

PAT WESTON
V.
ABC ROAD CONSTRUCTION, INC.

Case File

IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

PAT WESTON,

Case No.: CV-12-4637821

Plaintiff,

v.

ABC ROAD CONSTRUCTION, INC.,

Defendant,

BACKGROUND INFORMATION

Pat Weston was a 31 year old man who is now currently residing with his mother Consuelo Weston, age 66. On May 13th Y-2, Pat Weston was planning to visit a female friend by the name of Elisha, and was traveling from their mutual friend Shannon's home to Elisha's house at approximately 3:30 a.m.

After leaving Shannon's home, Weston was traveling south on Military Trail by way of his 2006 Suzuki GSXR motorcycle on his way to the Portofino apartment complex, where his friend Elisha lived. Weston does have a valid Florida driver's license. He does not have a valid motorcycle endorsement, but has been riding motorcycles for fifteen plus years. As Pat Weston was traveling southbound on Military Trail he approached a sudden lane shift between Appaloosa Street and Willow Pond Road. The lane shift was located approximately 1550 feet north of Willow Pond Road. The lane shift itself was constructed on approximately 200 feet of road and shifted approximately 26.9 feet in one direction, which is a large shift. The plaintiff's expert is Kelly Carnahan. He has testified in deposition that the design of the lane shift was not

congruent with Florida Department of Transportation standards and procedures. While attempting to maneuver the lane shift, Pat Weston lost control of his motorcycle and crashed. Pat Weston has filed an action based on common law negligence against ABC Road Construction, Inc. The defendant denies any liability. The plaintiff's witnesses include the plaintiff himself, Pat Weston, and the plaintiff's qualified accident reconstructionist Kelly Carnahan. The defendant's witnesses include the project manager for ABC Construction, Inc., Chris Walker, and the defendant's qualified accident reconstructionist, Deputy Lee McDang.

Typically, when traveling southbound on Military Trail the speed limit is 45 mph. ABC Road Construction, Inc. posted a 35 mph speed limit sign for navigating the constructed lane shift. Pat Weston stated that at the time he was traveling at the appropriate posted speed of 35 mph. Accordingly, he was traveling approximately one (1) car length behind an SUV while navigating the lane shift. While navigating the lane shift, Pat Weston felt his front tire begin to skip. The tire skipping caused Pat Weston to lose control of the motorcycle, flip over end over end, landing the motorcycle on its side, causing Pat Weston and the motorcycle to skid down the asphalt, as he recalls, approximately 40 to 60 feet, and finally colliding with a yellow divider.

Pat Weston's crash caused him to slide along with his motorcycle and suffer severe road rash from his right shoulder to buttocks. These injuries affected Pat Weston's ability to work his right arm. These injuries have also affected Pat Weston's ability to work and provide for himself financially. The injuries have affected his ability to perform the routine physical tasks necessary for receiving gainful employment. Although these injuries are severe, they are not the sole reason for Pat Weston's inability to gain employment. Pat Weston has been diagnosed with both Attention Deficit Hyperactive Disorder and Lupus. Pat Weston testified that these symptoms are incredibly severe and are neither being treated nor have been treated with medication.

The expert hired by the defense is Lee McDang with the Hillsborough County Sheriff's Office. No citations were issued to Pat Weston. Deputy McDang did opine that Pat Weston was driving his motorcycle on inadequate sleep at 3:00 a.m. Deputy McDang also opined that, Weston was following the vehicle in front of him too closely. In addition he testified that Weston was exceeding the speed limit. Deputy McDang's concluded that Pat Weston was the cause of his own accident on Military Trail.

Despite Deputy McDang's opinion that Pat Weston's contributed to his own accident, the plaintiff's expert witness, Kelly Carnahan, stated that the lane shift constructed by ABC Road Construction was unsafe regardless of Weston's action. Kelly Carnahan's deposition states that regardless of the change in speed limit the overall construction of the lane shift would have been unsafe at any speed.

The trial of the case will be based upon a pure comparative charge to be submitted to the jury. The defense counsel has evoked the Fabre defense for the inclusion of the Florida Department of Transportation. The case may be tried on liability only. The Florida Rules of Evidence and Florida Rules of Civil Procedure shall apply.

All years used in this case file should be used as follows:

Y-0 means the year in which the case is actually being tried.

Y-1 indicates the year before the case is being tried.

Y-2 indicates two years before the case is tried, etc.

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Plaintiff,

v.

ABC ROAD CONSTRUCTION, INC.,

Defendant,

PRE-TRIAL ORDER

The court hereby enters this Pre-Trial Order for the purpose of simplification and clarification of the issues to be tried.

IT IS HEREBY ORDERED as follows:

1. Trial shall be conducted in accordance with the Florida Rules of Evidence & the Florida Rules of Civil Procedure. Attorneys shall not be permitted to use case law.
2. The plaintiff and defendant shall be represented by trial teams.
3. Plaintiffs must call Pat Weston a fact witness and Kelly Carnahan as an expert witness.
4. Defendants must call Chris Walker as a fact witness and Lee McDang as an expert witness. Experts may render opinions upon a proper foundation.
5. No rebuttal witnesses will be permitted.
6. Male and Female pronouns, names, etc. are interchangeable. Each side shall have an equal amount of time for opening statements, direct and cross-examinations, and closing arguments.
7. No trial briefs are to be submitted.

8. All Motions in Liminie must be made and ruled upon prior to trial.
9. All photographs in the casebook are authentic and all predicate matters are stipulated. The only basis for any objections to a photograph is relevancy. The exhibits attached may be enlarged. No other docs or evidence may be used as real or demonstrative evidence. All demonstratives not provided in the case file shall be created during the trial. Demonstrative may not be created before trial.
10. It has been stipulated that all employees of ABC Road Construction, Inc. on or about the date of the accident were acting in the course and scope of their employment.
11. Jurisdiction and venue are proper in this Court.
12. The controlling law is set forth in the jury instructions. These may be referred to in closing argument after consultation with presiding judge for clarification of instructions and verdict form to be used.
13. This case shall be tried as a comparative negligence case as opposed to contributory negligence.
14. The defendant has raised the affirmative defense of Fabre. Specifically, the Defendant has alleged that the Florida Department of Transportation was negligent in causing the injuries to Pat Weston. This defense has stipulated that its Fabre defense will not be withdrawn during the proceedings.
15. The issue to be tried is liability ONLY.
16. Jury instructions are the ONLY statements of applicable substantive law other than the Florida Rules of Evidence & the Florida Rules of Civil Procedure and only portions of the Florida Statutes supplied within the case file. No additional instruction may be tendered. Case law may not be used at any point during the proceedings.

SO ORDERED this _____ day _____, 2011.

JUDGE PRESIDING

2011 MOCK TRIAL DEPOSITION OF PAT WESTON

DATE: FEBRUARY 5, Y-1

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Q Please tell me your name.

A Pat Weston.

Q How old are you?

A 31.

Q Have you ever, in your entire life, been deposed prior to today's date?

A "Deposed" means?

Q Someone is questioning you in front of a court reporter, in other words, in something called a deposition.

A No, sir.

Q Where are you originally from?

A Endicott, New York.

Q And when did you move out of New York?

A Y-28.

Q Where did you move to?

A Tampa, Florida.

Q And for what reason did you move to Florida from New York?

A I was 3 at the time.

Q And have you resided in south Florida since y-28?

A Yes.

Q Where do you currently live?

A 31 Foxtail, Tampa.

Q How long have you been at your current address?

