



UNDERSTANDING LIABILITY FOR MUNICIPALITIES WITH WINTER ROAD MAINTENANCE

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With the worst of the winter months yet to come, and undoubtedly more snow in the forecast, many cities and towns will find themselves wondering what their liability is when it comes to maintenance of roads, sidewalks, parking lots, or damage caused by a municipally operated plow. This article will outline the basics of road liability and provide some examples that may be useful in explaining the potential liability of cities and towns when it comes to road maintenance.

While cities and towns owe the public a duty to maintain the roadways, “Cities and towns have not been, and are not now, guarantors of public peace, safety and welfare.” *Doucette v. Bristol*, 138 N.H. 205 (1993).

However, municipalities do owe a duty of care when it comes to maintaining roads or sidewalks. This duty of care is outlined in RSA 231:90 - :92-a and is focused on what the law defines as an “insufficiency”. A municipality’s sole legal duty is to correct “insufficiencies”, which are defined as conditions which make a highway or sidewalk not safely passable by those persons or vehicles permitted to use such highway or sidewalk, or when there exists a safety hazard not reasonably discoverable or reasonably avoidable by a person when using the highway or sidewalk in a reasonable, prudent, and lawful manner.

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ONE OF THE MOST COMMON TIMES DURING WHICH A MUNICIPALITY MAY FIND ITSELF THE SUBJECT OF A CLAIM FOR PROPERTY DAMAGE IS DURING SNOW PLOWING SEASON. THE VERY NATURE OF PLOWING SNOW, THE VEHICLES INVOLVED, AND THE ROAD CONDITIONS THAT OCCUR ALL LEND THEMSELVES TOWARDS AN INCREASED LIKELIHOOD OF DAMAGE TO PERSONAL PROPERTY.



When an insufficiency exists, and damage is caused, the municipality will not be liable for said damage unless it is determined that the municipality breached its duty of care. RSA 231:92 lists the following conditions used to determine if the duty of care was breached:

- a. The municipality had received a written notice of the insufficiency warning it of the defect prior to the injury and failed to post warning signs immediately, and failed to develop a plan within 72 hours for repairing the insufficiency
- b. The municipality had actual notice or knowledge of the insufficiency and exercised gross negligence or reckless disregard in responding to that knowledge.
- c. The defect was caused by an intentional act of a municipal officer or employee, acting with gross negligence or reckless disregard of the hazard.

RSA 265:6

This statute can provide protections from civil liability for persons, teams, vehicles and other equipment while actually engaged in work upon the surface of a highway when a violation of any such provision is reasonably necessary for the completion of such work.

RSA 265:6-a, II

This statute requires other drivers to yield the right-of-way to any authorized vehicle obviously and actually engaged in work upon a highway whenever such vehicle displays emergency lights or amber warning lights.

Let's apply the above statutes to a possible real-world example of something that could happen involving a municipally operated snowplow. Let's say that during a snowstorm, a city plow was plowing a narrow street and the wing of the plow damaged another vehicle on the road. Who would be responsible for paying for the damage? In the case, Appeal of N.H. DOT, 152 N.H. 690, the Court explored this very issue when a plow being operated by a full-time State employee side swiped another motorist on a bridge in the town of Ossipee. Initially, the New Hampshire Board of Claims awarded compensation to the motorist after a finding that the State operated plow was negligent when the driver crossed over the double yellow center line while plowing at the time of the collision. Appeal of N.H. DOT, 152 N.H. 690, 691, 2005.

Upon appeal, the Court found that even though the wing of the plow was on the double yellow center line, at the time of the accident the plow operator was actually engaged in work upon the surface of a highway under RSA 265:6 and the driver was displaying the plow's amber emergency lights under RSA 265:6-a, II. Finally, the Court concluded that the driver was operating the plow as safely as he could under the circumstances, and they could not identify any negligent act on the part of the State employee. Therefore, it was the motorist's duty to yield the right-of-way to the plow and thus the State was not liable for damages. Appeal of N.H. DOT, 152 N.H. 690, 694, 2005.



CIRCUMSTANCES MAY ARISE WHEN A MUNICIPALLY OPERATED PLOW CAUSES SOME UNINTENDED DAMAGE TO PRIVATE PROPERTY, HOWEVER THE ABOVE STATUTES AND CASE ANALYSIS MAY PROVIDE SOME PROTECTIONS FROM LIABILITY AS LONG AS THE PLOW OPERATOR WAS FOLLOWING THE ABOVE REQUIREMENTS. FOR ALL OTHER SITUATIONS, IT IS IMPORTANT TO MAKE SURE PROPER LIABILITY INSURANCE IS IN PLACE.