

# Potholes: Are They Popping Up in Your Neighborhood?

By Doug Martin

Every roadway has the potential for developing potholes and I speculate a majority do at some point during their asphalt or concrete lifetime. Whether they develop overnight or progressively, municipalities owe a duty to the driving public to deal with potholes, large or small, on their public roadways.

Claims of vehicle damage against municipalities due to potholes are common. There were 82 claims against members in 2015 and 83 to date for 2016. Claims tend to spike this time of year and stay steady through spring time. Typical occurrence descriptions by claimants include: "I did not see the pothole I hit." "I was not able to avoid it." Occasionally some creative descriptions: "That pothole popped up from nowhere and blew out my tire." "I couldn't slow down for the pothole because I was being tailgated by another driver."

The standard for municipalities is to maintain their roadways in reasonably safe condition for ordinary travel. Meeting the standard of care reflects the use of normally accepted methods or practices of other agencies performing the same activity.

Successfully defending these claims hinges on when the municipality had notice (actual or constructive – should have known) of the hazard and when action was taken to correct it. We cite the Washington State Case *Wright v. Kennewick*, which held that a municipality is liable for a dangerous condition which it did not create only if it had notice of the condition and does not act reasonably to correct it. So, a claim can be justifiably rejected if the municipality was not aware of the pothole prior to the incident. Additionally, if there was prior notice and repair was made, then there is no negligence and the claim is denied.

My experience has been that the pool members perform very well in responding to this exposure. Keep up the good work. The damages sustained are certainly unfortunate, but if there is no liability, a respectful adverse claim decision is given to the claimant.