

Driver Found Not Negligent

Paul Lipman (Senior Partner/Los Angeles Office) recently prevailed on appeal, protecting Ronald Zurek's defense verdict in *Graven v. Goodell*. At trial, plaintiff bicyclist argued that defendant made a right turn without checking her mirrors, which the defendant admitted to cutting him off. Mr. Zurek argued that there is no duty to check one's mirrors when turning right if there is no indication that there is any hazard present (the driver testified she did not pass a bicyclist; the bicyclist testified that she did). At issue on appeal was the defendant's right to the "right to assume the good conduct of others" instruction. Plaintiff argued that this can only be used if the defendant herself used due care, and that she had not checked her mirrors. On appeal, defendant argued, as Mr. Zurek had done at trial, that it is not necessarily negligence to make a right turn without checking one's mirrors, if there is no indication of a nearby hazard.

In affirming the defense verdict, the Court of Appeal quoted Mr. Zurek's colorful closing argument at length. As Mr. Zurek told the jury, "I dare say that of the thousands of right turns that are being made during the time I'm making this closing argument, that if we had a video camera on every driver in Southern California, you probably wouldn't see one who turns around and looks over at the curb and behind them. Why would you? There is no reason to, okay? Unless his bicycle was right here – unless she drove right by him, and she knew he was right here – well, yeah, then that's obviously a different situation. But he wasn't. He was back here and he was coming real fast, and he was going downhill ..." The jury agreed, and the Court of Appeal agreed that this was the jury's decision to make.

The Court of Appeal also agreed with Mr. Lipman's appellate argument that a survey of case law indicates that the "right to assume the good conduct of others" instruction is appropriate anytime there is a conflict in the evidence as to whether the defendant used due care (the instruction is not appropriate if it is clear that the defendant did not use due care).

The Court of Appeal also agreed with defendant's contention that the jury instruction is applicable to defendants as well as plaintiffs.