



The great helmet myth

Does the failure to wear a helmet automatically give rise to fault by your plaintiff?

BY LARRY BOOTH

Every construction site in the Western world insists that everyone walking around wears a hard hat. Many ski resorts now insist on helmets. And, of course, there is a raging controversy over brain injuries in football where helmets have been worn for decades. Do any of these so-called safety devices do any good?

Some years ago, we had a client who was hit in the head with a large chunk of concrete which fell several stories on a construction project. He was, of course, wearing the almighty hard hat. The hard hat had a clean hole in it as did his head. Since the hard hat is built like a World War I helmet, it offers no protection from objects coming from any angle except directly down. Then, why, may we ask are hard hats mandatory where workers are not exposed to any overhead risk at all, such as digging a ditch? The better question is whether hard hats prevent any injuries at all to the brain or skull.

Football

The answer may come in the sport of football. The National Football League has just paid a massive settlement for brain injuries to past players, all who wore helmets. Could it be that the thin leather helmets which sat directly on the head decades ago were just as good or bad? Do today's players take risks they would never do if they had no helmet at all? There is a label on the back of football helmets, so very large it can almost be read on TV, which reads:

"No helmet system can protect you from serious brain and/or neck injuries including paralysis or death. To avoid these risks, do not engage in the sport of football."



Ski injuries

In 2009, actress Natasha Richardson recently died on a bunny hill at a ski resort when she fell on her head into soft snow while hardly moving. She was not wearing a helmet. Probably the greatest race-car driver in history, Michael Shumacher, is in a medically induced coma as a result of brain injuries incurred while skiing. He was wearing a helmet but was engaged in a very risky run. The National Ski Areas Association reports that despite the fact that 70 percent of skiers and snowboarders are now wearing helmets (nearly triple the number from 2003), there has been no reduction in the number of fatalities or brain injuries. Could it be due to people taking greater risks because they rely on helmets for protection?

Motorcycle helmets

It has long been true that people driving motorcycles are required to wear helmets. We had a case against a helmet manufacturer where the rider's helmet fell off just before a crash due to a defectively designed clasp. The defense was that the helmet would not have done him any good anyway. The defense expert relied on some very fancy tests in which he demonstrated that the defendant company made helmets that were essentially useless.

Injuries

Head and brain injuries are not necessarily due to impact on the head or helmet. The brain can be bounced around inside the skull even without a skull fracture or penetration. There can be tearing of delicate brain tissue and blood vessels due to rotational forces.

The bottom line is that plaintiffs' attorneys should not automatically assume that a client or decedent who did not wear a helmet while engaged in a sport or other activity is therefore at fault. There may very well be depositions out there *from the defense's own experts* which dispute their main contention that the helmet would have prevented the injury, when in fact the helmet would not have done any good at all.



Booth

Larry Booth is the author, along with his son Roger Booth, of the 600-page Personal Injury Handbook (<http://www.JamesPublishing.com>) and has tried hundreds of jury trials.