1 A Eight months.
2
3 Q And where did you previously live?
4
5 A Right down the block, actually, 40 – no, I forget.
6
7 Q Who have you lived with since May of y-2?
8
9 A Currently, with my mom.
10
11 Q And what's your mom's name?
12
13 A Consuelo.
14
15 Q How old is your mom?
16
17 A Will be, I want to say 63 this week – this week or next week. I'm sorry my ADHD really effects my
18 concentration sometimes.
19
20 Q And is there any particular reason why you're currently living with your mom?
21
22 A Yes.
23
24 Q Why is that?
25
26 A Can't really -- trying to pick up the pieces from the accident, and financially I'm not stable at the
27 moment with -- yeah, with regards to the accident.
28
29 Q When you say you're not financially stable, is that something you attribute solely to your injuries
30 from the accident in May of y-2?
31
32 A No.
33
34 Q For what other reason are you not – well, strike that. For what reason do you say you're not
35 financially stable?
36
37 A Physically unable to carry on tasks on certain jobs that I'm applying for.
38
39 Q And the fact that you can't perform tasks on jobs that you're applying for, is that something you
40 attribute solely to your injuries from the accident in May of y-2?
41
42 A No.
43
44 Q What else do you attribute your inability to perform tasks, besides your injuries from the accident?
45
46 A Partially, also, to do with my current affliction of ADHD and Lupus.
47

1 Q ADHD? How bad are your symptoms?
2
3 A Bad. I have a really hard time focusing. It really effects my concentration from time to time. I was
4 diagnosed when I was in 5th grade. I used to take medicine. I didn't like the way it made me feel so I've
5 been off it for at least 10 years.
6
7 Q Have you ever been married?
8
9 A No.
10
11 Q Do you have any children?
12
13 A Yes. A son he is 5 months.
14
15 Q Have you been in a relationship with anyone since your accident in May of y-2? The fact that you've
16 not been in a relationship since May of y-2, does that have anything to do with your accident in May of
17 y-2?
18
19 A Partially.
20
21 Q Please explain.
22
23 A Just not as confident as I used to be trying to get into a relationship due to the fact that I can't
24 perform certain tasks.
25
26 Q How far did you get in your education?
27
28 A I have a GED.
29
30 Q When did you get your GED?
31
32 A When I was 16.
33
34 Q Did you attend any type of schooling besides high school?
35
36 A No.
37
38 Q Do you have any type of technical degree or any type of certificate of any sort?
39
40 A Yes. But that related to just jobs that I did back -- back a while back. I taught a class on music in
41 Austria, but I don't have -- in moving, I lost the diploma or the certificate they gave me.
42
43 Q You said you taught a class on -- I wasn't sure what you said.
44
45 A Music mixing.
46
47 Q Have you ever been convicted of any crimes?

1 A Yes. An open alcoholic container in y-6. It's a misdemeanor.
2
3 Q Do you have a Florida driver's license?
4 A Correct.
5 Q Do you have a motorcycle endorsement?
6 A No, Never. I'm experienced though. I've been riding for 15 years.
7 Q What type of motorcycle were you operating at the time of the accident?
8 A A Suzuki.
9 Q Do you recall what model?
10 A A Gixer -- GSXR. It's a '96 Suzuki -- no. I'm sorry. I take that back. It was a 2006.
11 Q Had you ever operated that particular motorcycle before the day of this crash?
12 A Yes.
13 Q How many times had you operated the 2006 Suzuki before this crash?
14 A Numerous. I couldn't give you an accurate number. It was that many.
15
16 Q And did your father purchase it for you to operate?
17
18 A He purchased it with the intention of gifting it to me. It was a birthday gift.
19
20 Q Were you wearing a helmet at the time of the accident?
21
22 A Yes.
23
24 Q And the bike that you were operating, did it have any customization performed upon it before the
25 accident?
26
27 A The only thing I did to it was give it a louder pipe, just -- I mean, it's like a rule of thumb, to ensure
28 people do hear you coming down the road.
29
30 Q Did you do anything to the bike that increased its horsepower or speed?
31
32 A Yes. Actually, quite a bit. It was seriously loud too.
33
34 Q At the time of the accident, where were you headed?
35

1 A I was headed to a friend's house.
2
3 Q What friend? What's his or her name?
4
5 A Elisha.
6
7 Q What's Elisha's last name?
8
9 A I don't know.
10
11 Q How did you know Elisha?
12
13 A Mutual friends.
14
15 Q Who were the mutual friends?
16
17 A Hardee and Jarrett. I don't remember their last names. These are guys that I used to ride my bike
18 with.
19
20 Q Do you have phone numbers for any of them?
21
22 A No, unfortunately, I do not.
23
24 Q Where did Elisha live back at the time of this accident?
25
26 A She lived at Portofino.
27
28 Q Where is that?
29
30 A On the block of the occurrence.
31
32 Q Where would you describe it being in relation to where the accident occurred?
33
34 A About 500 feet away.
35
36 Q You were going south onto Military at the time of the accident?
37
38 A Yes.
39
40 Q So this was another 500 feet southbound on Military?
41
42 A Or more. Actually, I believe it was more. I believe the entrance was further from where I was. I
43 mean, I can't be positive, because it's been so long since I've been over there.
44
45 Q Okay. Had you ever been to Portofino prior to the day of this crash?
46
47 A Yes, many times. That's why I thought the speed limit 45 mph still. But it had been at least 3 years.

1
2 Q Where were you coming from at the time?
3
4 A I was coming from another friend's house. I was actually coming from, at the time, Shannon's
5 house.
6
7 Q What time did the accident occur?
8
9 A I'm not sure the exact -- I'm not sure the exact time, but it was, I think -- I'm pretty sure it was after
10 3:00.
11
12 Q 3:00 a.m.?
13
14 A Correct.
15
16 Q Between Shannon's and the time of the accident, did you stop off anywhere?
17
18 A No.
19
20 Q Did you go back to your house or go to --
21
22 A No.
23
24 Q Were you by yourself at the time of the accident?
25
26 A Correct. Yes.
27
28 Q Was anyone else headed over to Elisha's that you knew?
29
30 A No.
31
32 Q What time did you get to Shannon's place?
33
34 A I want to say 1:00 -- about 1:15, 1:30.
35
36 Q In the morning?
37
38 A Correct.
39
40 Q And what did you do from the time you got to Shannon's place until the time you left to head to
41 Elisha's?
42
43 A Did Internet research on an endeavor we were going to start, and ate and played Xbox.
44
45 Q What did you do Internet research on?
46
47 A Music.

1
2 Q Did one of you guys cook?
3
4 A Yes, me. It's my second hobby. Shannon cant cook to save her life.
5
6 Q So you were cooking around 1:30 in the morning?
7
8 A No. It was like 2:30.
9
10 Q Oh, okay.
11
12 Q How long did you guys play Xbox?
13
14 A About 45 minutes, just about, maybe less, half-hour, 45 minutes.
15
16 Q Where had you been directly before you got to Shannon's place?
17
18 A My house.
19
20 Q Do you have any recollection of what you did at any time earlier in the day before you left the house
21 to go to Shannon's house?
22
23 A Was that a Saturday, if you can help me out? I don't remember.
24
25 Q It was a Saturday, correct.
26
27 A More than likely, just vegged out and watched TV. That's pretty much all I did on the weekends –
28 well and during the week too. I think I watched some of the college games. I might have had a drink
29 earlier in the day at lunch time. Maybe noon.
30
31 Q Where?
32
33 A My house, with my mother.
34
35 Q What type of drink?
36
37 A Zima.
38
39 Q How many Zimas?
40
41 A Just one with lunch. Its kind of my thing.
42
43 Q What prompted you to head out to Shannon's house around -- in the early morning hours?
44
45 A My buddy.
46
47 Q Was that a plan for you to go, or did you just show up or --

1
2 A No. Just he called, he was like, "What are you doing?" I was like, "Nothing." "Come hang out."
3
4 Q Do you have any idea as to approximately what time you would have awakened on the day before
5 the accident?
6
7 A 6:00 am
8
9 Q At the time of this accident, were you tired?
10
11 A Yes, vey but I felt ok to drive. It didn't affect me. I was used to staying up late. When you are into
12 music mixing, it's a nighttime type of thing.
13
14 Q Do you have any idea as to how many hours you had been up prior to the time of your accident on
15 May 13, y-2?
16
17 A I guess 21 Hours.
18
19 Q How did it come about that you were heading over to Elisha's after you left Shannon's?
20
21 A Same as before, a phone call.
22
23 Q Who called who?
24
25 A She called me, I told her I was heading home.
26
27 Q And after you said you were heading home, what did Elisha say?
28
29 A She said, "If you'd like to -- do you want to stop by for a minute?" I was like, "Sure."
30
31 Q What did you plan to do when you got to Elisha's?
32
33 A Not sure. Couldn't answer accurately.
34
35 Q And was this the first time she had ever invited you over to her place?
36
37 A Correct.
38
39 Q Did she have to give you directions on how to get to her place?
40
41 A Yeah. But they're pretty simple, because I lived right around the corner. I just hadn't been on
42 Military in a very long time. I used to use that road all the time.
43
44 Q And do you have any idea as to what Elisha was intending to do with you that evening?
45
46 A Do not know.
47

