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e-xhilarating

EXAMINING COMMON LIABILITY ISSUES PRESENTED BY E-BIKE CASES

The lawyer listened to the commuter's description of the incident with sadness and without surprise. The commuter had recently purchased an e-bike. While the commuter had ridden bikes before, the commuter was not what the media might call an "avid cyclist." The commuter and a car driver had mixed it up, and now the commuter needed help getting the bike repaired and some medical bills paid.

Two wheels good

E-bikes are game changers. They're environmentally friendly, they functionally flatten steep hills, they allow parents to get children to school, and they let friends and family with wildly varying fitness ride together. They take up far less space on the roadway. For every person taking an e-bike trip there's one less car clogging traffic for those who must drive. With all they have going for them there's been explosive growth in e-bike sales and use. Unfortunately, any change in traffic's flow yields unintended consequences. Here, we identify the most common injury-causing e-bike events so that lawyers can better parse e-bike incident reports for liability concerns.

Driver surprise

To drivers, a bicyclist looks like a bicyclist whether that bicyclist is riding an e-bike or an unpowered bicycle. Many drivers see bicyclists as slow-moving obstacles that impede traffic and are best dealt with by gunning the engine to speed around them, oft-times immediately followed by a right turn directly in front of the cyclist. Our minds rely on past experiences as efficient ways to predict future engagement. Any human factors expert will tell you that if most past driver experiences with bicyclists occur where bicycles travel at roughly 9-13 mph, drivers then won't expect bicyclists to roll along at 28 mph. A driver then passes a cyclist, executes a turn based on past perceptions instead of actual bicyclist behavior and bang! Down goes the cyclist.

As more and more e-bikes take the streets, drivers' perceptions will change as they experience bicycles traveling at higher speeds. In the interim, expect that drivers won't recognize e-bikes for what they are and consequently will underestimate cyclists' speeds. Expect this when reading incident reports. "The bike came out of nowhere!" Translate that into flawed driver perception.

Rider inexperience

Unfortunately, cyclists themselves run into trouble with their perceptions and newer technology's faster speeds. There's a typical initial six-month arc with powered bicycles similar to new motorcycle ownership. First, there's a cautious period when a rider is new: "This bike is zippy, and I should be careful!" As a rider develops better appreciation for the bicycle's handling, enthusiasm replaces caution: "This is fun!" For some, the arc stops at enthusiasm, and life is good. For others (overwhelmingly young men but we've unfortunately seen such behavior with parents toting children, too) enthusiasm next transitions to exhilaration: "This can go fast!" That's the danger period. The danger period ends one of two ways. One is a heart-palpitating near-miss that resets the rider. The other is a crash.

When evaluating these crashes, recognize that many of them can be shared liability. While an e-bike rider may have been pushing the limits, a driver may also have contributed to the incident by misperceiving anticipated bicycle speed. Depending on the harm suffered, shared liability cases can still be worth pursuing.

Design defects

The final area where one sees e-bike crashes is product failures. E-bikes do not have standardized manufacturing safety regulations. This translates to manufacturing and design concerns. Manufacturers flood the market with all manner of powered two-wheelers in response to high demand from parents, commuters, environmentalists, and delivery people. The engineering and industry standards are minimal, and people want inexpensive options. For many people, a $1,000 e-bike sounds expensive. At that price, it must be well-made, right? But a typical throttle-controlled $1,000 bike is $800 of motor and battery connected to the cheapest components available. Corners get cut. A 50-pound bicycle topping out at 28 miles per hour may have been built with whatever the factory had lying around.

Where does one start in the evaluation? Looking for recalls or safety campaigns for the manufacturer at the Consumer Product Safety Commission [https://www.saferproducts.gov/PublicSearch] is a good start. But it can take a while before incidents accumulate. Additionally, manufacturers in this space pop up, sell some bikes, and frequently go out of business or reform into another entity. Consider talking to an experienced bike shop mechanic. Go over the bicycle details with the mechanic and see if the mechanic can identify any issues – brake mismatch being a very common one. If there's a defect, consider the investigatory costs versus the potential value. Mismatched brakes might be relatively easy to prove. Materials failures can cost tens of thousands to investigate and may not turn into a case.

Outro

Back to our lawyer and commuter. The lawyer was able to work with the commuter to make sure the commuter was made whole. In this case, the commuter was not scared away, used the property damage money to replace the bicycle, and returned to commuting.

Miles B. Cooper is a partner at Coopers LLP, *where they help the seriously injured, people grieving the loss of loved ones, preventable disaster victims, and all bicyclists. Miles also consults on trial matters and associates in as trial counsel. He has served as lead counsel, co-counsel, second seat, and schlepper over his career, and is an American Board of Trial Advocates member.*