

Responding to potholes

By Doug Martin

Webster's New World Dictionary defines a pothole as a deep hole or pit; chuckhole. No doubt many motorists use colorful language to describe the road conditions that cause damage to their vehicles. Some claimant descriptions of potholes we have gleaned from claim forms include: moon crater, gorge, black hole, sink hole and bottomless pit.

In liability claims, you should only be liable for damages if you breached a duty owed to the claimant. The legal duty is to maintain roadways in reasonably safe condition for ordinary travel. Ordinary travel is for all users of the road, not just the motoring public.

Based on the many pothole claims we handle every year, it is clear the membership is attentive to responding to the public's road complaints as well as making routine inspections of roadways. If you have internal processes to receive and timely investigate pothole complaints, you are meeting your obligations to the public.

If your staff remediates the pothole with hot/cold mix within a reasonable time period after receiving first notice of the pothole, then the City has again met its legal duty to users of the road and the claim is rightfully denied. The legal case, *Wright v. Kennewick*, 62 Wn.2d 163 (1963), holds that a municipality is liable for a dangerous condition which it did not create only if it has notice of the condition and does not act in a reasonable manner to correct it.

When a claim is rejected because there was no prior notice of the pothole, it is not unusual for the claimant to say, "the City is just saying that so they don't have to pay the claim." But, when we explain what is done after receiving notice, there is at least a better understanding why their claim is rejected. In some instances, there is no understanding. A claimant was adamant the City owned the street and therefore should pay for his damaged car. He said he had been dodging that pothole for a year. When he was asked if he ever notified the City about the pothole, there was dead silence on the phone and the claim was closed.

Because of your efforts, WCIA is able to effectively defend Claims for Damages, which can range from a few hundred dollars for a blown tire upwards to several thousands of dollars when specialty wheels, suspensions and under carriages are involved.