

DPRCG 2024 CONVOCATION

Litigate or Settle: What would you do?

Tahra Porterfield, Esq.
Senior Claims Specialist, AXA XL

Cheryl Shaw, Esq.
Claim Manager, AXA XL



THE VALUE OF
TRUST

Learning Objectives

- Understand the decision-making process: Learn how to weigh the benefits and drawbacks of both options based on the specifics of the case.
- Analyze legal risks and costs: Evaluate the financial, legal, and reputational risks involved in litigation versus settlement.
- Assess the strengths of the case: Analyze the evidence, legal merits, and probability of winning in court.
- Evaluate settlement negotiation strategies: Understand the process of negotiating a favorable settlement and what factors influence a successful outcome.

The Driver: Topsy McSway (deceased)



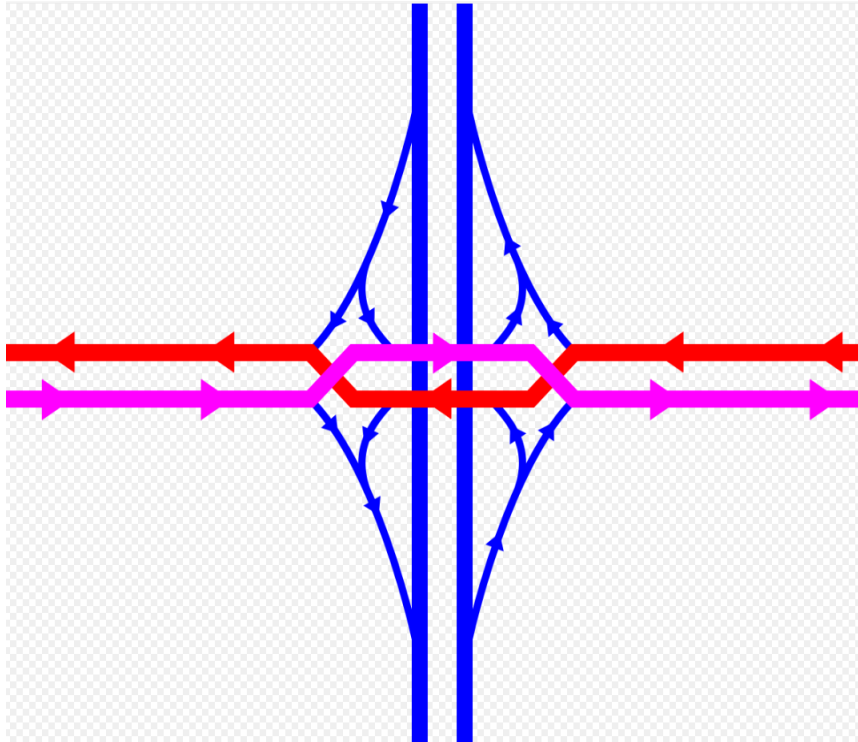
- Driving the wrong way on highway
- Blood alcohol content: 0.233
- Positive for marijuana: 52 ng/ml
- Speed of 102 mph

The Victim: Teacher Tammy Thompson (deceased)



- Driving home from high school football game
- Beloved math teacher
- Married with minor child
- Tremendous outpouring of community support at memorial services

The Project: Diverging Diamond Interchange



- Cited by *Popular Science* as one of the best engineering innovations of 2009
- At time of incident, DDIs introduced in in four other states
- But first of its kind in Anytown, USA
- Designed by ABC Engineers

The Wrongful Death Lawsuit



Plaintiffs:

- Estate of Teacher Tammy
- Husband
- Minor child
- Mother
- Father

Defendants:

- ABC Engineers
- State DOT
- City #1
- City #2
- General Contractor
- Traffic Signage Sub
- Lighting Sub #1
- Lighting Sub #2
- Pavement Markings Sub

What did plaintiffs allege?



- Defective (confusing) design
- DDI opened prematurely, prior to completing basic safety features
- Inadequate signage, pavement markings, and lighting as required by contracts and industry standards
- Conditions existed for several months before accident

Plaintiffs' Initial Demand



\$85,000,000

ABC Engineering confident this is a case of "no liability" or "cost of defense"

Litigate or Settle?

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#1 reason to litigate?

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Discovery Phase



- Unclear scope of services
- Problematic communications
- Glacial pace of discovery
- Municipalities file early MSJ

The case rolls on...



Plaintiffs' Expert Report:

- Temporary paint used for pavement markings and had faded
- Full specified lighting not installed prior to DDI opening or accident
- Study shows 60% of wrong way accidents involve drunk drivers & primary origin of wrong way movement are entry/exit ramps

Plaintiffs' New Demand



\$20,000,000
(globally)

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#1 reason to settle?

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Barreling toward trial...



- Threatened indemnity cross-claims
- Project engineer leaves ABC
- Skyrocketing costs/deductible exhausted
- Litigation fatigue
- Lawsuit has faded from public eye
- Fear of being “last man standing”

Plaintiffs' Final Demand



Policy Limits
(**>\$2M** for ABC)

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What happened?



Takeaways



Get the whole picture

Initial evaluation based on limited information should not necessarily drive decision to settle or litigate

Takeaways



Appetite for litigation

- Wheels of justice turn slowly
- You have a business to run
- Emotional toll to extended litigation
- Financial considerations

Takeaways



The landscape will change

- Discovery exists for a reason
- Important to remain objective
- No right or wrong answers
- TRUST your team!

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