Beier Howlett
ATTORNEYS AND COUNSELORS

Sidewalk Trip and Fall

by Michael P. Salhaney

Municipalities can breathe a sigh of relief from trip and fall claims and lawsuits now that the Michigan Legislature has brought the "two-inch rule" back to life. The rule gives local units of government the ability to rely upon a presumption that a sidewalk is in a reasonable state of repair if a defect in the sidewalk causing the injury is less than two inches in size.

The "two-inch rule," as it is known, existed in Michigan as merely a *rebuttable inference* under the statute related to defective public highways. Municipalities were able to use this statutory inference in lawsuits filed against them related to defective sidewalks that were adjacent to any highway. That is, until April of 2010 when the Michigan Supreme Court issued its ruling in Robinson v. City of Lansing that the statutory inference of reasonable repair applied only to those sidewalks that were adjacent to county highways, not state or local public roads.

The decision in Robinson forced municipalities dealing with claims concerning sidealks adjacent to non-county highways (i.e. city-owned streets) to spend precious governmental funds to litigate the question of whether the sidewalk was in "reasonable repair" without the benefit of any inference. Cities were finding themselves without any protection and having to litigate claims from a plaintiff who tripped on a sidewalk heave of an eighth of an inch.

With the legislative action, the "two-inch rule" is back, and stronger than the previous statutory language. Effective March 13, 2012, the legislature amended the Governmental Tort Liability Act, strengthening the statutory inference by changing it to a much stronger *statutory presumption*. This change to a presumption now requires plaintiffs/claimants to carry the burden of proof to avoid governmental immunity. It has also been broadened to include sidealks adjacent to municipal and state highways in addition to county highways. A plaintiff/claimant must now prove that the defect in the sidewalk has a vertical defect greater than 2 inches in height. If not, then the sidewalk is *presumed* to be in reasonable repair, and no liability.

Not only does the amended statute presume a sidwalk to be in reasonable repair, even if it has a defect less than two inches, but it also provides clarity to the issue of how you measure the defect. For instance, many plaintiffs would measure the defect horizontally (i.e., horizontal pot-hole width), yet actual vertical discontinuity would only be half an inch. The statute states, in pertinent part:

In a civil action, a municipal corporation that has a duty to maintain a sidewalk under

subsection (1) is presumed to have maintained the sidewalk in reasonable repair. This presumption may only be rebutted by evidence of facts showing that a proximate cause of the injury was 1 or both of the following:

(a) A vertical discontinuity defect of 2 inches or more in the sidewalk.

(b) A dangerous condition in the sidewalk itself or a particular character other than solely a vertical discontinuity.

MCL §691.1402a(3)

This language means the presumption may only be rebutted by evidence showing that an injury was caused by a *vertical* discontinuity of at least two inches or by a particularly dangerous condition existing in the sidewalk. The question of whether or not the plaintiff has rebutted the presumption is now a question of law for the court to decide, not a question of fact for the jury.

If you have any questions relating to the two-inch rule and how it impacts your municipality, contact Beier Howlett's Municipal Law Group.

Written by Michael Salhaney.

3001 W. Big Beaver Road, Suite 200
Troy, MI 48084
(248)645-9400
www.bhlaw.us.com