

Driver Safety: Does snow and ice on the road excuse the driver's negligence?

By: Steve Lombardi

The short answer is normally not.

Tuesday's edition of [one news source](#) has this headline: Ice and snow blamed for fatal accident. I read this and immediately know the writer hasn't a good understanding of what makes up negligent behavior. The headline reinforces a popular misconception but nevertheless it is legally incorrect.

So what happened in this case? It's a two-car accident on U.S. Highway 34 in Monroe County that occurred on February 13, 2009 around 4:47 PM. Two cars traveling in opposite directions collide. The first vehicle is being driven by one Delaney Palen, an 18-year old woman traveling in the westbound lane. She's driving a 2006 Chevrolet Cobalt. Delaney is from Ottumwa. The second car is a 2005 Hyundai Tucson being driven by Melissa Thompson, a 33-year old woman from Fort Leavenworth, Kansas. She's driving east on this same stretch of highway. For those of not familiar with this roadway it's a two-lane undivided U.S. highway.

There are passengers in each vehicle. Zach Murray is in the first car; Monica Thompson is in the second. Zach Murray is fatally injured in this accident.

Officer Daniel, of the Iowa State Patrol wrote the report. He's notified of the collision at 16:48 and arrives at the scene at 16:51, so he's really very close when he receives the call. Let's see how he describes the collision.

**UNIT #1 WAS TRAVELING WEST ON HIGHWAY 34 WHEN IT LOST CONTROL ON THE 100% SNOW COVERED ROADWAY. UNIT #1 CROSSED THE CENTERLINE AND SLID SIDeways INTO THE EASTBOUND LANE IN THE PATH OF UNIT #2. UNIT #2 STRUCK UNIT #1 IN THE PASSENGER SIDE DOOR. AFTER IMPACT, UNIT #2 CAME TO REST IN THE EASTBOUND LANE AND UNIT #1 TRAVELED DOWN INTO THE DITCH AND CAME TO REST IN THE EASTBOUND DITCH. TROOPER KEVIN STALLO #488 WILL CONDUCT A TECHNICAL INVESTIGATION OF THE COLLISION.**

Officer Daniel notes major contributing circumstances include the roadway's weather condition, the road surface condition and the first event is that the Palen vehicle crossed the center line. Let's assume this to be the case. There are four factors to take into consideration.

1. There is a snow storm.
2. The roadway has snow and ice.
3. Palen crosses the center line.
4. Palen's speed is fast enough for the weather conditions that the tires of her vehicle lose friction allowing the vehicle to slide out of control.

The first question you have to ask yourself is at what point a person simply has to not leave the house, waits to drive on the roads, if already on the roadway to pull off of the roadway and wait for the weather to clear sufficiently that travel is once again safe.

Iowa is a [comparative fault](#) state. What is fault as the law defines it? Fault is one or more omissions towards the person or property of the actor or of another which constitutes negligence or recklessness. It could mean misuse of a product, unreasonable failure to avoid an injury or unreasonable failure to mitigate damages. [Iowa Code 668.1](#).

After you determine if more than one party to the claim is at fault then you have to compare the two. More than one person can be at fault under the law.

What is negligence? Or stated another way, what things make a person negligent? Start off with the rules of the road. Under Iowa law there are [rules of the road](#) that [everyone learned when they first learning to drive](#). These rules are things like drive on the right side, don't cross the center line unless it's safe to do so, drive at the posted speed limit, don't pass when there is a double yellow line and obey the traffic signs and signals, to name a few. Chapter 321 of the Iowa Code lists well over 400 rules-of-the-roads. These are what we call statutory rules because they are created by the legislature by enacting a statute.

Then there is [the common law](#) that has created certain rules for using the public highways. These include a common law duty to drive so that you can maintain control, to drive using ordinary care where conditions require less than the statutory speed limit and maintaining a proper look out.

