

Liability Issues Arising from Bicycle Path Accidents and Injuries

Mary A. Hums
Kennesaw State College
Marietta, GA

■ INTRODUCTION

With the growing interest in health and physical fitness in this country, people everywhere are participating more and more in recreational activities. One of these activities is bike riding, both on-road and off-road. According to the United States Department of Commerce (1991) statistics for participation in sports activities in 1989, bicycle riding ranked as the third most popular sport, following only swimming and exercise walking. An estimated 56,941,000 people were classified as bicycle riders in 1989 (United States Department of Commerce, 1991), and according to the Consumers Union (1990), there are approximately 85 million bicycles in the United States today. In the state of New York alone, an estimated 750,000 bicycles were sold in 1989 (New York State Department of Health, 1990).

Along with the rise in participation has come an increase in biking accidents and injuries. The American Medical Association (1987), using information generated by the National Electronic Injury Surveillance System of the Consumer Product Safety Commission, estimated that in 1985 there were nearly 10 million emergency room visits for non-occupational, product related injuries. Of these, approximately 574,000 (5.7%) involved bicycles. These figures are confirmed by Kiburz, Jacobs, Reckling and Mason (1986), who point out that in 1985 bicycling accidents comprised the greatest recreational source of emergency room visits, numbering over 500,000. The significant factors contributing to bicycle accidents, according to these same authors, include rider carelessness (58.7%), environmental factors (36.9%), turns (22.9%), companion riders (15%), cycle malfunction (14.9%), and hills (13.4%).

Pena (1991a) estimates that in any given year about 900 riders are killed on American roads. Approximately 100,000 car/bike accidents are reported to the police annually, and 1500 cycling injuries are treated in U.S. emergency rooms daily. In New York state, 302 people died from bicycle accident injuries between 1984-1988. Of these deaths, 77% resulted from collisions with motor vehicles, 21% were non-motor vehicle related and 2% resulted from collisions with pedestrians (New York State Department of Health, 1990). This same agency revealed that non-

fatal bicycle related injury data are limited to police reports of bicycle/motor vehicle collisions. In the same time span, 1984-1988, an average of 10,000 persons yearly were reported injured in bicycle/motor vehicle collisions. However, police reports constitute only a portion of non-fatal bicycle injuries. According to Stutts, Williamson, and Sheldon (1988) only 20% of bicycle related injuries treated in North Carolina emergency rooms resulted from motor vehicle collisions, and only 10% of those injuries were reported to the police. This means the actual number of bicycle-related injuries may be ten times greater than the numbers represented by the data.

Amounts awarded in bicycle accidents have soared into the millions. In *Michael McDermitt v. Metropolitan Sanitary District of Greater Chicago, et al* (No. 85 L 3530), a 22-year-old man was awarded \$16 million for injuries he received while, when riding through an open field, he fell into a drainage ditch which was obscured by weeds. The man broke two vertebrae in his neck when he fell headfirst into the ditch, and was rendered a quadriplegic (Rooney, 1989).

In the Virginia case of *Margonie v. Bethelen Woods Home Association*, a child sustained injuries after she lost control of her bicycle on a bike path. The plaintiffs sued the homeowners association, the engineers and the government based on the fact that the 29% grade of the path exceeded the maximum 12% grade called for in the path plans. The settlement in this case was well over \$1 million dollars.

■ TYPES OF BIKING AREAS

With the increase in bicycling has come an increase in places for persons to ride, including bicycle paths. The term "bicycle path" may be interpreted in different ways. According to Isham (68 ALR4th 204), a bicycle path:

"includes not only separate ways which have been constructed and dedicated for use by bicyclists, but also portions of existing ways which are specifically set apart by markings or other means for the exclusive use of bicycle traffic. The term does not include sidewalks, on which bicycle riding may or may not be permitted" (p. 205).

There are basically four different types of biking areas according to Magas (1991). These areas are the bike route, the bike lane, privately owned bike paths and bike trails. In addition to these, off-road biking, which includes areas used by mountain bikes, constitutes another biking area.

The first of these is the bike route. Bike routes are shared roadways which are usually designated by signs (Magas, 1991). An example of a bike route is the National Road West route which follows U.S. Highway 40 across the country. Another example is the Bike Centennial system which crosses the country from coast to coast.

A second type of bike area is the bike lane. A bike lane refers to a portion of a roadway which is designated for bicycles only (Magas, 1991). Examples of this include specially marked areas on the shoulder of the road which are reserved for bicycles only. Bike lanes are also often found on college campuses because of the high level of bike traffic in these congested areas.

