

DECISION

Reason for Decision

- 1 I have been asked to consider your claim for damages sustained by your motor vehicle on 16 February 2010 at 10:00 pm whilst travelling on the Monash Freeway.
- 2 According to the information you have provided, your vehicle was involved in an incident resulting in approximately \$2,400 in damage to it.

Background to the Complaint

- 3 In brief, you state that the damage to your vehicle was caused by a “*T-top bollard*”, that was part of a CityLink lane closure measure, being hit by a truck travelling in front of you. This caused the bollard to land on its side on the roadway in your path and the consequent damage to your vehicle.
- 4 I note from a VicRoads Notice of Incident and Claim form together with an accompanying statement of 10 March 2010 that you had contacted VicRoads in relation to the incident and they responded with details of the road management system in the area at the time of the incident involving the vehicle. You contended in respect of their response:

“...specifically, dot point four states “Physical traffic management in the right hand lane at Burke Road commences after this red cross.”, however as you will see in my initial notice of application in the sketch where the incident occurred, this lane closure occurred before (not after as stated in their system) the Burke Road overpass (to the South East) and as such we could not see the red cross before the physical traffic management started. This shows that there is some disassociation between the traffic management system and what is actually happening in practice in this case.”

- 5 CityLink, in response to an enquiry regarding damage to your vehicle, in a letter of 25 March 2010 stated:

“You indicated the damage resulted from the rubber base of the bollard while travelling on the Monash Freeway. CityLink / Southern Link Upgrade is responsible for the traffic management on this section of the road.

We installed the traffic management system in early December 2009 as part of the opening of the additional lanes on the Monash Freeway between Warrigal Road and Toorak Road. The advanced warning provided for traffic management is superior to the minimum standard required. Accordingly, we do not believe we are responsible for your vehicle damage. I have outlined further information about our traffic management system below.

- *The traffic management was installed to manage the reduction in lanes from four lanes on the Monash Freeway to three lanes on the Southern Link section of the Monash Freeway (west of Toorak Road).*
- *The traffic management was installed by the Southern Link Upgrade project. Vicroads approved the traffic management plan as the Responsible Authority for that section of road.*
- *Advance notification of the traffic management is provided as follows:*
 1. *A Variable Message Sign (VMS) approx 200m west of Winton Road states "RIGHT LANE CLOSED 2KM AHEAD";*
 2. *A set of signs mounted on the High Street Bridge (1.1km east of closure), has a white arrow above the right hand lane directing traffic to merge left;*
 3. *A set of signs mounted on the York Road Pedestrian Bridge (600m east of closure), has a white arrow above the right hand lane directing traffic to merge left; and*
 4. *A set of signs mounted on the Burke Road Bridge has a red cross above the right hand lane indicating the lane is closed.*
- *Physical traffic management in the right hand lane at Burke Road commences after this red cross.*

Considering the advanced warning provided, it appears CityLink has met its obligations and is not responsible for the damage to your vehicle. Accordingly, we do believe compensation for the damage is not appropriate."

- 6** You subsequently emailed CityLink on 12 April 2010 and made the following points, amongst others:

"I travel twice every day (130km/day) along the Princes Freeway and Western Ring Road and there are numerous varying lane closures on this road, and even in the heaviest of traffic there is enough warning of impending lane closures ahead to avoid these types of incidents in which I was involved in on the Monash.

I believe that the location of this lane closure was poorly chosen, as it was located on a bend and a dip in the road, so there was no line of sight with the lane closure to allow the traffic to smoothly merge into the other lanes, resulting in the bollard being hit by the truck in front of my car. If this lane

closure had been placed before this bend, we would have been able to see the lane closure signs for kilometres in advance which would have avoided this incident.

The fact that the trucks (two) in front of me had hit the bollard into the merging lane (it was sitting on it's side in the merging lane) proves that it this was not a case of one particular driver not realising that the lane was about to close, but proves that this was a case of a shortcoming in the advanced warning of the lane closure as there was more than one driver caught out by this, but due to the construction of their vehicles had less of an impact on their vehicles than mine.

I also further want to question who is responsible for ensuring that there is not any obstacles on the roadway, like in this case there was a T-top bollard on the roadway?

If I felt that this was just a case of not seeing the signs, I would not bother to occupy our time with these discussions as we all have better things to do with our time, and as such I would like Transurban to reconsider their position, due to the points discussed above.

I can also provide statutory declarations to this information as I have a witness who was travelling in the car with me at the time."

