

The Public Duty Doctrine under siege - a new front in tort litigation

By Tiffany Ambrose

A recent appellate case out of Washington State has placed renewed focus on a foundational principle of tort law: the Public Duty Doctrine. In a legal environment where plaintiffs' attorneys are increasingly targeting municipalities for the actions of first responders, the case of *Zorchenko v. City of Federal Way* is a textbook example of how long-standing doctrines are being tested, reinterpreted, and some would argue deliberately eroded.

At the heart of the dispute is a tragic incident: Aleksey Zorchenko was struck by a van while standing on the shoulder of the road after a minor vehicle collision with another driver. While the officer was facilitating an exchange of information a van sideswiped the patrol car before crashing into Zorchenko's vehicle and pushing it into him. Zorchenko sued not only the at-fault driver but also the City, claiming that the officer negligently parked her vehicle and failed to warn him to stay in his car.

The trial court dismissed the claims against the City, applying the Public Duty Doctrine - the rule that government entities owe duties to the public at large, not to individual citizens, unless a specific exception applies. The appellate court affirmed this ruling, emphasizing that the officer was performing core governmental functions mandated by statute, such as reporting collisions and managing traffic. These are duties no private party could assume, and therefore, no private analogy for tort liability exists.

Yet, Zorchenko's legal team attempted to circumvent this doctrine by citing *Norg v. City of Seattle*, a recent case in which the Washington Supreme Court found a "special relationship" exception due to a prolonged 911 call and assurances from emergency dispatch. However, unlike *Norg*, which involved a delayed emergency medical response, the *Zorchenko* case lacked the extensive dispatcher interaction or unique undertakings that might create an individual duty.

This case is significant because it reveals a growing trend: plaintiff attorneys are increasingly framing negligence claims in ways that attempt to create exceptions to the Public Duty Doctrine, often relying on cases like *Norg* to argue for individualized duties where none traditionally existed. This has the potential to undermine the doctrine's core purpose - limiting government liability to circumstances where it mirrors private conduct.

Why It Matters:

- The Public Duty Doctrine protects municipalities from being sued every time a police officer, firefighter, or public official performs a statutory duty.
- Without this doctrine, governments would face constant litigation for discretionary acts, especially in emergency or law enforcement contexts.
- As cases like *Zorchenko* show, plaintiffs are not only challenging the limits of this doctrine - they are trying to reshape it.
- Washington's joint and several liability makes the 'deep pocket' pay for the acts of others when the plaintiff is fault free and the co-defendants share fault.
- Increasing jury verdict awards coupled with joint and several liability makes the financial exposure of the loss of Public Duty Doctrine enormous.

The appellate courts upheld the doctrine here, but plaintiffs are continually challenging and trying to erode the doctrine's protections for municipal entities. Over the last decade we have seen a continued erosion of the doctrine's protections. WCIA looks for cases with good facts to try and build a body of case law upon, and here we were able to secure a win for our member.