



Alexander Kemp

MICHIGAN AUTO LAW

Beyond the truck driver and motor carrier

FROM GOVERNMENTAL ENTITIES TO ROAD CONTRACTORS, PURSUING ADDITIONAL DEFENDANTS IN WORK-ZONE TRUCK CRASHES

Approximately one-third of work-zone fatalities involve commercial motor vehicles. (See <https://workzonesafety.org/work-zone-data>.) When your client is hit by a tractor-trailer in a construction zone, the truck driver and the motor carrier are not your only potential defendants.

In 2022 alone, there were roughly 96,000 work-zone crashes nationwide. Orange barrels, lane shifts, and shifting signage transform familiar roadways into a unique hazard, and the Commercial Driver's License Manual itself recognizes the elevated risk for truck drivers. (Commercial Driver's License Manual, § 2.8.2.) That hazard, combined with the network of contracts and public entities behind every project, is what creates the additional avenues of recovery this article maps.

Background of construction projects

A road-construction company will typically enter into a contract with the State Department of Transportation (Caltrans in California) for a road-construction project. Various contract types exist, but the design-bid-build contract is the most common. The agency designs the project itself, or with the help of an engineering firm, and hosts a bidding process where general contractors and subcontractors submit offers. The winning general contractor and its subcontractors build the project according to the design specifications.

The other common format is the design-build contract, which blends design and construction. The general contractor submits the design as it bids on the project and then builds according to its own design.

The contract type ultimately determines who the potential defendants are, what duties and responsibilities each party owes, and who is in control.

Work zone terms to know

Just as lawyers should understand the vocabulary of the Federal Motor Carrier Safety Regulations and the Commercial Driver's License Manual, you should also have a basic understanding of how a construction work zone is structured. Every construction project requires a temporary traffic control plan, which "describes TTC measures to be used for facilitating road users through a work zone or an incident area." (Manual on Uniform Traffic Control Devices, 11th ed., Rev. 1 (Dec. 2025), § 6B.01.) The TTC plan dictates which traffic control devices are used, where they are placed, and how they are deployed.

A work zone is "an area of a highway with construction, maintenance, or utility work activities." (MUTCD, 11th ed., Rev. 1, § 6B.02.) "It extends from the first warning sign or high-intensity rotating, flashing, oscillating, or strobe lights on a vehicle to the END ROAD WORK sign or the last TTC device." (*Ibid.*)

A temporary traffic control zone is "an area of a highway where road user conditions are changed because of a work zone, an incident zone, or a planned special event through the use of TTC devices, uniformed law enforcement officers, or other authorized personnel." (MUTCD, 11th ed., Rev. 1, § 6B.02.) It is "often divided into four areas as needed, based on engineering judgment: the advance warning area, the transition area, the activity area, and the termination area." (MUTCD, 11th ed., Rev. 1, § 6B.03.)

The advance warning area is "the section of highway where road users are informed about the upcoming transition and activity areas or incident area." (MUTCD, 11th ed., Rev. 1, § 6B.04.) Because rear-end crashes are the most common type of crash in work zones (see <https://safety.fhwa.dot.gov/wz/resources/fhwasa03012/fhwasa03012.pdf>), the advance warning area plays a key role as

the first warning to drivers of a hazard ahead.

A crash that occurs outside the work zone or temporary traffic control zone should not be overlooked. A crash can occur on a detour, which is "a temporary rerouting of road users onto an existing highway in order to avoid a temporary traffic control zone." (MUTCD, 11th ed., Rev. 1, § 6B.09.) A detour is part of a construction influence area, which has been defined in various construction projects as the "project and the area surrounding the project, as shown in the contract, which defines the limits of responsibility for traffic control." A driver may be beyond the work zone and not expect another stop, only to encounter an excessive backup queue caused by a detour with no proper warning.

Potential causes of action

Negligence claims against additional defendants are fact specific. Start by examining the three main themes of a construction project: design, implementation, and monitoring. If a rear-end crash was potentially caused by a failure to warn the driver, the design, implementation, and monitoring of the warning system are all candidates for a proximate cause analysis. How best to warn drivers depends on the road, the location and type of temporary traffic control devices, traffic queue formations, and other factors.

