

Bicyclist Beats *Boub*

But the beating underscores the battle

BY MARK ANDERSON

Are bicyclists “permitted” users of the road? The answer, of course, depends on whom you talk to.

Many of us ride to work or shopping every day without thinking twice about whether or not we are allowed to use the roads that girdle our city and state. But the question of whether bicycles belong alongside cars on city streets takes on a different tone when municipal liability is concerned. A recent court case resulting in a \$4.35 million settlement from the City of Chicago has brought the issue back into the spotlight, and has highlighted the concerns of bikers across Illinois.

In 1998 the Illinois Supreme Court handed down their decision in *Boub vs. Wayne Township*, a case with potentially wide-ranging implications for bicyclists. John Boub was hurt in 1992 while crossing a bridge under construction in DuPage County. As a result, he filed a lawsuit against the township responsible for the work, alleging a hazard created by the repair work was responsible for his injury.

On the surface, the case appeared to be relatively straightforward: a municipality failing to take “reasonable” care to alert vehicle operators (in this case, the bicyclist) of a hazard, thereby becoming liable. Previous to this case, bicyclists were able to sue municipalities for injuries resulting from “negligent municipal actions” that led to dangerous road conditions. For all intent and purposes, bicyclists were viewed as no different from motor vehicles, and subject to similar protection.

Boub may have changed all that. The township argued that under the Illinois Tort Immunity Act that bicyclists were not “intended” users of the public road, and were only “permitted” users. The Supreme Court agreed, ruling that bicyclists are not automatically “intended” users, thereby releasing the township from liability.

Many of the legal issues surrounding the decision center on liability. Under the Boub decision, municipalities that take action to designate roadways or facilities as intended for bikers run the risk of being held to a higher standard of liability than

when they take no such action. If municipalities do nothing, in effect, they are not liable. If they do, however, take steps to designate the use of facilities as “intended” for bicycles, they can be held to the normal standard of “simple negligence” should a hazard be created.

But beyond the question of designated facilities comes the simple issue of roadway use. Take the example of an open maintenance hole in the street: under the Boub ruling, cars damaged by such negligence would have the right to recover damages from the city, while bicyclists would not.

Such issues were at play in a recent case in the City of Chicago. In November,

Donald R. Hallsten Jr. won a \$4.35 million settlement from the city resulting from an injury sustained four years ago, which left him paralyzed. The city had allowed a construction firm

to erect a canopy at the corner of Dearborn and Delaware, thereby creating a blind spot. Hallsten approached the corner while riding and was hit by a cab.

The city had posted “bicycle route” signs along Dearborn, suggesting that bicyclists were intended users of the road. During the trial, however, the city argued the designation meant bicycles are “preferred” users of such routes, not intended users as such, and that such a designation did not undermine the Boub decision. The suit turned out to be the first successful action against a municipality since the Supreme Court ruling, however, largely as a result of the city’s designation.

That didn’t make the case any easier in the end, though. “The Hallsten case was an exception to the rule in that the city had a desire to make Dearborn a bike route,” said Hallsten’s attorney, Kurt D. Lloyd. “If you read all of the cases that have come down recently concerning bicyclists, you would see a definite trend against bikes”

in these matters, he said. “Boub makes bikes second-class citizens. The only exception is when a municipality manifests some desire or intent for bikes to be on the road”.

In fact, it is such a trend that has bikers and bike advocates most worried. Because signing or striping indicating that a road is “intended” for bicyclists may change a legal standing, many government agencies are reluctant to sign bike routes, paint bike lanes, or provide any kind of safety warnings.

“It’s a disincentive” says Ed Barsotti, executive director of the League of Illinois Bicyclists, who is working with

state legislators to change the law. “The normal rider is most impacted by a municipality’s unwillingness to create bike-friendly facilities.”

Randy Neufeld, CBF’s

executive director says the point isn’t to make it any easier for riders to sue, but that governments be held to the same standards for bicyclists.

“Fixing Boub in the legislature involves the goal for municipalities to have a reasonable responsibility to bicyclists,” he said. “Standard maintenance practices, when absent, shouldn’t distinguish between users. A cyclist should be able to recover damages, just like automobile drivers.”

There are efforts in the state legislature to erase the distinctions. Barsotti and Neufeld, who are working with potential sponsors of a bill, are looking to once again even the playing field.

“Does Illinois value bicycling enough to take some responsibility for it?” asks Neufeld. “That value will be determined by how strongly legislators hear from bicycling constituents.” 🚲

Donald R. Hallsten Jr. won a \$4.35 million settlement from the city after losing the use of his legs.
