



Bike Crash Case Has Lessons For Reluctant Lawyers

Lawyer navigates twists, turns in highway defect statute

By THOMAS B. SCHEFFEY

It was bad enough that Peter Serratore sustained life-changing injuries in a bicycle accident six years ago. Complicating his problem was the fact that his mishap was caused by a highway defect.

“Most personal injury lawyers will simply not take this kind of case,” said Serratore’s attorney, Shipman & Goodwin’s James Bergenn.

Unlike other negligence cases, the state’s highway defect statute bars recovery unless the plaintiff can show the state-caused defect was the “sole proximate cause” of the accident. Such cases are widely viewed as futile. If the defense can prove the plaintiff or anyone else was significantly at fault, “that contributory negligence is always lurking like a monster,” Bergenn said. “And it can devour you at any time.”

A seasoned criminal defender and civil trial lawyer, Bergenn has been teaching trial practice to other lawyers for decades, and is currently handling several bicycle accident cases for plaintiffs. The Serratore case, he said, has several useful lessons about highway defect cases. The first is, “Don’t say no too quickly.”

Serratore was an editor of *Off Shore*, a leisure magazine, and a biking enthusiast. He and his wife, Anne, were out riding on state Route 136 in their hometown of Fairfield on July 4, 2004. The couple struck up a conversation with two other cyclists – Bridgeport Hospital anesthesiologist Michael Packman and his 17-year-old son, Daniel.

The men rode in front, Serratore taking the lead. At one point he gave a hand signal, warning Packman of an upcoming hazard. There was a small dip in the road, seemingly nothing serious, and they didn’t even slow down.

Suddenly, Serratore’s front tire was grabbed as if by a vise, and he catapulted over the handlebars, snapping his neck on impact. Serratore was in a coma for weeks, and his medical recovery was slow and incomplete. He had suffered such serious brain injury that he would require 24-hour nursing care, at more than \$100,000 annually. He was 56 when the injury occurred and, before the accident, had a nearly 30-year life expectancy.

Rulers, Camera

Bergenn said he was reluctant to take the case at first, but was moved by the devotion showed by Serratore’s wife, Anne. When describing the case to Bergenn, she mentioned that Dr. Packman had taken a scientist’s interest; the doctor returned repeatedly to the scene of the accident with rulers and a camera, trying to reconstruct the accident.

“He never could figure out exactly what happened,” said defense lawyer Ronald Williams Jr., of Trumbull’s Williams, Cooney & Sheehy, who has been defending the state Department of Transportation in highway cases for more than 15 years. This case, he said, “had the worst injuries I have ever seen.”

The two attorneys and the state’s insurance carrier, which covers cases in excess of \$4 million, all agreed that a jury might return a verdict of \$10 to \$15 million. Or, because of the highway defect statute, it might be zero. “It was a 50-50 case,” said Williams.

Serratore’s biking expertise helped suggest a lack of contributory negligence. He was a member of a bike club, and had a



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Shipman & Goodwin’s James Bergenn said most attorneys reject cases involving highway defects because they’re so hard to win, but he was aided by several dedicated and compassionate witnesses.

radio show on which he stressed good riding practices. His wife was riding too far behind to be a fact witness about the accident. But she was a compelling witness to the level of damages Serratore sustained, in terms of loss of life’s enjoyment.

Bergenn created a videotape of their lives together that he calls “the love story.” He also prepared a more conventional day-in-the-life video, which showed how challenging and restricted Peter’s life had become. He uses a wheelchair, needs assistance to

even be “half-walking,” and requires help with other basic functions.

Unexpected Witnesses

To “lock in” Dr. Packman’s testimony for settlement or trial purposes, Bergenn had a video made, against a backdrop of the photos the physician had taken at the scene. The doctor described Serratore’s crash, which happened just a few feet in front of him. It appeared that a crevice about two inches deep, two inches wide, and eight inches long had instantaneously gripped Serratore’s bike wheel.

“I realized that Dr. Packman was trying to figure out, ‘What could Peter have done?’ He kept coming to the same conclusion: nothing, besides what he did,” said Bergenn. Because Serratore’s injuries were so serious, no doctor could give him a full medical recovery, but Dr. Packman’s testimony was vital to his legal recovery.

So was the input from a recently retired state highway safety supervisor. When Bergenn questioned the man, he was reluctant to testify against his career employer. But the attorney assured the ex-supervisor that he was more interested in gaining knowledge than a trial witness.

What Bergenn learned was at the time of the accident, state workers were visually inspecting state roads every few weeks. Video and still pictures were taken at least annually. In other words, there was enough checking going on that someone should have noticed the Route 136 problem.

Over time, the former safety supervisor became sympathetic to Serratore’s case, and became willing to testify. Referring to Dr. Packman as well, Bergenn said his witnesses’ innate sense of justice and compassion were invaluable in settlement negotiations.

Bike Expert

To cover all bases, Bergenn retained

James M. Green, of Asheville, N.C., author of “Bicycle Accident Reconstruction for the Forensic Engineer.”

Green heads an engineering firm focusing on cycling accidents. “He knows everything that can go wrong with bikes,” said Bergenn. “We had him in case we needed him.”

To further build the case that the state was on notice of the defective road, Bergenn had a private investigator interview neighbors. Many said they had reported standing water, ice and cracks.

Bergenn pulled the information together with the help of Shipman & Goodwin counsel William J. Ronalter and paralegal Patricia Vargo.

At the time of settlement negotiations, Serratore’s medical bills exceeded \$600,000. That money had been paid by the state Medicaid program, which would put a claim in on any future recoveries. And so even a million-dollar settlement would net the plaintiff virtually nothing, after the one-third attorney fee was deducted.

There was another problem. Medicaid payments go only to patients who are pretty much impoverished. If Serratore won a big pot of money from a jury or in a settlement, he would be responsible for his own medical bills, which would quickly mount.

Then, during mediation with Superior Court Judge Antonio C. Robaina, attorney Bergenn learned that the state is self-insured for up to \$4 million in these sorts of cases. That could serve as the basis of a settlement, he decided, with the proceeds going into a Medicaid “special-needs trust.”

Bergenn and his opposing counsel arrived at a settlement figure of \$3.5 million.

That amount saved the state some money since it was less than the \$4 million self-insured maximum and far less than a potential \$10 million to \$15 million trial verdict.

In return, Serratore wouldn’t risk getting zero money at trial if he lost his hard-to-win highway defect case. And he wouldn’t have to worry about losing Medicaid benefits if he did prevail in the courtroom.

“A big verdict might be good for the lawyers,” said Ronalter, the Shipman & Goodwin co-counsel, “but not necessarily so good for Peter. It wasn’t worth the risk of

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going to trial and the jury returning a zero verdict...And even if he’d won \$10 million, he would have lost his Medicaid eligibility.”

In contrast, with the Medicaid-approved trust, Serratore could continue receiving his state benefits while living in a Norwalk nursing care facility. About \$1.7 million ended up in the trust fund after the \$600,000 state lien, costs, and attorney fees were subtracted from the settlement. Those funds allow Serratore to have upgrades in his general living conditions, such as an occasional catered meal, a more private room, or a better wheelchair.

The moral of the story, says Bergenn, is that highway defect cases are winnable under the right circumstances. Bolstered by extraordinary fact witnesses, expert witnesses, and a compelling settlement “price point,” Bergenn said, “we could nail the case shut before the defense even looked at it.” ■