

Negligence in Road Construction and Maintenance

Ron Johnson

In the world of tort law, litigation involving injuries sustained in a motor vehicle collision might be the most common. The usual scenario involves at least two vehicles, and fault largely being decided by which is listed as "Unit 1" in the accident report completed by law enforcement. However, there is a third factor in many motor vehicle accidents that is often ignored by attorneys whether they are on the defense or plaintiff side of the case. That is the condition of the roadway itself. This is especially true in single vehicle accidents.

A shockingly high percentage of motor vehicle accidents occur, at least in part, because of the dangerous conditions of the roadway. These can take the form of negligently designed or maintained traffic control zones, defectively constructed roads or improperly placed or maintained traffic control devices. Practitioners would be well advised to thoroughly investigate if any of these factors played a role causing or contributing to the motor vehicle accident they are litigating.

Negligence in Traffic Control Zone

A traffic control zone is a designated area of a highway where temporary traffic control devices are used to guide drivers and ensure safety. These zones are used for construction, maintenance or other work activities. These can also be referred to as temporary traffic control zones because they only exist for the duration of the work being performed on the road or adjacent area.

The Manual on Uniform Traffic Control Devices (MUTCD) is the national standard for all traffic control devices used on public roads in the United States. It is issued by the Federal Highway Administration (FHWA) and is regularly updated to reflect the latest best practices and technologies in traffic control. If a motor vehicle accident occurs within a temporary traffic control zone, the MUTCD is the best source to consult to determine if the zone was properly configured and whether it played a role in the accident.

There are five parts of any traffic control zone. Those are:

1. The advanced warning area: This is the first section of the traffic control zone and is located before the transition area. It is used to alert drivers of the upcoming work zone and to give

them time to adjust their speed and position.

2. The transition area: This is the section of the traffic control zone that separates the advanced warning area from the work area. It is used to guide drivers into the proper lane and to direct them around any obstacles or hazards that may be present in the work area.
3. The buffer area: This is the section of the traffic control zone that separates the work area from the adjacent traffic lanes. It protects workers and creates a physical barrier between the work area and moving traffic. The buffer area may include devices such as barriers, cones and drums.
4. The work area: This is the section of the traffic control zone where the actual work is taking place. It is essential to keep this area clear of any unnecessary personnel or vehicles to ensure the safety of workers and drivers. Traffic control devices, such as traffic signs and signals, may guide drivers through the work area and alert them to any hazards.
5. The termination area: This is the final section of the traffic control zone and is located after the work area. It is used to alert drivers that they are leaving the work zone and to guide them back into the regular traffic flow.

If anyone of these components is designed, arranged or maintained in a way that violates the standards set forth in the MUTCD then the contractor responsible for the traffic control zone may be responsible, in part or in whole, for the motor vehicle collision in your case.

As an example, in a case handled by our firm, the advanced warning area and the work area were responsible for a collision resulting in a death. The work area required a lane closure on a two-lane road. This meant that traffic going in opposite directions had to alternate use the remaining lane. This was achieved using a portable traffic signal set on a timer to give northbound traffic a red light to stop while southbound traffic used the single available lane, and then the reverse after a set amount of time. The MUTCD set forth clear standards governing how

(Continued on next page)

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such a work area should be constructed and changed as traffic volumes changed throughout the day.

The problem arose when rush hour traffic drastically increased the volume of southbound traffic, and no one changed the timing of the portable traffic signal to accommodate that change in volume. The result was that the southbound traffic began to back up for more than a mile, which put the end of the queue well past the first advanced warning sign. This meant that southbound traffic in a 55-mph zone was likely to suddenly and unexpectedly encounter stopped traffic. This should never happen in a traffic control zone.

In this case, this happened just over a slight hillcrest in the road, and a pick-up truck fatally struck a man on his motorcycle stopped at the end of the queue. The contractor responsible for the traffic control zone failed to follow the MUTCD guidelines. The negligence in the maintenance of the traffic control zone was the substantial factor in causing the collision and served as a powerful defense of the driver of the pick-up truck, which was listed as “Unit 1” in the accident report.

Defectively Constructed Roads

When roadways in Kentucky are built or resurfaced, the MUTCD is still a source of guidelines and standards, but the Project Proposal from the Kentucky Transportation Cabinet (KYTC) and KYTC *Standard Specifications for Road and Bridge Construction* are the two sources that will most directly govern how the roadway is to be constructed or repaved. In a case where the condition of the roadway itself seems to have played a role in causing the motor vehicle collision, practitioners should obtain a copy of the Project Proposal for that job from the KYTC via an open records request.

The most common, and often most dangerous, defect in a road is a vertical face at the road edge that exceeds three inches. Usually, these are found on two-lane roads without a paved or gravel shoulder. When one of these roads is resurfaced with asphalt it increases the height of the road edge. This is especially true if the contractor does not first mill the existing asphalt, a process of scraping the existing layer of asphalt off before laying down new asphalt. While milling is required in areas where there are curbs, gutters or manhole covers, it is often omitted in long stretches of rural roads without those features.

