

Entry 5 Nelson Deposition

DEPOSITION SUMMARY OF ROBIN C. NELSON, P.E., HIGHWAY DESIGN ENGINEER

My name is Robin C. Nelson. I am a 58-year-old highway design engineer. I received my bachelor's degree in mechanical engineering from Purdue University. I was hired by the Major Department of Transportation right out of school, serving as an engineer on a number of major road construction projects throughout the state. In the course of this work, I had to become quite familiar with the specifications and standards for roadway engineering, as well as requirements for traffic control signs and devices.

As my time went on in the Major Department of Transportation, creating my own highway design-consulting firm began to develop as my ideal employment setting. During the course of my work for the government, I had my deposition taken many times by plaintiffs' lawyers in litigation against the State. I enjoyed the give and take of forensics much more than I had thought I would at the outset.

At this point, I have had my own firm for 15 years. My current billing rate is \$350 per hour for document review and site inspections and goes up to \$500 per hour for deposition and court testimony. I have worked for both plaintiffs and defendants over the last 15 years, but probably 75% of my work at this point is for the plaintiffs, with the remainder for the government. There are a number of situations where I offer my opinion to one side or the other and they decide not to use me. Apparently, in these circumstances, my opinions and conclusions are not helpful to the party who retained me.

I have a staff of five people working for me, including the receptionist. After paying all my expenses, my average yearly income as a forensic highway design engineer is around \$250,000 - \$300,000 a year. This is significantly more than I was making as a government employee, which was somewhere around \$60,000 a year at the time I left.

I was asked by plaintiff's counsel to look into the rollover death single car accident that claimed the life of Terry O'Brien. I reviewed all the police reports, as well as traveling to the scene with my survey crew to measure it. It is my opinion that Jamner County's sole negligence caused this accident. I break down the highway design engineering safety compliance requirements violated by the county into three basic areas:

1. Highways must be safe, with accepted and proven design standards.
2. The public must be protected from any substandard features that must be left in place on a road for any reason.
3. Warnings and notice of any latent roadway hazard must be left in place as long as the hazard continues to exist.

The circumstances at this scene required defendant Jamner County to post signs in the vicinity of the accident. It is my opinion that a warned driver who is aware of danger is far less likely to have a serious accident than one who is unaware of the danger. That is why standard traffic control measures and tactics are in place nationwide. It is why uniformity and certainty of application with regard to signage is so very important.

There was no warning posted of the dangerous and extra hazardous condition of the abrupt road edge that existed on Pioneer Road on June 16, 20XX. Had a safe and proper traffic control plan been initiated, it is my opinion that the type of accident involved here would have been substantially less likely to occur.

The Department of Transportation standards that apply to road construction projects such as this required the County to do one or more of the following:

1. Post appropriate warning signs alerting motorists of the condition.
2. Place channeling devices, such as barricades and plastic safety drums along the traffic side of the drop-off.
3. Place temporary concrete barriers on the traffic side of the drop-off.
4. For night use, barriers should have paint, reflective tape or warning lights.

While I agree with Trooper Cleaver that motorists do not uniformly follow traffic control signs, he goes way too far in saying that these signs do not have value. If we were to extend this reasoning to its logical conclusion, we would not have any road signs at all, presuming that nobody would follow them.

I did not go to the accident scene until several months later. I had to rely on the photographs taken by law enforcement as to the conditions as they appeared that day. This is not unusual for me in my career as a forensic highway design expert. An ambiguous situation existed, with lack of definition where the edge of the road ended. Roadway markings are intended to give guidance to drivers. None existed at this location due to the ongoing construction. Abrupt lane edges are tricky even for experienced drivers, particularly on a narrow county road such as this. Certainly, visibility is better when daylight hours on sunny days such as occurred here.

I disagree with Trooper Cleaver that the speed of the decedent was anything more than the posted 50 m.p.h. range. Given the sideways motion of this vehicle, it is much more difficult to accurately determine speed. I do concede that Trooper Cleaver had the opportunity to eyeball the actual

conditions on the day of the accident, though the photos were more than adequate for my purposes.