Read alone a person might think they are not negligent for driving the posted speed limit even though the weather conditions indicate otherwise. The speed limit could be 55 M.P.H. but that doesn't excuse a person if the roadway is covered in ice/snow and they fail to adjust to the conditions and slow down. We all have a duty to drive at a careful speed not greater than or less than is reasonable and proper, having due regard for the traffic, surface and width of the highway and of any other existing conditions. That is the first jury instruction under speed restrictions. [UJI 600.1](#) (You need to be a

lawyer to have access to the UJI through the Iowa Bar Association website.) Anyone who's ever sat on a jury that decided a car accident probably heard and read this instruction.

As the court's instruction would be to a jury, a violation of this duty is negligence.

So let's get back to our example of driving while the road is ice and snow covered and snow is falling. I make no judgments about who is or is not at fault or negligent in the case of Palen and Thompson because I know nothing about that accident. We know what the police said about it but the police officer isn't a court of law and those findings are not conclusive.

If before leaving the house you see it's snowing and know the roads are ice covered you have to ask if you can drive safely or not. If not maybe you should stay home.

On the other hand if you're out driving and it begins to snow and the roads become ice covered there is a point in time when you should pull off the road to avoid losing control.

And if you can drive safely but you have to slow down, then do so.

Ask yourself, what is the explanation of why each driver continued to drive and not pull over or to slow down enough to not lose control? Remember the facts? The car collision occurs in one lane of travel. One car crossed the center line. That is a very important fact. Because whatever you might think of car one's driver continuing to drive, they were doing so under control; and that's not true about the second car.

So as badly as you may feel about the collision and how badly the occupants were injured it doesn't excuse negligence. And the weather isn't at fault, it's just one consideration. I say that because the weather isn't driving the car. It's the drivers. Looking back at the beginning of this post, the headline blaming ice and snow for this fatal accident is inaccurate and a misstatement of the law of negligence.

Now all of you who read this and believe it sounds so easy that you should represent yourselves, think again. A professor in law school was heard to say, "A lawyer representing himself has a fool for a client." In most instances I would agree with Professor Powers. Being prepared isn't the same as being able to litigate a lawsuit. Be prepared but don't be foolish.

Know your rights, protect yourself and be alert to risks that can cause injury or death.

Visit the [Help Center](#) at the [InjuryBoard](#) or here at [Lombardi Law Firm's website](#). Steve Lombardi writes for each and explores the how's and why's people are injured in our society. He also provides commentary and insight on his blog at [The Verdict](#) and on the [Des Moines Register](#).

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Notes:

[http://www.ottumwa.com/local/local\\_story\\_047003514.html](http://www.ottumwa.com/local/local_story_047003514.html)

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<b>L O C A T I O N</b>	Date of Accident <b>2/13/2009</b>	Time of Accident <b>04:47 PM</b>	County <b>Monroe - 68</b>	Accident occurred within corporate limits of (city)	Law Enforcement Case Number: <b>2009011120</b>		
	Literal Description <b>US 0034 / US 34 measuring 1458 Feet East from US 0034 / US 34 (Milepost 169)</b>				Legal Intervention? <b>No</b>	Private Property? <b>No</b>	
					X-Coordinate: <b>518195.1</b>		
					Y-Coordinate <b>4540691.</b>		
<b>U N I T</b>	Driver's Name - Last <b>PALEN</b>		First <b>DELANEY</b>	Middle <b>SUE</b>	Suffix		
	City <b>OTTUMWA</b>		State <b>IA - Iowa, US</b>		Zip <b>52501</b>		
	Driver's Age <b>18</b>				Citation Charge Code 1	Citation Charge 1	
	Gender <b>Female</b>	State <b>IA - Iowa, US</b>	Class <b>C - Non-commercial vehicle or commercial Veh w/26000 GVWR or less &amp; either 16 Pass Design or Hazmat</b>	Endorsements <b>None</b>	Restrictions <b>B - Cor Lenses</b>	Citation Charge Code 2	Citation Charge 2
Alcohol Test Given? <b>1 - None</b>		Drug Test Given? <b>1 - None</b>		Citation Charge Code 3	Citation Charge 3		
Seating Position <b>01 - Front: Left Side / Motorcycle Driver</b>		Injury Status <b>2 - Incapacitating</b>	Occupant Protection <b>2 - Shoulder and lap belt used</b>	Airbag Deployment <b>5 - Not deployed</b>	Airbag Switch Status <b>9 - Unknown</b>	Ejection <b>1 - Not ejected</b>	Ejection Path <b>1 - Not trapped</b>
Transported to: <b>MONROE COUNTY HOSPITAL</b>				Transported by: <b>MONROE COUNTY HOSPITAL</b>			
Insurance Co. Name							
Year <b>2006</b>	Make <b>Chevrolet - CHEV</b>	Model <b>COBALT</b>		Style <b>2DR</b>	Approximate Cost to Repair or Replace <b>15000</b>		
Initial Travel Direction <b>4 - West</b>	Vehicle Action <b>01 - Movement essentially straight</b>	Speed Limit <b>55</b>	Point of Initial Impact <b>03 - Right Side</b>	Most Damaged Area <b>03 - Right Side</b>	Extent of Damage <b>5 - Severe, vehicle totaled</b>	Override/Override <b>1 - None</b>	
Total Occupants <b>02</b>	Traffic Controls <b>01 - No controls present</b>	Vehicle Config. <b>01 - Passenger car</b>	Cargo Body Type <b>01 - Not applicable</b>	Vehicle Defect <b>01 - None</b>	Driver Condition <b>1 - Apparently normal</b>	Vision Obscured <b>01 - Not obscured</b>	Contributing Circumstances, Driver (up to 2)
SEQUENCE OF EVENTS			First Event <b>04 - Crossed centerline/median</b>	Second Event <b>21 - Vehicle in traffic</b>	Third Event	Fourth Event	Most Harmful Event (by vehicle) <b>21 - Vehicle in traffic</b>
Emergency Vehicle Type					Emergency Status		

