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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

ROBERT A. SMITH,  
Plaintiff,  
v.  
BRANDON LEE SWIGER, STATE OF  
OREGON AND CITY OF PORTLAND,  
Defendants.

CASE NO.:  
**COMPLAINT  
(Negligence)**  
TOTAL PRAYER: \$1,358,229.37  
ORS 21.160(1)(d)  
CLAIMS NOT SUBJECT TO  
MANDATORY ARBITRATION  
JURY TRIAL REQUESTED

PLAINTIFF ALLEGES:

- 1.
- Plaintiff is a citizen and resident of Multnomah County, Oregon.
- 2.
- Defendant Swiger is a citizen and resident of Clackamas County, Oregon.

**COMPLAINT**

**Thomas, Coon, Newton & Frost**  
820 SW 2<sup>nd</sup> Ave., Suite 200  
Portland, OR 97204  
Telephone: 503-228-5222  
Facsimile: 503-273-9175

1 3.

2 Defendant City of Portland is a home rule City in Multnomah County, Oregon.

3 4.

4 At all relevant times, Defendant City of Portland has been responsible for the  
5 design and maintenance of the intersection of N. Greeley Avenue and the I-5  
6 southbound on-ramp (“the intersection”) about one quarter mile northwest of the I-405  
7 interchange.

8 5.

9 At all relevant times, Defendant State of Oregon has been responsible for the  
10 design and maintenance of the intersection of N. Greeley Avenue and the I-5  
11 southbound on-ramp (“the intersection”) about one quarter mile northwest of the I-405  
12 interchange.

13 6.

14 At all relevant times, the intersection design and signage have required a  
15 bicyclist proceeding southeast on N. Greeley Avenue in the bicycle lane to cross the I-5  
16 on-ramp in order to continue on the N. Greeley bike lane.

17 7.

18 At all relevant times, the speed limit on N. Greeley at the intersection has been 45  
19 miles per hour, but traffic at that point routinely travels at 55-60 miles per hour.

20 8.

21 On or about December 21, 2017, at about 1:45 PM, plaintiff was riding his  
22 bicycle southeasterly on N. Greeley Avenue in the bike lane. Approaching the  
23 intersection, he checked traffic and noted a large white truck traveling southeasterly on  
24 N. Greeley at a speed and distance sufficient to allow him to cross the I-5 on-ramp as  
25 indicated by the bike lane directional arrow painted on the road. As plaintiff crossed the  
26 on-ramp, defendant Swiger, traveling at more than 60 miles per hour, passed the white

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1 truck and crossed from left to right in front of it so as to take the exit ramp for I-5. In  
2 doing so, defendant Swiger struck plaintiff and his bicycle, causing plaintiff injury as  
3 alleged herein.

4 9.

5 As a result of the negligence of defendants alleged herein, plaintiff suffered a  
6 traumatic brain injury, left femur neck and shaft fracture, left tibia and fibia fractures, left  
7 tri-malleolar ankle fracture, left comminuted calcaneal fracture, right hand fracture, right  
8 pelvic fracture, multiple rib fractures, collapsed and bruised lungs, liver and spleen  
9 injuries, chipped teeth and facial scarring, and incurred reasonable and necessary  
10 medical expenses in the amount of \$358,229.37, which will be amended to allege  
11 further medical expenses incurred by the time of trial.

12 10.

13 As a result of the negligence of defendants, alleged herein, plaintiff has endured  
14 pain, suffering, inconvenience and loss of the enjoyment of life, to his noneconomic  
15 damage in the amount of \$1,000,000.00.

16 **FIRST CLAIM FOR RELIEF**  
17 (Negligence against Defendant Swiger)

18 11.

19 Plaintiff realleges paragraphs 1-10

20 12.

21 Defendant Swiger was negligent, which was a cause of damage to plaintiff as  
22 follows:

- 23 a. In driving too fast for conditions;
- 24 b. In exceeding the posted speed limit;
- 25 c. In failing to maintain a proper lookout;
- 26 d. In failing to keep adequate control of his vehicle; and

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1 e. In attempting to pass the white truck and take the I-5 on-ramp when he  
2 did not have sufficient room to do so.

3 **SECOND CLAIM FOR RELIEF**  
4 (Negligence against Defendant City of Portland)

5 13.