The third type of bike area is the privately owned bicycle path. In this case, an unofficial bike area may be maintained by a local condominium association or

private land owners (Magas, 1991). An example of this is a paved area which may connect condominium buildings with their recreation areas or other buildings within the condominium property.

The fourth type of biking area is the bike trail. A bike trail typically refers to an off-highway (as opposed to off-road) trail or paved path closed to motor vehicles and designed and maintained by some government agency (Magas, 1991). An example of this is the nationally known Rails-to-Trails project, which converts abandoned railroad corridors to developed bike trails. These trails are located across the country and include Iowa's 26 mile Heritage Trail, Ohio's Little Miami Path and the proposed Discover Michigan Trail.

The final type of biking area is the off-road biking area. This refers to riding bikes where there are not necessarily specified areas to ride, for example on hiking trails, across fields, in swampy areas, up and down hills and over natural obstacles. The bikes used for this activity typically have thicker than normal gauge chrome-molybdenum frames, wide profile aluminum alloy rims, thumb-operated gear shifts and gear ratios often 25% lower than stock ten speed bikes (Havlick, 1986). This paper will deal with accidents and injuries in these bike areas, with special emphasis on bike trail incidents. Accidents occurring on sidewalks, parking lots or other areas will not be included in this article.

■ CONSIDERATIONS

A question which arises in bicycle accidents and injuries is "Who's in charge here?". When an accident occurs, under whose jurisdiction was the place the accident occurred? When bicycle (or hiking) trails are involved, there are various agencies and advocacy groups which are involved with the planning, construction, maintenance and funding of trails in the United States. Mac Arthur (1990) cites three federal land-management agencies and a number of support groups involved in national trail management. First is the United States Forest Service, which oversees the nation's largest trails network. This agency oversees 156 national forests, 373 wilderness areas, and 19 national grasslands on more than 191 million acres in 44 states, the Virgin Islands and Puerto Rico. The National Park Service is the second federal agency involved. As the nation's second largest trail agency, it oversees almost 13,000 trail miles across 90 million acres of National Parks, as well as almost 15,000 miles of national scenic and national historical trails.

Finally, the Bureau of Land Management administers approximately 272 million acres, and 3732 miles of trails. Its role is to administer lands under the principle of multiple use, and it does not place much emphasis on trail issues (Mac Arthur, 1990).

When looking at who uses these trails, approximately 90% of Forest Service trails are set aside for hikers. However, approximately 80% of the trails are available for horseback riding, and 45% are available for bicycling, according to forest supervisors (Mac Arthur, 1990).

In addition to federal agencies, local governing bodies may be involved with trails as well. These may include cities, townships, counties or states. Some land through which trails pass may be owned by private citizens or corporations as well. If an accident occurs, one must determine which of these actors is involved in order

to bring action against them. As Magas (1991) states, when suing the government, one may be required to follow a different set of rules than when suing someone else. That's the advantage of being the one who sets the rules. Governments typically prevent one from suing them on decisions involving a high degree of discretion or the exercise of judgment in developing public policy (Magas, 1991).

When examining cases in this complex area, it is useful to break down cases into related categories. Two of these categories include bike trail maintenance and bike trail design. These categories must then be shown to have caused the accident.

According to van der Smisson (1990), the maintenance of paths, walks and trails includes clearing these areas of debris and protecting people using these areas in relation to terrain. The responsibilities to do so are similar, whether the user is on foot or riding a vehicle such as a bicycle. In actions involving bike trail maintenance, one must typically show that there had been some notice of a maintenance problem to successfully bring a suit. Types of questions one could ask to show notice had been given include:

1. Does the path get inspected? How often?
2. Did someone previously complain that the pavement was cracked open widely enough to hold a bike tire?
3. Do the bushes hang so low as to obscure oncoming traffic and whack the cyclist about the face?
4. Do city street sweepers constantly push glass and other debris into the bike lane?
5. Was the path designated on a high traffic/high risk street?
6. Does water accumulate due to poor construction? (Magas, 1991)

In cases involving bike path design, again there are certain questions which may be asked:

1. Were any well accepted design standards ignored?
2. Were any obvious design flaws incorporated in the design?
3. Are there hills, blind curves or other problems designed into the path?
4. Was the proper grade for hills designed into the path? (Magas, 1991)

In determining causation, every case will be examined to determine what the exact cause of the accident was. The causation will differ from case to case. The defendants may bring up some of the following causes other than poor maintenance or defective design, including:

1. cyclist error, resulting from speed, fatigue, alcohol, or carelessness;
2. faulty cycling equipment;
3. negligence by another cyclist;
4. rain; and
5. any other potentially causative factor (Magas, 1991).

