A State Attorney's Perspective
Sharon F. Lyles

Louisiana, like most states, has a full gambit of tort claims with plaintiffs' attorneys becoming more innovative each day as to causes for why a state highway agency should be held liable.

Tort claims against the state are a serious problem in Louisiana. Having lost sovereign immunity many years ago, tort claims have been escalating. For the period 1972-1983 tort judgments paid by legislative appropriations have escalated from approximately $180,000 in round figures in 1972 to just over $12 million in 1983. The figures for 1984 have not yet been finalized, but are expected to exceed the $12 million mark. One case (Dwight P. Allemand v. Harold LeBlanc, et.al No. 68,757, 32nd J.D.C., Terrebone) with a $17 million judgment against the Louisiana Department of Transportation and Development was compromised and paid this year for $9-1/2 million.

Changes in Louisiana jurisprudent account for much of the increase, the courts having "processed" to what is called "strict liability" or Louisiana Civil Code 2317, liability in tort. Strict liability means that a plaintiff many recover by showing: (1) that the "thing" which caused the damage was in the care or custody of the defendant; (2) that the "thing" was defective in that it posed a condition creating an unreasonable risks of harm; and, (3) that the defective "thing" caused the injury. The state is strictly liable, whether or not the state highway agency had actual or constructive notice of the alleged deficiency. The only defenses available area:

1. Fault of the victim.
2. Fault of a 3rd party (who in many cases is unknown).
3. Force majeure (Act of God).

In Louisiana, proposed Legislative remedies such as limitation of liability or legislative restoration of the "notice" requirements have in the past several years been woefully unsuccessful. Legislative remedies aside, the only other solutions are engineeirng prevention of defects that cause these accicents.

In terms of numbers of lawsuits, Louisiana Department of Transportation and Development receives an average of about two new tort suits each working day.

In 1979, to help make the engineering division, particularly in maintenance areas, aware of the problem areas, the Legal Division started transmitting a copy of each new suit received to the district offices for compilation of any available information on file that might aid defense of the suit. Additionally, the engineering division developed a computer program to classify the types of accident by defect type.

The computer program produced the following statistics:

Year	No. of Claims	Amt. of Demand
1979	134 claims	121 Million
1980	216 claims	180 Million
1981	311 claims	354 Million
1982	363 claims	384 Million
1983	274 claims	353 Million

These figures do not include "Small Claims" which are claims of $2,000 or less. (La. R.S. 13:5141 et seq.)

The "Number 1" problem area was shoulders from 1979-81. Shoulder problems include no shoulder, inadequate shoulder width and low shoulder. In 1982-83 the "Number 1" problem area changed from shoulders to signs. The Maintenance Division has used these statistics to justify legislative appropriations for maintenance. (See tables 1, 2 and 3 for more detail.)

Another problem is funding for maintenance and reconstruction of areas found to have inadequate designs. Louisiana has been experiencing budgetary problems which has translated into a lower level of personnel and materials to perform needed work.

In terms of what can be done to improve the problems, my recommendation is better communication between legal and engineering divisions of state highway agencies.

TABLE 1. ACCIDENT AND CLAIMS SUMMARY

1979 - 1983
CLAIMS

CONDITION	CLAIM AMOUNT	NO. CLAIMS
SHOULDER	$203,935,706	157
DESIGN, ETC.	$201,049,525	107
SURFACE	$123,683,633	161
WORK SITE	$121,102,215	107
SIGNS	$94,664,421	96
PROPERTY	$94,365,486	45
RR CROSSING	$59,835,430	39
BRIDGE	$59,713,449	55
DRAINAGE	$48,569,651	16
SIGNAL	$36,309,772	126
MARKING	$29,136,161	26
SIGHT DISTANCE	$27,425,450	23
TRAFFIC CONTROL	$26,125,700	7
MAINTENANCE	$24,816,773	28
LEFT TURN	$10,893,211	18
LIGHTING	$7,614,655	14
EQUIPMENT	$6,400,870	4
DEBRIS	$6,386,497	13
FERRY	$5,204,479	3
MOWING	$4,062,350	4
GUARD RAIL	$3,511,109	6
TUNNEL	$2,350,000	1
OTHER	$2,000,000	1
STEEL CABLE	$1,110,000	2
DOTD OPERATOR	$227,000	1
UNDER - $100,000	$286,867	9
TOTAL	$1,200,780,410	1,069

