

THE STATE OF NEW YORK
COURT OF CLAIMS

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RONEN AMINOV,

Plaintiff,

-against-

CLAIM #.: E14-0135

THE STATE OF NEW YORK,

Defendant.

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I, **JAMES C. SHULTZ, PE**, Expert for Claimant, RONEN AMINOV swears under penalties of perjury the following, the source of which is upon information and belief, the source of which are witness affidavits, Claimants testimony, pictures of the scene by Police, and a physical inspection of the site where Claimant received his crippling physical injuries and traumatic brain injury:

1. I have been qualified in the field of Road Design, Construction and Maintenance in New York State courts and other state courts.

2. In spite of the Assistant Attorney General's assertions, there are several viable theories regarding the roadway, pedestrian path and pedestrian crossing that attach liability to the State of New York. Said theories are as follows:

3. The State knew about the pedestrian activities at the accident locus and route and that the path that Plaintiff, RONEN AMINOV took, was commonly used by pedestrians as it is well trod and at a busy road junction.

4. In spite of the fact the State knew of the need for safeguards to protect pedestrians traversing the pedestrian pathway, the State planned and executed a mid-block crosswalk that was clearly improper and insufficient, considering the roadway configuration. The easily discernable pedestrian pathways show that the State's mid-block crosswalk is not used by many.

The failure to provide design and construction appropriate for pedestrian operations and protection placed pedestrians in danger.

5. The marked pedestrian crossing location does not provide a convenient or direct crossing. It has long been known that pedestrians will use the most direct pathway or crossing, especially at junctions and at night when there is less traffic, and the marked crossing is poorly illuminated. The State's failure to provide such a crosswalk and pathway, or to effectively direct pedestrian access to the marked pedestrian crossing, subjected pedestrians to a dangerous condition and was a cause of the crash.

6. The lighting conditions at the crash site were insufficient to illuminate the evident pedestrian pathway, thereby failing to advise motorists of the presence of pedestrians at the crash location and placing pedestrians in a position of serious danger.

7. The lighting conditions at the marked mid-block crosswalk were insufficient, thus making the pedestrians using the crosswalk unexpected and inconspicuous to motorists and making it likely that pedestrians would not use the crosswalk. .

8. The path persons traverse in lieu of the State's indicated crossing location has been worn down and eroded, giving a clear and discernable location where pedestrians walk and giving notice of the need for safeguards to protect pedestrians.

9. The State's placement of the marked crosswalk was improper in that the markings are improperly maintained and eroded; the illumination of the roadway and crossing is insufficient; and it does not provide a direct and convenient crossing expected and anticipated by pedestrians.

10. The obvious worn pathway where this collision occurred was near the outside of the roadway curve. It is more likely that a vehicle traversing the curve will leave the roadway on

the outside of the curve, which will be in close proximity of the obvious worn pedestrian pathway adjacent to the roadway, placing pedestrians in serious danger.

11. There are no safeguards to prevent cars leaving the roadway and entering into the obvious worn pedestrian pathway and hitting pedestrians, as was the case in this particular accident.

12. Witnesses will testify the car easily drove over the curbed edge of the roadway. There was no adequate separation or division between the roadway and the area where pedestrians obviously walk, which is why the vehicle drove off the roadway and over the inadequate curb and onto the area where Claimant was standing.

13. The outside of the curve is poorly marked and the concrete curb is only two to three inches high on the roadway side. The curb is of the non-mountable (i.e., barrier) curb type. The New York State Department of Transportation (NYSDOT) Highway Design Manual indicates barrier curb should have an exposed face on the traffic side of the curb of six inches. The improper curb height reduces a driver's visibility of the roadway edge afforded by the color contrast between the concrete curb and the asphalt roadway, and reduces the ability of the curb to re-direct an errant vehicle traveling at lower speeds back to the roadway. This increases the likelihood of a vehicle leaving the roadway, entering the known and obvious pedestrian pathway outside of the curb and placing pedestrians in danger.

14. The extensive worn area on the outside of the curb has resulted in a depressed surface adjacent to the outside face of the curb of four to five inches. The NYSDOT Design Manual indicates the surface on the outside of the curb should be flush or even with the top of the curb. The improper curb height on the roadway side increases the likelihood of a vehicle crossing over the curb and dropping into the depressed surface area immediately adjacent to the outside of the curve. Because of the difficulty drivers experience in retaining control when

attempting to return to the pavement over a vertical drop-off, roadway standards indicate vehicles should not be exposed to edge dropoffs of greater than 2 inches.

15. Due to the improper and excessive vertical exposed face on the outside of the curb, the difficulty of a vehicle that has left the pavement and crossed into the known obvious pedestrian area beyond to quickly and safely return to the roadway due to the excessive and unsafe vertical drop-off, as occurred in this case, will result in an errant vehicle remaining in the pedestrian area for a significant time, increasing the danger for pedestrians. The failure to properly maintain the surface on the outside of the curb was a factor in the crash.

16. There is outstanding discovery, such as diagrams of Union Turnpike as it was built that would be useful and based upon conversations with counsel, the Assistant Attorney General has not supplied information that would be useful for this matter.

17. It is the position of the Assistant Attorney General that the driver that hit Claimant may have been intoxicated and, thus, the intoxication being the sole cause of the accident. That is inconsistent with the observation of the worn roadway edge, which indicates many vehicles have left the edge of the travel lane. Although intoxication may be the cause of the incident vehicle and perhaps other vehicles leaving the roadway at the crash locus, excessive speed, improper roadside conditions, insufficient pavement marking and signing, and driver confusion, among other possible reasons, are also potential causes of or factors in the crash.

18. Observations of the crash site show that numerous drivers have left the roadway at the crash location, whether the reasons for leaving the pavement are due to the signage, roadway curve, lighting and/or some other factors. That drivers leave the road on the outside of the curve is not an anomaly, and must be considered in the roadway design.

19. There is a substantial issue of fact as to whether the State's design and configuration of the roadway and pedestrian facilities at the crash location was inherently

defective and gives New York State liability and therefore, I join in FRANK C. PANETTA,
ESQ.'s Opposition to the State of New York's motion for Summary Judgment.

Dated: Lancaster, Pennsylvania
May 15, 2016

Respectfully submitted,



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