

A \$21 million verdict, narrowly avoided

By Harlan Stientjes

In 2019, the plaintiff was shopping downtown with her daughter. She saw a marked crosswalk and went to cross the two-lane road with her daughter. Shortly after she stepped into the lane of travel, leaving her adult daughter on the sidewalk, she was hit by a driver. She went up on the hood and then rolled off onto the side of the road. She was transported to the hospital where she was assessed to have a brain injury.

Prior to this accident new businesses had opened downtown. Since this uncontrolled intersection was relatively close to City Hall, staff noticed an increase in pedestrian travel in the area. Under [RCW 46.61.235](#), there was an unmarked crosswalk at this location that was legal for pedestrians to cross even without bars on the ground. Seeing the increased pedestrian travel and in response to resident feedback, the Mayor and Public Works Director went to the intersection to consider painting a marked crosswalk. They decided it would be appropriate to add a marked crosswalk at this location. Given the proximity to City Hall and their long-term knowledge of the intersection, they did not complete an engineering study and proceeded to paint a marked crosswalk on the ground. Whether painted or not, this was a legal crossing for pedestrians.

The plaintiff filed a lawsuit against the driver, after finding out that she had the state minimum insurance limits available (\$25,000) she sought to add the City as a defendant. She sued the City and proceeded to hire experts (the same ones we see in most cases like this) who alleged negligence in the process by which the crosswalk was marked and the failure to add more warning devices. Notably from our standpoint, they do not allege any failure of the crosswalk that was present on the day of this accident.

WCIA responded with a strong defense. There was no accident history in this crosswalk and there was clear fault, in our opinion, on the part of the driver and the plaintiff who stepped right in front of a moving car. Unfortunately, as WCIA proceeded through the lawsuit, we received a ruling that the plaintiff was fault free in this accident. This meant if the jury found the City 1% at fault, we would share in any award against the driver through joint and several liability and the plaintiff would be solely focused on proving liability against the City. WCIA attempted to appeal this issue prior to trial and were told we had a strong case for appeal but that the case was not ready until we went through trial. Assuming an adverse verdict, this would leave WCIA appealing the case with a potentially large verdict accruing interest on it while we sought an appeal.

On the eve of trial, WCIA reached a resolution with the plaintiff. The plaintiff proceeded to take the case to trial against the driver and secured a \$21 million verdict (there was an underinsured motorist policy they were trying to recover from). Adverse judicial rulings and joint and several liability laws nearly exposed WCIA and its member to a verdict that would have been more than WCIA's policy limits, impacting the member's general fund.

The tort climate and increased verdict size in Washington continue to make our business very difficult. Recently the Court of Appeals affirmed a \$98.5 million verdict against the state, though you won't find any news coverage of how that verdict is being paid. WCIA has expertise in defending public entities and participates in more litigation than any other risk pool in the state. We share this case to educate on the potentially adverse liability environment in Washington. Members should be aware of the difficult tort environment and consider engineering expertise and standard processes anytime roads and crosswalks are altered.