TABLE 2. ACCIDENT AND CLAIMS TREND

1980 - 1983

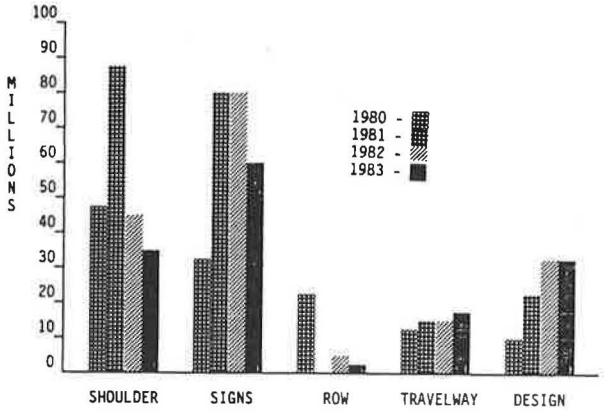
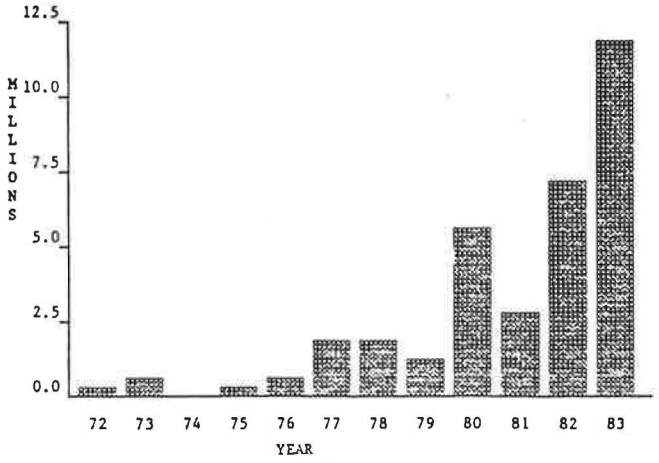


TABLE 3. LEGISLATIVE APPROPRIATIONS FOR DOTD

JUDGEMENTS IN TORT CASES

(Amounts do not include interest paid)



A Highway Safety Research
Engineer's Perspective
Don Ivey

There are two objectives of this talk. First, to describe three problems that either are, or should be, the purview of conscientious engineers and researchers to correct. Second, to describe three recent research developments that MAY, and I emphasize MAY, result in improvments in some aspects of highway safety and in the ability of states to defend their construction and maintenance policies.

First, there are the three perceived problems:

1. Over-publication of marginally valuable research.

2. Representation of transportation system resistance to change as a major drawback to achieving appropriate levels of safety.

3. The ability of untrained, uneducated and non-objective individuals to qualify as expert witnesses in our courts.

"Even as we speak," an insulated, academically-oriented, idealistic, university professor, part-time highway safety researcher, and self-acknowledged societal philosopher is writing a report on some aspect of highway safety. This philosopher is making recommendations for immediate implementation of his "findings" with little understanding of how his particular recommendations might fit into an overall plan for safety improvement by a state department of transportation, and no concern for the economic feasibility of the proposed "improvements." Indeed it is not always beyond debate that particular recommendations will have a positive influence on safety. Whether or not the research is credible or the recommendations feasbile, once published, such a report will become part of the arsenal for plaintiff attorneys seeking financial gain at the public's expense.

Almost everything published by researchers relative to highway safety has the potential for use in Tort Claims, either for or against the states, and in my view, much more is published than should be. The reasons for over-publication of marginally valuable documents are understood. The incentive to publish to advance in the academic community, the justification of research expenditures, the desire for personal recognition and many other more subtle influences on both individuals and organizations combine to produce an avalanche of published documents, in a field where fewer well-done and well-considered treatises, subjected to stringent peer review would be more productive. As we are called on as members of TRB, SAE, ITE, FHWA, ASCE, ASTM and other organizations, to review and recommend whether these papers should be published, we can exert a major and even immediate influence on this problem.

By "transportation system inertia," I mean the well-measured pace at which research ideas, innovations and designs are implemented by state DOT's. The idealistic researcher described before is extremely frustrated that it takes so much time to get good ideas implemented and converted to "standard procedure" on our highway system. It has been estimated that new ideas and designs take approximately ten years to achieve general acceptance and implementation in the field. This position has usually been stated as a complaint against the inertia of state DOT's. Considering