

Transportation Liability and Risk Management

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Speaker Info

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Qualifications and Experience

- Occasional Expert Witness Since 1987
- Frequently Retained Expert Witness Since 2010
 - Approx. 90-100 Depositions
 - Approx. 20 Trials (2-3 per Year)
- **I am not an Attorney!**
 - But I work with many Attorneys



Key Take-Aways

- Our State is a High Liability State
 - Frequent Claims and Litigation
 - Push for Subsequent Remedial Measures
 - More Notice from Unusual Sources
- Injured Parties have the Right to Sue to Attempt to Be Compensated for Damages

Why High Liability?

- No Limits on Economic Damages
 - Medical, Loss of Wages
- Low Insurance Limits
- High Exposure to Vulnerable Users
- How Liability is shared



Joint & Several Liability

- Multiple Defendants All Responsible To See How Injured Party Is Compensated
 - Based Upon Ability To Pay
 - Deep Pockets
- “Injured Parties have a Right to be Compensated”
- Subject to Potential Limitations
 - Cap on Amount of Damages

Example Under Joint & Several Liability

- Injured Pedestrian Has \$3 Million In Medical Expenses
- Injured Pedestrian Found 15% At Fault
- Damage Award 85% = 2,550,000
- Driver 75% At Fault, Has \$50,000 In Insurance
- Agency 10% At Fault, Has \$3 Million In Insurance
- Agency Pays \$2,500,000

Dangerous / Defective Condition

- A Dangerous Condition Exists
- The Danger is Substantial, not Trivial
- The Condition Contributed to an Incident
- The Condition is Under the Control of the Agency
- The Agency knew or Should have Known of the Danger
- The Agency did not do Anything to Correct or Warn of the Defect

Where Do We Stand

- Standard Of Care:
 - System Is Built Upon Focusing Fault Upon Dangerous Driver Behavior
- MUTCD (Very Important)
 - Less Than 5 Collisions In Recent Years = No Problem
 - Drunk Driver = No Problem
- Design Guides (Important but not as Vital)



Due Care and Sight Distance

- Hefner v. County Of Sacramento, 1988
- Sight Distance Poor Near/Behind Stop Sign Limit Line
 - Limit Line Was Per MUTCD Guidelines
- Sight Distance Good If Driver Moved Forward With Care
 - Reasonably Foreseeable



California Immunities

- Time Limits to File Claim
- Complex Procedures
- Motions for Summary Judgement (MSJ)
- Design Immunity
 - Procedure Defined by Statute
 - Clear Record of Compliance
 - Can be Lost if not Careful

Design Immunity Needs

- Approved Plans for Current Condition
- Approval of Any Subsequent Changes
 - Sign Work Orders
- Reasonable Safety Record
- No Glaring Irregularities
- Files Show Diligence

Best Ideas for Design Immunity

- Prepare Complete Signing and Striping Plans Whenever Streets are Repaved.
- Establish a Policy to Reflect this Process
- Ensure Authority is Properly Delegated
- Change a Small Design Feature, if Possible
 - Lane Width
 - Pavement Edge Treatment

Preserving Design Immunity

- Clearly Document Authority for Approvals
- Maintain Signed Plans
- Standard Drawings
- Stamped Signing and Striping Plans
 - Suggested With All Overlay Projects
- Priority System for Safety Improvements

Losing Design Immunity

- No Plans
- Lost Plans
- Shredded Plans
- No Signatures
- Too Many Changes
- Poor Safety Record Discovered
- Previous Litigation at Site

Design Immunity Example 1

- Castro v. Thousand Oaks (239 Cal. App 4th)
- Solid Plan for a Marked Uncontrolled Crosswalk
- Added a flashing treatment at a later date without a design
- Motion for Summary Judgement Granted, but appealed
- What Happened After?



Other Recent Design Immunity Appeals

- Cordova v Los Angeles
- Menges v Caltrans
- Tansaavadi v RPV



No Design Immunity??

- Address Allegations of Dangerous and Defective Condition
 - Does it Exist?
 - Is it substantial?
 - Do you have Control?
 - Should you have known of it?
 - Is there a reasonable action that you should have taken?

Managing the System

- Safety Monitoring Systems
 - TIMS
 - SWITRS
 - City Systems
- Priority System for Future Improvements
- Follow Up
- Implications of Google Photos

Turturro v Pascarella

- New York City
- Failure to Traffic Calm
- \$8 Million Judgement Against City

State's Highest Court Holds NYC Liable for Injuries on Streets Without Traffic Calming

By Brad Aaron | Jan 5, 2017 | 200



Gerritsen Avenue, where a speeding driver severely injured 12-year-old Anthony Turturro after locals asked DOT to calm traffic on the street. A state Court of Appeals ruling exposes the city to liability for failing to redesign streets when it's aware of dangerous conditions.
Image: Google Maps

The Court of Appeals, New York's highest court, ruled that New York City and other municipalities can be held liable for failing to redesign streets with a history of traffic injuries and reckless driving.

Subsequent Changes



About \$1 Million Awarded for
Failure to Stripe Bike Lane

Settlements and Judgements

- Sometimes it is wise to pay even if you did nothing wrong.
 - Risk Management = Minimizing Total Costs
- It may be hard to Prove you did nothing wrong
- There may be something truly wrong
- Top Plaintiff Firms have Great Resources
- Juries are Unpredictable

Most Important Factors

- Cases are Largely based upon:
 - Extent of Injuries
 - Sympathy of Victim
 - Skill and Determination of Injured Party Legal Team
- Procedures and Record Keeping of Defendant Parties

Areas of Great Exposure

- Vulnerable Users
 - Pedestrians, Bicyclists, Motorcyclists
- Higher Speed Roadways
 - Especially with Minimal Access Control
- Construction Zones
- Areas with Poor Documentation

Conclusions

- We cannot prevent parties from filing claims
- We need to be confident that our system safely meets the needs of competent and responsible drivers
- If we know of deficiencies, we need a plan
 - Even if Funding is not Available
- We need to minimize the chances of surprises

If You Want More

- Look for UC Berkeley Tech Transfer TE-56
 - 8 hours over 4 days
 - Legal Procedures
 - Tips for Depositions and Testimony
 - Numerous Case Examples

 - Questions?