

Sidewalk rise “notice”

By Jessica Dedman

WCIA received a claim for damages submitted by a claimant who had tripped on a one and a half inch sidewalk lift. Upon review of the photos the claimant submitted, the lift appeared to be from a tree that was growing on the property of an abutting property owner. The claimant also provided a screen shot of a complaint submitted to the City on its online tracking tool prior to the date the claimant tripped.

Members have a duty to keep their streets and sidewalks reasonably safe for ordinary travel. One of the questions an adjuster has to answer is whether the City had notice of the sidewalk rise before the person tripped and fell. Notice can be actual (someone directly told the City to fix the problem) or constructive (the issue has been there so long the City should have seen it and corrected it). There are other defenses and risk transfer present on this claim but whether the City had notice is the focus of this article.

Initially, WCIA looked at Google Maps and found evidence the lift appears to have been present since 2011. We next asked the City whether anyone had directly complained about this area of sidewalk in the past. The City reported that no one had complained to the public works department about the sidewalk lift. This generally might have been enough to deny liability on actual notice; however, the presence of the lift for 12 years may be constructive notice.

During WCIA’s investigation, we discovered that the City had created a database to track Americans with Disability Act (ADA) issues on their website which was open to the public. While the intent of the online tracking tool was to bring awareness to areas to which the City could improve ADA access, residents had begun to lodge complaints about sidewalk rises on this website. Once the complaint was made, it was available for anyone to see. The City intended to use this website for resource planning and future projects, and having not realized residents were reporting sidewalk rises, the City was not responding to those complaints made on their website in real time. The City’s intent was big picture problem-solving; however, this secondary use by the public was an unfortunate consequence. In considering this claim, the City is likely to be deemed by a jury to have had notice of this sidewalk issue, even though it was not reported via City staff’s preferred method.

Members should consider their various interactions with the public and where the public may be “providing notice” of hazards around the City. Simple solutions are adequate once a member is put on notice of a sidewalk lift. Consider spray painting the hazard until the repair can be budgeted, and maintain the spray paint in a visible fashion until the repair occurs. “Notice” may not always come in a member’s preferred method, it can be via email to a single staff member, by phone to the front desk, or a litany of other methods!