

Liability and Complete Streets in Connecticut

Tri-State Transportation Campaign

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Introduction

On July 1, 2009, Connecticut's Complete Streets law went into effect, requiring Complete Streets designs to be a routine part of the roadway¹ planning process and a reasonable amount of funds – not less than one percent – be made available for implementation of these Complete Streets designs.² This law has been designated as the second best state Complete Streets legislation in the country by Smart Growth America and the National Complete Streets Coalition.³

Despite the requirement that Complete Streets designs be a “routine part of the planning, design, construction and operating activities of all highways,”⁴ concerns remain that implementation of Complete Streets designs can increase the risk of liability. In response to these concerns, the Tri-State Transportation Campaign has prepared this simple primer on Complete Streets designs, including an analysis of governmental liability for roadway design defects.

Main Conclusions

- Under Connecticut's Complete Streets law, Complete Streets designs and funding are required to be a “routine part of the planning, design, construction and operating activities of all highways” and thus should not be subject to different legal requirements than other roadway planning decisions.
- Liability for roadway planning decisions – of which Complete Streets designs is one part – is normally found in “relatively narrow” circumstances where the highway would have been “out of repair from the beginning.”
- In addition to being clearly required under the Complete Streets law, the prudence of implementing Complete Streets designs is supported by statements of Federal Highway Administration, including, “With every passing year, the courts become less and less sympathetic to agencies that have not understood the message: bicyclists and pedestrians are intended users of the roadway” and the body of evidence showing ample benefits of Complete Streets designs.

¹ This discussion uses the terms “roadway” and “highway” interchangeably.

² Conn. Gen. Stat. § 13a-153f(b), (c).

³ Smart Growth America and the National Complete Streets Coalition, Complete Streets Policy Analysis 2011, available at, <http://www.completestreets.org/webdocs/resources/cs-policyanalysis.pdf>.

⁴ Conn. Gen. Stat. § 14-1(40) defines the term highway as “any state or other public highway, road, street, avenue, alley, driveway, parkway or place, under the control of the state or any political subdivision of the state, dedicated, appropriated or opened to public travel or other use.”

Complete Streets Designs

Complete Streets is a design concept adopted by municipal governments and departments that seeks to balance the needs of different users of a roadway. Called “accommodations for all users” under Connecticut’s Complete Streets law, Complete Streets designs and funding are required to be a “routine part of the planning, design, construction and operating activities of all highways” and thus should not be subject to different legal requirements than other roadway planning decisions. As discussed below, there is typically no liability for defects in roadway planning unless the roadway includes an egregious defect that probably and inevitably will result in injury. But Complete Streets designs essentially do the opposite, often making roadways more not less safe. So much so in fact, that Federal Highway Administration (FHWA) encourages such accommodations and has stated on the issue of liability that “[h]ighway and recreational facilities that fail to fully incorporate the needs of all users increase the likelihood of potential court settlements in favor of those who are excluded.”⁵ As such, ample resources are available for guidance.

Liability for Defective Roadway Design

Historically, the government in Connecticut was not liable for any roadway defects – a concept known as sovereign immunity. However, “in certain actions in which the injuries allegedly resulted from a defective” roadway, that sovereign immunity was waived by the state through statute.⁶ There are in fact two statutes: one statute covers state highways⁷ and the other covers municipal roadways.⁸ Despite separate statutes, the analysis for governmental liability under both is the same.⁹

These statutes impose a duty on the government to keep the roadway free from defects¹⁰ and in a state of good repair.¹¹ This duty requires the government to fix problems in roadways in a reasonable time after the government becomes aware of the problem.¹² Essentially a maintenance issue, the duty as written in the statutes arises after the design plan is implemented

⁵ Federal Highway Administration, Federal Highway Administration University Course on Bicycle and Pedestrian Transportation, Lesson 22: Tort Liability and Risk Management, *available at*, <http://www.fhwa.dot.gov/publications/research/safety/pedbike/05085/chapt22.cfm>.

⁶ *Tyson v. Sullivan*, 77 Conn. App. 597, 602 (2003).

⁷ Conn. Gen. Stat. § 13a-144.

⁸ Conn. Gen. Stat. § 13a-149.

⁹ *McIntosh v. Sullivan*, 274 Conn. 262, 267 fn. 4 (2005) (“no substantial difference in the duties imposed by” § 13a-144 and § 13a-149).

¹⁰ *Id.* at 268 (2005).

