

The resolution of tort claims alleging an inadequate geometric design is contingent on determining the appropriate set of design standards used to assess negligence.

Determining whether a highway improvement project is sufficiently extensive to qualify as reconstruction can be a key issue in a tort claim because reconstruction projects usually must meet current new construction standards.

Deficient roadside signs or pavement markings and pavement edge-drop problems, which are often the basis of tort claims, can be routinely corrected on RRR projects.

DEFENSE OF A RRR PROJECT DESIGN

Although planning and design activities are exempt from liability in most states, this immunity has been held not to apply to decisions made without prior study or conscious deliberation.

Documentation of the planning process should be part of the state highway agency's defense.

For RRR projects, documentation should demonstrate that safety aspects of the roadway design were properly considered. Reports that identify deficiencies in existing roadways are potentially threatening to the public agency preparing the report if the deficiencies are not addressed. Thus, if any exception to an applicable design standard was granted, documentation should explain the reasons for the exception and show that logic and orderly procedures were followed in obtaining it.

When a highway agency contemplates a design exception for a geometric or roadside feature, it should be prepared to prove why the feature need not meet the same standards as other facets of the roadway design. Often, the best defense in this situation is to demonstrate that the safety cost-effectiveness of further upgrading the feature does not meet any reasonable criteria.

Courts seldom rule that the unavailability of funds is justification for not correcting an alleged defect, but the issue of availability of funds can be part of the defense in relation to the agency's programming procedures.

The following points are important to such a defense:

- The agency is aware of the condition of its facilities
- Deficiencies have been ranked on a logical basis
- Given the existing funding, items are being corrected in the order of priority
- Appropriate warnings or other temporary measures should be used to alert the public that deficiencies have not been corrected. The highway agency can then affirm that it has performed its duties in the best way possible with the available resources.