1 Q Did she give you any insight as to what sort of things that she wanted to do?
2
3 A No.
4
5 Q It never came up?
6
7 A No. I just figured I'd stop by because it was close to my house. Say hello.
8
9 Q And you had no idea how long you were going to stay there either?
10
11 A No.
12
13 Q Was there a particular time that you intended to get to sleep on May 13th y-2?
14
15 A No.
16
17 Q When had you last been on Military Trail before the accident?
18
19 A It may have been years. It could have been three years, maybe more. That stretch of Military, I
20 never really go past Okeechobee.
21
22 Q So you're saying that within the three years before the accident, you wouldn't have gone north of
23 Okeechobee on Military; is that correct?
24
25 A Uh-huh. I had no reason. Yeah. Correct.
26
27 A Anytime before this accident on May 13 of y-2, did you know that the Military Trail was under
28 construction in the vicinity of where the collision occurred?
29
30 A I did not until that night.
31
32 Q Which lane were you in when you were stopped at the light at Shiloh and Military Trail?
33
34 A Far left lane to go straight, yeah, not the turning lane to make the left, but the one next to it.
35
36 Q And which lane were you in at the time of the crash?
37
38 A I was actually in the left lane, if memory serves me correctly.
39
40 Q Not including what you are calling the turn from where the crash occurred, did you switch lanes at
41 all between the time of the stop light at Shiloh until the point where you went into the turn where the
42 crash occurred?
43
44 A No, no, no. From the light, I took off, and the next thing I remember is I'm head over heels.
45
46 Q How far was the light at Shiloh to the point where the collision occurred?
47

1 A I couldn't recall that. Yeah, the only thing I recall is that it was a pretty sharp -- it was a pretty sharp
2 turn, pretty swift turn to get to the light, actually, to make the right, to stay in that lane for the light in
3 between those barriers. I guess one was like an acting median, but it wasn't. It was just a barrier.
4

5 Q Did you ever look at your speedometer at any point between the time that you left the stop light at
6 Shiloh until the time when you had the crash?
7

8 A I did. I was doing about 35 mph it's hard to tell on the speedometer because I was behind another
9 car at the previous intersection.
10

11 Q How close was the car in front of you?
12

13 A One car length.
14

15 Q Did that ever change?
16

17 A Not until I crashed.
18

19 Q And at the time of the crash, were you still doing that same speed as when you last looked at your
20 speedometer?
21

22 A I can't recall.
23

24 Q Do you have any recollection if you were going faster than approximately 35 miles an hour at the
25 crash?
26

27 A I don't recall.
28

29 Q What would you estimate your speed to have been at the time of the crash?
30

31 A About the same. Well, actually, going into the turn, I slowed down. So I would assume it would have
32 been slower. I don't really like to assume, but I'm just going to say it was slower than what I was doing.
33 Maybe 25-30 miles an hour.
34

35 Q So had you begun to brake before you got to the turn?
36

37 A Absolutely, yes.
38

39 Q At any time that you were on Military Trail, until the time of the crash, did you see anything that
40 indicated to you that Military Trail or its surroundings were under construction?
41

42 A Not until I got between the barriers and started making the turn in the lane shift did I realize that
43 something was wrong in the road. This is not like -- that there was more construction going -- that there
44 was construction going on.
45

46 Q Did you see any type of warning signs southbound on Military Trail from the time you got on Military
47 Trail until the time of the crash?

1
2 A Can't recall.
3
4 Q Do you recall if you saw any barricades at all southbound on Military Trail from the time you got on
5 it until the time of the crash?
6
7 A Not where I was, no. I mean, I saw the barriers coming up, but I knew there was going to be
8 construction, I just didn't know where. You can see the big -- had the little wooden barrier in the center
9 where the median line should have been.
10
11 Q You said you were behind a car. Do you recall what type of vehicle it was?
12
13 A I don't. I remember it was white. That's it.
14
15 Q Was it some type of truck or SUV or pickup?
16
17 A SUV.
18
19 Q And do you recall for how far of a distance you had been behind this white car?
20
21 A A car length from the light -- from the light at Shiloh.
22
23 Q And did this car at Shiloh -- strike that. This SUV, did it also stop at Shiloh like you did?
24
25 A Correct.
26
27 Q The white car that you were behind at the time of the crash, do you recall what your distance was
28 behind this vehicle when you had your accident?
29
30 A At least -- at least a car length.
31
32 Q Did you have your headlight on?
33
34 A Oh, yeah. Absolutely.
35
36 Q Do you wear glasses or contact lenses?
37
38 A No.
39
40 Q How long has it been since your eyes were last examined?
41
42 A Could not recall.
43
44 Q And the photos that your dad took a day or two after the accident, do they fairly and accurately
45 show the area of where the collision occurred?
46

1 A I believe so, yes. I pointed it out. That's why I remember. I remember from sitting on the curb,
2 looking around going, wow, I just crashed. I remember the -- I remember where everything was, yeah.
3
4 Q Where did you begin to fall?
5
6 A I couldn't -- I couldn't do it -- I couldn't be 100 percent positive where it was, because after I got up, I
7 was probably 50, 60 feet down, or 40 feet, or wherever it was, where I was on my back, jumped up, the
8 bike was already -- so I couldn't be 100 percent accurate.
9
10 Q Okay. Do you recall what it was that you came in contact with, if anything, that caused you to lose
11 control?
12 A After getting up, I evaluated the situation, and -- I mean, I've been riding a bike for a very long time
13 and never had an accident. And when I went back to go see, I'm like, what just happened? What
14 skipped my front tire up? In this one, you can kind of see it better. And I'm pretty sure my tire hit --
15 skipped right on the change in elevation on the road where it looks like they added asphalt. As I'm in
16 the turn, you have to lean into the turn a little bit, and as I was leaning into the turn, the tire skipped,
17 came off the ground and threw me -- it kind of slid on the side a little bit and then hit the median and
18 flipped over.
19
20 Q And in the left lane of southbound Military Trail, still within the curve area, you're saying the area
21 where you believe you felt your tire skip is where you can see, I guess, the uneven asphalt in the
22 leftmost southbound lane?
23
24 A Correct.
25
26 Q Now, where did your bike come to rest?
27
28 A I couldn't recall. I don't remember. All I remember is trying to drag it off to the side of the road with
29 one arm.
30
31 Q How far of a distance did your bike continue to travel from the time you first felt the skipping of the
32 bike until you came to rest?
33
34 A From wherever it started, I couldn't recall, to when it hit, because I remember it -- I remember it like
35 a bad dream. I hit it, and then as I'm going over, I closed my eyes and opened them again, and I was still
36 flipping over. And then the bike landed. I slid down the asphalt a little bit more and then jumped up,
37 like, what just happened? I know what just happened, but saying to myself, what the hell just
38 happened. And then I noticed where I was and noticed what was going on, so I grabbed the bike by the
39 handlebar and dragged it off to the side.
40
41 Q So what part of your bike initially came into contact with the yellow divider?
42
43 A Front tire first.
44
45 Q Were you leaning in any particular direction when you hit --
46
47 A Towards the right. I'm making a right turn.

1
2 Q So that's what you normally do when you're going into a right turn, you lean to the right?
3
4 A Correct.
5
6 Q And were you still leaning to the right when you hit the yellow divider?
7
8 A I was on the floor when I hit the yellow divider, like the nylon crash protector was already scraping
9 the ground. I couldn't be accurate, but, you know, I -- from trying to put it together, that looks like the
10 scrape of the nylon crash protector, as it scraped the ground. That was my -- that was me putting it back
11 together, but I'm no expert.
12 Q I'm going to go ahead and do this. The area that you think might be the scrape that you left in the
13 leftmost lane from your kickstand, I'm going to circle this, and tell me, is this the area right here?
14
15 A Correct.
16
17 Q Okay. I'm going to circle -- if I can get the pen to write. Did I put like an oval-shaped circle --
18
19 A Yes.
20
21 Q -- around the area where you think you left the scrape mark?
22
23 A Yes.
24
25 Q And were you separated from your bike when you came to rest?
26
27 A Yes.
28
29 Q Can you say --
30
31 A Because everything -- everything after that, once I jumped up, was kind of a little blurry, but very,
32 very, very -- what's the word I'm looking for? Everything was really clear. It was fuzzy and, at the same
33 time, really clear like being in the matrix. Now, you've got to remember, my back was scraped -- my
34 back was scraped up where it pretty much took my T-shirt off, from shoulder to buttocks. So I
35 remember jumping up, looking around, looking up -- looking up, seeing my bike in the street, grabbing
36 my face. As I grabbed my face, my right arm didn't work correctly.
37
38 Q What side of the bike was in contact with the ground when the bike was at rest?
39
40 A Right side.
41
42 A On my back, landed -- I landed on my back, I believe, helmet first or back first, and slid a little bit. I
43 don't remember how long the slide was. I don't remember. I'm pretty sure my back and my head hit
44 first.
45
46 Q What part of your body was furthest southbound?
47

1 A My feet.
2
3 Q Did you observe any sand or loose rock or debris in the area of where you came to rest or where you
4 lost control or anywhere in between where you lost control and where you came to rest?
5
6 A There was definitely sand on the ground. There was definitely loose gravel and loose rocks in the
7 ground, 100 percent. Where I saw them or where I recall them, I don't. Where I saw them or where I
8 initially saw them, I don't remember.
9
10 Q Was that loose sand or gravel anywhere from the time where you lost control -- located anywhere
11 from the time where you lost control until where you came to rest?
12 A I don't know. I remember -- I do remember seeing it everywhere. There was loads of it. And when I
13 got up and pulled the bike out of the way and walked up, like kind of paced the sidewalk until those two
14 people from across the street helped me to the curb, I could definitely see -- or remember seeing lots of
15 sand and gravel.
16
17 Q Are you saying there was loose sand and gravel in the area of where you lost control?
18
19 A I don't know. Maybe.
20
21 Q Did you have any sand or gravel in any portion of your body after the crash?
22
23 A I believe I had some rocks in my arm.
24
25 Q Embedded your arm?
26
27 A Correct. It's still there.
28
29 Q It's your right arm?
30
31 A Uh-huh.
32
33 Q Yes?
34
35 A Yes.
36
37 Q How about the helmet, do you still have that?
38
39 A Yes.
40
41 Q And was the helmet cracked at all?
42
43 A Scraped and cracked.
44
45 Q How about the bike, what happened to the bike?
46
47 A It was repossessed for nonpayment.

