

WORK ZONE LARGE LOSS SUMMARY

Work Zone Description

March 1998. 4-lane road located in a large metropolitan area. 2 lanes north bound and 2 lanes south bound. Posted speed limit of 45 mph. ABC Construction was acting as the General Contractor on a sewer improvement project for the Water Reclamation District. The construction did not involve any work to the roadway itself but did require traffic to be diverted and 2 lanes were closed. Traffic Lites was hired by ABC Construction to provide and maintain traffic control devices such as signage, arrow boards and barricades in order to redirect traffic flow through the area. ABC Construction was self-performing the sewer improvement and all construction activity.

ABC Construction carries a \$2 million each event limit and \$4 million general total limit. A \$1 million deductible applies. A \$25 million Umbrella Excess policy also is in effect. Traffic Lites carries a \$1 million primary policy and has no umbrella excess coverage. ABC is included as an additional insured on the subcontractor's policy.

The accident occurred near the intersection of Grand and Walton Streets. Vehicles involved in the accident were traveling on Grand – 1 north bound and the other south bound. Construction operations required that the 2 northbound lanes be closed. One northbound lane was closed completely, and the other northbound lane was diverted into what would normally have been the inside lane of the south bound traffic. Therefore, south bound traffic on Grand proceeded south in the existing curb lane and north bound traffic proceeded north in what normally would be the inside south bound lane. This diversion of the northbound lane into the southbound lane occurred approximately 200 feet north of Walton Street.

Accident Facts and Injuries Sustained:

At approximately 10:00 PM, as Mr. R was transitioning from the north bound lanes into the south bound lanes, his vehicle apparently lost control and entered into the oncoming traffic lane, where he collided with Mr. B who was traveling south bound at the time. Both vehicles came to rest in the southbound lane. Mr. R was ejected from his vehicle. As a result of the collision and ejection, Mr. R suffered major head trauma:

- 26 yrs old at time of accident. No expected decrease in life expectancy.
- Hospitalized for 1 month in a coma.
- Discharged to nursing home, rehab, therapy. Constant monitoring for 3 months. Taken care of by mother and family members.
- Seizure problems. Readmitted for multiple surgeries.
- Currently not able to work, walks with assistance, needs full time care.

Bills and Damage:

- \$265,000 medical for hospitalization and surgeries and continuing.
- \$205,682 past wage loss
- \$1,230,524 future wage loss (Jewel Food Stores)
- \$189,000 per year home care
- \$135,479 per year institutional care
- \$5,000,000 past and future pain and suffering
- \$2,500,000 disability and disfigurement
- Estimated full value of damages between \$7M and \$10M

Possible Causes of Accident:

1. Mr. R was driving too fast for conditions, and lost control of his vehicle. Witness statements indicated good lighting, a well marked roadway and the area was obviously under construction. Barricades, signs and arrow board were all present and working. No evidence any traffic control devices were placed directly in the lane of travel.
2. Traffic control devices were improperly positioned such that they were placed in the lane of travel and/or confused Mr. R and lead him into a barricade, or caused him to make a sudden maneuver that sent him out of control. Strongest argument seems to be that the taper transitioning northbound into southbound lanes of traffic was too short, and did not comply with the MUTCD. (DOT resident engineer confirmed it was accepted by the DOT). No evidence to suggest that ABC Construction was not justified in relying on the DOT's acceptance of the taper.

Initial Demand and Damage Estimates:

- Settlement value estimated between \$4.5 to \$7.5 million
- Possible trial verdict of \$7 to \$15 million
- Initial demand by plaintiff of \$16 Million
- Initial offer by Traffic Lites of \$1M and Insurance Carrier/ABC of \$1.1M
- Mock trial used to determine possibility of success in court.
 - 3 separate mock juries set up, 6 people each
 - All provided with same info and testimony
 - Jury A – ABC 10% negligent, **\$18 Million awarded**
 - Jury B – ABC 25% negligent, **\$7 Million awarded**
 - Jury C – Hung Jury
 - 3 found ABC negligent – 75%, 80%, 75%
 - 3 found ABC negligent – 0%, 20%, 40%
 - **\$20 Million Awarded**

Outcome:

- **Negotiated a full and final settlement on 4/2003 (5 years after the accident) for a total of \$6,000,000.**
- **Traffic Lites settled for their policy limits of \$1,000,000**
- **Insurance Carrier settled for \$5,000,000**
 - **\$1,000,000 deductible paid by ABC Construction**
- **Considered to be a success based on the potential excessive jury award if this had gone to trial...**

Case Strengths:

- Speed – claimant going 50-55 mph (10-15 miles over the posted speed limit)
- DOT approved all plans, went to site, approved speed thru the work zone
- Claimant knew the area and lived close – had been thru work zone multiple times
- Lane closure in place for almost 1 year
- Very few accidents – 1 drunk hit barrels, 1 other minor incident
- Thousands of vehicles safely through work zone
- Claimant had alcohol in system - .02
- DOT very supportive of work
- Police drove through the work zone every day
- Police report was favorable – “traffic control did not cause the accident”
- Construction area well marked – arrow boards, signs, barricades, etc.
- Most agree claimant was not paying attention while driving
- Point of impact occurred in the oncoming lane
- Driver was ejected – assumes no seatbelt – violation of law and cause of severe injuries
- Barricade orders and pickup receipts were available to indicate proper mgmt

Case Weaknesses:

- Speed issues – not reduced enough. 40 mph from 45 mph
- **Taper too short based on MUTCD calculations**
- Inexperience of ABC Project Manager – came from another project
- **Missing log books of inspections – “failure to inspect”**
- Photos – Confusing look at night which jury will see in court
- **Missing – inadequate temporary fog lines through taper, not visible**
- **Double yellow lines not visible**
- **Channelizing devices not aligned properly, staggered, not in line**
- **Deviations from MUTCD were not well-documented in TCP**
- Failure to report 2 prior accidents in the same work zone
- **Absence of photo documentation taken during project**
- Failure of night time surveillance by mgmt
- ABC Construction employees not cooperating with investigation
- Sympathy for claimant and family
- Serious injuries, brain damage, life altering injuries
- Dislike of Construction Companies
- **Sand in roadway created visibility problems with lines.**
- **Inadequate traffic control south of Walton Street**

Considerations:

1. How well would your company be able to defend against allegations similar to what are outlined above in “case weaknesses”?
2. What documentation would you have available to prove you were in compliance with the MUTCD and Traffic Control Plan prior to the accident?
3. How consistently are regular work zone inspections and associated documentation being maintained on all projects?
4. Have your field supervisors been adequately trained?