A failure to warn could result from a defendant's failure to properly design the advance warning area to adequately warn drivers of the hazard ahead. The defendant may have designed a project that failed to use the proper signs or failed to plan where the proper locations of the signs should be under the MUTCD, and that failure was a proximate cause of the crash.

If the design was adequate, the project could have been improperly

implemented. If the correct signs were specified but the wrong signs were installed, or the correct signs were placed in the wrong location to adequately warn drivers, that supports a negligent implementation claim. All temporary traffic control devices must be implemented in compliance with the MUTCD. If they are not, the defendant may be liable for negligent implementation.

What if the design was proper and carried out according to plan? A negligent monitoring claim should be explored. Traffic conditions are fluid and can change at any time. If a queue formation extends beyond the temporary traffic control devices, signs may need to be altered or moved to give drivers proper warning of the hazard ahead. Another basis for negligent monitoring is when other crashes occur in the same area, an indication that the warning was inadequate, and nothing was changed when it should have been. Defendants should be monitoring the work zone and advance warning area for queue formations or other incidents and making changes as needed. If indications were present that changes should have been made, and they were not, the defendant will be liable.

In California, the design-negligence claim collides with a common affirmative defense in dangerous-condition cases: design immunity under Government Code section 830.6. “A public entity claiming design immunity must establish three elements: (1) a causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design.” (*Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 69.)

Design immunity is not perpetual, however. It can be lost where (1) the plan or design has become dangerous because of a change in physical conditions; (2) the public entity had actual or constructive notice of the dangerous condition; and (3) the public entity had a reasonable time to obtain funds and carry out remedial work, or, if unable to remedy the condition, did not reasonably attempt

to provide adequate warnings. (*Cornette*, 26 Cal.4th at p. 66; CACI No. 1124.) In a work-zone case, the very nature of construction means physical conditions, traffic patterns, and signage all changed.

Potential defendants

Several potential defendants exist beyond the truck driver and motor carrier. First, a governmental entity such as Caltrans may be a potential defendant based on its involvement. This could also be the federal Department of Transportation or a local public entity depending on the circumstances. Claims against Caltrans for work-zone crashes are brought under Government Code section 835, dangerous condition of public property.

The next likely potential defendants are the general (or “prime”) contractor and any subcontractors responsible for completing the job in accordance with the contract. When the general contractor uses many subcontractors, some are responsible for placing temporary traffic control devices, completing inspections, or performing other duties under the contract. Depending on the jurisdiction and specific facts, a contractor may also have immunity as a result of derivative sovereign immunity, also known as *Yearsley* immunity. Derivative sovereign immunity shields contractors when the work was “authorized and directed by the Government of the United States” and “performed pursuant to [an] Act of Congress.” (*Yearsley v. W.A. Ross Construction Co.* (1940) 309 U.S. 18 [60 S.Ct. 413, 84 L.Ed. 554].)

The design-engineering firm may be another potential defendant if a negligent-design claim is alleged. Even if the public entity, which may have immunity, was responsible for designing the project, the public entity may have consulted with a design-engineering firm to develop the specifications.

Another potential defendant is the manufacturer of a temporary traffic-control device. If a sign malfunctions and fails to display the required warning, and that failure was a cause of the crash, the manufacturer may be liable.

No matter the circumstances, anticipate that defendants will point fingers

at each other and at non-defendants who have immunity. Liability will come down to which parties have responsibility under the contract and who is in control of the various aspects of the project.

Important documentation to obtain

Gathering all the evidence in a construction work-zone case is essential. If a governmental entity is involved, a Public Records Act request (Gov. Code, § 7920.000 et seq.) for state or local agency records, or a federal FOIA request when a federal entity is involved, will produce a wealth of information that helps reveal potential defendants. Useful documentation includes:

- **Construction contracts:** contracts between the public entity and the general contractor, and between the general contractor and subcontractors, identify the scope of work and the duties and responsibilities of each party.
- **Temporary traffic-control plan:** Outlines what TTC devices will be used, how they will be used, where they will be placed, and how traffic will be directed or rerouted.
- **Bidding submissions:** Contractors submit bids for projected costs, identifying all TTC devices they intend to use and the cost of each device.
- **Meeting minutes:** The public entity, general contractor, and subcontractors often meet throughout a project to discuss progress and changes that need to be made, which also helps identify key representatives to depose.
- **Job invoices:** Help determine what types of TTC devices were actually used.
- **Reports:** Police reports help document what happened and identify potential parties or witnesses, but during a project there are also reports documenting daily activities, including Inspector Daily Reports.
- **Policies and procedures:** Contractors should have policies and procedures in place to ensure appropriate safety measures are followed during a project.

