

How to Stay Out of Jail and Keep Your County Out of Court



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Setting the Scene

- Rubber-tracked skid steer with broom attachment was sweeping mud off an asphalt roadway.
- Witnesses reported that the sweeping operation “*created a cloud of dust that visually obstructed the roadway*”.
- Straight, level roadway
- Posted speed limit = 45 mph
- Weather was sunny, 70 degrees F; dry road

Setting the Scene 2

- No advance warning signs
- No shadow vehicle
- No flagger
- No lights on skid steer
- Motorcycle struck rear of skid steer
- Motorcycle operator was fatally injured



The Involved Units



Additional Note

- In this jurisdiction, state law says that all mobile equipment designed to be operated at 25 mph or less “*shall display a slow-moving vehicle emblem.*”

Local Law Enforcement Officials

- Investigating police officer felt that operating a slow moving piece of equipment that created a visual obstruction, with no warning for motorists was a more egregious act than simple negligence and showed a disregard for public safety.
- He discussed the facts with the local district attorney who agreed with the officer.
- The district attorney filed criminal charges (vehicular homicide) against the skid steer operator.

The Outcome

- Case was tried before a jury and the skid steer operator was convicted on the criminal charges.
- He served 6 months of jail time

But Wait—There's More

- A year later, the surviving wife of the motorcycle operator filed a wrongful death suit in civil court alleging negligent operation of the skid steer and a failure to warn motorists of a dangerous condition.
- What's going on here?
- Two different legal claims
 - a criminal claim
 - a tort claim

Tort Liability

Tort

- A civil wrong resulting in injury or damage
- Not a crime
- Independent of a contract
- Violation of a duty owed to injured party

Example—Fatal Crash Led to Tort Claims



Duty

- Provide Reasonably Safe Roads
- Warn of Existing Hazards
- Provide reasonable and continuing supervision over roads/streets so can be aware of their condition and possible defects

Another Type of Claim Faced by
State and Local Governments—
Civil Rights Law

Inaccessible Sidewalks/Streets
(Americans with Disabilities Act)

Potential ADA Claim



Not Equal Access to Pushbutton

Standard Of Care

- Criteria by which reasonableness is judged.
- Examples include:
 - Guidelines developed by national and professional organizations (e.g., MUTCD and AASHTO Green Book)
 - Agency policies, guidelines and directives (e.g. county's road design and construction standards and county's road maintenance plan)

Element of Time

- Notice (Actual Notice) means the public entity was given specific notice of a defect in roadway system. Examples include:
 - Email/Letter
 - Phone call
 - Editorial in newspaper
- Constructive Notice--After reasonable time, a prudent agency should have known about a roadway defect. Examples include:
 - Annually recurring icy condition
 - Three-month old downed STOP sign

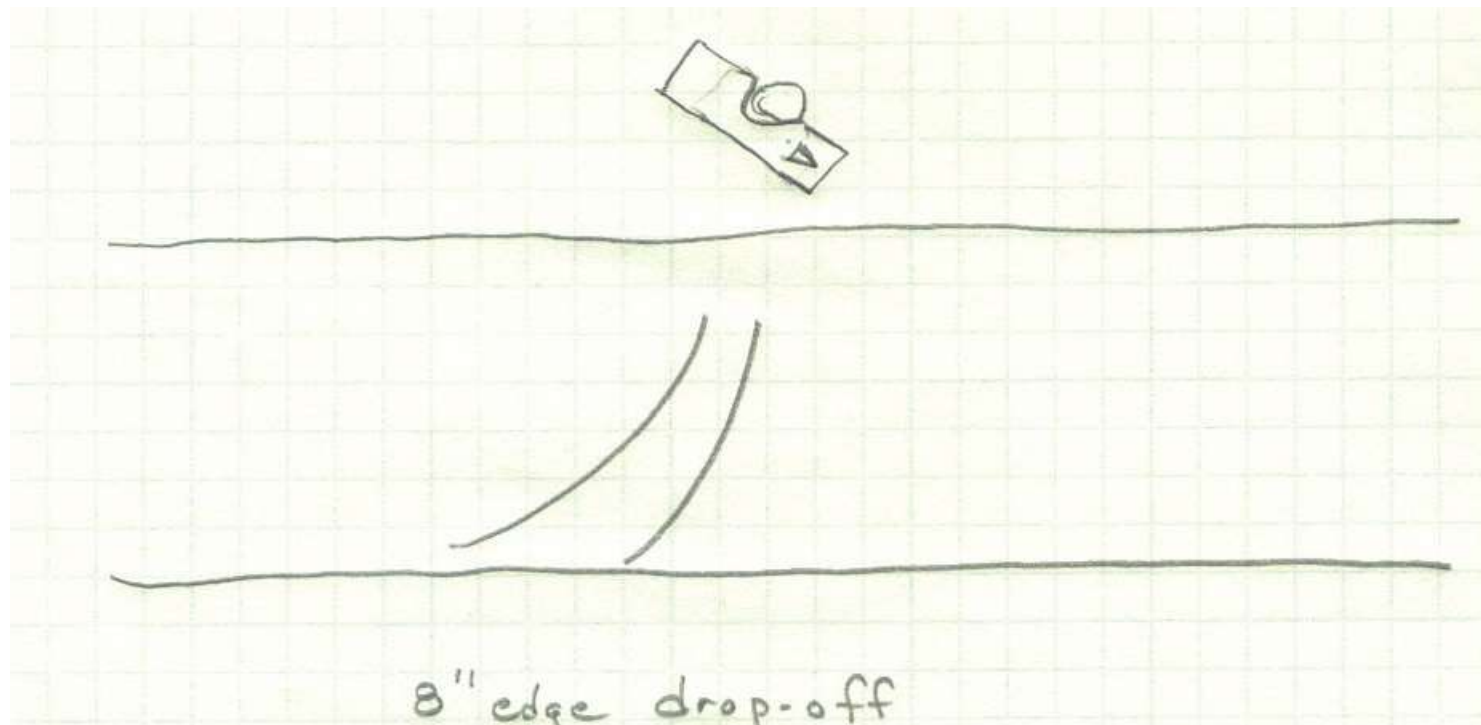
Elements Necessary for A Tort Action to Proceed to Trial