When a road is resurfaced without milling, it is crucial that the contractor create a safety wedge where the edge of the road meets the unimproved shoulder. A safety wedge is nothing more than a 45-degree sloped wedge of asphalt that eliminates a vertical face at the road edge. The presence of the wedge creates what is known in the industry as a “forgiving road edge,” meaning that if a vehicle drops a tire off the road, the wedge allows it to easily move back onto the roadway. A vertical road edge of three inches or more does not allow this and is often the cause of serious motor vehicle accidents.

When investigating a case where the road edge caused a vehicle to lose control and crash, the practitioner should look first at the Project Proposal from the KYTC to determine if a safety wedge was required. In almost every instance of a road with an unimproved shoulder it will be a requirement. If the contractor failed to construct a safety wedge when paving or resurfacing a road, it is negligence unless specifically authorized by the KYTC engineer.

In a case handled by our firm, we proved that the death of a woman driving her children to school was not the fault of the truck that impacted her vehicle, but the defectively constructed road edge that caused the driver of the truck to lose control and cross the center line striking her vehicle head-on. The contractor responsible for resurfacing the road failed to construct a safety wedge and failed to obtain permission from the KYTC to omit it. The result was a vertical road edge that was over eight inches in height. A Boone County jury returned a significant verdict against the road contractor and refused to apportion any fault to driver of the truck that crossed the center line.

Traffic Control Device Negligence

Traffic control devices, such as stop signs, stop lights and yield signs, are crucial to roadway safety. Failing to use or maintain these devices as required by the MUTCD can result in extreme danger to the traveling public. The MUTCD has an entire section dedicated to setting forth the circumstances under which certain types of traffic control devices must be used on the roadway.

As stated in the MUTCD, “the purpose of traffic control devices, as well as the principles for their use, is to promote highway safety and efficiency by providing for the orderly

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movement of all road users on streets, highways, bikeways, and private roads open to public travel throughout the nation.”

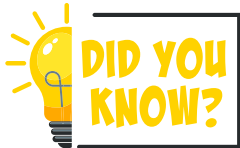
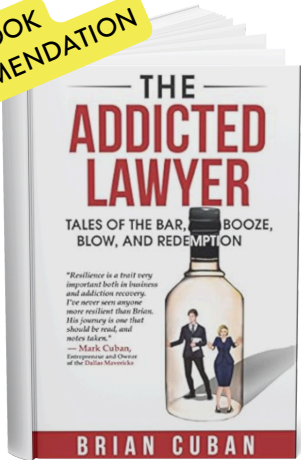
The MUTCD also contains standards so that traffic control devices are uniform across the country in shape, color and message so that the traveling public quickly recognizes the instruction given. As stated in the MUTCD, “uniformity of devices simplifies the task of the road user because it aids in recognition and understanding, thereby reducing perception/reaction time.” When installing traffic control devices, it is crucial that they comport with the requirement for design set forth in the MUTCD. Failure to do is negligent and could cause catastrophic consequences.

Equally important is the maintenance of traffic control devices. The MUTCD requires that physical maintenance of traffic control devices should be performed to retain the legibility and visibility of the device, and to retain the functioning of the device. It is not uncommon for vehicles to knock down a stop or yield sign. If it is not quickly replaced, the intersection without such a sign becomes very dangerous.

A common issue for maintenance of traffic control devices is determining who is responsible for its maintenance. In a case handled by our firm, a stop sign was missing at an intersection for at least four months. The absence of the sign was a substantial factor in a motor vehicle collision at the intersection that caused the death of one driver and severe injuries to a passenger. The issue was who was responsible for noticing that the sign was down and replacing it. Because the intersection was between a county-maintained road and state-maintained road, the county took the position that it was the state’s responsibility. However, the KYTC *Maintenance Guidance Manual* sets forth in such a situation that maintenance of the traffic control device is the responsibility of the owner of the road it controls, even if the sign is placed within the right of way of the state road.

Motor vehicle injury cases are often not as simple as they seem. Make sure to look at all factors involved in the accident, as there may be problems with the road or road signage that caused or contributed to the collision. When trying to determine if the roadway was properly designed and constructed look to the *Manual on Uniform Traffic Control Devices*, the KYTC *Standard Specifications on Road and Bridge Design*, the KYTC *Maintenance Guidance Manual* and the KYTC Project Proposal. Those sources will determine the standard of care for the road contractor and whichever entity was responsible for maintaining road signs.

Ron Johnson is a civil trial lawyer based in Louisville, Kentucky. He is licensed to practice law in Kentucky and Ohio. He concentrates his practice in personal injury, mass torts, class actions and multi-district litigation. Johnson is chair of the LBA’s Tort and Insurance Law Practice Section. ■



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