

SMITH FREED EBERHARD P.C.

WASHINGTON CASE UPDATE

Does a Municipality Owe a Duty of Care to Remove Hazardous Roadside Vegetation?

From the Desk of Kyle D. Riley: What is the standard of care owed by a municipality to a motorist regarding roadside conditions? Find out in this week's case update.

Claims Pointer: The Washington Supreme Court held that a municipality's duty to maintain its roadway in a reasonably safe condition for ordinary travel includes removing or correcting hazardous roadside vegetation. Therefore, if a wall of roadside vegetation makes the roadway unsafe by obstructing a motorist's view, the municipality has a duty to take reasonable steps to address it. As a result of this ruling, we can expect municipalities to be added as defendants in cases where roadside vegetation contributed to the cause of an accident.

case in point...

Wuthrich v. King County, No. 91555-5 (January 28, 2016).

Guy Wuthrich and Christa Gilland collided in an intersection after Gilland was turning left and could not see Wuthrich approaching. Wuthrich filed a complaint against both Gilland and King County, alleging that the County was also liable for his injuries due to overgrown blackberry bushes obstructing Gilland's view of traffic. The trial court dismissed the action against the County on summary judgment. The Court of Appeals affirmed the dismissal. The Washington Supreme Court granted Wuthrich's request for review. Wuthrich's claim against Gilland was stayed during the pendency of the appeal and review.

The Washington Supreme Court reversed the summary judgment dismissal and reinstated Wuthrich's claim against the County. The Court held that a municipality has a duty to take reasonable steps to remove or correct hazardous conditions that make a roadway unsafe for ordinary travel, which includes hazardous conditions created by roadside vegetation. Therefore, summary judgment was inappropriate in this case where Wuthrich introduced sufficient evidence to create genuine issues of material fact as to whether the County breached its duty and whether the road was reasonably safe for ordinary travel. Gilland testified that her view was obstructed by the blackberry bushes, and Wuthrich's experts testified that the County could have taken a number of corrective measures to address the hazard.

King County raised the arguments that it owed no duty to Wuthrich and, in the alternative, any breach on its part was not the proximate cause of Wuthrich's injuries. In its first argument, the County argued that a municipality's duty to address conditions outside the roadway was limited to warning or protecting against inherently dangerous or misleading conditions. The Court rejected this argument, finding that any prior holding that a municipality has no duty at all to address dangerous sight obstructions by roadside vegetation is no longer good law. According to the Court, the more recent precedent makes clear that a municipality has the overarching duty to provide reasonably safe roads for the people of its state to drive upon, which includes removing or correcting hazardous conditions such as roadside vegetation. In its holding, the Court noted that a hazardous condition need not be on the asphalt and may be present along the highway. In addition, the Court clarified that in recognizing this duty, a municipality will not be strictly liable for all traffic accidents as only a duty of reasonable care is owed.

The Court also rejected the County's argument that summary judgment must be affirmed on the basis that any breach on its part did not proximately cause Wuthrich's injuries. According to the Court, cause in fact is a determination generally left to the jury. Furthermore, genuine issues of material fact were raised as to whether Wuthrich would, in fact, have been injured if Gilland's view had not been obstructed. The County argued that legal causation was not established since it



Contact: Kyle Riley | www.smithfreed.com | email: kriley@smithfreed.com

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.



SMITH FREED EBERHARD P.C.
WASHINGTON CASE UPDATE

When Statutes of Limitations Conflict, Which State's Law Applies?

case in point...

did not have notice that the blackberry bushes were hazardous, as there were very few prior incidents. The Court countered that there was evidence presented that the bushes had been there for years and that the County knew about them. The evidence of few prior incidents would not preclude legal causation, but would instead provide circumstantial evidence as to the reasonableness of the County's actions when evaluating breach.

The Washington Supreme Court reversed the ruling of the Court of Appeals and remanded to the trial court for further proceedings.



Contact: Kyle Riley | www.smithfreed.com | email: kriley@smithfreed.com

Ph:206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.