<b>1 - Not applicable</b>				<b>3 - Not Applicable</b>			
Carrier Name			City		State		Zip
Number of Axles			Gross Vehicle Weight Rating		Placard #		Hazardous Materials Released?

Driver's Name - Last <b>THOMPSON</b>				First <b>MELISSA</b>			Middle <b>HOPE</b>		Suffix
City <b>FORT LEAVENWORTH</b>				State <b>KS - Kansas, US</b>			Zip <b>66027</b>		
Driver's Age <b>33</b>					Citation Charge Code 1		Citation Charge 1		
Gender <b>Female</b>	State <b>IL - Illinois, US</b>	Class <b>D - Chauffeur</b>	Endorsements <b>None</b>	Restrictions <b>None</b>	Citation Charge Code 2		Citation Charge 2		
Alcohol Test Given? <b>1 - None</b>			Drug Test Given? <b>1 - None</b>		Citation Charge Code 3		Citation Charge 3		
					Citation Charge Code 4		Citation Charge 4		
Seating Position <b>01 - Front: Left Side / Motorcycle Driver</b>	Injury Status <b>4 - Possible</b>	Occupant Protection <b>2 - Shoulder and lap belt used</b>	Airbag Deployment <b>1 - Deployed front of person</b>	Airbag Switch Status <b>1 - Switch in ON position</b>	Ejection <b>1 - Not ejected</b>	Ejection Path	Trapped <b>1 - Not trapped</b>		