1. Defendant had a duty to the plaintiff
2. Defendant breached that duty
3. Plaintiff suffered damage
4. Breach was proximate cause of damage

Example of Successful Defense of a Tort Claim

- Small, rural jurisdiction
- Double fatality (2 young males)
- Road supervisor examined police report the next day

Drawing From Police Report



What He Found at the Site



Insides of Tires



Result

- Supervisor filed his information (photos, measurements, notes)
- One year later, plaintiffs filed law suits
- Two years later after discovery process, judge dismissed the case citing that, while there was an edge drop-off, it was not a contributing factor in the crash or the fatal injuries (vehicle never encountered the drop-off)

Tort Claims Acts

- Each state has a Tort Claims Act, passed by that state's legislature
- Define types and nature of claims/suits that can be brought against state and local roadway agencies
- Become generally familiar with your state's Tort Claims Act (talk with your agency attorney)

What Can My Agency and I Do
To Stay Out of Court?

Tips (1)

- Provide an inspection system
- Conduct operational reviews after installing devices
- Learn to read the road . . .

Reading the Road



Look for indications that road users may be having problems traveling a section of road.

Tips (2)

- Use *current* design criteria
- Investigate certain crashes
- Document! Document! Document! (good documentation wins) . . .

Characteristics of Good Documentation (personal)

- Prepared in a Timely Manner
- Complete
- Dated
- Signed
- Filed in A Manner Facilitating Retrieval

Tip: Regular Reviews of Policies and Manuals

- Systematic review, by attorneys, risk management staff, engineers and field personnel of relevant policies.
- Make sure your documents reflect how things are done in the field.

Tip: Variations from Agency Guidelines

- Show that guideline was considered
- Explain the reason for variation
- Document approval by competent authority

Tip: Systematically Address Complaints/Concerns

- Responsiveness is key
- Investigate
- Reporting to appropriate party for action
- Implement where appropriate
- Communicating with the complainant
- Documenting and tracking complaints

Tip: Develop and Maintain Personnel Competence

- Provide training (including safety) appropriate to job assignment
- Facilitate professional development of employees (e.g., leadership and communication skills)

Communications (Internal and External)
Are Critical

Tip: Use Care in Personal Communications

- E-mails—are legal documents, not a conversation!
- Like diamonds, E-mails are forever!
- Heed the following advice . . .

Dance

like nobody is watching

Text and email

like it will be read in court someday

Tip: Vague Phrases Should Not Be Used

- Factual information and descriptions that allow the practitioner to use engineering judgment to make a decision are more useful as opposed to 'wherever possible' or 'consideration should be given.'

Tip: Pay Attention to Your Written and Spoken Words

- Use liability neutral language
- Not this . . .



Words that Can Create Unintended Liability

Acceptable

Dangerous/Hazardous

Enough

All

Safe

Never

Unsafe

Ensure

Burden of Proof

- Criminal Cases—Beyond a reasonable doubt
- Civil Cases—By the preponderance of the evidence (e.g., more likely than not, 51% to 49%)

The Rest of the Skid Steer Story

- Civil suit filed against:
 - energy company
 - contractor
- Driveway permit issued to energy company:
 - keep surface of road clear of mud
 - follow the state's TTC manual

Relevant Deposition Testimony

- Contractor testified skid steer operated at 3 mph.
- Contractor had never worked on public roadway before.
- Said would use traffic control only when “there is a lot of traffic.”

Relevant Deposition Testimony (2)

- Contractor stated *“a 45-mph road would never require traffic control”* and *“If you are only there for 15 minutes, you don’t need traffic control.”*
- Denied being familiar with temporary traffic control guidelines.

The Outcome

- Confidential out-of-court settlement reached shortly before trial

Lessons Learned

- Anyone working in/near the roadway needs to understand and follow the applicable maintenance and protection of traffic guidelines (standard of care)
- Training is critical for anyone working in/near the roadway
- Vehicles and equipment operating in the roadway must be equipped with required lights and warnings

Wrap-Up

- Care about what you do and be able to demonstrate it.
- Document! Document! Document!
- Don't hesitate to innovate, but do it thoughtfully.

Thank You!!

Questions?

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