When is a door not a door?

When it's ajar! Strategies for prosecuting bicyclist dooring cases

Cooper

BY MILES B. COOPER

The client explained what happened. "I was riding as close to the right as I safely could. There was a fair amount of traffic and I did not want to be in the way. I'm pretty good at looking out for car doors, but suddenly a door popped open. The corner speared my chest and suddenly I couldn't breathe. They called it a sucking wound." The lawyer asked the client to continue.

Dooring

Dooring is the all-too-common event where an inattentive individual opens a parked or idling vehicle door directly in front of a bicyclist. It is so common it developed its own word. The conflict arises because bicyclists are required to ride as close to the right as practicable. Bicyclists also feel pressure from cars behind them to stay to the right. That pressure comes from engine revving, close proximity, or punishment pass so close that the side view mirror almost kisses the handlebars.

Bicyclists are constantly weighing two competing hazards. Ride in the door zone or stay farther out and risk getting struck from behind. It is no wonder that doorings are one of the most common crashes in urban environments. The injuries range from minor to catastrophic. All too frequently the cyclist is bounced into the roadway and subsequently run over by another vehicle.

Code warrior

California's dooring law is straightforward. Vehicle Code section 22517 states: No person shall open the door of a vehicle on the side available to moving traffic unless it is reasonably safe to do so and can be done without interfering with the movement of such traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

Open and shut liability, right? Unfortunately, insurance adjusters and defense lawyers deploy various defenses attempting to put fault on the bicyclist. These arguments take various forms. "The cyclist was riding too fast." "The door was open for a long time." "The cyclist didn't hit the door but instead over-reacted and caused his own crash."

Deflating the defense

In the demand phase these arguments face the cold hard code. If the driver's actions were reasonably safe, and if the door could be opened without interfering with the movement of traffic, why did the door take out the cyclist? The cyclist saw an open car door way down the block and aimed at it, thinking, "You know what I really need today is to be hospitalized, sustain permanent injuries, and spend 18 months in litigation because maybe, just maybe, I might get a few dollars to pay my rent?" The dooring's very occurrence means the driver is liable.

In litigation, it is not enough to simply tell a jury that the law makes the defendant liable. Unless the defenses are combatted while working up the case, driver-centric jurors could be swayed to believe the code's "reasonably safe" means opening a door however a driver wants to fling open a door. One must build a theme and arm favorable jurors. How? Help the jury understand how it was the driver's choice, and the driver's callousness caused the crash. This starts during the driver's deposition and then gets turned into the multiple choices, multiple failures revealed during cross-examination at trial.

Following this line of questioning can help: Driver, you know there are other road users aside from cars, correct? Including bicyclists. And bicyclists are told under the Vehicle Code to ride as close to the right as possible, correct? Near parked car doors, like yours. And you had a choice to consider that before opening your car door? And you chose not to. You saw there were sharrows (share-the-road bicycle/arrow stencils commonly painted on roads without bike lanes) on the road? You had a choice to consider whether that meant there may be bicyclists there. You chose not to consider it. You have a side view mirror, correct? And you could have looked at it? But you chose not to look at it. You have a rearview mirror. You could have looked at it. But you chose not to. You have the ability to turn your head and look behind you for bicyclists. But you chose not to. You could have slowly opened your door a fraction and looked behind you. But you chose not to.

This examination must be tailored to the facts as they develop. But the situation where the jury understands that the driver chose to be inattentive stacks the facts in the bicyclist's favor.

Outro

Back to our lawyer and client, fast forwarding many months later. The lawyer batted down the various arguments the adjuster made from the *It Ain't Our Fault* playbook. After some back-and-forth, the adjuster begrudgingly tendered the significant policy limits, bringing the matter to a close.

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