

Sidewalk maintenance challenge: balancing safety and nature

By Jessica Dedman

A WCIA member city takes great pride in the safety of its citizens, which led to the development of a comprehensive sidewalk maintenance program. This initiative ensures diligent maintenance of sidewalk lifts while preserving the city's renowned abundance of trees. The city has maintained its certification as a Tree City USA for fourteen years, with a Board Certified Master Arborist on staff for ten of those years, ensuring the health of the city's trees.

In 2017, the arborist, along with city engineers, developed the sidewalk maintenance program to balance tree preservation with sidewalk safety. Every other year, city maintenance workers inspect each sidewalk, document defects, and provide temporary fixes until they can grind them down. The city had a written policy of addressing lifts over 0.25 inches.

In September 2020, a plaintiff in his thirties was running in his neighborhood with his two children when he tripped on a sidewalk lift allegedly caused by a city tree root. The fall resulted in a fractured leg requiring surgery. Although the plaintiff was familiar with the street, he did not notify the city immediately and waited to take photos of the lift.

Without notice from the plaintiff, the city identified and mitigated the defect during its 2022 sidewalk survey. Since neither party measured the lift at the time of the fall, experts were retained to estimate its height. The plaintiff's expert claimed the lift was over one inch in 2020, while the city asserted the lift was not identified in its 2019 Sidewalk Repair and Replacement Program as they had remediated hazards on both sides of this area that year.

A governmental entity is not required to make its sidewalks absolutely safe but must use reasonable care for ordinary travel in the maintenance of its sidewalks. A lack of reasonable care is often established through direct or constructive notice of an unsafe condition, with constructive notice being established when the defect existed long enough that ordinary care and diligence should have led to its discovery and mitigation. Here, WCIA felt the city had gone above and beyond in their maintenance program and certainly met their legal burdens.

The plaintiff incurred \$86,740.32 in medical expenses and requested \$850,000 to resolve his claim. Given what WCIA felt was a strong liability position in maintaining the sidewalk and after failed negotiations, the case went to a bench trial with Judge Darvas presiding.

In her written opinion, Judge Darvas awarded the plaintiff all his medical bills and \$850,000 in pain and suffering for a total of \$936,740.32. She reduced the award by finding the city 60% negligent, resulting in a verdict of \$562,058.59 against the city.

In WCIA's view, Judge Darvas applied a strict liability standard rather than one of reasonable maintenance. She accepted the plaintiff arborist's circumstantial testimony that the lift was over one inch and asserted the city should have caught and mitigated it, though they had attempted to find and had remediated all issues they found in the area less than twelve months prior. She also asserted the city failed to meet its own standard of mitigating all lifts above 0.25 inches and awarded ten times the incurred medical bills in general damages.

After a verdict, interest begins to accrue on the judgement during the pendency of an appeal. While WCIA filed an appeal on this matter and had strong thoughts about our ability to prevail on appeal, we would have been remanded for a new trial that would have come with additional defense costs and still a potential for an adverse verdict. Given those potential costs, this matter was settled for less than the verdict while on appeal.

In WCIA's view, the city was a model for responsible sidewalk maintenance and certainly was meeting their legal burdens of "reasonable care." WCIA disagreed with the legal standard applied and thought the general damages award was excessive, but this judgment is representative of the risk to municipalities in Washington. Going forward, WCIA would recommend that cities use programs like this one but refrain from adopting a strict numerical standard of when a hazard will be mitigated.