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CIVIL LITIGATION UPDATES

SUBJECT: AUTOMOBILE vs. BICYCLE ACCIDENT

ISSUE: Is The Plaintiff Negligent When Riding Her Bicycle On The Wrong Side Of The Sidewalk At The Time of the Accident?

ANSWER: No, but as more fully set forth below, this is the beginning not the end of the analysis.

LAW: **California Vehicle Code section 21650(g)**
[The California Vehicle Code] does not prohibit the operation of bicycles on any shoulder of a highway, **on any sidewalk**, on any bicycle path within a highway, or along any crosswalk or bicycle path crossing, where the operation is not otherwise prohibited by this **code or local ordinance**.

California Vehicle Code section 21650.1

A bicycle operated on a **roadway** or the shoulder of a highway, shall be operated in the **same direction** as vehicles are required to be driven upon the **roadway**.

California Vehicle Code section 21202(a)

Any person operating a bicycle upon a **roadway** at a speed less than the normal speed of traffic moving in the same direction at that time shall ride as close as practicable to the right-hand curb or edge of the roadway.

Negligence Per Se Statute Cal. Evid. Code 669

The failure of a person to exercise due care is presumed if the person is in violation of a vehicle code statute in which the violation of the statute caused the accident, and the accident is the type of accident this statute was designed to prevent. If so, then the person who violated the statute is presumed to be negligent. *Taylor v Cockrell*, 116 Cal.App. 596 (1931)

CASE LAW: *Spriesterbach v Holland*, 215 Cal.App.4th 255 (2013)

[The plaintiff is allowed to ride his bicycle on the sidewalk against the flow of traffic.]

Spriesterbach v Holland

In *Spriesterbach v Holland*, 215 Cal.App.4th 255 (2013) the plaintiff was riding his bicycle on the sidewalk in the opposite direction of traffic. As he approached the parking lot of a major supermarket (Ralph's), he saw the defendant's vehicle stopped at the threshold of the driveway of the parking lot. Since he was riding against the flow of traffic, the defendant did not notice the bicycle rider on the sidewalk to her right. She was looking to her left at on-coming traffic. She intended to make a right turn out of the driveway and onto the adjacent roadway and thereby would have been heading in the opposite direction of the bicycle rider. She testified that she was stopped at the limit line between the parking lot and the driveway that crossed the sidewalk. Before the accident happened, she believed she took her foot off of the brake and her car inched forward across the driveway toward the roadway. As she did so, the plaintiff rode his bicycle in front of her vehicle and the impact occurred. The bicyclist sued the driver of the vehicle.

Generally, a driver of a vehicle exiting a parking lot onto a highway must yield the right of way to traffic on the highway. Cal. Vehicle Code §21804(a)¹. However, this does not mean that the driver pulling out of the parking lot will always be negligent in a subsequent accident. If, at the time the driver pulls out of the driveway, it was safe to do so, then the driver on the roadway may become the negligent driver by speeding up, changing lanes or by doing some other hazardous activity. Under these circumstances the jury may find either driver negligent depending on the facts of the case. Cal. Vehicle Code §21804 (b)². But in this situation both drivers are driving with the flow of traffic. In *Spriesterbach*, the bicyclist was traveling in the opposite direction of travel *on the sidewalk*.

Generally, bicycle riders are permitted to ride their bicycles on the sidewalk. Cal. Vehicle Code §21650(g). However, there are some cities [local authorities] that prohibit bicycle riders from riding on the sidewalk.³ In those cities, the bicycle rider would be prohibited from riding on the sidewalk *in either direction*. In *Spriesterbach*, the defendant argued that the plaintiff was riding his bicycle against the flow of traffic and was therefore in violation of the statute. He was wrong.

But the ruling in that case was dependent upon the facts of that case. It appears that both parties agreed that the accident occurred *on the sidewalk*. Though it may have been lawful for the plaintiff to have been riding his bicycle *on the sidewalk*, the issue is whether the "accident" occurred on the sidewalk or on the roadway. It appears that the parties and the trial court

¹ California Vehicle Code section 21804 "(a) The driver of any vehicle about to enter or cross a highway from any public or private property, or from an alley, shall yield the right-of-way to all traffic, as defined in Section 620, approaching on the highway close enough to constitute an immediate hazard, and shall continue to yield the right-of-way to that traffic until he or she can proceed with reasonable safety."