¹¹ *Id.*

¹² *Id.*

but does not explicitly cover design plans.¹³ However, the Connecticut Supreme Court has extended these statutes to design plans through case law, but liability will only attach when it can be shown “that the plan adopted ‘was totally unacceptable in that the highway would have been in such a defective condition as to have been out of repair from the beginning.’”¹⁴

What Does This Mean?

This means a governmental entity “ordinarily will not be liable . . . due to errors or defects in the plan adopted. . . . and something more than a mere choice between conflicting opinions of experts is required”¹⁵ before liability will attach. The roadway must be “defective from the beginning, or . . . shortly after the completion of the improvement, and injury is . . . *the inevitable and probable result.*”¹⁶ This is a question of fact¹⁷ that does not easily lend itself to in depth analysis, particularly because there are so few reported cases analyzing this problem after the Supreme Court’s most recent decision.¹⁸ However, the courts have used strong language when discussing the “limit[ed]” and “relatively narrow”¹⁹ circumstances that would give rise to liability, saying the defect must be “so egregious, [it] requir[es] obvious correction.”²⁰ This is strongly related to the highly discretionary nature of roadway planning.²¹

Complete Streets Designs Exceptions

The Connecticut Complete Streets law appears to contemplate and incorporate this discretion explicitly through the provision of an exception. That exception states: Complete Streets designs “shall not be required if the Commissioner of Transportation or a municipal legislative body determines, with respect to a highway, road or street that: (1) Nonmotorized usage is prohibited; (2) there is a demonstrated absence of need; (3) the accommodation of all users would be an excessively expensive component of the total project cost; or (4) the accommodation of all users is not consistent with the state's or such municipality's, respectively, program of construction, maintenance and repair.”²² This exception, taken together with the law’s requirement for routinely implementing Complete Streets designs and judicial recognition

¹³ See *Trotta v. Branford*, 26 Conn. App. 407, 410-11 (1992).

¹⁴ *Id.* (quoting *Hoyt v. Danbury*, 69 Conn. 341, 352 (1897)); see also *McIntosh v. Sullivan*, 274 Conn. 262, 271 (2005) (plan must be “totally inadmissible” from the beginning).

¹⁵ *Donnelly v. Ives*, 159 Conn. 163, 168 (1970).

¹⁶ *McIntosh*, 274 Conn. at 268 (citing *Perrotti v. Bennett*, 94 Conn. 533, 539 (1920)) (emphasis added by *McIntosh*).

¹⁷ *Tyson*, 77 Conn. App. at 602 (“whether a condition in a highway constitutes a defect must be determined in each case on its own particular circumstances”).

¹⁸ A brief discussion of a few cases is attached hereto in the Appendix.

¹⁹ *McIntosh*, 274 Conn. at 280, fn. 8.

²⁰ *Sankaran v. Sullivan*, No. CV980585292, 2001 WL 103968, *2 (Conn. Super. Jan. 18, 2001) (citing *Langton v. Westport*, 38 Conn. App. 14, 17 (1995) and *Federman v. Stamford*, 118 Conn. 427, 429 (1934)).

²¹ *Sankaran*, 2001 WL 103968 at *2 (citing *Donnelly v. Ives*, 159 Conn. 163, 168 (1970)).

²² Conn. Gen. Stat. § 13a-153f(d).

that roadway planning is a discretionary process, supports a conclusion that Complete Streets designs should not create a liability concern that is new or different from the discussion above.

Benefits of Complete Streets Design

In addition to the existence of the Complete Streets law, the prudence of implementation of Complete Streets designs is further supported by statements of FHWA, the body of evidence showing ample benefits of Complete Streets designs and the work of other organizations. Complete Streets designs can reduce infrastructure costs 35-40%²³ and reduce injury and crash risks for pedestrians by 28% and bicyclists by 50%.²⁴ In addition, studies in both the United States²⁵ and United Kingdom²⁶ found traffic calming measures resulted in over 20% fewer accidents. More specifically, within two years of implementing Complete Streets designs on Eighth and Ninth Avenues, New York City saw 13-23% fewer crashes, 15-56% fewer crashes that cause injuries and 18-58% fewer injuries to all street users.²⁷ For these reasons, FHWA has clearly stated: “It is no longer acceptable to plan, design, or build roadways that do not fully accommodate use by bicyclists and pedestrians. With every passing year, the courts become less and less sympathetic to agencies that have not understood the message: bicyclists and pedestrians are intended users of the roadway. Transportation staff must be knowledgeable about planning, design, and other aspects of nonmotorized travel. All modes must be taken into account.”²⁸

FHWA has been particularly vocal about advocating for accommodating all users through implementation of Complete Streets designs. For example, it has said, the “United States Department of Transportation encourages States, local governments, professional associations, other government agencies and community organizations to adopt this Policy Statement as an indication of their commitment to accommodating bicyclists and pedestrians as an integral element of the transportation system”²⁹ and an “FHWA-backed approach [to traffic planning] is applying context sensitive solutions (CSS) to help ensure that streets are indeed ‘complete’ in the

²³ National Complete Streets Coalition, The Benefits of Complete Streets 1, Costs of Complete Streets, *available at*, <http://www.completestreets.org/complete-streets-fundamentals/factsheets/costs/>.

