

To Pay or Not to Pay?

By Carlene Brown

As we enter the season where the weather changes, potholes begin to form after snow or rain seeps into the soil below the road surface. The moisture freezes when temperatures drop, causing the ground to expand and push the pavement up. As the temperatures rise, the ground returns to normal level but the pavement often remains raised. This creates a gap between the pavement and the ground below it.

Jane Smith was travelling down a road and hit a pothole, causing her tire blow out and damaging her wheel. She filed a claim with the City alleging that the City was responsible for the damage to her tire and wheel in the amount of \$750. Jane is claiming it is the duty of the City to keep the roads maintained and safe from road hazards.

Once the City was notified of the pothole, they took immediate action and sent out their work crew to assess the pothole and make the repairs. The crew repaired the pothole within 48 hours of having received notice that there was an issue in this particular area and location.

Municipalities have a duty to keep their roads reasonably safe for ordinary use. According to the case of *Wright v. Kennewick*, a municipality is liable for a dangerous condition it did not create only if it has notice of the condition and a reasonable opportunity to correct it. Notice can be either actual or constructive. In this case, the City did not have actual notice of the condition and upon notice, repaired the pothole within 48 hours of receiving notice.

Although it was unfortunate that Jane Smith had damages to her vehicle, once the City was notified of the issue and took corrective action to repair it, the City did not do anything negligent and therefore does not owe for her damages.

The term reasonableness can be ambiguous. It is important for cities to have a written process for recording when notice was received, where the defect is located and when the road defect was fixed. After the notice is received, the “reasonableness clock” has started and the City needs to take action to provide a reasonable repair of the defect. The time of repair needs to be noted along with the type of repair (gravel, cold patch) and any comments.

WCIA does not recommend creating an internal policy that requires member staff to respond to street defects within a certain amount of hours. For further information, please see our recommendation for potholes from the Liability Resource Manual:

<http://www.wciapool.org/member-resources/documents/RMS-Liability>