7 CityLink, in response to email to them of 12 April 2010 regarding the damage to your vehicle, responded on 19 April 2010 in the following terms:

"I have further investigated the issue you have raised with CityLink / Southern Link Upgrade. I have been advised the following:

The overhead Lane Use Management Signs (LUMS) on the Monash Freeway are visible from more than 100 metres away. As discussed in my original response you were made aware of the closure via:

- a Variable Message Sign 2km prior to the closure;*
- via a merge arrow 1.1km prior to the closure;*
- via a merge arrow 600m prior to the closure; and*
- via the red cross on the Burke Road bridge this is easily visible prior to the traffic management commencing.*

The notification of upcoming lane closures in this LUMS environment is far superior to that of other closures that are implemented on metropolitan Melbourne Freeways (particularly at night with illuminated signs).

You raised a further question about who is responsible for ensuring there are no obstacles on the roadway. Responsibilities for traffic management devices on the Freeway are the responsibility of the Road Authority, in this case CityLink /Southern Link Upgrade via approval from VicRoads. CityLink's obligation is to ensure the traffic management devices are correctly installed

and maintained. Regular inspections (both via CCTV camera and on road patrols), are completed throughout the day and night with a minimum of two physical inspections daily.

In the case of this incident, you could claim damages from the truck driver that hit the bollard out of its specified position. CityLink cannot be held responsible for the actions of this truck driver who may have instigated this incident.

CityLink /Southern Link Upgrade believe it has provided adequate advanced warning for motorists. It should be noted this traffic management treatment has been in place for nearly 5 months and as far as we are aware, there have been no other claims for damages due to this traffic management system.

Considering the advanced warning provided, it appears CityLink has met its obligations and is not responsible for the damage to your vehicle. Accordingly, we believe compensation for the damage is not appropriate.”

8 You subsequently stated in an email of 14 May 2010, in particular:

“I believe that the location of this lane closure was poorly chosen, as it was located on a bend and a dip in the road, so there was no line of sight with the lane closure to allow the traffic to smoothly merge into the other lanes, resulting in the bollard being hit by the truck in front of my car. If this lane closure had been placed before this bend, we would have been able to see the lane closure signs for kilometres in advance which would have avoided this incident.

The fact that the trucks (two) in front of me had hit the bollard into the merging lane (it was sitting on it's side in the merging lane) proves that it this was not a case of one particular driver not realising that the lane was about to close, but proves that this was a case of a shortcoming in the advanced warning of the lane closure as there was more than one driver caught out by this, but due to the construction of their vehicles had less of an impact on their vehicles than mine.”

9 Since the foregoing exchange of information, there has been an exchange of email correspondence facilitated by my office in respect of the issue in dispute. During the course of this correspondence you have reinforced your complaints in respect of the adequacy of the physical traffic management in the area by stating in particular:

“I was travelling in the car with another person and both of us were surprised by the swerving of the trucks, and we did not see the red cross on the Bourke Road bridge as it was obstructed by the trucks. As I have stated in previous correspondence, the statement made in the traffic management plan you detailed is incorrect. The statement:

- *Physical traffic management, in the right hand lane, at Burke Rd commences after this red cross;*

This is incorrect as the physical traffic management commences BEFORE the Burke Rd overpass by approximately 100m, so the red cross is AFTER the physical traffic management bollards that were hit by the truck, which is not in accordance with the traffic management plan. This is why I believe the location of the lane closure was not placed in a position that would allow good vision of the lane closure, especially as on the night we travelled there was no evidence of any road works in this closed lane for some kilometres, so it would have been better for the lane closure to occur after the Burke Road overpass, in which case this incident could have been avoided.

There was also a trailer mounted orange variable message board saying lane closed, but the was positioned about 100m after the Burke Road overpass, which is on a bend so could not be seen approaching the closed lane, so by the time we saw this sign the lane was already closed off by the bollards.”

- 10** You further made the additional point in respect of the visibility of traffic management warnings in the vicinity of the lane closure at the time:

“I travel over 40,000 kilometres a year and have done so for the last 7 years I have worked in Campbellfield, and as you would probably be aware have probably spent a good percentage of this driving through the constant road works on the Western Ring Road, and have never before experienced an instance where I felt that you did not have ample warning to merge for a lane closure, generally they are positioned in such a way that there is a line of sight from before the start of the merging to the location of the trailer mounted lane closure sign. However on this occasion I can't comprehend why the lane closure was positioned in this location, as you could not see the trailer mounted lane closed sign until after the lane was closed, yet if the lane closure was located about 500m before or after the location it was in, it would have been located on a straighter part of the road allowing a better line of sight to the lane closure sign. We were probably unlucky that in our particular circumstance the red cross was blocked by the trucks travelling in front of us due to the dip and bend in the road, whereas if this was on a straight section of road we would have been able to see it, but obviously we can't change the location of this bridge and sign, but the location of the lane closure could have. Relying on one red cross to indicate a lane closure at the point of the lane closure, which could be obscured as in our case, I think is inadequate and I would have thought that this would have been realised when the lane closure was implemented.”