■ CASES

There has been a variety of cases in this area. The question of responsibility for bicycle paths was raised as early as 1902 in *Prather v. City of Spokane* (70P.55, 1902). Here, in an action against the city for injuries suffered while riding a bicycle path, Prather claimed that the city was negligent in that there was a sharp turn in the bicycle path at a point near a gutter and a sidewalk. The city contended that, being a

governmental function, there was no liability for injuries from the location of the path. The Supreme Court of Washington held that the city's contention was of no merit.

Recently, there has been an assortment of cases in this area. In *Dean v. Bays Mountain Park* (551 S.W. 2d 702, 1977), the plaintiff, eight year old Michael Dean, was injured when he attempted to ride his bicycle down a steep gravel road blocked by a chain stretched across the entrance to prevent unauthorized vehicles from using the road. The chain was attached to two posts, and the chain and the posts were painted international orange for visibility. However, the chain was not nearly as visible as the posts, even though the chain was painted every six months. Michael Dean rode into the chain, suffering facial injuries.

The question before the court was whether or not the maintenance of a chain across the access road in the park constituted a nuisance for which the city would be liable for the resulting injuries. In this case, the court stated that there was no evidence that the chain itself was inherently dangerous to those using the park properly. Without evidence to establish an inherently dangerous condition, no nuisance was found to exist.

In *Puhalski v. Brevard County* (428 S. 2d. 374, 1983) a cyclist participating in a cross-state bike race was injured when struck by a car. The injured party found that the bicycle path was so poorly maintained that he chose to ride on the edge of the highway instead. Upon so doing, he was struck by a car that wandered out of its lane. Puhalski sued, saying that his injuries were caused by the county's breach of duty to maintain the bicycle path, so it was foreseeable that cyclists would have to ride on the road's edge where it was foreseeable that a car could leave its lane and hit the cyclist. In response, the county pointed out that it was a matter of well-established law that it is unforeseeable that a vehicle will veer out of its lane, citing numerous cases. The judge entered summary judgment for the defendant county because the county had no duty to provide a bicycle path. The failure of the county to provide a bicycle path, or a properly maintained bicycle path is not the legal cause of the dangers involved with riding a bicycle on the highway. The court stated that whatever duty the county had to maintain the path once the path was there, the breach of that duty was limited to injuries directly and proximately caused to riders by defects in the path resulting from improper maintenance. The county did not breach any legal duty owed because the county had no legal duty to provide a bicycle path, well-maintained, unmaintained or not at all, and having provided one, no legal duty to continue to provide one. With no legal duty, there could be no duty of breach and therefore no negligence.

In another case involving poor maintenance of a bicycle path, *Stahl v. Metropolitan Dade County* (438 S. 2d 14, 1983), a child was killed when struck by a car after veering off a badly maintained section of a bicycle path. Thirteen-year-old Andrew Stahl was riding on a bicycle path which had been built in 1971 and had not received any maintenance for nine years. As a result, the path was bumpy in places because of tree roots which grew under the path. When Andrew swerved to go around this section of the path, he drove his bicycle off the path and onto a parallel grassy area which had trees growing in it, and in avoiding the trees, he drove into the road and was struck by an oncoming car. The court here used the "but for" test for actual causation. But for "Dade County's negligence in not properly maintaining

the path, Andrew would not have had to ride off the path into a grassy area filled with trees, and in the process of avoiding the trees, he would not have had to ride into the street where he was hit by the car. “But for” Dade County’s negligence in not maintaining the path, the whole sequence of events would not have occurred. On the question of the foreseeability of the car collision because of the defendant’s negligence, the court noted that a reasonable jury would find the sequence of events culminating in the child being hit in the street by an oncoming car. The point was made that when bicycling, a certain amount of momentum exists, which may carry a rider along while he tries to avoid hitting an obstruction. In this case, that momentum carried Stahl into the street.

The court cited *Puhalski v. Brevard County* in pointing out that Stahl was not claiming that Dade County breached its duty in failing to provide a usable bicycle path; the claim was that Dade County failed to maintain a perfectly usable bicycle path. Although Dade County did not have to provide a usable bicycle path at all, at least not at this location, once having done so it had the duty to properly maintain the path so as not to create, as here, unreasonable risks of harm to bicyclists using the path (*Stahl v. Metropolitan Dade County*, 1983).

