



BY Alyssa E. Lambert

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spotlight]

## Overcoming Liability Roadblocks in Bicycle Accident Case

*Stecher v. Doherty*, No. 14-CV-30520 (Colo. Dist. Ct. Arapahoe Cnty. Mar. 18, 2015).

For Mark Stecher, an avid triathlete, it was just another bicycle ride in Aurora, Colo., until a fully loaded, 50,000-lb. county dump truck ran over him and crushed his legs. Although he can walk with the aid of a walker, Stecher, 65, will never run or compete in a triathlon again.

His case was far from a slam dunk: Stecher, not the driver, was ticketed for the accident; several eyewitnesses said the dump truck driver did nothing wrong; Stecher said he never saw the signs warning of the construction zone; and Colorado has a \$350,000 governmental immunity damages cap, making a challenging case a nearly impossible one. Fourteen lawyers declined representation, but when Denver attorney Kurt Zaner heard Stecher's account of the accident, Zaner believed in him and his case. "In my mind, I couldn't figure out how a dump truck running over a bicyclist could ever be the bicyclist's fault," Zaner said.

Stecher sued the driver and Arapahoe County, alleging negligence, negligence per se, and vicarious liability. Zaner had to overcome several liability issues: Stecher didn't see the multiple signs warning of the construction zone ahead, nor did he see the large truck positioned at the beginning of the zone with a flashing arrow directing him to

proceed away from it. He did, however, see the construction cones at the last second and moved to the left of the "cone zone"—the construction area marked off by the cones. The defense and eyewitnesses maintained that Stecher stayed in the zone the whole time, and police ticketed Stecher.

Realizing these facts were insurmountable, Zaner's strategy was simple: Have Stecher accept some responsibility for the accident. "Jurors like to hear people take responsibility," Zaner said. The defense adamantly denied, even in closing, that the driver or any county employees did anything wrong.

Several issues called the driver's actions and decisions into question, however. The driver could have taken a safer route that involved crossing only one lane of traffic. Instead, he crossed three lanes of traffic going in two different directions. When Zaner questioned the driver about this, he said it would have taken too much time to go the safer route.

Zaner also focused on another crucial misstep, which he said can be key in any construction zone accident case. On the day of the accident, the construction crew had a flagger directing traffic and stopping traffic when construction personnel had to cross the road. But at the end of the day, there was no flagger when the dump truck was crossing three lanes and hit Stecher.

"We couldn't blame Arapahoe County because of vicarious liability, so we had to show it was the driver's failure to ask

any of his eight construction workers to flag and stop traffic," said Zaner. "We got the driver to admit he could have and maybe he should have asked for a flagger. . . . If someone had been flagging, this accident wouldn't have happened."

To poke more holes in the defense's credibility, Zaner presented evidence that the driver was involved in previous accidents with the dump truck in which he caused property damage. The county never punished or suspended him.

Then Zaner was blindsided by several county employees' trial testimony. For the first time, one of the eyewitnesses claimed that the plaintiff told him at the scene: "I don't blame the dump truck; he couldn't have seen me." Zaner deposed him for three hours before trial, and this never came up. Zaner abandoned his original cross-examination questioning and focused on the fact that the eyewitness unleashed the most damaging statement of the case for the first time at trial. "I think because the jurors trusted me, they identified with my anger and frustration. After the trial, the jurors commented that they were shocked by this 'blockbuster' statement," he noted.


To make matters worse, the defense called a state trooper and a county deputy officer to testify—neither of whom returned Zaner's multiple calls or emails to talk to them before trial. The trooper accused Stecher of being the most disingenuous "suspect" he had ever interviewed. "When the trooper went to interview my client in the hospital, he

asked Stecher to write his statement. Stecher was on pain meds from multiple surgeries and said he didn't feel well enough to do that and asked if he could dictate it and review it for accuracy before signing," Zaner said. "Stecher asked the officer to make two minor corrections, and the officer agreed. But at trial, all of a sudden, the officer testified that Stecher had 'recanted' his story."

The deputy, who never filed a police report, testified that he happened to drive by the scene and saw the plaintiff riding his bicycle all over the road while the dump truck was maneuvering safely. When Zaner asked him about 30 questions about what he observed after the crash, the deputy stonewalled and repeatedly answered that he had "no recollection." Zaner said, "It became clear to the jury he was not willing to cooperate."

Zaner seized on the theme that the local government was marshaling its resources in a concerted effort to protect an employee. "The jury had the power to tell the county it couldn't do this to one of its own citizens, and I think that really resonated with the jury," Zaner said. The defense "even tried to make the Arapahoe County employees who witnessed the accident into the victims. They claimed they had to go to counseling because of what they saw, as if that was a greater harm than a man getting his legs crushed by a 50,000-lb. dump truck."

The jury returned a verdict apportioning liability at 80 percent to the driver and 20 percent to Stecher. Before trial, the county stipulated that if the plaintiff prevailed on liability, Stecher would receive the entire \$350,000 under the damages cap.

"This is why I went into the practice of law. To fight for the little guy against the Goliath," Zaner said. "I hope this sends the message that no matter the odds, if you believe in your clients and you fight with passion, you can achieve an uncommon and just result." 

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