- **Photographs:** Photographic evidence documenting which TTC devices were used, where they were located, and any lack of compliance helps establish liability.

Potential depositions

Many people can be deposed to develop information and prove a negligence claim against additional defendants. Likely deponents include general contractor and subcontractor representatives such as the project director, safety director, and foremen. Other deponents include public entity representatives such as engineers and inspectors, police officers, eyewitnesses, 911 callers, the truck driver, trucking corporate representatives, and drivers of prior incidents in the work zone.

Retained experts: The construction engineering expert is unique to a work-zone case and is essential to tie everything together to prove how the additional defendant was a proximate cause of the crash. The expert reviews the construction documentation to determine whether the temporary traffic control plan was designed in accordance with the MUTCD and the contract, implemented properly, and monitored properly. Other potential experts may include an accident reconstruction expert, human factors expert, and commercial motor vehicle driving expert.

Industry standards

The Manual on Uniform Traffic Control Devices is the gold standard for road construction cases and the most important industry standard in a work-zone crash case. (The 11th edition with Revision 1, published December 2025, is the latest national edition.) Every state has adopted the MUTCD, either in its entirety or by developing its own state version. All federally funded construction projects must install and maintain temporary traffic control devices in accordance with the MUTCD. (23 U.S.C. § 109(d); MUTCD, 11th ed., Rev. 1, § 1B.01.)

In California, the operative document is the California Manual on Uniform Traffic Control Devices, published by Caltrans pursuant to Vehicle Code section 21400. The CA MUTCD 2026, effective

January 18, 2026, replaces the CA MUTCD 2014 (Revision 9) and is in substantial conformance with the National MUTCD 2023. When you litigate a California work-zone case, the CA MUTCD is the document you will compare to the contract and the temporary traffic control plan. The CA MUTCD substantially mirrors the National MUTCD but contains California-specific amendments. Always pull the edition that was in effect at the time of the crash.

Useful starting points in the MUTCD include Part 1: General, and Part 6: Temporary Traffic Control.

To establish a negligent design claim regarding failure to warn, Part 6 addresses how the needs and control of all road users are essential to managing traffic incidents, the primary function of temporary traffic control, the fundamental principles of temporary traffic control, and how the goal is safety while using proper judgment. (MUTCD, 11th ed., Rev. 1, §§ 6A.01, 6A.02, 6B.01.)

For a negligent implementation claim, Part 1 outlines who should make implementation decisions (§ 1A.04), who is responsible for placing temporary traffic control devices (§ 1D.02), and what an effective traffic control device is (§ 1D.01). Part 6 addresses where warning signs should be placed in an advance warning area (§ 6B.04).

For a negligent monitoring claim, Part 6 establishes requirements to monitor changing traffic conditions, requires consideration of prior incidents when deciding whether changes are needed, and addresses the use of law enforcement officers when traffic situations change. (MUTCD, 11th ed., Rev. 1, §§ 6A.01, 6A.02.)

Beyond the MUTCD, Caltrans publishes a deep library of standards and policies useful for direct negligence claims, including the Caltrans Standard Specifications, Caltrans Standard Plans, and Caltrans Standard Special Provisions. The CA MUTCD itself recognizes these as supplemental documents that, in some cases, impose more stringent standards than the CA MUTCD baseline. Caltrans also publishes typical traffic control plans for common scenarios that can be used to

prove what should have been done in a given configuration.

