ROADWORK

The Dangers of Distractions

can work zone safety keep pace with the modern world?

By William S. Thomas

Summer construction season places highway crews within feet of vehicles traveling at high speed, often through traffic patterns that change from one shift to the next. The scale of that exposure is difficult to overstate.

A 2026 survey conducted by the Associated General Contractors of America reveals 60 percent of responding highway contractors reported at least one moving-vehicle crash in a work zone during the prior year, and nearly one-third reported five or more. Among contractors experiencing crashes, nearly three-fifths reported an injury to a driver or passenger, 27 percent reported an injured construction worker, 22 percent reported a driver or passenger fatality, and 7 percent reported a worker fatality. More than half also reported project delays caused by work-zone crashes. Those numbers make work-zone safety an obvious concern. They also foretell a significant and growing liability exposure for highway contractors given the typically low limits of many motorists' auto insurance and caps or sovereign immunity hurdles for the state or local governments for which the projects are initiated.

When a serious crash occurs, the motorist's speed, distraction, impairment, or failure to follow instructions are more likely than not central to the accident. But litigation rarely ends with the driver's conduct. Plaintiffs commonly examine whether the work zone was properly planned, installed, maintained, inspected, illuminated, adjusted, and monitored. They ask whether the contractor recognized changing conditions, recurring queues, displaced devices, confusing markings, restricted sight distance, unsafe drop-offs, inadequate positive protection, or hazards that developed after crews left for the day. The contractor's defense often begins with what you would think would be dispositive of the issue: "We followed the traffic-control plan, the state specifications, and the Manual on Uniform Traffic Control Devices (MUTCD)." While that evidence is important, it is not necessarily a complete defense.

M.U.T.C.D. IS A BASELINE, NOT ALWAYS A CEILING

Jurors who decide litigated outcomes often proclaim during jury selection that "codes and standards are a minimum requirement, and contractors should do more" to protect safety. The MUTCD governs temporary traffic control on federal, and typically state projects. Federal regulations require state work-zone policies and project-level transportation management plans and require temporary traffic-control plans. Many states have their own department of transportation (DOT) regulations that have requirements that exceed those federal rules. The Occupational Safety and Health Administration (OSHA) has worker protection requirements in construction areas at points of hazard. Finally, above all of this is a common law court, and jury-imposed regime contractors operate in so as to not injure the commuting public by meeting some undefined "standard of care." Thus, the contractor may face overlapping responsibilities: regulatory duties to its employees, contractual duties imposed by the owner or DOT, and tort duties to motorists and other road users imposed by the courts.

The problem posed by litigation is that while the MUTCD promotes uniformity and supplies minimum standards and guidance, litigation is a case by case and state by state regime. Traffic control plans cannot anticipate every configuration, traffic pattern, weather condition, work operation, driver behavior, or project-specific hazard. A plan that was adequate when approved may become inadequate when conditions change. Courts have repeatedly recognized this distinction. In Transcon Lines Corp. v. Cornell Construction Co., the Oklahoma Supreme Court made it clear that a highway contractor's duty to road users did not depend solely on its state contract. The contractor had an independent legal duty not to permit the highway to become dangerous for ordinary use under the circumstances. Contract language can broaden that exposure. In Royal Insurance Co. v. Whitaker Contracting Corp., the Alabama Supreme Court held a general contractor's state contract imposed continuous, non-delegable responsibility for construction warning signs, barricades, and traffic-handling measures, even though a subcontractor had performed the work associated with the accident.

