

Potholes CLAIMS BRIEF



No. 16

March 2000

The Pothole Primer

By Erik Walter

With the advent of spring, streets and roads begin to reveal the wear and tear suffered through the harsh winter. This wear and tear manifests itself in many forms, such as cracks, splits and most annoyingly, potholes.

This is the time of year road maintenance and pothole repair become important as the weather relents and allows crews to get out and make permanent repairs to winter-ravaged roads. Unfortunately, far more potholes spring forth than there are hours to make repairs, causing much frustration amongst drivers who happen to experience these nuisances first-hand.

With frustrated drivers come claims alleging tire, alignment and suspension damage due to potholes. Along with the many small claims come some claims alleging significant damage. When someone has an accident due to hitting a pothole, the results are potentially serious.

Maintenance Liability

The immunity defense cannot be invoked in road maintenance claims. Maryland courts have long held that local governments are "liable for failure to keep the public highways under its management and control in a reasonably safe condition...." *Mayor and City Council of Baltimore City v. Blueford*, 173 Md. 267, 273 (1937).

In the absence of the immunity defense, we must determine if the local government entity were negligent in the maintenance of the roadway where the claim occurred.

Prior Notice

In determining whether or not a locality was negligent in the maintenance of its road, we look to see if the local government had **notice** of the pothole, or road condition, that caused

Please Route to:

Sheriff _____
Attorney _____
Police Chief _____
Clerk _____

Human Resources _____
Risk Management or Claims _____
Manager _____

the damage to the claimant's vehicle. **Notice** is one of the key elements in deciding whether or not a member is negligent in the maintenance of its road.

There are two kinds of **notice**, actual and constructive. Actual **notice** is when a member has knowledge of a defect, either by a citizen report or an inspection. Constructive **notice** is the concept that a member should have known of the defect through general inspection of its roads, or because a specific road has a history of pothole related complaints and should have a higher level of maintenance.

The general rule of law is that if a local government does not have notice of the defective condition of the street, it is not liable for injuries caused by the defective condition. *Neuenschwander v. Washington Suburban Sanitary Comm.*, 187 Md. 67 (1946).

In addition, even if a member had notice, if its actions were not negligent, it will not be found liable. If there is a plan in place for repairing the road and reasonable steps are being taken for the repair, there will not be evidence that the member failed in its duty to maintain the roads.

Road Maintenance Defenses

The following are a handy guide for helping LGIT defend road maintenance claims:

- Keep an accurate log of citizen complaints concerning problems in member-controlled roads. (An accurate log of complaints helps us verify lack of notice if a problem shows up for which there has not been a citizen complaint.)
- Make quick and effective repairs upon learning of a potential problem in the road
- Maintain a regular inspection and maintenance schedule for member controlled roads (Obviously, roads with high traffic should be inspected more than low traffic roads.)
- Confirm ownership of the road (If the locality does not own the road, they are not liable for any damage)
- Establish a plan for repairs and prioritize repairs according to consistent guidelines.

By following these guidelines, we can successfully minimize any claims that may occur.

This bulletin is intended to be merely informational and is not intended to be used as the basis for any compliance with federal, state or local laws, regulations or rules, nor is it intended to substitute for the advice of legal counsel.



LGIT Sponsoring