If the project is federally funded, 23 C.F.R. § 633.102 requires that “Form FHWA-1273 shall be physically incorporated in each Federal-aid highway construction contract.” Form FHWA-1273 helps establish liability against a contractor through Section VII Safety: Accident Prevention, which references 23 C.F.R. § 633.108: “The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.” If the contractor fails to provide all safeguards reasonably necessary to protect the safety of the public, it may be liable for the crash.

Defense arguments and how to counter them

Multi-defendant work zone cases generate predictable defenses:

The “professional driver” defense

Defendants will inevitably try to shift blame to the truck driver, arguing that a professional driver should have safely navigated any hazard the work zone presented regardless of how it was designed, implemented, or monitored. The CDL Manual itself becomes a sword in their hands. You counter with the same regulatory framework. Truck drivers are required to have knowledge applicable to a work zone, including visual search, speed management, space management, and hazard perception. (49 C.F.R. § 383.111.)

That said, a professional driver’s duty does not eliminate the contractor’s duty to design, implement, and monitor a safe work zone. The American Road and Transportation Builders Association recognizes that tractor-trailer drivers face unique challenges in work zones and describes practices contractors should use to accommodate large trucks and help drivers better negotiate them. (Design and Operation of Work Zone Strategies to Improve Large Truck Safety, ARTBA

(2016).) The duty runs in both directions, and comparative fault makes clear that more than one party can be at fault for the same harm. (CACI No. 406.)

Design immunity

Caltrans will assert design immunity under Government Code section 830.6 in nearly every case where the design itself is challenged. The defense has three elements (causation, discretionary approval, substantial evidence of reasonableness), and the public entity bears the burden on each. (*Cornette*, 26 Cal.4th at p. 69.) Two attack vectors typically work in work-zone cases. First, changed conditions. The very nature of construction means physical conditions, traffic patterns, and signage have changed since the design was approved. (*Id.*, at p. 66; CACI No. 1124.) Second, deviation from the approved design. Where the actual work-zone configuration differs from what was approved, immunity does not attach to the unapproved features. (*Cameron v. State of California* (1972) 7 Cal.3d 318.) Build both arguments into the case from the start through expert review of the approved plans against site photographs and the as-built configuration.

The “we followed the plan” defense

Contractors will argue that they implemented the temporary traffic control plan exactly as designed and therefore

cannot be liable for any inadequacy in the warning system. This defense fails on two fronts. First, the contract typically obligates the contractor to maintain a safe work zone and to monitor traffic conditions, not merely to install the specified devices. Form FHWA-1273, which is incorporated into every Federal-aid highway construction contract, requires the contractor to take “any other needed actions...to be reasonably necessary to protect the life and health of employees on the job and the safety of the public.” (23 C.F.R. § 633.108.) Second, the MUTCD imposes ongoing monitoring duties independent of any specific plan. (MUTCD, 11th ed., Rev. 1, §§ 6A.01, 6A.02.) The contractor’s duty is to provide a safe work zone, not just to follow a checklist.

The pointing-fingers defense

Defendants in multi-party work-zone cases inevitably point at each other and at non-parties with immunity. The contractor blames the design engineering firm, the engineering firm blames Caltrans, Caltrans claims design immunity, and everyone blames the truck driver. This shifting-blame strategy can be turned to the plaintiff’s advantage. Each defendant’s attempt to point at another defendant is an admission that the work zone was unsafe. The fight is no longer

whether the work zone was unsafe; it is which defendant is responsible.

The construction-engineering expert is essential here, because a single expert opining on design, implementation, and monitoring failures gives the jury a unified theory while the defendants fight among themselves.

Conclusion

On your next work-zone truck crash case, don’t overlook these additional defendants. When you understand the basics of a construction work zone, you can identify the strongest claims against them. After gathering the evidence, taking depositions, showing violations of the MUTCD and contract specifications, and using a construction engineer and other experts to prove causation, you maximize your client’s recovery.



Alexander Kemp is board certified in Truck Accident Law by the National Board of Trial Advocacy. He practices at Michigan Auto Law, where he focuses on catastrophic injury and wrongful-death truck and car crash cases. A member of the AAJ Truck Litigation Group and the Academy of Truck Accident Attorneys, Alexander frequently speaks at legal conferences on commercial motor-vehicle litigation.