1
2 Q Was the bike ever repaired after the accident?
3
4 A No. It was left as it was.
5
6 Q Did you take photographs of the bike also?
7
8 A Yes.
9
10 Q How many photographs did you take of the bike?
11
12 A A lot.
13
14 Q Did paramedics ever come out to the scene of the accident?
15
16 A Yes.
17
18 Q And were you attended to at the scene?
19
20 A Yes.
21
22 Q How long -- well, strike that. When you left the scene of the accident, did your dad bring you
23 straight to the hospital?
24
25 A Correct.
26
27 Q And were you admitted to the hospital?
28
29 A No.
30
31 Q Did you fracture your clavicle on the right side?
32
33 A Broke it.
34
35 Q And you mentioned, also, that you had road rash on your back?
36
37 A Back, both arms, buttocks and right leg.
38
39 Q Did you actively lift weights within two years before this accident?
40
41 A Oh, yeah.
42
43 Q What type of weight-lifting did you do within the two years before the accident?
44
45 A Strength training.
46
47 Q Can you give me an example of what type of strength training?

1
2 A Two 45-pound plates on each side, 90, 180, plus the bar, 45, bench a little over 200 and change, that
3 was for benching. And then I was actually about to train for MMA. That's what I was getting my
4 conditioning up for, and then this whole mess happened.
5
6 Q Was that for repetitions or maximum?
7
8 A For reps, 12 to 15.
9
10 Q And MMA, you were going to do mixed martial arts?
11
12 A Correct. I was about to look into American Top Team, because it was across the street from the gym
13 -- or around the corner, if it's still there.
14
15 Q Did you see any speed limit signs before the crash and after the previous intersection?
16
17 A I think so.
18
19 Q Did you see any lane shift signs?
20
21 A No, I remember seeing a barricade as I mentioned before.

1 2011 MOCK TRIAL KELLY CARNAHAN DEPOSITION

2 DATE: APRIL 16, Y-1

3

4 Q What is your name?

5 A Kelly Carnahan

6 Q What is your role in this case?

7 A I have been hired by plaintiff to look at the mode of transportation in this particular case. I am also
8 an accident reconstructionist, but I did not do a full accident reconstruction work up in this case because
9 I feel it was not necessary.

10 Q Tell us what about your background makes you qualified to be an accident reconstructionist and an
11 expert in MOT?

12 A I am a professional engineer. I am FDOT approved for temporary traffic control and federal and state
13 standards, policies, and procedure. I have a MBA from Florida State University, Bachelor of Civil
14 engineering from University of Miami. I am a certified crash data analyst. I have been an engineer for 4
15 years. I have a full accreditation in accident reconstructionist from the commission for traffic accident
16 reconstruction (ACTAR). I studied human factors for traffic accidents at Florida Coastal. I am an
17 instructor in the motorcycle safety foundation for rider safety. Did I mention I am a professional
18 engineer in Florida? Yeah that's pretty much it.

19 Q Tell us what you review in this case?

20 A I reviewed the DOT plans that were approved by the engineer of record looking specifically at the
21 southbound lanes. I would have liked to review the depositions of the defendant's project manager but
22 I was never supplied a copy. I feel it would have helped me further in determining what else the
23 defendant did wrong in this case. I also reviewed photographs: aerials, photos taken by the plaintiff
24 after the crash which showed the condition of the road. I'm waiting on the property damage photos. I
25 also created a diagram using an aerial of the area of the crash which is an exhibit that has been filed in
26 this case. It is self-explanatory.

1 Q Anything else?

2 A No, I don't need anything else.

3 Q Did you review the plaintiffs deposition?

4 A No, I have no interest in reviewing that. Has nothing to do with whether ABC construction followed
5 the industry standards in constructing the road at the time of the crash.

6 Q Did you ever go to the scene of the crash when it was in the condition as it was in May of y-2?

7 A No, I would have liked to, but it was already changed by the time I was hired by the plaintiff.

8 Q Where is the lane shift that I'm assuming you will say caused the plaintiffs fall?

9 A The lane shift where the plaintiff fell is not located on the plan approved by DOT and the engineer of
10 record. The lane shift is approximately 1550 feet north of Willow Pond. Or just south of Appaloosa St. I
11 determined that by using the aerial obtained from the Hillsborough County geographic information
12 system.

13 Q Alright you said you reviewed the DOT approved plans, what did you learn about the project through
14 the plans?

15 A Well among the things we already discussed regarding the lack of a lane shift on the plans. I also
16 learned the posted speed was 35 mph at the time of crash because the area was under construction.
17 Speed limit before construction was 45mph. Although in my opinion there was inadequate signage
18 showing the speed limit based on the photos that the plaintiff took. But who really cares, because the
19 lane shift was too abrupt and unsafe for any speed. I don't care if he was going 100mph or 20mph, it
20 wasn't safe.

21 Q OK, do you have anything to back up your opinion that there was inadequate speed limit signage?

22 A Well yes, they did not get the speed limit signs correct according to DOT regulations, and in addition I
23 feel like if they included one right before the lane shift, the client would have seen it. Apparently the
24 project manager is saying they were stolen the night before. That is hogwash. That is the classic excuse
25 these guys use. Ive heard it before from other road construction companies. It doesn't matter if they
26 were truly stolen or not, it's the responsibility of the road construction company and specifically the

1 project manager, in this case Chris Walker to make sure they are present when the road is open for
2 traffic. There are ways to prevent them from being stolen. Hello... they are called chains and locks.

3 Q Do you know how many speed limit signs the client drove by on Military trail before he came to the
4 lane shift where he crashed?

5 A Yes, according to the records 3. 3 signs which said the speed limit was 35mph. The 3 signs that
6 would have been there if they weren't "stolen." But people speed all the time it's foreseeable. The
7 construction company doing the road work needs to take that into account of course. I was speeding on
8 my way to this deposition.

9 Q You mentioned that you did some accident reconstruction work in this case, tell us what you did?

10 A I only looked at the crush damage on the plaintiffs motorcycle and determined that he was going 35-
11 48 mph at the time of the crash. There are numerous factors that go into the calculation, I will go over
12 them if you want.

13 Q No thanks, I like the answer so I'll stipulate that you did it correctly, so the plaintiff was speeding?

14 A Based on crush damage to plaintiffs motorcycle, plaintiff was exceeding speed limit at the time of the
15 crash by approximately by as much as 13 mph. I look into how much damage was done to the vehicle as
16 well as other factors, like how rough the road is, gouge marks, etc. There are questions that I would
17 need answered to in order to be more specific, but like you said we aren't going to get into that. But
18 yes, to answer your question he was going over the speed limit at the time of the crash. That is unless
19 the plaintiff had nylon crash protectors. That's how I figured the 35 mph speed. If the plaintiff had the
20 nylon crash protectors he was going 35 because the vehicle would have slid further with less friction.
21 Therefore it would appear he was going faster than he actually was.

22 Q So what you are saying is there are 2 scenarios regarding the speed of the motorcycle?

23 A Exactly. Without nylon crash protectors, he was over the speed limit. Without he is going the speed
24 limit. I still need to take a look at some of the photos of the property damage. They were fedexed to
25 me this morning but I haven't received them yet. Should be here tomorrow.

26 Q Let's talk about the diagram that you created from the aerial, ok, what are you trying to show here?

1 A I'm showing that the lateral distance of the lane shift was 27 feet to the right. And length of lane shift
2 is approximately 200 feet. Tapers for lane closures and lane shifts are based on the lateral shift and the
3 speed of the road. Based on the above, lane shift should have been over 500 feet for a 27 foot lane
4 shift. This isn't even close to what should have been acceptable. But when you see its not on the plan,
5 you understand why ABC road construction messed it up so bad. It is a clear violation of the DOT
6 regulations as well as the industry standards. They went rogue and skipped the whole approval process.
7 I'm not really sure why, but there is no excuse. The approval had to be in writing.