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Insurance Co. Name

Year <b>2005</b>	Make <b>Hyundai - HYUN</b>	Model <b>TUCSON</b>	Style <b>SUV</b>	Approximate Cost to Repair or Replace <b>25000</b>
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Initial Travel Direction <b>2 - East</b>	Vehicle Action <b>01 - Movement essentially straight</b>	Speed Limit <b>55</b>	Point of Initial Impact <b>01 - Front</b>	Most Damaged Area <b>01 - Front</b>	Extent of Damage <b>5 - Severe, vehicle totaled</b>	Underride/Override <b>1 - None</b>
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Total Occupants <b>02</b>	Traffic Controls <b>01 - No controls present</b>	Vehicle Config. <b>04 - Sport utility vehicle</b>	Cargo Body Type <b>01 - Not applicable</b>	Vehicle Defect <b>01 - None</b>	Driver Condition <b>1 - Apparently obscured normal</b>	Vision Obscured <b>01 - Not obscured</b>	Contributing Circumstances, Driver (up to 2)
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SEQUENCE OF EVENTS		First Event <b>21 - Vehicle in traffic</b>	Second Event	Third Event	Fourth Event	Most Harmful Event (by vehicle) <b>21 - Vehicle in traffic</b>
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Emergency Vehicle Type <b>1 - Not applicable</b>	Emergency Status <b>3 - Not Applicable</b>
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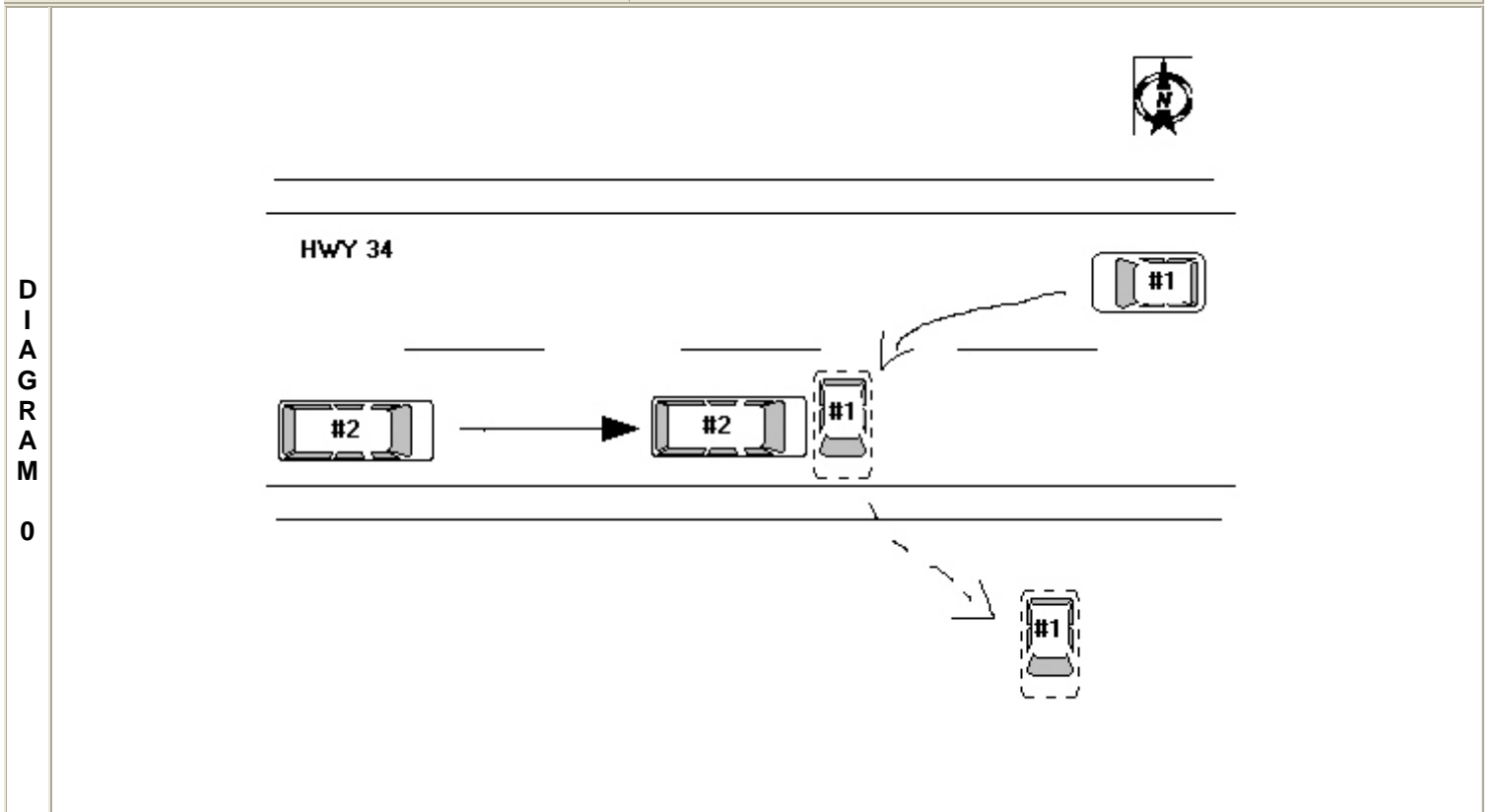
Carrier Name			City		State		Zip
Number of Axles			Gross Vehicle Weight Rating		Placard #		Hazardous Materials Released?

