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## New suit filed in Essex Avenue fatality

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---- — A lawyer representing the estate of Stephen Bennett — the rider killed when his motorcycle slammed into a package delivery truck crossing to the westbound lane of Essex Avenue from Fernwood Lake Avenue last May — has filed a lawsuit against the driver and insurance company of another truck that was in front of the cycle, and is alleged to have blocked the vision of both the truck driver and cyclist by illegally traveling in the breakdown lane.

The Massachusetts State Police collision reconstruction report of the incident indicates that Barbara Cox, who was driving a truck owned by Cox Co. Inc. was cited by Gloucester police for a “breakdown lane violation.”

Gloucester attorney Joseph Orlando, representing Bennett’s estate, contends that, by shifting from the eastbound general travel lane of Essex Avenue (Route 133), Cox impeded the vision of the UPS driver who exited Fernwood Lake Avenue onto the eastbound lane of Essex Avenue to turn left or west, and would not have moved ahead had he known that Bennett, riding his Harley Davidson at a legal speed behind the Coxco truck, was there.

Orlando also alleges that Bennett was prevented from seeing the UPS truck by the placement of the Coxco vehicle in the breakdown lane.

A report by the state police reconstruction team released by the office of Essex County District Attorney Jonathan Blodgett in December concluded that Bennett was solely responsible for the collision that killed him.

Orlando called that finding “truly absurd.”

”The rules of the road were ignored,” he added.

Representatives of Coxco, which is based on Fernwood Lake Avenue, and Arbella Insurance Co., which insured the vehicle cited by Orlando in his lawsuit, declined comment Wednesday. UPS and the Bennetts have reached a settlement that Orlando has described as “very generous.”

In a telephone interview Wednesday, Orlando said the suit is “about Stephen Bennett’s legacy to his children.

”We have set out to prove that he (Stephen Bennett) was not the cause of the accident that took his life,” Orlando said. “That’s the higher purpose in what we’re doing.

“Amazingly, the police report, which was made public nearly eight months after accident, found Stephen

Bennett at fault,” Orlando said in an emailed statement to the Times.

“Stephen Bennett was an innocent victim of negligence of the driver of the Coxco truck for reasons for which it was cited by the Gloucester Police Department, as well as the UPS truck for entering without a clear view of traffic.

“To attempt to blame the victim, who is unable to defend himself, is outrageous,” Orlando added.”

The state police report concluded that “the cause of this collision and resultant fatal injuries suffered by Stephen Bennett was his illegal passing of the (Coxco truck) that obscured his vision of the roadway ahead on Route 133 while in the eastbound travel lane.”

A key issue in the case is the interpretation by the state police that the breakdown lane on Route 133, in combination with the eastbound lane, constitutes a highway divided into lanes.

The collision report quotes from Section 4A of Chapter 89 of the Massachusetts General Laws, which states that, “when any way has been divided into lanes, the driver of a vehicle shall so drive that the vehicle shall be entirely within a single lane and he shall not move from the lane in which he is driving until he has first ascertained if such movement can be made with safety.

“The operators of motorcycles shall not ride abreast of more than one other other motorcycle, shall ride single file when passing, and ‘shall not pass any other motor vehicle within he same same lane,’ except another motorcycle”.

State Police declined comment on the lawsuit Wednesday.

Orlando filed the suit in U.S. District Court last Thursday, accusing Barbara Cox and Cox Co. Inc. of negligence and bringing about what he said was Bennett’s wrongful death of Stephen Bennett. The suit also charges Arbella Protection Insurance Co. with “bad faith,” and alleges that the company has a “duty to make a reasonable offer of settlement when liability is reasonably clear.”

Arbella “to date, has not made an offer of settlement, but instead has denied liability,” Orlando said.

The May 31, 2012 accident occurred in front of Bennett’s widow Tammy Bennett and the family’s 12-year-old son, who were driving an SUV immediately behind Stephen Bennett’s cycle, heading home to their apartment in The Heights of Cape Ann.

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