Another case dealing with the maintenance of a bicycle path is *Roy v. Department of Transportation* (408 N.W. 2d 783, Mich. 1987). Here the plaintiff William Roy was riding on a bicycle path adjacent to an interstate highway. He was injured when he rode his bicycle over a “substantial asphalt bump” which he did not see, as some cut and piled weeds obscured the bump. Roy was thrown to the ground and suffered a shoulder separation, lacerations, contusions, and muscle, ligament and tendon damage.

Roy contended that the bicycle path was under the department’s jurisdiction, and that the state was liable under the exception to immunity contained in Michigan state law. The phrase in question states, “The duty of the state and the county road commissions to repair and maintain highways, and the liability therefore, shall extend only to the improved portion of the highway designed for vehicular travel and shall not include sidewalks, crosswalks or any other installation outside of the improved portion of the highway designed for vehicular travel” (M.C.L. 691.1402; M.S.A. 3.996, 102).

The state Appellate Court stated that, “Motorists and cyclists both benefit from having these parallel paths so that cyclists can remain safe and out of the way of motorists. We conclude that if the state has a duty to maintain the roadway itself in a safe condition it should also have the same duty with respect to such paths” (*Roy v. Department of Transportation*, 391 N.W. 2d 414, 1986). The court also clearly stated that this ruling applied only to bicycle paths constructed adjacent to roadways and which parallel those roads as extensions of or adjuncts to the paved surface reserved for motor vehicle use.

The state Supreme Court reversed the Court of Appeals, citing that the state statute in question expressly indicated that the exception for liability does not extend to sidewalks, crosswalks or any other installation outside of the improved portion of the highway designed for vehicular traffic and said, “Indeed to the extent it [the statute] shows any legislative judgment on the benefits of separation, the exclusion of sidewalks, crosswalks and other installations from the duty of maintenance and

repair, reflects a conclusion that pedestrians and users of these installations have been sufficiently protected by the separation of them from motorists, without any need to impose a duty of maintenance and repair enforced by liability for resultant injuries" (*Roy v. Department of Transportation*, 1987).

In *Roux v. Department of Transportation* (426 N.W. 2d 714, Mich. App. 1988), the plaintiff was riding a bicycle on the shoulder of a busy road and allegedly hit a rock, hole, or some sort of "defective area" in the shoulder of the road. This caused Roux to lose control of his bicycle and he subsequently collided with a garbage truck. He brought suit claiming that the Department failed to properly maintain, repair and inspect the shoulder of the road or to warn riders of the shoulder's dangerous condition. The trial court in this case granted summary judgment for the Department of Transportation, based on the fact that, although the state has a duty with respect to the improved portion of the highway designed for vehicular travel, a bicycle is not technically considered a vehicle, and so no duty was owed to bicyclists.

On appeal, the Department of Transportation again argued that the duty to maintain the improved portion of the highway for vehicular travel does not apply to bicycle travel. Roux argued that the Department's duty under the statute in question is dependent upon the location at which the traveler is injured and not the mode of transportation. The Appellate Court agreed with Roux, and reversed and remanded the lower court's decision.

■ RAILS-TO-TRAILS PROJECTS

A nation-wide project is currently underway which hopes to convert abandoned railroad corridors into biking and hiking trails. This project is being sponsored by an organization known as the Rails-to-Trails Conservancy, which was founded in 1985. According to this organization, these long and narrow abandoned corridors are perfect for linear uses such as bicycling, running, horseback riding and cross-country skiing. These railroad rights-of-way provide excellent wildlife habitat, serve as shelter belts to reduce soil erosion and, in the Midwest, contain some of the last remnants of the original prairie ecosystem (Rails-to-Trails Conservancy, 1991). There are economic benefits to the local communities as well, with the Heritage Trail generating approximately \$1.2 million of economic activity, and California's Lafayette/Moraga Trail generating approximately \$1.6 million. (Rails-to-Trails Conservancy, 1992).

By July, 1991, a total of 292 trails encompassing 3300 miles of rail-trails had been developed (Pena, 1991b). In the past, 300,000 miles of railroads covered the United States. In the past 50 years, 150,000 miles of these railroads have been abandoned at the rate of approximately 3000 miles per year. Of the remaining 150,000 miles, 50,000 miles were sold, 50,000 miles are so remote as to be useless. That leaves approximately 50,000 miles with conversion potential (Pena, 1991).

