

Kiawah Island Resort Settles for \$1.75 Million with Brain Injured Cyclist

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A Kiawah Island resort has settled for \$1.75 million with a New York City stockbroker who suffered a brain injury when his rented bicycle collapsed.

Christopher Cox, 32, had filed a negligence lawsuit in U.S. District Court against Kiawah Island Golf & Tennis Resort and several other defendants. The parties settled Jan. 5.

Cox, who was 28 at the time of the accident, was at the resort with friends to celebrate his graduation from Harvard University's Business School. The group had gone for a vacation as they awaited their graduation ceremony.

During a bicycle ride on the beach on May 4, 1997, one of the rented bicycles that had been left at the beach house for their use collapsed. Cox was thrown over the handlebars. He suffered a separated shoulder and a mild traumatic brain injury, according to the plaintiff's complaint.

"Kiawah has a fleet of more than 1,000 bikes, and supposedly this bike was serviced in January," said attorney Stephen M. Smith of the Brain Injury Law Center in Hampton, Va. "But we alleged they didn't maintain their bike properly. The rust buildup on the bike that Cox was riding caused the front fork, steering column and metal frame of the bike to suddenly snap and break off. He flew over the front of the bike and violently hit his head on the ground."

Charleston attorney Richard Rosen, who also represented Cox, said rusted areas on the bike were not visible to the naked eye. "An eyewitness said it appeared that the bike had been painted over," Rosen told *Lawyers Weekly*.

Charleston attorney Stephen Darling, who represented the defendants, said his evidence differed on one key point.

"The green paint that was alleged to have been sprayed on the bicycle was actually painted on by the bicycle manufacturer," Darling said. "Any rust that would have been on the bike was hidden, and we would have proved that at trial."

He said the case settled the day after the defendants settled with a third-party defendant, a Taiwanese bike manufacturer.

The plaintiff's experts were prepared to show the bike should have been taken out of service, Rosen said. "Bikes don't last in salt air and near salt water. If you have a bike in those conditions, you've got to rotate it out of service on a regular basis. Kiawah kept this bike in

service a little too long."

Rosen said the resort might have had a hard time showing the paint on the bike was original because it disposed of the bike within two months of trial, he said.

The defense tried to make an issue out of Cox's failure to wear a helmet, Smith said.

"But this was a beach cruiser, and he was riding on the beach," he said. "If anybody was not going to get hurt under those conditions, it was Cox. He was a former professional cyclist. Riding a bike on the beach was for him like a marathoner taking a leisurely walk."

Cox was once on the British Cycling Team and at one point took over a failing bicycle manufacturing company, Serotta, and turned it around within two years. He left that company and entered Harvard University, where he obtained his MBA, before moving into a Wall Street job.

Smith, whose firm concentrates on brain injury cases, said Cox's mild traumatic brain injury caused him to leave his job as a stock and security analyst.

His first year at the Wall Street firm paid \$105,000 and jumped to \$145,000 the second year. He resigned the following year when the brain injury left him unable to perform multiple tasks at the same time, according to Smith.

"In fact, he still has problems with concentration and suffers from memory loss and physical pain," Smith said.

Cox has returned to school and is seeking a master's degree in exercise science.

Smith said it took several months for the closed head injuries to fully surface. But by 1999, two doctors who saw him agreed his mental problems stemmed from the accident. But for the accident, Cox would still be working in his securities job, the doctors testified.

However, Darling said he was prepared to argue at trial that the plaintiff's problems stemmed from pre-existing conditions, not the bike accident. That included a childhood diagnosis that Cox might have had a learning disability such as dyslexia.

"This was a hard-fought case, with a lot of issues involved, and we were prepared to try it, but we settled on the eve of trial," Darling said. "They got less than what they wanted, and we paid more. But that's the nature of a settlement."