INTRODUCTION

I've tried a number of personal injury cases in which the Indiana State Highway Commission is a named defendant. Most of these cases are jury trials—some of which I've been successful with, some of which, unfortunately, I have not. But the one thing that one does learn about a jury trial is that it is like throwing dice—every jury is unique. Out of a dozen jury trials one will find against you when you thought you had won the case, and one will find for you when you thought you had lost the case.

Of the hundreds of cases filed against the highway commission, only perhaps 25% have merit; for the other 75%, liability is paper thin, but the injuries are quite serious so the plaintiff hopes he will win the case based upon sympathy. He sues the state based on the deep pocket theory because we have all the money.

DEEP POCKET THEORY—EXAMPLE CASE

For example, I tried a case last March. A man, his wife, and young child were hit head on by a man who was trying to pass a slow moving dump truck. The man and wife did not sustain serious injury, but the child suffered brain damage. The child was six months old at the time of the accident and was six years old when the case was tried. Mentally, however, the child acted and behaved like a six-month-old child and would the rest of his life—very sad case. The act of negligence against the state was that the road was improperly signed. The man who really caused the accident didn't have insurance, so the target obviously was the treasury of the state. Fortunately, we won the case; if it was tried all over again before a different jury, the results could have been just the opposite.
FOUR BASIC NEGLIGENCE SUITS AGAINST ISHC

The highway commission is sued basically on four theories of negligence:

1. Improper construction
2. Improper design
3. Improper maintenance
4. Improper signing

Nobody can stop accidents from happening, and as long as the state, the counties, and the cities have money, they are going to be sued, sued, and sued again.

TIME FACTORS IN LAWSUITS

As Mr. Spear pointed out, a claimant has 180 days to file notice of his claim from the date of the accident. Once he has filed a claim he has two years from the date of the accident to file suit. Once the lawsuit is filed the case in all probability will not come to trial for approximately two to three years. Thus the trial will probably be four to five years from when the accident occurred. This is unfortunate since memories can be pretty hazy about something that happened several years ago. Therefore, it is of utmost importance to keep good records and do not destroy any records for at least a seven-year span. Those records should contain accurate day by day reports as to what the men were doing, where they were at, etc.

MANY LAWSUITS INVOLVE SIGNING

Many lawsuits have to do with signing and whether or not a warning sign or signs were in place at the time of the accident. Records as to signing are quite important especially when the plaintiff says he saw no signs warning him of a hazard, when in fact we can prove that the sign was there. Keeping records when signs were knocked down and when they were replaced may be the difference in winning or losing a case. One traffic engineer at the present time is keeping records of signs and their replacement and is in fact having his men on the back side of the sign putting the date it was replaced. This is an excellent idea. The whole idea of keeping accurate and thorough daily records is that it makes us look like we are doing a good and efficient job to a jury.
SIGNING LAWSUIT—EXAMPLE CASE

For example, I tried a case involving a 90° curve on SR 44. There were six signs warning of the curve as you approached it. A man, his wife, and oldest son were driving home one night. They contended all the signs had been knocked down, the man didn’t see the curve early enough to avoid it and flipped his car over three times. All were seriously hurt.

At the time of the accident we didn’t keep any records as to those signs being up or down. The plaintiffs’ son-in-law testified he went out to the scene of the accident two days later, and all the signs were knocked down. Fortunately, however, we had two property owners who lived on the curve and could testify that only one of the six signs were down. The jury believed the property owners and found for the state. If it had not been for the testimony of the property owners, the state would have lost some money.

DOS AND DON’TS WHEN INVOLVED

There are some dos and don’ts:

1. Never, I repeat never, talk to a potential plaintiff’s attorney about an accident—refer that lawyer to your lawyer.

2. Even if there might have been some fault on your behalf, never admit fault to a lawyer, to a party, newspaper, etc. That is for the jury to determine and not you.

3. Cooperate in every way possible with your own attorney. He is your friend, he is representing you, and without your utmost cooperation he cannot fully help you.

4. Any and everyone of you are going to be witnesses in a trial one time or another. That is not something to look forward to, but it is something that cannot be avoided. As a witness talk to your attorney, be prepared, and tell the truth; but like I said, never admit fault to a jury. Also when asked questions by the plaintiff’s attorney at trial, never volunteer information to him, just answer his questions truthfully. If any of you are interested, I have some reproduced copies of materials on preparing to be a witness at a trial.