A question which is raised with regard to these trails concerns responsibility for taking care of these trails. These trails pass through a number of different agencies' jurisdictions. For example, the Ohio to Erie Trail (1991) organization addresses this issue as follows:

No special agency will be created to buy or build the entire trail. The trail will have the cooperation of the local park districts, city governments, state agencies and the federal government. These agency owners will be responsible for maintaining and policing the trail (p. 5).

■ OFF-ROAD BIKING

Another type of bicycle riding which is increasing in popularity is off-road biking. Using specially constructed bicycles often known as mountain bikes, off-road riders are no longer confined to paved roads or trails, and can now ride over just about any type of terrain. Mountain bikes first became available commercially in the summer of 1979 and they became instantly popular (Kelly, 1990). By 1986, bicycle shops in the West reported as much as 90% of their sales as off-road machines (Havlick, 1986). The use of mountain bikes on public trails soon became a source of controversy. Kelly (1990) traces a timeline of events surrounding the trail access issue:

Summer, 1979	First commercial availability of mountain bikes.
June 11, 1982	Memo from Robert McCormick, acting director of recreation for the U.S. Forest Service, to all forest supervisors states: [In wilderness areas] prohibition of these devices [bicycles, carts or wheelbarrows] should be done by issuing a special order in those cases where a conflict, problem or unacceptable resource damage is occurring.
February 18, 1983	Boulder, Colorado, closes all trails and fire roads in parks and open space land to bicycles.
February 20, 1984	U.S. Forest Service announces that the definition of mechanical transport in the code of federal regulations will be changed to absolutely prohibit bicycles in wilderness areas.
January 26, 1986	California's East Bay Regional Park District bans mountain bikes from all hiking trails in its 53,000 acres.
April 15, 1987	All trails within the Mammoth ranger district of California's Inyo National Forest are closed to bicycles.
November, 1988	California's Department of Parks and Recreation adopts an official mountain bike policy that states "Generally, park roads, unless otherwise posted, are open and trails are closed to bicyclists. Unpaved roads may be closed and trails opened upon a written order by the district superintendent, approved by the regional director. A trail is defined as any route less than 5 feet wide.
August 31, 1989	Pennsylvania state park supervisors reaffirm a regulation that prohibits bicycles from any trails not designated for their use (p. 104-110).

The ever-growing popularity of this type of biking will no doubt lead to increasing legislation and litigation in the future. As early as 1981, in Marin County in California, serious injuries to hikers had resulted from collisions with off-road

riders (Havlick, 1986). More and more, federal agencies such as the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, and the United States Forest Service will be involved in developing policies related to off-road biking.

An example of litigation arising from off-road biking comes from the New York case, *Masone v. State of New York* (563 N.Y.S. 2d 992, Ct. Cl. 1990). According to testimony, Charles Masone, an experienced mountain biker, rode down a "trail" which was more of a gully caused by erosion. The trail sloped gradually at first, and then very sharply. At the end of the trail was a pile of sand, which Masone knew to be there. Riding at a speed estimated close to 25 miles per hour, Masone rode into the three foot high sand pile, even though there was sufficient room for him to have ridden around the sand. He was injured when he fell from his bike after hitting the sand. It was apparent that Masone was injured as he tried to ride over or jump the sand pile. He filed suit claiming that the state had actual or constructive notice of mountain bikers using that trail so as to make it reasonably foreseeable that the sand pile at the end of the trail posed an unreasonable danger to park users.

The New York Court of Claims ruled in favor of the defendants, stating, "the subject pile of sand did not constitute a dangerous condition to reasonably foreseeable and reasonably careful users of the park. We therefore find no duty to close the park to dirt bikers or otherwise warn them of obvious, known hazards. Certainly the burden on the state of making its woodland parks totally safe for off-road bikers who disregard known and obvious dangers unreasonably outweighs any risk such bikers could be reasonably deemed to have assumed. Here the subject sand pile merely furnished the occasion for Mr. Masone's accident. It was not a foreseeable dangerous condition nor a negligently culpable proximate cause thereof" (*Masone v. State of New York*, 1990).

■ CONCLUSION

With increasing numbers of bicycle riders, there is a trend towards increasing litigation involving bicycle accidents. Along with this trend will come the questions of who was liable in the area the injury occurred. Those who are injured will have to do their homework to determine who should be named in the suit. Persons responsible for on-road and off-road biking areas will need to be more aware of dangerous conditions in those areas and take appropriate actions to make these areas as safe as possible. By doing so, riders will be more able to enjoy their experience and the popularity of the sport will continue to grow.

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