, and it will leave markings on the bottom of the down tube.

There will be transfers of paint that are transferred onto the spokes. As the wheel is exiting the fork, it transfers the paint onto the wheel spokes. That's your order there. Also, the chain of events can go back further.

As soon as you know you have a quick release case, I invented the device that measures the amount of pounds of clamping force, I can actually test a quick release for its clamping ability, and whether the quick release is defective, whether it's worn out, how obvious it would be that it was worn out.

I can tell all about the quick release from this little device by knowing the amount of clamping force, how much force it takes to close it, and how much force it takes to open it. The actual clamping force. Not the outside force pushing the arm, but the actual clamping of the quick release, I can measure that exactly with a calibrated force gate, which is quite remarkable.

Every single case has a trail. It's almost like the theory of the criminal case. A person can't really go into an area without putting evidence into the area and taking evidence with him. If you have a real great investigator, he'll figure out who was there and what was going on if he has the resources available to him.

It's the same thing with a bicycle case. Very rarely is it that the bicycle case can't be figured out. In my career, I've had a couple.

John: What made that particular incident unsolvable?

Alex: It was the lack of the preservation of the evidence. Whoever it was, I got on to the case the very end, and the case wasn't documented well in the beginning. The evidence basically was compromised. Everything from the evidence on the school bus to the bicycle, everything was compromised, and the evidence wasn't documented correctly.

John: What's a typical bicycle claim you've seen?

Alex: Typically, right now, there's a lot of cases where the mechanical failures with the bike, where attachment hardware comes loose and then causes the person to lose control. That's the most common. As far as the incidents, I do a lot of the bicycle safety, bicycle operation, where the bicycle itself maybe had the potential of being able to stop, but the person doesn't stop.

Most commonly, it's the operation of the bicycle, people not using common sense and not abiding by the rules of the road, by the vehicle code. Bicyclists' etiquette in their riding is very questionable to say the least. Bicyclists don't have a lot of respect for the rules of the road, and I don't know why.

I'd say that's probably the hottest ticket right now is, I'd say bicycle operation, bicycle safety. You have your bike lanes; you have bike paths.

I have a case right now where I'm representing the pedestrian and the pedestrian's walking through a park and is rear ended by a bicyclist, and she's knocked down. She's piled face first into the concrete, and she's really severely injured. He turns around and sues her.

In this particular case, the insurance company is going to take the whole thing right to trial. I'm glad because plaintiff attorneys, the idea of, say, you have a client and your client rear ends a pedestrian, hits the pedestrian from the rear at a good rate of speed, and feels justified to sue the pedestrian because the pedestrian didn't do what the cyclist wanted him to do.

The cyclist called out and said, "On your left, on your left." He didn't realize that this lady wasn't from the United States, so she stepped to the left, and he says, "On your right." Then she stepped to her right, according to him, and the two of them collided.

My view of it is that as soon as he saw that she wasn't responding in the way that he wanted her to, he should have slowed down and been prepared to stop. That's the kind of stuff, the most common-sense kind of stuff, that People are dealing with right now.

It's selfish behavior. They think that they're entitled, and bicyclists, for some reason, have gotten a reputation for thinking that they're entitled. You're going to find a lot more cases involving auto versus bike, auto versus pedestrian because these people think that they're entitled and they're not.

One of the things that I've done is I've dissected the vehicle code, and one of the smartest things you can do is you go into the definitions first, understand what a highway is, and what your responsibilities are. Most people don't understand that a highway is any open way, a means for a person to get from point A to point B that's open to the public. The sidewalk is part of the highway.

The sidewalk is that part of the highway which is intended for the pedestrian. Most people think that the sidewalk is not part of the highway, but it certainly is. When you look at the basic speed law, it has to do with the highway. The basic speed law, you can't travel any faster than conditions present allow you to safely travel. That's the highway.

It's not a roadway, it's not a freeway, it's not a street, although the roadway and the street are part of the highway. The code section, when you go into the vehicle code, you have to be very careful about the definitions.

You look up your definitions, get your definitions down, and then you have a very clear understanding of how to operate the case. In some cases, you have bicyclists that ride their bicycles on the sidewalk, and in some communities, it's perfectly legal to do that.

There's no state ordinance or state section, vehicle code section that says you can't ride your bike on the sidewalk, but you have to do so at a safe manner as part of the highway. You can't travel any faster than conditions present allow, so obviously, you would yield to the pedestrian.

Most cities have ordinances saying that when riding your bike on the sidewalk, you shall yield to pedestrians, or the city ordinance will say, in a business district, you shall not ride your bicycle on the sidewalk. City ordinances and state law with relationship to the vehicle code, most state laws are pretty much the same.

There's a lot of opportunity for advancement for the general public and for cycling in general. We will progress, and it's going to take probably some more people getting injured, ultimately, because of their silliness.

If they work at it, the people can get along, the bicyclists can get along with motorists. Bicyclists can use the roadways. The advancements for transportation using bicycles is there. We have the potential of really getting people out on the roads and getting along with one another.

John: Are there any particular states or areas prone to bike accidents or claims? You're based in California, but you can work anywhere in the country. Have there been any trends in any particular states or areas that you've seen?

Alex: Generally, wherever the larger claims are, if it involves a serious injury, then that's where it would be. As far as litigious states, California, Florida, Texas, Hawaii, there's a lot of litigation that goes on.

John: What should attorneys be aware of in terms of bicycle claims? You mentioned the plaintiff side and the defense side. What should they be aware of?

Alex: Get your expert on the case as soon as possible. Document your facts and get your exemplars.

Whether it's your bicycle or whatever your components are, your vehicles, get access to those so that you can start modeling out, get an investigation going early on so you know what you're dealing with, so before they change the conditions on the roadway, you can document it, that you can locate that type of a vehicle.

Make sure whatever evidence is on that vehicle is preserved. Make sure that the bicycle gets preserved, the clothing, the helmet, all that stuff is preserved. Find out what's going on in the medical records, especially the ER, whatever the early statements are early on so that those aren't coming up as a surprise later on.

I would say, start your investigation early. Don't wait till the last minute because then you get into this wishy-washy thing of where you really can't tell what happened.

If you had the evidence behind you to back you up, you'd have a much better chance at either ending the case, settling it, or if you had to go to trial, you would be able to much better take care of your side if you get going early on.

John: I have a final question. You have a long career in bicycles. What do you see for the future?

Alex: The bicycles are here to stay. Because of the population, we're going to have more and more bicycle accidents. We're constantly evolving. The electric bikes are going to be a big producer of litigation because they travel so fast.

The people aren't really designed to handle the speed that they can go, but people are going fast. You'd be better off on a motorcycle because they have better brakes, better suspension. They have power to be able to get out of trouble situations.

Electric bicycles are dangerous. Then you combine that with people that don't obey the rules of the road, there's going to be a good amount of litigation, and you're going to have some really serious injuries.

It's a growing stage that people will end up going through. Eventually, they'll catch on that they have to be more careful. Bicycles are here to stay and bicycle litigation is here to stay too. [laughs]

John: Alex, thanks so much for joining us today. Terrific job.

Alex: Thank you.

John: You were just listening to Alex LaRivière from qualified member company, Bicycle Accident Investigations, and special thanks to today's producer, Anthony Palma.

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