8 Q Any other deficiencies that you found?

9 A Should have been signage advising motorists of the shift, there were none, the attorney filed an
10 example in the case file. South bound retro-reflective yellow edge line pavement marking was missing.
11 The solid white lane line required between adjacent lanes of travel in the same direction was not in
12 compliance with standards.

13 Q Are you aware that beer cans were found at the scene when the police arrived?

14 A I saw that in the accident report.

15 Q Did you take the beer cans into account as to what caused this accident?

16 A No, why would I? The only thing that could have played a role other than the shoddy job by ABC as
17 previously discussed, is the fact that the plaintiff could have been overly tired at the time of the crash. I
18 think he was awake for almost 24 hours at the time of the crash. But there is no evidence he was tired,
19 and nothing to back up that theory. So I think its irrelevant. Beer cans at the scene, so what, there is no
20 evidence that he was drinking.

21 Q Why would being tired have contributed to the crash?

22 A Because he could have been slower to react. Its common sense. But its only a theory, nothing to
23 back it up. But that still doesn't take away from the fact that the construction company dropped the
24 ball. Tired people drive all the time.

25 Q Back to the lane shift which you said was inadequate, is there ever a reason that a lane shift like the
26 one where the plaintiff crashed is within industry standards or acceptable by DOT specifications?

1 A Well there is a reason that it could be acceptable in theory, if there is not enough room to have a 500
2 feet long lane shift, then it could be acceptable, but they would need to do something to warn traffic of
3 the really sharp turn.

4 Q Did you determine if there was room for the 500 feet lane shift?

5 A I looked at it, but its hard to tell. I cant know for 100% sure, but I'm more than 50% sure it would fit.

6 Q Can you look now and give us a definite answer?

7 A No I can't, it's a complicated equation. It's more complicated than just looking at my diagram. I
8 won't be testifying that I'm 100% sure either way. But I'm definitely more than 50% sure it would fit.

9 Q What like 51%?

10 A Sure.

11 Q What would they do to warn traffic if the lane shift was less than 500 feet?

12 A Well, there is no hard and fast rule because the road construction company and project manager
13 aren't supposed to break that rule. But in my opinion they should have had 3 lane shift signs in place,
14 you know the one that was part of the court file. That's the only way to warn motorists of the extremely
15 sharp lane shift if the shift was less than 500 feet. And maybe they should have a sign that says sharp
16 turn. But like I said there is no specific rule to that effect. You really look at the industry standards at
17 that point. But they need to do something other than what was out there on the day of the accident,
18 otherwise the road construction company is asking for trouble. Motorists need to know what's ahead of
19 them, that's why the DOT makes rules to keep motorists safe.

20 Q Have all your opinions been within a reasonable degree of engineering probability?

21 A Yes of course.

22 Q Oh, I almost forgot about some of my background questions, are you being paid by the plaintiff?

23 A Yes, of course, I am paid \$950 per hour for my work in this case, but it's about to go up. So far I have
24 worked 42 hours on this case doing everything we have discussed which also includes travel. For trial I

1 charge \$5000 minimum for 3 hours of testifying. Anything over that is extra. Also I charge portal to
2 portal.

3 Q You mentioned travel, where is your office located?

4 A I live and work out of San Diego, California for the last 5 years. But I come down here a lot.

5 Q So safe to say, you have charged a lot of money in this case for travel?

6 A Well yes, I'm expensive, but you get what you pay for.

7 Q Have we discussed all your opinions in this case?

8 A No. I forgot something. The defendant in this case also fell below the standard of care with regards to
9 the stones on the road as well as the change in elevation on the road. It is too high and violates industry
10 standards. I didn't measure it exactly but from the looks of things it isn't even close. Its dangerous.
11 Also the road shouldn't be left with construction debris, specifically the stones and rocks and sand. Its
12 supposed to be cleaned up prior to the leaving for the day. Ultimately the sharp turn with a lack of
13 warning accompanied with the poor road condition caused the crash.

14 Q Does that cover all your opinions in this case?

15 A Yes

2011 DEPOSITION OF CHRIS WALKER

DATE: MARCH 25, Y-1

Whereupon:

CHRIS WALKER,

a witness herein being of lawful age, and being first duly sworn in the above cause, testified on his oath as follows:

Q If you could

Give us your full legal name for the record?

A It's Chris Walker.

Q Can you give us the benefit of your educational background starting after high school?

A I have a bachelor's degree in Civil Engineering from the University of Florida.

Q Any other schooling that you received since University of Florida?

A No.

Q What about any education or training as far as, I guess, post graduate? Any sort of training in engineering?

A No, sir.

Q Did you have to do any continuing, I guess, engineering credits or anything like that to maintain a license?

A No.

Q Where are you currently employed?

A I'm employed by ABC Road Construction.

Q What is your title with ABC Road Construction?

A I am a project manager.

Q How long have you been working for ABC Road Construction?

A Just over seven years now.

Q Have you always been a project manager with ABC Road Construction?

A Yes.

Q Can you tell us what the differences – as far as job description between a project engineer and a project manager, if there is one?

1 A I don't know if there is a set description. The companies I work with, in general, the project
2 engineer would be more assigned to a specific project, whereas a project manager may be involved in
3 the larger projects specifically or handling multiple projects and; actually, per the name, a little more
4 on the technical side of the construction project as opposed to managing the project from the
5 subcontractor than the financial standpoint.

6 Q Are you currently handling multiple projects?

7 A Yes.

8 Q What about back in May of y-2, were you handling multiple projects then?

9 A Yes.

10 Q Can you tell us which projects you were handling back in May of y-2?

11 A At that time we had either one or two projects that we were working on out in Bell City, which was
12 about 250 miles away from the project on Military Trail.

13 Q Just so we're clear. I asked about you and then you answered we. So do you mean the company
14 or do you mean those were projects that you were personally working on as a project manager?

15 A Those are projects I was a project manager on.

16 Q The Military Trail project, that's the one that we're here for today?

17 A Correct.

18 Q What's the most amount of projects that you've worked on at any given time? That means all at
19 the same time is what I mean.

20 A When the accident happened that was the most amount of projects I had going. It was a little
21 hectic running around so much.

22 Q How do you split your time between projects when you're working on more than one at a time?

23 A You know, it may be divided up proportionately according to the demands of the project.
24 Obviously, larger projects may require more of your time. The military project was the biggest back then.

25 Q Do you actually have to physically go to projects as project manager?

26 A Yes frequently. Couple times per week.

27 Q Back in May of y-2 when you had either, I believe, three or four of these projects going that we just
28 discussed, is that something that as the project manager you had a project engineer for each one of
29 those projects working underneath you, or explain to me how it worked?

1 A No, it would just be one project manager, myself, and then your project staff; your superintendent
2 and workers, laborers and equipment operators actually building the project.

3 Q Who was your supervisor back in May of y-2?

4 A My supervisor was the general manager.

5 Q As far as who worked under you back in May of y-2, who was working directly underneath you or
6 who answered to you?

7 A Subordinates according to our organizational chart, but we did have -- I would have superintendents
8 on site that I would work with, coordinate with, but they weren't technically my subordinates. Do you
9 want names. I mean its pretty much unimportant because ultimately its my job to make sure the public
10 is safe. The buck stops with me. I have to make sure the project is up to code and industry standards.

11 Q Well, yes, I'm going to ask you just regarding the, I guess, the Military Trail, West Palm Beach
12 project back in May of y-2, do you know who the superintendent was on site?

13 A We had -- at that exact time since we had different superintendents involved -- it was a long
14 project. We were running over schedule at the time of the accident. I'm not quite sure, but I know that
15 we did have one superintendent, Adam Werner, who was on site. We also had Maaz Quraishi, who
16 was one of our superintendents. He's no longer with our company and I'm not sure when he had left,
17 still on site at that point, and so was Bill Pickens.

18 Q Safe to say it was most likely one of those three that were the superintendent at the time?

19 A That's correct. I was relying on them when I wasn't at the site. I cant be there all the time. They
20 are all more than qualified.

21 Q Did your role -- did your role for the Military Trail West Palm Beach project, the one that we're
22 here for, did your role as the project manager differ in any way on that project versus any other projects
23 that you've done?

24 A No.

25 Q So tell us what your day-to-day activities would be regarding the Military Trail project; what was
26 your responsibility?

27 A Well, as the project manager, we coordinate our own resources as well as our subcontracted
28 resources, coordinated that work daily in order to get the work done according to our project schedule.
29 We handled payments to our subcontractors and vendors. Maintain compliance with Dot regulations.
30 Keep the cite safe for public and employees.