²⁴ National Complete Streets Coalition, The Benefits of Complete Streets 9, Safety of Complete Streets, *available at*, <http://www.completestreets.org/complete-streets-fundamentals/factsheets/safety/>.

²⁵ Mayor Mike McGinn, Nickerson Street project improves safety, *available at*, <http://mayormcginn.seattle.gov/nickerson-street-project-improves-safety/>.

²⁶ United Kingdom Department of Transport, Traffic Advisory Leaflet 11/00, Village traffic calming - reducing accidents, December 2000, *available at*, <http://assets.dft.gov.uk/publications/tal-11-00/tal-11-00.pdf>.

²⁷ New York City Department of Transportation, Community Board 4 Presentation: Eighth and Ninth Avenues Complete Street Extension, September 21, 2011, *available at*, http://www.nyc.gov/html/dot/downloads/pdf/201109_8th_9th_cb4_slides.pdf.

²⁸ Federal Highway Administration, Federal Highway Administration University Course on Bicycle and Pedestrian Transportation, Lesson 22: Tort Liability and Risk Management, *available at* <http://www.fhwa.dot.gov/publications/research/safety/pedbike/05085/chapt22.cfm>.

²⁹ FHWA, Design Guidance, Accommodating Bicycle and Pedestrian Travel: A Recommended Approach, *available at*, <http://www.fhwa.dot.gov/environment/bikeped/design.htm>.

sense of being appropriate for the area in which a project is implemented.”³⁰ And, as noted above, on the question of liability, FHWA has stated that “[h]ighway and recreational facilities that fail to fully incorporate the needs of all users increase the likelihood of potential court settlements in favor of those who are excluded.”³¹

There are ample Complete Streets planning resources available to governmental entities that can be relied on in formulating planning decisions. “Approved Complete Streets design standards include those from the American Association of State Highway and Transportation Officials (AASHTO Green Book), the Manual on Uniform Traffic Control Devices from the Federal Highway Administration (FHWA), and the Institute of Transportation Engineers.”³² In addition, FHWA maintains a Bicycle & Pedestrian Program resource website³³ and the National Complete Streets Coalition provides a particularly helpful Resources page³⁴ for learning more about the benefits of and design guidance specifically related to Complete Streets designs. There are also Connecticut based resources, including the City of New Haven Draft Complete Streets Design Manual,³⁵ the City of Bridgeport’s Complete Streets Policy and Action Plan³⁶ and the Connecticut Bicycle and Pedestrian Advisory Board website.³⁷

Conclusion

Liability should not be an impediment nor is a justifiable excuse for not implementing a Complete Streets plan or improvement in Connecticut. Governmental entities are required to incorporate Complete Streets designs in the planning process and devote funds to their implementation. Doing so should not create liability unless there is a defect in the plan that is so egregious, it requires obvious correction within the circumstances of the roadway.

³⁰ Robin Smith, Sharlene Reed, and Shana Baker, Public Roads, Street Design: Part 1—Complete Streets, Vol. 74, No. 1, (July/August 2010), *available at*, <http://www.fhwa.dot.gov/publications/publicroads/10julaug/03.cfm> (emphasis added).

³¹ Federal Highway Administration, Federal Highway Administration University Course on Bicycle and Pedestrian Transportation, Lesson 22: Tort Liability and Risk Management, *available at*, <http://www.fhwa.dot.gov/publications/research/safety/pedbike/05085/chapt22.cfm>.

³² Alan M. Voorhees Transportation Center, NJ Complete Streets Summit Summary Report, pg. 9, *available at*, <http://policy.rutgers.edu/vtc/bikeped/completestreets/Final%20Complete%20Streets%20Summary%20Report.pdf>.

³³ FHWA, Bicycle & Pedestrian Program, *available at*, http://www.fhwa.dot.gov/environment/bicycle_pedestrian/index.cfm.