ACCIDENT ENVIRONMENT			ROADWAY CHARACTERISTICS Major Contributing Circumstances:			WORKZONE RELATED?		SEQUENCE OF EVENTS	
Location of First Harmful Event <b>1 - On Roadway</b>		Weather Conditions (up to two) <b>03 - Cloudy</b>		Environment <b>2 - Weather condition</b>		Location		First Harmful Event of Crash (use codes 11-42 only) <b>21 - Vehicle in traffic</b>	
Manner of Crash/Collision <b>5 - Broadside</b>		Surface Conditions <b>4</b>		Roadway <b>02 - Road surface condition</b>		Type			
Light Conditions <b>1 - Daylight</b>		Type of Roadway Junction/Feature <b>01 - No special feature</b>		Workers Present?					

<b>P E R S O N</b>	Name- Last <b>MURRAY</b>				First <b>ZACHARY</b>			Middle <b>DAVID</b>		Suffix	
	City				State			Zip Code			
	Age <b>19</b>	Sex <b>Male</b>	Unit No. <b>01</b>	Seating Position <b>03 - Front: Right Side</b>	Injury Status <b>1 - Fatal</b>	Occupant Protection <b>2 -</b>	Airbag Deployment <b>5 - Not</b>	Airbag Switch Status	Ejection <b>1 - Not ejected</b>	Ejection Path <b>1 - Not ejected/not</b>	Trapped <b>3 - Extricated</b>

N E D	Shoulder and lap belt used	deployed	9 - Unknown	applicable	by mechanical means			
	Transported to: <b>MONROE COUNTY HOSPITAL</b>			Transported by: <b>MONROE COUNTY HOSPITAL</b>				
	NON-MOTORIST	Type	Location	Action	Condition	Safety Equipment	Contributing Circumstances	Unit No. of Vehicle Striking

P E R S O N  I N J U R E D	Name- Last <b>THOMPSON</b>			First <b>MONICA</b>			Middle		Suffix		
	City			State					Zip Code		
	Age <b>7</b>	Sex <b>Female</b>	Unit No. <b>02</b>	Seating Position <b>09 - Rear: Right Side</b>	Injury Status <b>4 - Possible</b>	Occupant Protection <b>5 - Child safety seat used</b>	Airbag Deployment <b>5 - Not deployed</b>	Airbag Switch Status <b>9 - Unknown</b>	Ejection <b>1 - Not ejected</b>	Ejection Path <b>1 - Not ejected/not applicable</b>	Trapped <b>1 - Not trapped</b>
	Transported to: <b>MONROE COUNTY HOSPITAL</b>						Transported by: <b>MONROE COUNTY HOSPITAL</b>				
	NON-MOTORIST	Type	Location	Action	Condition	Safety Equipment	Contributing Circumstances	Unit No. of Vehicle Striking			



**NARRATIVE**

**UNIT #1 WAS TRAVELING WEST ON HIGHWAY 34 WHEN IT LOST CONTROL ON THE 100% SNOW COVERED ROADWAY. UNIT #1 CROSSED THE CENTERLINE AND SLID SIDWAYS INTO THE EASTBOUND LANE IN THE PATH OF UNIT #2. UNIT #2 STRUCK UNIT #1 IN THE PASSENGER SIDE DOOR. AFTER IMPACT, UNIT #2 CAME TO REST IN THE EASTBOUND LANE AND UNIT #1 TRAVELED DOWN INTO THE DITCH AND CAME TO REST IN THE EASTBOUND DITCH. TROOPER KEVIN STALLO #488 WILL CONDUCT A TECHNICAL INVESTIGATION OF THE COLLISION.**

Officer <b>DANIELS</b>	Badge No. <b>089</b>	Time Officer Notified of Accident <b>16:48</b>	Time Officer Arrived At Scene <b>16:51</b>
Name of Agency	Date of Report	Investigation made at scene?	T.I. #

<b>P14</b>	<b>2/13/2009</b>	<b>Yes</b>	
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