² California Vehicle Code section 21804 "(b) A driver having yielded as prescribed in *subdivision (a)* may proceed to enter or cross the highway, and the drivers of all other vehicles approaching on the highway shall yield the right-of-way to the vehicle entering or crossing the intersection."

³ We provide a list of the current cities and local authorities that prohibit or otherwise regulate cyclists riding bicycles on the sidewalk.

concluded that there was no distinction between the roadway and the sidewalk. The Court of Appeal found that the parking lot and driveway were constructed in a manner in which the distinction between the sidewalk, the driveway and the roadway were unclear. If the driveway clearly “crossed” the sidewalk **and** the bicyclist continued riding in a straight path across the sidewalk/driveway, the Appellate Court held that the bicycle rider was riding on the “sidewalk” at the time of the accident. But these are very specific facts particular to this case. It is often unclear where the accident occurred. As this case demonstrates, it may be very important to identify the location of the accident.

Negligence Per Se

This case is important because a favorable ruling may have made the defendant’s chances of success much higher. In *Spriesterbach v Holland* the defendant was trying to assert that the plaintiff was Negligent Per Se. Generally, the plaintiff has the burden of proof, but neither side is presumed negligent. Pursuant to California Evidence Code section 669, if the Court finds that one of the parties violated a statute, the court could give a jury instruction holding that the party who violated the statute is *presumed* to be negligent. In *Spriesterbach v Holland* the defendant sought a jury instruction that declared that the plaintiff violated the statute against riding a bicycle against the flow of traffic and therefore should have been presumed to be negligent.⁴ The Court of Appeals ruled that in light of the facts of that case, it was an error to give this jury instruction in this case.

Lipscomb v Fernandez

Wasson & Associates, Inc. recently handled a similar case in which the plaintiff was riding her bicycle on the sidewalk against the flow of traffic. Our client was stopped in the driveway of a similar private parking lot. However, the sidewalk and driveway were constructed in a way that clearly differentiated between the sidewalk and the roadway. The sidewalk ended and a handicap ramp led the bicycle rider off the sidewalk and out onto the roadway, across the driveway and onto the other side of the driveway where the sidewalk resumed. As the plaintiff approached the defendant, the defendant was looking to his left for on-coming traffic. He intended to make a right turn onto the roadway. As traffic cleared, the defendant took his foot off the brake and his vehicle inched forward *out onto the roadway*. As he was doing so, the plaintiff rode her bicycle off the sidewalk, down the handicap ramp and out onto the roadway in an effort to maneuver around the front of the defendant’s vehicle. As the plaintiff attempted to make this maneuver, she was struck by the front passenger bumper of the vehicle.

The police arrived at the scene the accident. The police officer cited the plaintiff for violating California Vehicle Code, section 21202 [traveling against the flow of traffic]. The plaintiff was taken by ambulance to the hospital. The plaintiff claimed to have suffered severe injuries. At the time of trial, she had incurred \$97,587.42 in past medical expenses and \$30,000 in future medical treatment.

The plaintiff argued that under California law the plaintiff was lawfully riding her bike on the sidewalk and therefore the officer’s testimony and the fact that she was cited for violating

⁴ Though the trial court agreed with the defendant and gave the jury this jury instruction, the Court of Appeal held that this was a mistake. However, the jury’s defense verdict was not disturbed on appeal because the court found that this instruction was not the reason the jury rendered a defense verdict.

California Vehicle Code, section 21202 should be excluded. Furthermore, the plaintiff objected to our efforts to persuade the trial court to give the jury the *negligence per se* jury instruction on the grounds that the plaintiff violated the statute. The parties were ready to argue competing Motions in Limine on these liability issues on the first day of trial. Though the case settled before the court had the opportunity to rule on these motions, we believe that we would have prevailed on these Motions in Limine and the court would have given the jury the *negligence per se* jury instruction. Accordingly, our chances of obtaining a defense verdict were very good.

