

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JESSICA LOVEJOY

Plaintiff

and

**HOMER SIMPSON, MARGE SIMPSON, OTTO MANN, SHELBYVILLE SHIPPING,
THE TOWN OF SPRINGFIELD, and DUFF GENERAL INSURANCE COMPANY**

Defendants

**MEDIATION MEMORANDUM OF THE DEFENDANT,
THE TOWN OF SPRINGFIELD**

Date and Time:	March 28, 2019
Location:	McCague Borlack LLP
Mediator:	Van Krkachovski
Lawyers for the Plaintiff,	Jessica Grant
Lawyers for the Defendants, Homer Simpson and Marge Simpson	Matthew Dugas
Lawyers for the Defendants, Otto Mann and Shelbyville Shipping	Eric W.D. Boate
Lawyers for the Defendant, The Town of Springfield	Jim Tomlinson
Lawyers for the Defendant, Duff General Insurance Company	Bogdan Miscevic

OVERVIEW

This action arises out of a motor vehicle accident that occurred on or about July 1, 2016, on Maple Avenue at or near the intersection with Elm Street (hereinafter the “Intersection”). The plaintiff, Jessica Lovejoy, alleges that she was bicycling northbound on Maple Avenue when a truck owned by the defendant, Shelbyville Shipping, and operated by the defendant, Otto Mann (hereinafter the “Truck”), also travelling northbound on Maple Avenue, struck her while the truck was in the process of making a right turn onto Elm Street (hereinafter the “Accident”). The plaintiff alleges that she suffered injuries as a result of the Accident.

LIABILITY

Contributory Negligence of the Plaintiff, Jessica Lovejoy

Springfield submits that the plaintiff substantially caused or contributed to the accident and her own injuries.

Springfield contends that the plaintiff, as a cyclist approaching the intersection and planning to travel straight through, is obliged to merge to the left side of the curb lane. This allows motor vehicles to merge into the bicycle lane in advance of making a right turn. This manoeuvre is required irrespective of whether the bicycle lane continues on the other side of an intersection. Springfield submits that the plaintiff failed to perform this manoeuvre and instead remained in the bicycle lane. She incorrectly positioned herself in the area designated for turning vehicles such as the Truck.

The plaintiff failed to perform the above manoeuvre, to keep a proper lookout, and/or to operate her bicycle in a safe fashion. Springfield submits that these omissions arise from her improper consumption of alcohol prior to the accident. In addition, the plaintiff was in a rush to get home prior to her curfew. Springfield submits that these factors reduced the plaintiff’s decision making ability thereby placing herself and others on the roadway in risk of serious injury or death.

With respect to damages, the plaintiff, in an attempt to “look cool” did not properly secure her helmet in accordance with section 104(2.1) of the *Highway Traffic Act*. Springfield submits that had the plaintiff secured her helmet, the severity of her injuries would have been reduced.

Liability of the defendants, Shelbyville Shipping and Otto Mann

The driver of the Truck, Otto Mann, consumed cannabis prior to operating the Truck. Mr. Mann was intoxicated and his ability to safely operate the motor vehicle was severely impaired. In addition to, or as a result of, Mr. Mann’s impairment, he failed to activate his turn signal prior to

merging into the dashed bike lane in advance of making the right turn onto Elm Street. Therefore, Springfield submits that Mr. Mann did not meet his obligation pursuant to section 142 of the *Highway Traffic Act*.

Otto's failure to signal caused and/or contributed to the accident. The plaintiff testified at her examination for discovery that she did not know whether the Truck was planning to turn right onto Elm Street and could not respond accordingly.

Mr. Mann states that the plaintiff tried to pass the Truck prior to the Intersection. Notwithstanding the negligence of the plaintiff discussed above, it is logical that Mr. Mann would have been aware of the plaintiff's presence. A motor vehicle travels faster than a bicyclist. The Truck must have passed the plaintiff while travelling northbound on Maple Street. As a result, Mr. Mann should have been aware of the possibility that there would be a bicyclist in his "blind spot".

Springfield takes the position that the reverse onus provision contained in section 193(1) of the *Highway Traffic Act* applies since the plaintiff was a cyclist. Springfield submits that Mr. Mann and Shelbyville Shipping have failed to satisfy this reverse onus.

Liability of Springfield

Springfield submits that at all material times Maple Avenue and the Intersection contained proper signage and that Springfield discharged its duty to protect individuals using its roadways. It is Springfield's position that the absence of a designated bike lane on the North side of the Intersection does not and should not impact the operation of cyclists or vehicles on the South side of the Intersection.

DAMAGES

The Plaintiffs' damages from the accident are in dispute.

Springfield contents that the plaintiff's alleged damages are exaggerated and that the plaintiff failed to mitigate them.