

The perfect road

By Tanya Crites

One of the most expensive and time consuming challenges a city or town faces is constructing and keeping roads and streets in a reasonably safe condition for ordinary travel. Washington courts have decided what “reasonably safe” and “ordinary travel” mean. When a suit is brought alleging road design, the plaintiff has the burden to demonstrate that a roadway was not reasonably safe for ordinary travel. In addition, Washington law [RCW 4.22.070\(1\)\(b\)](#) states: “If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants [claimant's] total damages.” This means that the city/town could be left paying an entire judgement even though other defendants share the fault.

So, what can a city/town do to mitigate this risk?

A perfect road or street is not a reality. Therefore, a city/town must be able to demonstrate it is doing its best to meet its duty.

COUNCIL: This all starts with providing the legislative body with the information it needs to support funding for new construction and for the ever-increasing maintenance required for the existing aging infrastructure. Prioritization of large capital expenditures and a plan for implementation can be used to argue for discretionary immunity. While not foolproof, these arguments have been upheld by the courts.

DESIGN: It is vital that the initial design of a new road or street (including signs, lights, traffic calming, bike and pedestrian considerations, etc.) is created by a qualified engineer(s) following engineering standards and legal requirements. The engineer must provide detailed reports and plans which the city/town retains in its archives.

CONSTRUCTION: The construction should be performed by an experienced contractor with appropriate city/town oversight. Remember to make sure all traffic control devices and signs are present before acceptance.

MAINTENANCE: While some claims may allege an injury was caused due to negligent design or faulty construction of a road, many “street design” type claims allege improper, inadequate or negligent maintenance. To defend these allegations, a city/town should, at a minimum, **DOCUMENT** that it has:

- identified and prioritized areas of concern and adopted a plan to deal with issues;
- inventoried lights, signs, traffic calming devices, crosswalks, bike lanes, vegetation, utilities, etc.;

- created and followed maintenance and replacement plans and schedules;
- recorded citizen complaints and city/town action taken (or why no action was taken); and
- developed a retention schedule for all documentation.

The reality is, tragic injuries can occur on any road or street at any time, and are usually the fault of a party other than the city/town. The city/town may be brought into a resulting claim or lawsuit for a number of reasons, including but not limited to, inadequate insurance limits of the at-fault party; recent court cases increasing a municipality's duty and expanding the definition of "ordinary travel" of a roadway; or, the "joint and several" liability statute. Implementing and documenting a robust, yet reasonable, program for managing city/town infrastructure increases the city's/town's ability to successfully defend itself.