31 Q Anything else?

32 A No, that's generally the duties.

1 Q What about May of y-2? Anything specific about that time period, as far as your responsibilities
2 on this particular project on Military Trail in West Palm Beach?

3 A Not that I recall any different than the normal responsibilities. We were having issues with our
4 street signs being stolen. I think at the time of the crash it was the 3rd time they were stolen in the past
5 2 months. The kids in the area were causing trouble.

6 Q Okay. We have decided or the town has decided or the county has decided we need to redo the
7 road. Explain to me the way the process works. Who comes up with a plan? What do they do?

8 A Well, I don't have knowledge to go that far back. I mean, basically, when we come into the picture
9 it is the DOT, Department of Transportation, has a plan that they let for construction. We bid on that
10 plan set, the actual written plans and specifications, and provide a proposal to the Department to do
11 that work. We were selected by the Department to do the Military Trail project, and from there the
12 project gets underway.

13 Q Just so I'm clear. DOT puts this up to bid to several different contractors?

14 A Correct.

15 Q You were selected to do the work in this particular case?

16 A Correct.

17 Q As far as the plan, does DOT expect ABC Road Construction to build the road per plan?

18 A Yes.

19 Q What about if there is going to be a change in the plan, whose responsibility is it to make the
20 change in the plan?

21 A It would be the engineer, the designer. We have to request that he approve any changes.

22 Q Who was the engineer in this case or the designer?

23 A I believe the designer was Greg Yaffa – was the engineer of record. He works on his own as an
24 independent engineer.

25 Q What I want to know is if ABC Road Construction can take it upon themselves to go outside the plan
26 and do something different than the plan on their own?

27 A We would have no reason to not build what the plans depict. There is no benefit to us.

28 Q But I'm asking if they can? Do they have the right to do that? Should they be doing that?

29 A We would have no reason to build what's not shown on the plans. I don't know why we would do
30 that.

1 Q So there is no reason for ABC Road Construction to do that?

2 A Not that I know of.

3 Q What is the term for -- I guess, temporary shifts or transitions in traffic that aren't the finished
4 project, but they're some sort of change so that way traffic can move through the area while
5 construction is taking place? What's the proper term for that?

6 A Maintenance traffic plan.

7 Q Who comes up with the maintenance traffic plan?

8 A That would be part of the plans from the engineer.

9 Q That's Mr. Yaffa in this case?

10 A Yes.

11 Q Does ABC Road Construction -- should they make changes to the maintenance traffic plan on their
12 own?

13 A We wouldn't change -- again, we wouldn't change what's shown on the plans.

14 Q If ABC Road Construction made a change to the maintenance traffic plan on their own, would that be
15 the incorrect thing to do?

16 A It depends on the situation. There are times when some changes would necessitate a change to the
17 DOT plan. I can't say that it would never happen. It would, generally, be a part of a decision with the
18 Department or the engineer. But, in general, we would have no reason to change what's shown in the
19 original plans.

20 Q Just so we're clear. If ABC Road Construction were to make a change to the maintenance traffic plan,
21 would they have to clear it with DOT and the engineer?

22 A Yes.

23 Q What is the proper term for a lane shift or lane transition if a certain lane is, I guess, turn in one
24 direction slightly and then turn back to go straight in another direction, what's the proper term for that?

25 A That would be a lane shift.

26 Q Do you know if the plan that was approved by the engineer, Mr. Yaffa, and DOT called for a lane shift
27 between Appaloosa Street and Willow Pond on Military Trail?

28 A I don't think so, no.

1 Q If the instance, like you said, the plans not being constructables -- is it ABC Road Construction's
2 responsibility to go to the project designer or engineer, Mr. Yaffa, and let him know and get the lane
3 shift approved by him?

4 A We wouldn't go directly to Yaffa, but we would go to the DOT's representative and initiate some
5 change, they would go to Yaffa for approval.

6 Q So it's safe to say then that ABC Road Construction does not have the right to put a lane shift on a
7 road under a maintenance traffic plan where there is not a lane shift on the actual written plan?

8 A We wouldn't do that unless there was some approval to do it.

9 Q Fair enough. That's fine. So if you did want to make a change to the maintenance traffic plan, you are
10 saying that ABC Road Construction would go to the DOT representative, right?

11 A Correct.

12 Q The DOT representative, I'm assuming -- but correct me if I'm wrong, would then go to the Engineer
13 and make whatever sort of, I guess, preparations need to be done to that area or changes in the plan?

14 A Potentially. I mean, we don't really have control over that who, you know, the DOT goes to. They
15 may or they may not.

16 Q Fair enough. Is it safe to say that any lane shifts built under a maintenance traffic plan should be built
17 to industry standards?

18 A Well, the DOT has standards and the project is constructed according to their standards and project
19 specifications. They also usually come out and do inspections. I would say a couple times per month,
20 they send a representative. They just make sure we are progressing.

21 Q Does DOT have standards -- you said that any lane shifts built needed to be built per DOT standards,
22 correct?

23 A The plans or the standards.

24 Q Plans or standards. Okay. If a lane shift was built, does DOT have standards regarding -- I guess, I'm
25 going to butcher the proper terms here, I'll do the best I can, hopefully you can correct me -- the length
26 of road needed for the amount of shift that's going to take place on the road?

27 A There are requirements in the DOT standards that relate in a particular facility and a particular speed
28 and amount of shift and the length of the shift.

29 Q So you did understand my question then?

30 A Yes. You did a good job.

1 Q Did I use the proper terms?

2 A Pretty close.

3 Q Pretty close. Okay. Now, do you know what the speed is on Military Trail in this particular area
4 between Appaloosa Street and Willow Pond Road?

5 A 35 mph.

6 Q Do you know if a lane shift of 26.9 feet -- and that's amount of shift in one direction -- would be per
7 DOT plans if it was done in the length of road of approximately 200 feet on this particular area of
8 Military Trail?

9 A I don't know off the top of my head.

10 Q Why does DOT have standards regarding the distance required for a lane shift based on speed and the
11 amount of actual shifting that's going to take place?

12 A I can't answer that.

13 Q You don't know?

14 A It's something they have developed and it's part of their standards, so I can't really guess as to why
15 they --

16 Q Do you know if they do that to make sure that the traffic can be safe when they're driving down the
17 road?

18 A I'm sure everything in the DOT standards would relate to safety.

19 Q Can we agree that regarding a lane shift, assuming everything else being equal, the longer the lane
20 shift is along the road, the less abrupt the term would be for vehicular traffic?

21 A Yes, I would agree.

22 Q I assume that you won't know the answer to this, but I have to ask it anyway for the lane shift that
23 was -- the lane shift we have been talking about between Appaloosa and Willow Pond on Military, do
24 you know if there were any signs warning of that lane shift back in May of y-2?

25 A Yes, there would have been. The issue we were having at the time was there were vandals stealing
26 some signs. The lane shift signs were particularly desirable.

27 Q Whose responsibility was it to make sure that there were signs in place to warn of the lane shift back
28 in May of y-2?

29 A We install the MOT and maintain the MOT. DOT provides us the signs. If we need more we ask them
30 for them. They install them based on the plan when we tell them we are ready or need them.

1 Q Ultimately, it's ABC Road Construction's responsibility to make sure that the signs are in the correct
2 place and operational?

3 A Correct but with the caveat that DOT needs to put them where we tell them.

4 Q Can we agree that if there were no signs present warning vehicular traffic of the lane shift back in
5 May of y-2, the lane shift we have been talking about, that that would be a violation of the DOT
6 standards?

7 A There would be signs associated with that transition.

8 Q Assume there are no signs there on the day of this incident, would that be a violation of the DOT
9 standards?

10 A It would be, but not if they are stolen that night which is what happened. Kids these days. We don't
11 work at night. They were replaced the following morning when we requested DOT to come out and put
12 up the new signs.

13 Q The presence of signs, what signs and where they are located? Would that be something that would
14 normally be in the maintenance traffic plan provided by DOT?

15 A It would be in the maintenance traffic plan or in the DOT standards.

16 Q Whose responsibility is it to make sure that the asphalt within a MOT construction site is sufficiently
17 even?

18 A It would be our responsibility to build it according to the standards.

19 Q Whose responsibility is it to make sure that the asphalt in an area of the road under construction is
20 sufficiently without debris?

21 A It's our responsibility to maintain the service.

22 Q What are the standards regarding, I guess, the evenness, for lack of a better term, of pavement in an
23 MOT area of a roadway?

24 A The standards don't really describe it as evenness. They give certain tolerances.

25 Q Where are the tolerances?

26 A Well, it depends on the particular situation. There is cross slope requirements. There is dropoff
27 requirements, reveal requirements within the lanes or adjacent lanes.

28 Q Can you tell me what was done to make the pavement look like that's where there are different
29 levels near where Mr. Weston fell?

