

## **BACKGROUND ON TORT LIABILITY**

Tort is defined as a civil wrong or injury, and a tort action seeks repayment for damages to property and injuries to an individual. If a defendant is found negligent in his actions, or lack of action, he is liable for a tort claim and must compensate the plaintiff. State laws and rulings differ regarding tort claims against a governmental entity. In Virginia, as in most states, the courts or state legislatures have eliminated sovereign immunity (whereby an individual cannot sue the state or its agents for negligence).

Highway agencies are spending substantial sums as a result of tort claims. The costs of handling tort claims include not only the direct costs of judgment awards, settlements, and insurance, but also attorneys' fees and the cost of engineers' and other staff time.

Negligence can be alleged on two grounds particularly relevant to highway agencies:

- Agency (or person) improperly performs its duties (misfeasance).
- Agency (or person) fails to perform its duties (nonfeasance).

## **RRR IMPROVEMENTS AND TORT CLAIMS**

Little is known about how frequently the geometric features addressed by RRR design standards are cited in tort claims against highway agencies. Few states maintain data on tort claims by alleged defect. Further, classifying tort lawsuits is difficult because most involve several defects that differ in importance.

Geometric features (such as cross-sections, alignment, and intersections) usually covered by RRR standards account for a small percentage of total claims filed against highway agencies. Of the cases in which a geometric feature is at issue, horizontal and vertical curves are the most often cited.

Pavement features including edge drops, potholes, surface deterioration and slippery pavements, account for large amounts of the settlement costs.

## **SUSCEPTIBILITY OF RRR PROJECTS AND STANDARDS TO TORT CLAIMS**

The standards selected for RRR projects, the design process followed, and the scope of the improvements may influence the litigation of future tort claims. The issues that might arise in a tort action are:

- Did the project meet the appropriate design standards?
- Are the standards reasonable?
- Was the design process reasonable?
- Did the improvements correct existing dangers?
- Should unimproved roads be judged by standards used for roads that are improved?