It is also clear that the plaintiff's counsel also believed would were about to prevail on these motions. The nature of this settlement strongly suggests that plaintiff's counsel was persuaded by the arguments supporting these Motions in Limine. During the litigation the plaintiff demanded more than \$300,000 to settle the case. After we served our pre-trial motions setting forth our arguments that the plaintiff was negligent, the plaintiff agreed to drop her settlement demand below the amount the defendant had offered at the last Mandatory Settlement Conference. In fact, these initial attempts by the plaintiff to settle the case were rejected by the defendant as we prepared for trial. However, on the day of trial the plaintiff became rather desperate to settle the case. After four years of litigation, numerous depositions of the parties and experts, the plaintiff agreed to settle the case for just \$13,000 which was substantially lower than the previous offer made by the defense at the last Mandatory Settlement Conference.⁵ Consequently, we are confident that the main reason for the plaintiff's change in position rested with the realization that the defendant was about to prevail on these Motions in limine.

In our case, the accident occurred in Perris, California. Perris did not have a local ordinance prohibiting bicycle riders from riding on the sidewalk. However, unlike *Spriesterbach v Holland* our investigation focused on the construction of the sidewalk, parking lot and driveway. Our experts visited the scene of the accident, took photographs and were prepared to testify about the configuration of the area. In our case the sidewalk ended at the driveway. The area crossing the driveway was not a "crosswalk" or a "bike path". Consequently, we argued that the accident occurred in the roadway and that the plaintiff was riding her bicycle on the roadway against the flow of traffic in violation of **California Vehicle Code section 21650.1**. Based upon this argument, we intended to ask for and we would have likely been granted a Negligence Pre Se jury instruction.

In addition to this argument, we also argued that the plaintiff had a duty to yield the right of way to the defendant-driver by stopping her bicycle and waiting for the vehicle to pass before crossing the driveway. Cal. Vehicle Code §21804. Additionally, we also argued that [much like the base path of a baseball diamond] the plaintiff may have had the right to cross the driveway, but in our case the plaintiff's maneuver took her outside the base path [unmarked crosswalk] and out onto the roadway. In either case, the plaintiff was **no longer** on the sidewalk and was on the roadway at the point of impact. As a result, the plaintiff-bicycle rider was traveling on the roadway against the flow of traffic in violation of California Vehicle Code section 21202(a).

If the case had not settled, we would likely have been able to persuade the Court to instruct the jury that if they found the plaintiff was traveling on the roadway in the opposite direction of the

⁵ In fact the defendant served a C.C.P 998 offer for \$50,000.

traffic flow of traffic the jury could presume the plaintiff was at fault. Thus, there would have been strong inference that the plaintiff was negligent.

CONCLUDING ANALYSIS:

Generally, the plaintiff is permitted to ride her bicycle on the sidewalk in the opposite direction of traffic. However, this is the *beginning* not the end of the analysis. The first inquiry is whether there are any local ordinances prohibiting bicycle riders from riding on the sidewalk. Second, if there are no such local laws, identify the exact location of the accident. Did the accident occur on the driveway, crosswalk, sidewalk or other unmarked or undesignated area of the roadway?

Generally, if the area is not otherwise defined, it is likely to fall within the definition of “roadway” for purposes of the application of the statute. Additionally, even if the accident occurred at or near a crosswalk or bike path, was the cyclist riding outside this designated area at the point of impact? Usually, bicycle riders must stay within the designated lines of the crosswalk or bike path. If the bicyclist travelled outside this designated area, it is likely that this maneuver contributed to the accident which itself is evidence that the plaintiff was not riding on the sidewalk or within the crosswalk but rather on the roadway at the time of the accident.

WASSON & ASSOCIATES, INC.

Our practice includes assisting claims professionals in handling claims arising from accidents involving vehicles and bicycles. The California Legislature has enacted laws designed to increasingly give more protection to bicycle riders. Wasson & Associates, Inc. tracks changes in the laws that may affect the liabilities of drivers of automobiles as well as bicycle riders. We are always available to answers questions.

