

## **MEMORANDUM**

DATE: March 6, 2007

TO: KAREN SCHMIDT, Executive Director  
Freight Mobility Strategic Investment Board  
MS: 40965

FROM: LARRY SHEAHAN, Assistant Attorney General  
Government Operations Division  
MS: 40108

SUBJECT: **ROUNDABOUTS**

### **I. BACKGROUND**

This Memorandum is in response to your question concerning the potential liability for the state, municipalities and the public when trucks or other large vehicles are involved in accidents causing damage or injury within roundabouts.

### **II. ISSUES PRESENTED**

1. Could the state or a municipality that installs roundabouts face potential liability based on defective design due to the fact that large vehicles, including trucks, cannot successfully move through roundabouts without using both lanes?
2. Would the potential liability for truck drivers, bus drivers and drivers of emergency vehicles increase when using roundabouts?

### **III. SHORT ANSWERS**

1. Yes, it is possible that the state or a municipality could face potential liability for the defective design of a roundabout if damage or injury occurred due to the fact that the truck or other large vehicle could not successfully move through the roundabout without using both lanes. However, no one has successfully sued the state or a municipality in the state to recover for injuries or damage caused in a roundabout by a truck or other large vehicle encroaching into an adjacent lane.
2. As long as the truck drivers and bus drivers are following the rules of the road in regard to the use of roundabouts, their potential liability should not increase. However, the rules of the

road place a duty on such drivers to make a judgment that it is safe to move into the adjacent lane before doing so; that decision would be subject to scrutiny by the court. Emergency vehicles would continue to have the right of way when moving through roundabouts, so their potential liability would not increase.

#### IV. ANALYSIS

The state of Washington and municipalities within the state are liable for damages arising from their tortious conduct to the same extent as if they were a private person or corporation. *See* RCW 4.92.090; RCW 4.96.010. The state and municipalities have a duty of care to the public in the building and maintenance of the state's public highways and roads. The state has a duty to "exercise ordinary care in the repair and maintenance of its public highways, keeping them in such condition that they are reasonably safe for ordinary travel by persons using them in a proper manner." McCluskey v. Handorff-Sherman, 125 Wn.2d 1, 6, 882 P.2d 157 (1994). A municipality owes a duty to all persons, whether negligent or fault-free, to build and maintain its roadways in a condition that is reasonably safe for ordinary travel." Keller v. City of Spokane, 146 Wn.2d 237, 249, 44 P.3d 845.

In 1981, the legislature adopted the doctrine of comparative fault. Laws of 1981, ch. 27, § 8 (codified at RCW 4.22.005). Under the comparative fault doctrine, if a plaintiff is somewhat at fault for the damage or injury, his or her claim against the defendant is not barred, the amount of recovery is reduced by the percentage of fault attributed to such plaintiff. *See* RCW 4.22.005. This means that in the case of an accident in a roundabout causing damage or injury, the state or municipality could be sued successfully based on a design defect even if the plaintiff was somewhat at fault.

The doctrine of comparative fault places the state and municipalities at significant risk of being sued based on design defects. Plaintiffs have sued the state and municipalities, claiming design defects caused damage or injury, under a myriad of circumstances, including, slippery surfaces, potholes, inadequate lighting, accumulated water, inadequate resurfacing, lack of barriers, lack of stop signs, inadequate shoulder width, lack of load limit signs, lack of sufficient signing and erroneous signing.

States and municipalities may attempt to limit their potential liability and increase safety in roundabouts by using commonly accepted design standards, by adjusting their designs to better accommodate trucks and other large vehicles, by fixing hazardous conditions, by erecting warning signs and by establishing guidelines and standards in the rules of the road to direct the public on how to safely use the roundabouts.

The state or municipalities could defend themselves against potential liability by showing that they acted reasonably in the design of the roundabout and that they adjusted the design to better accommodate trucks and other large vehicles. One way to do this is to show that they complied

with all applicable standards presented in commonly accepted publications such as *Standard Plans for Road, Bridge and Municipal Construction*, M 21-01, WSDOT; *A Policy on Geometric Design of Highways and Streets* (Green Books), AASHTO; and *Manual on Uniform Traffic Control Devices for Streets and Highways*, USDOT, FHWA. Another way of showing reasonableness in design is to present evidence that the state or municipality considered the advantages of different designs, taking into account safety and recognized engineering practices. Complying with all applicable, commonly accepted standards of design strengthens the argument that the state or municipality acted in a reasonable manner while designing the roundabout.