6 Plaintiff realleges paragraphs 1 - 10.

7 14.

8 At the time of plaintiff's injury, defendant City of Portland was aware that the  
9 intersection was unsafe. There had been previous collisions, and the danger of the  
10 intersection had been discussed in the local cycling press:

11 A recent collision on North Greeley where it crosses over an on-ramp for  
12 the Interstate 5 freeway has thrust concerns about that dangerous  
13 intersection back into the spotlight. It's also a reminder that even when  
14 collisions don't lead to serious injuries or even death they still take a  
significant toll on victims and the road designs that lead to them still  
deserve our attention.

15 I've mentioned this location several times in the past. In the southbound  
16 direction people are driving 45-50 mph and then speeding up even faster  
17 as they merge onto the I-5 on ramp. Meanwhile, there's a designated bike  
18 lane to the right that directs riders to merge left across the freeway on-  
19 ramp in order to continue southbound toward Interstate Avenue. This is a  
completely unacceptable design for a bikeway — especially a route where  
the latest City of Portland counts show about 1,400 average daily bicycle  
trips.

20 Jonathan Maus, Editor, *BikePortland*, 2/3/16.

21 15.

22 Defendant City of Portland postponed addressing the safety of the intersection  
23 because of delays associated with providing an analysis to comply with least-cost  
24 paperwork requirements in ORS 279C.305.

25 ///

26 ///

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1 16.

2 Defendant City of Portland was negligent in:

- 3 a. Designing the intersection so as to require a cyclist in the southeast
- 4 bound bike lane to cross a freeway entrance ramp where traffic routinely
- 5 travels at 55-60 miles per hour;
- 6 b. Establishing a bike lane on N. Greeley Avenue southeast bound, knowing
- 7 that bike lane would cross the freeway on-ramp;
- 8 c. Failing to provide a means of traveling on the southeast bound bike lane
- 9 on N. Greeley Avenue without crossing the freeway on-ramp;
- 10 d. Failing to provide a bike lane on the northeast side of N. Greeley Avenue
- 11 to accommodate both northwest and southeast-bound bicycle traffic;
- 12 e. Failing to warn approaching traffic of the bike lane crossing; and
- 13 f. Failing to close the bike lane until a safe design could be implemented.

14 17.

15 On or about April 10, 2018, plaintiff sent defendant City of Portland a tort claim  
16 notice in compliance with ORS 30.275.

17 **THIRD CLAIM FOR RELIEF**  
18 (Negligence against Defendant State of Oregon)

19 18.

20 Plaintiff realleges paragraphs 1 - 10.

21 19.

22 At the time of plaintiff's injury, defendant State of Oregon was aware that the  
23 intersection was unsafe.

24 ///

25 ///

26 ///

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2 Defendant State of Oregon postponed addressing the safety of the intersection  
3 because of delays associated with providing an analysis to comply with least-cost  
4 paperwork requirements in ORS 279C.305.

5 21.

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- 8 bound bike lane to cross a freeway entrance ramp where traffic routinely
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- 13 on N. Greeley Avenue without crossing the freeway on-ramp;
- 14 d. Failing to provide a bike lane on the northeast side of N. Greeley Avenue
- 15 to accommodate both northwest and southeast-bound bicycle traffic;
- 16 e. Failing to warn approaching traffic of the bike lane crossing; and
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19 On or about April 10, 2018, plaintiff sent defendant State of Oregon a tort claim  
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1 **PRAYER**

2 WHEREFORE, plaintiff prays for judgment against defendants as follows:

- 3 (a) Economic damages in the amount of \$358,229.37;  
4 (b) Non-economic damages in the amount of \$1,000,000.00; and  
5 (c) Costs and disbursements incurred herein.

6 Dated this 30<sup>th</sup> day of August, 2018.

7 **THOMAS, COON, NEWTON & FROST**  
8 Attorneys for Plaintiff

9 By /s/ Cynthia F. Newton  
10 Cynthia F. Newton, OSB 040037  
[cnewton@tcnf.legal](mailto:cnewton@tcnf.legal)

11 /s/ Raymond F. Thomas  
12 Raymond F. Thomas, OSB 794160  
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13 Federal Tax ID #93-078675  
14 Trial Attorneys: same

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