- 11** I obtained information from CityLink and yourself in respect of your travel on the Monash Freeway between the time of the commencement of the roadwork in December 2009 and the date of the incident on 13 February 2010. Due to the volume of traffic using this section of CityLink, I also have obtained information from

CityLink about reports of similar incidents in the area in question between December 2009 and 13 February 2010.

- 12 I am satisfied that both CityLink and yourself have had adequate opportunity to make submissions in respect of the issue in dispute. I am further satisfied that CityLink and yourself both understand your respective positions in relation to the issue.
- 13 In considering your claim, I have taken into account:
- your version of events;
 - VicRoads' response to your claim;
 - CityLink's response to your claim;
 - CityLink's responsibility under the traffic management system that was in place;
 - the number of similar incidents or claims made against CityLink in the area; and
 - the responsibility of the truck drivers that struck the bollard.
- 14 Having considered the material provided by CityLink and yourself, I have no reason to doubt your version of events in respect of the incident or the basis upon which CityLink maintains that it should not be liable for the damage done to your vehicle. I do not have access to information from the truck drivers involved in the incident that led to the damage to your vehicle but I am satisfied that they had a duty of care in respect to their driving on the freeway. In this context I will look at CityLink's responsibility for the damage to your vehicle and the adequacy of the traffic management system.
- 15 I have previously provided you with a copy of a Decision I made in respect to vehicular damage sustained as a result of litter or hazardous material on public roadways, such as those controlled by CityLink. I note that you responded to this in the following terms:

"Firstly thanks for your response, however I would like to make the point that the circumstances resulting in the damage to my vehicle are different to those in the decision you provided. In the decision you provided, the debris on the roadway was as a result of a third party, whereas the debris on the road which my vehicle collided with was placed there by the road authority (or their contractor) and therefore I believe the road authority to be responsible for this equipment.

I would like to draw attention to a part of the document you provided (page 5, The History of the law– Pre 2001) as this is more relevant in my case. Paragraph 5 states:

*'By way of contrast, if a person suffered a damage or loss because of a defect **resulting from some act by the road authority, the authority could be liable to compensate for the damage or loss.** In simple terms, the road authority was not liable for damage or loss resulting from non-activity **but it was so liable if it negligently performed work such as erecting a barrier or a false curb and the damage or loss resulted.**'*

In my case the road authority (or their contractor for which they have responsibility for) erected a lane closure barrier which I believe was inappropriately positioned, not allowing clear warning of the pending lane closure, and are therefore negligent in this case. I believe that the fact that both the trucks in front of my vehicle had to swerve between traffic travelling besides them to avoid the lane closure bollards demonstrates that the location was inappropriate with inadequate warning and therefore the road authority (or it's contractor) was negligent in the positioning of this lane closure."

- 16** Due to the fact that your complaint was the first of this nature in respect of the traffic management in this area in the period in question I had received, I sought information from CityLink in the following terms:

"It would be of assistance if you could provide me with details of similar reported incidents between the commencement of the traffic management system in December 2009 and [the complainant's] incident on 13 February 2010 in the area in question."

- 17** CityLink responded on 16 June 2010 as follows:

"[The complainant's] was the only case we received. There was no other complaint from any other motorist for a similar incident."

- 18** It is relevant to the issue of the adequacy of the traffic management, to take into account that this has been the only complaint that CityLink and I have received despite the high volume of traffic using this section of CityLink each day.
- 19** CityLink has a responsibility to develop and maintain a road traffic management system that meets reasonable requirements to ensure that the section of CityLink upon which you were travelling was not dangerous to traffic. In this regard, it must meet its obligations under the Road Management legislation to which I have previously referred. This does not mean that it guarantees that accidents may not happen because of the actions of other drivers.
- 20** I note that the traffic management plan was installed as a part of an upgrade of the roadway and that VicRoads approved the traffic management plan as the responsible authority for the roadway. Details of the plan and the actual physical layout have been provided and have been set out earlier in this Decision.
- 21** I note, in particular, that you have challenged the appropriateness and visibility of the red cross on the Burke Road bridge in relation to the commencement of the road works as being a deficient aspect of the traffic management. Although not conceded by either CityLink or VicRoads, it may well have potentially been an issue for some drivers.

- 22** However, this was only one aspect of the traffic management plan in place and, on the evidence before me, has not been the cause of any like incidents other than the one with the truck or trucks travelling in front of you. This indicates that vehicles were able to travel on this section of CityLink without striking the bollards or otherwise causing damage to other vehicles.
- 23** After considering all the material I am satisfied that the damage caused to your vehicle was not as a consequence of CityLink's traffic management plan but the negligence of the truck driver who first struck the bollard, putting it in the pathway of following vehicles. I cannot, in these circumstances, find that CityLink is liable for the cost of the repairs to your vehicle.

Decision

- 24** The complaint is not upheld.

Michael Arnold
Tolling Customer Ombudsman

Dated: 29 June 2010