³⁴ National Complete Streets Coalition, Resources, *available at*, <http://www.completestreets.org/complete-streets-fundamentals/resources>.

³⁵ City of New Haven, Draft Complete Streets Design Manual, 2010, *available at*, <http://www.cityofnewhaven.com/TrafficParking/pdfs/CS-Manual-04-05-10.pdf>.

³⁶ Greater Bridgeport Regional Council, City of Bridgeport’s Complete Streets Policy and Action Plan, *available at*, <http://www.gbrct.org/uploads/PDFs/Publications/Reports/Transportation/Pedestrians-Bikes/Bridgeport-Complete-Streets/Bridgeport-Complete-Streets-August-2011.pdf>.

³⁷ <http://www.ctbikepedboard.org/index.html>.

DISCLAIMER:

This document is intended to provide a brief and simple overview of transportation planning law in the state of Connecticut. **It is not intended to be legal advice, does not constitute legal advice and should not be used as a substitute for qualified legal advice from a competent, experienced attorney licensed to practice law in the state of Connecticut. Any person or entity reading this document should retain a lawyer to seek his or her advice with respect to any information or legal issues discussed in this document.**

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Appendix: Selected Case Law Case Summaries

***McIntosh v. Sullivan*, 274 Conn. 262, 268 (2005)** involved an automobile that was struck by falling rocks and debris while operating on a state highway. The plaintiff alleged, amongst other things, that the roadway included a design defect in violation of Conn. Gen. Stat. § 13a-144. In finding for the Commissioner, the court explained that although a design defect is generally not actionable under § 13a-144, there is the “so-called *Hoyt* exception” – the extension of § 13a-144 to design defects in limited circumstances. The court noted two examples of the egregious nature of design defect that could give rise to a claim under § 13a-144. The first, a hypothetical presented in the *Hoyt* case,³⁸ of a “sidewalk that had been left with its grade broken by a four foot wall, without provision of steps. . . . reveal[ed] the true nature and limitation of the exception.” The second, from the facts of *Perrotti v. Bennett*,³⁹ involved the collapse of a roadway at a point where a drain pipe installed under the roadway and separated by twelve inches of sand and gravel from the roadway caused by a 25,000 pound truck traveling thereon. The *Hoyt* exemption was applied in that case because the defect in the highway resulted from the inability of the pipe’s materials, the sand and gravel covering, or both, to support the weight of that 25,000 pound truck. The court found that rocks and debris falling on the roadway onto the plaintiff’s car did not constitute a defect under § 13a-144.

In ***Sankaran v. Sullivan*, No. CV980585292, 2001 WL 103968 (Conn. Super. Jan. 18, 2001)**, the court ruled that the decision to not install rumble strips and a guardrail or mark or identify the highway edge was not a design defect under § 13a-144. The court believed that the lack of these measures did not rise to the level of design defect that was “so egregious, requiring obvious correction” as it was unlike the example of a sidewalk having its grade broken by a four foot wall discussed in *McIntosh*.

***Moreino v. State*, No. CV054003227S, 2008 WL 1914734 (Conn. Super. Apr. 11, 2008)** involved a single car accident cause when the plaintiff’s decedent’s car left the roadway while negotiating a turn, struck the tapered end to a guardrail, became airborne and struck a tree 50 feet away, ultimately cause the plaintiff’s decedent’s death. Plaintiff alleged that the removal of a previously existing stone wall and installation of a driveway adjacent to the roadway negatively affected sightlines and road geometry, causing the accident. The court denied the defendant’s motion for summary judgment, finding a genuine issue of material fact existed as to whether sightlines and roadway geometry were altered in a way that made the road design defective under the *Hoyt* exception pursuant to *McIntosh*.

***Cummings v. State*, Nos. CV075011774S, CV075011825S, 2011 WL 5009488 (Conn. Super. Sept. 29, 2011)** was a consolidated case where one plaintiff suffered injuries and the other’s

³⁸ *Hoyt v. Danbury*, 69 Conn. 341, 352 (1897).

³⁹ *Perrotti v. Bennett*, 94 Conn. 533, 539 (1920).

decendent died when a truck driver lost control of his truck and it barreled through an intersection at the bottom of the inclined highway on which it had been traveling. The court found that the defendant's motions to dismiss and for summary judgment must be overruled because the plaintiffs' allegations that the state created an unsafe condition of allowing trucks to operate on such a steep downhill grade when designing the road in that it amounted to a design defect under § 13a-144 and might fit within the *Hoyt* exemption as discussed in *McIntosh*.

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