The state and municipalities could also reduce the potential for liability by designing the roundabouts so that they are more accessible to trucks and other large vehicles. One design feature that is currently used with single lane roundabouts (but would also work with double lane) is the truck apron. A truck apron is built around the middle of the roundabout; it reduces the distance a truck needs to move into an adjacent lane by allowing its back wheels to traverse the roundabout on the apron.

Roundabouts are designed to handle fire trucks, buses and various sizes of emergency vehicles, as well as truck and trailer combinations. The center island of all single-lane roundabouts is built with a gradually sloped and flat curb, called a truck apron. This apron makes it easier for long vehicles to make the turns.

[www.wsdot.wa.gov/projects/roundabouts](http://www.wsdot.wa.gov/projects/roundabouts)

Another way the state or municipality may attempt to limit their potential liability and improve safety is by developing clear guidelines in the rules of the road as to the appropriate action to be taken by all drivers in a roundabout. When the rules of the road are clear and the driver of the car or small truck fails to follow those rules, resulting in an accident, the driver would have more difficulty proving that the accident was caused by a design defect rather than by his or her actions.

The rules of the road appear to apply similar requirements to vehicles moving through roundabouts as they do to vehicles in conventional intersections when a truck is making a wide right turn.

Where there are multiple lanes of entry and two or more lanes of circulating traffic, the roundabout is designed with the idea that trucks will use both lanes to travel through the roundabout as smoothly as possible. A truck approaching a roundabout may straddle both lanes, similar to making a “wide right turn” at a standard intersection, provided the driver has determined it is safe to move into the adjacent lane and has signaled their intentions. When a driver of a car or small truck approaches a roundabout where a large truck has stopped to yield to

circulating traffic, they should drop back behind the truck as it completes its movement through the roundabout and when exiting.

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Currently, trucks of a certain size are required to prominently display a sticker alerting drivers following the truck that it must move into its adjacent lane when completing a right turn. As of yet, there is no requirement in the law that requires warning stickers to be modified to address wide swings in roundabouts.

The state and municipalities would argue that since the rules of the road appear to apply to roundabouts in the same way as to conventional intersections and since no court has declared a conventional intersection to be defective in design because of the wide swing requirement for trucks, the roundabouts should be immune from defective design lawsuits, as well. However, no Washington court has ruled on whether the legal standards that apply to conventional intersections also apply to roundabouts. Simply giving a warning or requiring a sticker on the back of a truck may not be sufficient to limit liability when one is dealing with an accident in a roundabout.

The state or municipality may attempt to limit potential liability by showing that they took reasonable steps to remedy a defective condition once it came to their attention and that they gave the public adequate warning of the condition while they attempted to fix it. In general, if the state or municipality has knowledge of a defective condition which makes a highway or roadway not “reasonably safe for ordinary travel when being used in a proper manner,” they must take action, in a reasonable period of time, to remedy the situation. Remedying the situation could be accomplished through redesign, repaving, installation of median barriers, increased lighting, etc. Until the defective condition is remedied, the state or municipality must post signs to warn the public.

The warning provided must be commensurate with the danger involved, whether the defective condition is inherently dangerous or is simply confusing enough that a traveler exercising reasonable care might be misled. In regard to roundabouts, this might include warning stickers on trucks, cautionary signs regarding changing lanes, speed reduction advisory signs, or whatever else may be pertinent for the location. By recognizing that a defective conditions exists which makes a roundabout potentially hazardous when trucks or other large vehicles enter, the state or municipality could reduce its potential liability by posting a warning sign.

The problem that could arise for the state or municipality is that if they, themselves, created the defective condition by the way they chose to design the roundabout, simply warning the public of the danger may not shelter them from liability; they may be required to remedy the situation by redoing the entire project. Posting a sign does not free the state or municipality from liability

if the roundabout itself is not “reasonably safe for ordinary travel.” See McCluskey, 125 Wn.2d at 6, 882 P.2d 157.