LOCAL AUTHORITIES REGULATING OR PROHIBITING BICYCLES RIDING ON THE SIDEWALK

As more fully set forth below, the laws governing traffic in these local cities and counties vary greatly. Wasson & Associates, Inc. is prepared to give claims professionals assistance and guidance regarding the applicable law in all Local Authorities in California. The foregoing is a list of Cities and Counties actively addressing and issuing regulations and laws governing bicycle traffic on sidewalks and bike paths. Please contact us with specific questions governing specific local authorities.

- San Diego
 - The rules vary widely within the County and City of San Diego. There are some areas within the City where it is prohibited to ride on the sidewalk.
- Los Angeles
 - The rules vary widely within the County and City of Los Angeles. There are some areas within the City where it is prohibited to ride on the sidewalk.
- San Francisco
 - The rules vary widely within the County and City of San Francisco. There are some areas within the City where it is prohibited to ride on the sidewalk but the City generally favors access to bicycle riders.

- Sacramento
 - The rules vary widely within the City of Sacramento. There are some areas within the City where it is prohibited to ride on the sidewalk.
- San Jose
 - The rules vary widely within the City of San Jose. There are some areas within the City where it is prohibited to ride on the sidewalk. San Jose Municipal Code 11.72.160 allows bikes on the sidewalks in certain areas of the City.
- Oakland
 - The rules vary widely within the City of Oakland. There are some areas within the City that restrict but do not prohibit riding bicycles on the sidewalk.
- Riverside
 - The City of Riverside recently repealed a local ordinance prohibiting the use of bicycles on the sidewalks. Though it is not currently prohibited, there is a push to impose further regulations in this area.
- Fresno
 - It is not permitted to ride on the sidewalk.
- Long Beach
 - The rules vary widely within the City of Long Beach especially within business districts.
- Escondido
 - The City has enacted regulations but has not yet prohibited riding on the sidewalk
- San Marcos
 - The City has enacted regulations but has not yet prohibited riding on the sidewalk
- Hemet
 - Currently there are no rules against riding on the sidewalk, but the City is considering proposals that would restrict bicycles on sidewalks and also include a mandatory helmet requirement for adults.

UPDATE CHANGES TO APPLICABLE CALIFORNIA LAW

The following proposed changes to this statute were introduced on February 19, 2019. These proposed changes to the law follow.

California Vehicle Code, section 21202⁶.

- (a) Any person operating a bicycle upon a roadway at a speed less than the normal speed of traffic moving in the same direction at that time shall ride ~~as close as practicable to the right-hand curb or edge of the roadway~~ **in the right-hand lane or bicycle lane, if one is present, except under either of the following situations:**

- (1) When overtaking and passing another bicycle or vehicle proceeding in the same direction.

⁶ California Assembly Bill No. 697.

- (2) When preparing for a left turn at an intersection or into a private road or driveway.

~~(3) When reasonably necessary to avoid conditions (including, but not limited to, fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes) that make it unsafe to continue along the right-hand curb or edge, subject to the provisions of Section 21656. For purposes of this section, a "substandard width lane" is a lane that is too narrow for a bicycle and a vehicle to travel safely side by side within the lane.~~

~~(4) When approaching a place where a right turn is authorized.~~

- (b) Any person operating a bicycle in the right-hand lane that is wide enough for a vehicle and a bicycle to travel safely side by side within the lane shall ride far enough to the right in order to allow vehicles to pass, except under either of the following situations:

- (1) when reasonably necessary to avoid conditions that make it hazardous to continue along the right-hand edge of the lane.

- (2) when approaching a place where a right turn is authorized.

- (c) Any person operating a bicycle upon a roadway of a highway, which highway carries traffic in one direction only and has two or more marked traffic lanes, may ride as near the left-hand curb or edge of that roadway as practicable.

ANALYSIS OF THESE PROPOSED CHANGES

These specific changes will not necessarily shift the liabilities of these parties. The changes require bicycle riders to move to the right-hand side of the road to allow cars to pass when the bicycle rider is not traveling the same speed as the car. Wasson & Associates, Inc. is tracking this legislation with the Assembly.