

# Duty to road users under *Keller*

By Harlen Stientjes

Washington municipalities continue to confront uncertainty over the scope of their duty to pedestrians under *Keller v. City of Spokane*. Recent cases illustrate that while the existence of a duty is well settled, its boundaries remain highly fact dependent.

In *Keller*, the Washington Supreme Court held that municipalities must exercise ordinary care to keep streets and sidewalks reasonably safe for ordinary travel. Crucially, the Court grounded that duty in foreseeable use, not strict adherence to traffic design or pedestrian controls. This principle is reflected in WPI 140.01, which instructs juries that a municipality's duty extends to persons using streets and sidewalks in a reasonably foreseeable manner.

WCIA is arguing a case at the state appellate courts now wherein a pedestrian jay-walked across the road and was hit by a 3rd party driver, killing her. There was no crosswalk in this location, nor was the area designed for pedestrian crossing. A marked crosswalk was a short distance away. The trial court dismissed the case in our favor after understanding that this use was not intended in this City's design and finding that we had a duty to keep the road safe to foreseeable uses only. The plaintiff has argued that prior complaints about a lack of a crosswalk create a duty to the City to create one, they also argue the City did not keep the road reasonably safe because there was not enough streetlights. This proposition turns transportation planning on its head and would create obligations to cities' limited resources that are expensive and not best engineering practice based on what members of the public choose to do for their own ease. Hopefully, we will prevail in our arguments. This case highlights the growing tests plaintiffs bring to the duty, and the varying appellate courts have had differing opinions on this issue. It also supports that WCIA looks for defensible cases and takes a strong position in them.

Courts have applied *Keller* with varying results, though mostly through unpublished opinions. In *Perez v. City of Seattle*, the court found no duty where a pedestrian was injured while crossing outside a crosswalk, concluding that the location and manner of travel were not reasonably foreseeable under the circumstances. *Perez* remains an important reminder that foreseeability has limits.

Recent other decisions, however, have taken a broader view. In *Stenzel v. Dumbrava*, the court emphasized that *Keller's* duty is not confined to sidewalks or marked crossings and may apply wherever pedestrian presence in the roadway is reasonably foreseeable. More recently, in *Brende v. City of Seattle*, a court applied *Keller* to a pedestrian injured while walking to a legally parked vehicle, reasoning that on-street parking necessarily creates foreseeable pedestrian movement in the roadway. These broader interpretations create much greater risk for cities in that cities need to consider designing and maintaining roads with pedestrians all over, instead of just in planned areas like sidewalks and crosswalks.

Taken together, these cases suggest that Washington courts are not completely aligned on where the duty to a pedestrian begins and ends when using the roadway and courts are increasingly reluctant to draw bright-line exclusions based solely on a pedestrian's location. While *Stenzel's* ruling is much more expansive, the decision was reasoned based on curb cuts enticing the pedestrian to believe the area was a crosswalk. The *Perez* analysis turns on how streets are actually used and whether the municipality could reasonably anticipate pedestrian activity at the location in question.

For municipalities, these cases highlight several practical considerations:

1. **Foreseeability Is the Central Risk Driver**  
The court's interpretation of duty will often turn on whether pedestrian activity—however informal—is predictable given parking patterns, land use, transit stops, or nearby destinations.
2. **On-Street Parking Increases Exposure**  
Where on-street parking is permitted, courts may view pedestrian movement into the roadway as inherent and foreseeable.
3. **Design Decisions Matter**  
Striping, curb extensions, lighting, signage, and sight-distance limitations may all be evaluated as part of the analysis.
4. **Summary Judgment Is Less Certain**  
Because WPI 140.01 frames duty broadly, courts are increasingly inclined to leave foreseeability and breach questions to the jury.
5. **Documentation and Prioritization Are Critical**  
Maintenance records, hazard assessments, and rational prioritization of improvements can be essential in defending against claims that a condition rendered a street unreasonably unsafe. Signage in areas you do not want or design for pedestrians may become crucial.

As pedestrian behavior and street use continue to evolve, municipalities should expect *Keller*-based duty arguments to remain a central feature of pedestrian litigation—and should plan accordingly. As these cases expand to whom a duty is owed, loss costs and loss frequency will continue to be driven up. This comes at a time when city resources to address infrastructure challenges are limited. Washington's joint and several statute and recent jury verdicts present work in concert with this expanded duty to provide enormous financial exposure to members from these road design losses.