1 A Here is where we would have had to add some asphalt to compensate for the grade differential
2 between phases of construction.

3 Q When you say "add asphalt," are you talking about you added asphalt to the left side of the photo
4 there where it's higher?

5 A It would have been, basically, a wedge of material more than likely from graduating up from the
6 lower elevation to the higher elevation. I don't know which was lower or higher. You can't tell from the
7 picture.

8 Q Can we agree, though, that regardless of, guess, what was added or what was taken away, that ABC
9 Road Construction did something to the road to make the asphalt look the way it does in these photos?

10 A I would say we had to add asphalt to the higher sections to transition grades.

11 Q Would you agree with me that the work done here looks like a sloppy job?

12 A I can't really say it was sloppy. There is nothing to really compare it to as far as anything in the
13 standards. Some of the edges are raveling there. I would agree with that. That's all I can really say.
14 There are some edges there that are raveling.

15 Q I have all the records and I found several progress meeting minutes as well as reports that say that
16 there is temporary asphalt that's being repaired and potholes, and words to that effect, that are being
17 repaired. So I'm wondering what the reasons are that ABC Road Construction would have to do that?

18 A Obviously, to fill a pothole we have to -- the idea is to put material in the hole.

19 Q Why would you fill a pothole?

20 A So it is not a traffic hazard.

21 Q Why is a pothole a traffic hazard?

22 A It could potentially damage a vehicle.

23 Q Could it damage people in the vehicle or on a motorcycle?

24 A I don't know if it would damage someone in or on the vehicle, a pothole.

25 Q Could a pothole cause an accident?

26 A I'm sure a pothole could cause an accident.

27 Q Could uneven pavement cause an accident?

28 A Anything can cause an accident. It would have to deal with the

1 Q I also found several areas in the records that say -- I guess it's a report of asphalt surface
2 irregularities. What is an asphalt surface irregularity?

3 A I don't know what you're specifically referencing there, but any, you know, any nonconformance
4 with the plans or specs or asphalt surface, be it -- typically, I would see that on permanent construction.
5 Could be irregularity, any nonconformance with the plans or specs I would say.

6 Q Is irregular asphalt a potential danger to the motoring public?

7 A You know, again, I might get a comment on or a report -- irregular asphalt on pavement that's not
8 even open to traffic.

9 Q So if it was open for traffic and there was irregular asphalt, could that be a danger to the motoring
10 public?

11 A I couldn't say.

12 Q I've shown you photos. Those have all been marked as exhibits they are, I guess, closeups, for lack of
13 a better term, of the road. Do you know whether the -- I'm going to use the term irregularities to the
14 road on those three photos -- could be a potential hazard to the motoring public?

15 A I can't say that that would be a hazard.

16 Q You can say that it would?

17 A No.

18 Q Can you say that it wouldn't?

19 A I can't see where this would be a hazard to the public. There is nothing in this photo that tells me for
20 sure this is a hazard to the public.

21 Q I just want to make sure we're clear. Can you say under oath that what's been shown in these photos
22 is definitively not a hazard to the public?

23 A I can't comment on that. I can't comment that it is a hazard to the public.

24 Q Okay. Just so we're clear --

25 A The only thing I can compare it to would be the standard, and I don't have any information to believe
26 this is a violation of the standard.

27 Q This is why I'm asking, you know, if for whatever reason this case were to go to trial and you were
28 going to be called as a witness, I have the right to know what your answers would be to my questions.
29 I'm not trying to ask you the same question over and over again, but I just want to make sure that we're

1 clear. Okay? My question is: Can you say definitively that the photos that I've shown you are not a
2 hazard to the motoring public?

3 A And I cannot say that that would be a hazard.

4 Q Can you say that it would not be a hazard definitively?

5 A No. I can't. But that's why we reduce the speed limit in these lane shift areas. Without the shift it
6 should have been 45 mile an hour zone. We made it a 35 miles per hour because of the lane shift.

7 Q Did ABC Road Construction do anything wrong on this project that caused this crash?

8 A No. It was normal for a Road Construction site. These projects are complicated costing multi million
9 dollars. This was a huge project. There were no prior problems. The lane shift had to be that way
10 because we were having problems due to being over scheduled. The plan was verbally approved
11 through the FDOT supervisor Shannon Perez, although we never got it in writing. It should have been in
12 writing but it couldn't wait. She's dead now. Gasoline accident.

13 Q Whose responsibility was it to keep project safe for everyone?

14 A Mine and ABC Road Construction as well as FDOT.

15 Q Would a 500 foot lane shift have fit?

16 A I don't think so. More than 200 feet. But not 500 feet. Maybe 425 feet. Doesn't matter. Safe for 35
17 mile per hour traffic.

18 Q Have we discussed all your testimony in this case?

19 A Yes.

2011 Mock Trial

DEPOSITION OF DEPUTY LEE MCDANG

DATE MAY 21, Y-1

1
2
3
4 Q Full Legal Name?

5 A Lee McDang

6 Q Any middle name?

7 A Nope.

8 Q I noticed that you work for the Sherriff's Office, were you working in your capacity as
9 the Sherriff's office for this case?

10 A No, I was hired as an expert. I didn't work up this case with S.O. I'm getting paid to be
11 here by the defense.

12 Q OK, how much do you get paid?

13 A I am paid \$500 per hour for my work as an expert and I believe I have worked 75 or so
14 hours on this case including this deposition.

15 Q How much do you get paid for testifying at trial?

16 A I up my rate to \$3000 minimum for as long as it takes for 1 full day of trial. If my
17 testimony goes into a 2nd day then I charge another \$3000.

18 Q How long have you been testifying as an expert witness?

19 A I have been doing this for 3 years. Obviously I have been doing accident reconstruction
20 for longer with S.O.

21 Q How much do you make working for Hillsborough Sheriff's office?

22 A About \$45,000 per year plus benefits.

23 Q Can you tell us everything you have reviewed in this case?

24 A Sure, I've seen photos of the motorcycle which are all part of the court file, I've seen
25 photos of the accident scene which were taken by the plaintiff I believe, I inspected the damage
26 to the motorcycle, I also reviewed the overheads of the scene, I personally went to the scene, I

1 read the plaintiffs deposition, the plaintiff experts deposition, project managers depo, I'm
2 pretty sure that's about it.

3 Q What were you hired to do in this case?

4 A Review the records as previously discussed and reach opinions regarding reconstructing
5 the accident.

6 Q Were you asked to reach any opinions about whether the MOT met the minimum
7 standards in this case?

8 A No I was not. I'm not trained or qualified to do that. I believe the project manager
9 would know about the MOT standards.

10 Q Have you reached opinions in this case?

11 A Yes I have, the plaintiff in this case was driving his motorcycle on inadequate sleep at
12 3:00am in the morning. Following the vehicle in front of him too closely. In addition he was
13 exceeding the speed limit. As a result, Weston caused this accident. Its his fault. If I was the
14 investigating officer, I would have written him a ticket for speeding as well as following at an
15 unsafe distance. Both are civil traffic infractions.

16 Q How do the street signs or the lack there of come into play with your opinions?

17 A I didn't look at street signs, the speed limit in this area is 35mph. I had the plaintiff
18 going anywhere from 45-50 mph at the time he lost control.

19 Q What did you base that on?

20 A The damage to the motorcycle, the depth of gouge marks in the road, the damage to
21 the curb, the weight of the motorcycle, the type of road, weight of rider, fairing material,
22 amount of gas in the tank.

23 Q OK, anything else?

24 A Nope, that's all I need. The speed can never be narrowed down any closer than that, we
25 will never know exactly the speed of the vehicle unless there is a blackbox, which this vehicle
26 didn't have.

27 Q How do the nylon crash protectors affect your opinion of the speed of the motorcycle?

28 A I knew you were going there, I'm not aware of any study that crash protectors of any
29 material will slow motorcycles faster when they hit the ground. As a result, I have no opinion
30 regarding whether that played a role. Didn't take it into account because I'm not aware of

1 anything saying I should. It's the same as saying that well the plaintiff had no socks on when he
2 crashed. There is no difference in the calculations. With that said, I do understand where
3 Carnahan is coming from, it makes sense in theory. But without studies, you cant just pick
4 numbers out of the sky and change the calculations.

5 Q OK, tell us about how your figured the type of road, what did you take into account?

6 A Well in order to get 10-15 mph over speed limit, I considered that the roads were sandy
7 with some gravel and small rocks, you can see it in the photos in that area, also I considered
8 that the road was really rough with some elevation changes, again you can see the photos. It is
9 the area where the plaintiff said he lost control. Also, crush damage, smoothness of road,
10 gouge marks, weight of motorcycle, amount of damage and material of item motorcycle hit.