Given a particular fact situation, the court may feel a roundabout, when trucks or other large vehicles are involved, is so confusing or that the design is so inherently defective that someone could be using it in a “proper manner” for “ordinary travel” and still, through no fault of their own, suffer damage or injury. Under this circumstance, the court may rule that the state or municipality failed in its duty to exercise ordinary care in keeping the roundabout “reasonably safe for ordinary travel” and therefore, should be held liable based on defective design, even though some type of warning was given.

For example, if landscaping or some visual impediment in the center of the roundabout obstructs the view of the driver of the smaller vehicle such that they cannot see a truck entering the roundabout on the opposite side, an accident may be unavoidable as the truck moves into the lane adjacent to it. Likewise, if the truck slows to a near stop so that its back wheels can traverse a truck apron, a smaller vehicle not realizing the truck is moving so slowly because it is circling the roundabout on the opposite side, may not be able to stop in time to avoid an accident. In these instances, the court may rule that both the driver of the truck and the driver of the smaller vehicle acted in a reasonable manner under the circumstances and place the fault on the state or municipality, based on the design of the roundabout.

The state or municipality may follow all of the standards and practices in the field of roundabout design, they may establish rules of the road to guide users of roundabouts and they may post signs warning drivers to beware of trucks in roundabouts, and still, if the facts are egregious enough, may be found liable for a design defect if an accident involving a truck takes place in the roundabout.

The rules that apply to trucks would also apply to buses or other large vehicles such as motor homes. The rules of the road would allow buses or other large vehicles to move into the adjoining lane, if necessary, once the driver has determined it is safe and has signaled the intention to do so. However, a court would look to the facts of the individual case to determine if the driver of the truck, bus or other large vehicle was at fault in any way. Since such driver must make a judgment that it is safe to move into the adjacent lane and must signal prior to doing so, his or her actions and decision making would be the subject of scrutiny by the court. If he or she followed the rules of the road, they should not be found at fault, but they would have the burden of presenting that information in a convincing way to the court.

The rules of the road which apply to emergency vehicles on any public road would apply in a roundabout. Any vehicles approaching the roundabout, or in the roundabout, must yield to the approaching emergency vehicle, including moving to the outside (right) of the roundabout or exiting to allow the emergency vehicle unencumbered access through the roundabout.

## V. CONCLUSION

A public entity could face potential liability for the defective design of a roundabout if damage or injury occurred due to the fact that the truck or other large vehicle could not successfully move through the roundabout without using both lanes.

The state and municipalities have a duty to “exercise ordinary care in the repair and maintenance of its public highways, keeping them in such condition that they are reasonably safe for ordinary travel by persons using them in a proper manner.” The fact that Washington is a comparative fault state makes our state and municipalities particularly susceptible to lawsuits alleging design defects on our highways and roadways.

The state and municipalities can defend themselves against design defect lawsuits by following standard design procedures, by remedying any defective condition, by posting warning and by developing clear guidelines for the use of roundabouts. No court in the state has held the state or a municipality liable for damages or injury as the result of an accident in a roundabout. However, a court may, in considering the facts of a particular case, decide that roundabouts are designed in such a way that makes them inherently defective or confusing to the public and rule that the state or municipality is liable because it did not exercise ordinary care while designing or maintaining the roundabout.

The rules of the road apply in the same way to drivers of buses or other large vehicles such as motor homes as they do to drivers of trucks. Such drivers, when in a roundabout, have a duty to make a judgment that it is safe to move into the adjacent lane and must signal prior to doing so, which means that the actions and decision making of the driver is subject to scrutiny by the court. If he or she followed the rules of the road, they should not be found at fault, but they would have the burden of presenting that information in a convincing way to the court.

The rules of the road involving emergency vehicles would apply in the same way to vehicles in roundabouts as they do to vehicles on the public highways or roadways.

I hope this analysis will be helpful to you. Please feel free to contact me at (360) 586-9667 if you have any questions. This memorandum represents my considered legal judgment on the questions presented, but is not an opinion of the Attorney General.

LLS:ph