



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

LESSONS FROM LOSSES: DESIGN IMMUNITY

The only mistake in life is the lesson not learned. —Albert Einstein

DESCRIPTION

A driver was killed due to a head-on vehicle crash on a bridge built in the 1940s. On the evening of the accident, the adverse driver's vehicle was cut off by another vehicle traveling in the same direction. The driver swerved, lost control of her SUV, and drove through a gap in the bridge's median. She hit the decedent's vehicle head-on, and three other vehicles piled up behind him. The phantom vehicle and driver were never identified.

The investigation revealed that the City had commissioned an outside engineering company to inspect the bridge two decades prior to the incident. The engineering firm offered three design options to upgrade the bridge. Solutions ranged from rehabilitation with an approximate time frame of three years to full replacement with an estimate of ten years. The report warned that immediate action was required to install barriers and guardrails to prevent crossover incidents. The City ignored the engineering firm's advice and never implemented any of the recommendations to remedy the condition of the bridge.

The plaintiff's beneficiaries sued the City, the vehicle operator, and the owner of the vehicle, alleging poor road design, negligence, and vicarious liability, respectively.

THE RESULT

The case did not go to trial. The City settled for \$5MM and the adverse driver's insurance paid policy limits of \$100,000.

THE PROBLEM

The City had ownership and control of the bridge and had been notified of its dangerous condition. The highway patrol repeatedly warned the City that a barrier or guardrail was needed, that lighting was inadequate, and that the surface was slippery when wet or icy in the cold. The report of the engineer's inspection, which had been commissioned after several accidents, offered three options for improvement at various costs, and there were at least three fatal crossover collisions after the inspection. Based on historical accidents, the information in the engineer's report, and subsequent incidents, future accidents were foreseeable.

LESSONS LEARNED

Public officials and employees are generally not liable for discretionary functions or activities of their official duties under various design immunity and tort acts established by each state. For example, courts have held that there is no liability for an injury arising out of a highway plan or design that has a defectively designed traffic light, curve, curbs, drain, median, or crosswalks because these are all decisions requiring the exercise of independent judgment and discretion after considering traffic requirements.



Immunity is not a bulletproof defense, however. Some courts have held that immunity does not apply, and liability for defective design may be imposed if the defect is one that is “obviously dangerous,” “manifestly dangerous,” or “obviously and palpably dangerous.” Additionally, design immunity may not apply when a plan was prepared without adequate care or consideration, the design contained an inherent defect, or the approval of a plan was made without adequate consideration.

Immunity, even when applicable, may not be perpetual. Although some jurisdictions may hold that the public entity be judged by the design standards in existence at the time of adoption, others may require officials to periodically review plans, traffic patterns, and modern construction practices and undertake corrective action where conditions have become dangerous.

When considering whether to compromise a settlement or take a design immunity case to trial, it is important for public entities to be familiar with jurisdictional interpretations and court applications of design immunity. In this case, the City recognized that the immunity defense was not a strong one because it had been notified in multiple ways about the bridge’s dangerous condition, there had been several fatal accidents, a reasonable plan for improvement had been provided, and a decision had been made by City officials not to execute the recommendations to modernize the bridge. The City made the decision to negotiate a settlement rather than take it to trial. It is recommended that public officials carefully consider design and construction plans before approving or dismissing them and proactively analyze accident reports to identify accident frequency in problematic locations in order to mitigate catastrophic loss within the community due to defective road design.

Note: Although the statements above are based on an actual loss, some of the facts may have been altered for purposes of illustration and education. This information should not be relied upon for legal advice; please contact an attorney for your specific needs.



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