11 Q What do you do with all that information?

12 A Do you want me to plug it into the equation for you?

13 Q No that's fine?

14 A Well I plug it into the equation, basically same equation your expert used. So that's not
15 in dispute. Only difference is the numbers used. I think I considered the road was rougher
16 than he did which is why the numbers come out a little different. Also that whole thing about
17 the nylon crash protectors is unfounded based on my research. I think the plaintiffs expert is
18 being intellectually dishonest and possibly intentionally lying. I'm not really sure which. I ran
19 all the numbers first to figure out the speed of the vehicle. In addition, I was in a crash on my
20 motorcycle while working for S.O. about 7 years ago. I was going the same speed and my
21 motorcycle looked about the same, so I used that to help confirm my conclusion.

22 Q Thanks for sharing that, do you have any photos or measurements from your crash?

23 A No, I didn't save those.

24 Q OK, tell us what you base your opinion on regarding the plaintiff following too closely?

25 A Well he said he was 1 car length if my memory is correct from the vehicle in front of
26 him. At 45-50 mph that is too close for a motorcycle like his. He wouldn't have been able to
27 perceive what was coming in front of him with adequate time to react. He also has un-
28 medicated ADHD

29 Q What about at 35 mph, was 1 car length too close for the plaintiff?

30 A No, that would have been acceptable, but as we discussed, he was going 45mph or
31 more.

1 Q And I think the last thing you mentioned was that the plaintiff was operating the vehicle
2 on inadequate sleep, what did you base that on?

3 A Plaintiffs deposition and the website located at
4 <http://www.fhwa.dot.gov/publications/research/safety/humanfac/94046/index.cfm>. Defense
5 counsel has filed it as part of the case file, it can be found online as well if its not there.

6 Q Any other webpages you have relied on in reaching your opinion?

7 A No. That's it.

8 Q OK, I will review that webpage, I'm sure there is some impeachment material in there.
9 Anything else we haven't covered regarding your opinions?

10 A No that is it.

11 Q Are you an engineer?

12 A No.

13 Q What is the basis for your opinion that the lack of sleep of Weston contributed to this
14 crash.

15 A He was up for almost 24 hours before the accident. Everyone knows that a lack of sleep
16 will effect driving. It's the same as driving drunk.

17 Q Ok, any studies or anything else to back up your opinion that Weston's lack of sleep
18 contributed?

19 A No. Its just common knowledge.

20 Q Do you know anything about his sleeping pattern in the days prior to the collision?

21 A No. I don't think I need to.

22 Q Have all your opinions been within a reasonable degree of accident reconstruction
23 probability?

24 A Yes.
25

26 Q Have we discussed all of your opinions?
27

28 A Yes

2011 Mock Trial

MOCK TRIAL DEPOSITION LEE MCDANG

DATE MAY 21, Y-1

Defense Accident reconstruction expert: Lee McDang

Curriculum Vitae

EXPERIENCE:

1997 - Present Hillsborough County Sheriff's Department

- Certificate of Training from the Florida Highway Patrol for Police Basic Training, 345 hours, December 1996
- Road Patrol Officer and Shift Supervisor (Sergeant)
- Advanced Accident Reconstruction
- Formed a multi-county accident reconstruction team with members of other departments (Pinellas, Hillsborough, Pasco)
- Certified police motorcycle officer

1992-1996 United States Army Reserve

- Desk Sergeant duties and Area Supervisor
- Advanced Training in riot control, anti-terrorism, and hostage situations
- Security Clearance of Secret Service

Law enforcement professional with extensive experience and training. Certified officer and radar/lidar operator in the State of Florida. Special expertise as an Advanced Accident Reconstructionist under the Florida Law Enforcement Officers' Training Council. Currently a shift supervisor and Sergeant in the Hillsborough County Sheriff's Department.

EDUCATION:

5/1996 Atlanta Community College

Associate in Applied Science Degree in Law Enforcement

Grade Point Average: Major 3.8 Overall 3.35

Certified Training in Executive Protection and Terrorist Tactics

Member of Florida Crash Reconstruction and Automotive Specialist group

Providing expert services with pride and integrity.

SPECIALIZED TRAINING:

1997 Certified Precision and Emergency Vehicle Driving Instructor

1998 Certified Skid Car Systems Instructor

2002 Certified Fire Fighter I and II Instructor

2002 Certified Fire Fighter Drivers' Training Instructor

2003 Vehicular Homicide Investigation (16 hours)

2003 Traffic Engineering (40 hours)

2005 AI-3 Crash Photography (16 hours)

2006 AI-5 Tire Examination (8 hours)

2008 Motorcycle Crash Investigation (12 hours)

JURY INSTRUCTIONS

[2.1] Members of the Jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you, to facts as you find them from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions that reason and common sense lead you to draw from the facts shown by the evidence in this case. But you should not speculate on any matters outside the evidence.

[2.2a] In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

[2.2b] You have heard opinion testimony on certain technical subjects from persons referred to as expert witnesses. Some of the testimony before you was in the form of opinions about certain technical subjects. You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

[3.1] The court has determined and now instructs you, as a matter of law, that ABC Road Construction, Inc. is responsible for the negligence, if any, of its employees or agents which was the cause of the accident that occurred on March 11, Y-2.

[3.5b] The issues for your determination on the claim of Pat Weston against ABC Road Construction, Inc., are whether ABC Road Construction, Inc., were negligent in the construction or maintenance of its lane shift between Appaloosa Street and Willow Pond on Military Trail; and, if so, [3.6c] whether such negligence was a legal cause of loss, injury or damage sustained by Pat Weston.

[3.7] If the greater weight of the evidence does not support the claim of Pat Weston, then your verdict should be for ABC Road Construction, Inc.

[3.8] If however, the greater weight of the evidence does support the claim of Pat Weston, then you shall consider the defenses raised ABC Road Construction, Inc. On the defenses, the issues for your determination are

[3.8a] Whether Pat Weston was, himself negligent; and, if so, whether such negligence was a contributing legal cause of the loss, injury or damage complained of. If the greater weight of the evidence does not support the defenses of ABC Road Construction, Inc. and the greater weight of the evidence does support the claim of Pat Weston, then your verdict should be for Pat Weston. However, if the greater weight of the evidence shows that Pat Weston, or Florida Department of Transportation, or ABC Road Construction, Inc., were all negligent and that the negligence of each contributed as a legal cause of loss, injury or damage sustained by Pat Weston, you should determine and write on the verdict form what percentage of the total negligence of the parties/entity that is chargeable to each.

[3.9] “Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

[4.1] Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either in doing something that a reasonably careful person would not do under like circumstances or in failing to do something that a reasonably careful person would do under like circumstances.

[5.1a] Negligence is a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred.

[5.1b] In order to be regarded as a legal cause of loss, injury or damage, negligence need not be the only cause. Negligence may be a legal cause of loss, injury or damage even though it operates in combination with the act of another, some natural cause or some other cause if such other cause occurs at the same time as the negligence and if the negligence contributes substantially to producing such loss, injury or damage.

[7.1] In reaching your verdict(s), you are not to be swayed from the performance of your duty by prejudice, sympathy or any other sentiment for or against any party. Your verdict(s) must be based on the evidence that has been received and the law on which I have instructed you. Reaching a verdict is exclusively your job. I cannot participate in that decision in any way. You should not speculate about how I might evaluate the testimony of any witness or any other evidence in this case, and you should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you.

[7.2] When you retire to the jury room, you should select one of your number to act as foreperson to preside over your deliberations and sign your verdict(s). Your verdict(s) must be unanimous, that is your verdict(s) must be agreed to by each of you.

You will be given a form of verdict, which I shall now read to you:

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form. You may now retire to consider your verdict(s).

IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

PAT WESTON

Plaintiff,

v.

ABC Construction, INC.

Defendant.

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Case No.: CV-12-4637821

VERDICT

WE, THE JURY, return the following verdict:

Was there negligence on the part of Defendant, ABC Construction, Inc., which was a legal cause of damage to Plaintiff, Pat Weston?

YES _____ NO _____

(If your answers to question (1) is NO, your verdict is for the Defendant, and you should not proceed further except to date and sign the verdict form and return it to the courtroom. If your answers to question (1) is YES, please answer question (2).

2. Was there negligence on the part of the Plaintiff, which was a legal cause of damage to Plaintiff, Pat Weston?

YES _____ NO _____

3. Was there negligence on the part of the Florida Department of Transportation which was the legal cause of damage to plaintiff Pat Weston?

YES _____ NO _____

4. State the percentages of any negligence for each injury which was the legal cause of damage to the Plaintiff, that you charged to:

ABC Construction, Inc. _____%

Pat Weston _____%

Florida Department of Transportation _____%

(Total must be 100%)

SO SAY WE ALL this _____ day of _____, 2010.

FOREPERSON