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## SCDOT pays \$225,000 to settle claim over fatal wreck on icy Edgefield Co. road



The plaintiff in *Oliphant* claimed guardrails would have prevented the decedent's car from skidding off an icy road into a stream.

### *Plaintiff claimed culvert should have had guardrails*

The estate of a woman who was killed when her car skidded off a slick Edgefield County road and flipped into a stream has settled its claim against the state highway department for \$225,000.

The suit alleged that the S.C. Department of Transportation was negligent in failing to reinstall guardrails at the culvert — although the safety equipment had been in place 60 years ago, but later removed.

One of the plaintiff's lawyers, Nathan Hughey of Mount Pleasant, said SCDOT admitted in depositions that guardrails would have prevented the death.

"DOT's response was, 'We're real poor and we can't afford to go fixing things,'" Hughey told *Lawyers Weekly*.

"We thought we could blow that out of the water by mentioning that they had just built a \$60 million bridge in Charleston," he said.

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When SCDOT didn't take remedial action after the wreck, Edgefield County installed guardrails for less than \$10,000, according to Hughey.

He said it is usually difficult to eke out a settlement check from the state agency. "There's not usually a lot of incentive for them to settle these cases."

The case is *Oliphant v. S.C. Dep't of Transportation*, Edgefield County Civil Action No. 05-CP-19-0288. Columbia attorneys Neal M. Lourie and Tish D. Alleyne also represented the plaintiff.

The settlement was reached last month.

SCDOT's lawyer had not returned *Lawyers Weekly's* call by press time.

#### **Background**

The wreck occurred on the evening of Feb. 26, 2004, on McCreight Road near Johnston.

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# GUARDRAILS: Lawyer says settlements with state highway department are rare, difficult

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The driver and her niece were driving back from choir practice. As the car approached the culvert, it began to slide on snow and ice. The driver lost control, and the car flipped into the water below.

The driver survived the initial impact, according to the plaintiff's case report. Rescue workers heard her cries while she was pinned in the car and soaked in icy water, but they were unable to free her before she died. Her niece lived.

## Theories Of Liability

Hughey said his client faced formidable obstacles in the Tort Claims Act suit, which required him to approach SCDOT liability from several directions.

"The DOT essentially has immunity from claims that are related to snow and ice. So, we couldn't go in that direction in this case, even though the accident initially happened because there was snow and ice on the road," Hughey said.

He abandoned plans to pursue a claim against SCDOT based on its alleged failure to salt and sand the culvert during the inclement weather.

Another hurdle: discretionary immunity.

"DOT generally has immunity for things that they have discretion to make the decision on," Hughey said.

According to him, SCDOT initially maintained that guardrails were not mandatory and it was left to the agency's discretion whether to put them in.

To counter that argument, Alleyne, another of the plaintiff's lawyers, interviewed a longtime resident of the area. He told her that back in the 1940s, there used to be a wooden bridge over the culvert — and it had guardrails.

"We seized on that," Hughey said.

"We argued that you certainly shouldn't take a structure that already has guardrails and replace it with one that doesn't have them," he said.

Not only did the resident remember that the guardrails used to be there, but he also had urged the highway department to put them back, according to Hughey.

"He said that he had complained successfully to the DOT through about four different administrations, saying this was an unsafe road," he said.

After the accident, the local newspaper wrote about the incident and revealed that others had complained about the lack of guardrails at the site, according to Hughey.



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Nathan Hughey,  
represented plaintiff

"One article was entitled 'Tragedy at bridge could have been prevented.' It had a local resident saying that he had complained to Rep. [James] Clyburn about the dangers of this bridge, and that Clyburn had assured him that something was going to be done about it," he said.

During depositions, Rep. Clyburn testified that he had informed state officials about the conditions at the culvert, according to Hughey.

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