More recently, the Delaware Supreme Court explained in Pavik v. George & Lynch, Inc., that compliance with MUTCD-approved measures during working hours did not necessarily establish reasonable care for risks existing after hours. An approved traffic plan was not a blanket answer where the plan failed to address the particular condition that allegedly caused the accident. The contractor still had a common-law duty to act reasonably and prudently for the traveling public. There are some cases that hold the other way, however. The Nebraska Supreme Court addressed the point directly in Porter v. Knife River, Inc., where it found MUTCD compliance was sufficient to establish summary judgment for the contractor when the plaintiff failed to produce evidence that the selected devices were unsuitable or that ordinary care required something more. That outcome demonstrates the proper role of compliance evidence: It can support a strong defense, but it does not automatically eliminate the broader reasonable-care inquiry. This variability is part of the broader concern: Contractor immunity, retained control, governmental plan approval, and the necessity of expert testimony vary by jurisdiction. The takeaway is that technical compliance and reasonable care are related questions, but not always identical ones.

WHY WORK-ZONE CLAIMS SURVIVE

A traffic-control plan is generally prepared before the contractor experiences the work zone in operation. Litigation, however, focuses on what actually happened in the field. The questions will get asked: Did traffic routinely back up beyond the advance-warning signs? Were motorists encountering an unexpected stop immediately beyond a curve or hillcrest? Did rain, darkness, glare, dust, or construction lighting reduce visibility? Were channelizing devices displaced by traffic and not promptly restored? Did temporary and permanent pavement markings conflict? Was a lane closure safe for passenger vehicles but confusing or inadequate for trucks and motorcycles? Did the contractor continue using a configuration after prior crashes, near misses, complaints, or field observations that revealed a recurring problem?

These questions turn a "compliance with the MUTCD" defense into a fact-intensive inquiry about notice, foreseeability, and reasonable response. They also explain why inspection records, daily reports, photographs, police communications, change orders, traffic-camera footage, device-maintenance logs, and internal emails often become more important than the original plan.

A SAFETY PLAN IS A LIVING SYSTEM

AGC is urging Congress to use the next surface-transportation reauthorization to encourage comprehensive state work-zone safety plans, stronger enforcement, and better crash-data collection. Existing federal regulations already require state-level work-zone policies and project-level transportation management plans, but the proposal seeks a broader and more coordinated approach. The House Transportation and Infrastructure Committee approved H.R. 8870, the BUILD America 250 Act, by a 62-2 vote in May 2026 as Congress works toward the Sept. 30, 2026, expiration of current surface-transportation authority. The committee-approved bill would establish an FHWA-NHTSA-OSHA roadway-worker protection working group to study work-zone data limitations, safety contingency funds, adoption of uniform crash criteria, and improvements to education and public-awareness campaigns. It also would expand eligibility for work-zone safety education and safety-data improvements. The proposal remained pending legislation as of this writing, not an enacted contractor safe harbor.

Better plans and better data could materially improve safety. They can help states identify high-risk project types, establish consistent reporting to detect recurring crash patterns, and intervene before a serious event. But contractors should recognize a corresponding legal effect: A comprehensive plan can become both a shield and a sword. Following a well-developed plan, documenting inspections, and responding to identified risks can provide compelling defense evidence. Ignoring the plan, failing to update it, or leaving known hazards uncorrected can create an equally compelling liability narrative.

PRACTICAL RISK-CONTROL MEASURES

The most defensible work zone must be continually evaluated against actual conditions. Contractors should treat the traffic-control plan as a living operational document. Qualified individuals with real authority to inspect and order corrections should perform and document conditions and establish triggers for reassessment after any incidents. Traffic-control duties should be clearly defined in subcontracts without assuming those duties have been delegated away. All available evidence, photographs, inspection records, plan revisions, and communications demonstrating timely response, should be protected and preserved.

Contractors should also close the loop after every significant incident. A crash investigation should not be limited to determining whether the driver was speeding or distracted. It should consider whether the event exposed a recurring queue, visibility, geometry, signage, barrier, illumination, or traffic-flow problem that warrants an immediate change. Continued use of the same configuration after repeated warning events may become a central liability issue in a later lawsuit.

The central lesson is straightforward. MUTCD and DOT compliance should be the beginning of the safety analysis, not the end. A contractor that can show both technical compliance and a disciplined, project-specific response to changing conditions will be in the strongest position to protect its workers, the traveling public, and itself. ■

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