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Henry S. Sahm

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MUNICIPAL LIABILITY IN PENNSYLVANIA FOR DEFECTIVE STREETS

HENRY S. SAHM*

In Pennsylvania municipalities are held liable for injuries from negligent failure to keep streets in a reasonably safe condition.¹ The courts reason that where municipal corporations are invested with exclusive authority and control over the streets within their city limits and with means for their construction and repair, a duty arises to the public from the nature of the powers granted to keep the streets in a reasonably safe condition for the ordinary use to which they are subjected, and a corresponding liability exists on the part of the municipality to respond in damages to those injured by a neglect to perform the duty.² However, a municipality's duty to maintain streets is primary³ whereas its duty to maintain sidewalks is secondary.⁴

A municipality is under an implied duty to maintain its streets⁵ in a proper state of repair, and the fact that another may be sued due to an injury on a street does not prevent one from instituting an action against the municipality.⁶

A study of the many cases on this subject will disclose that the decisions have established and imposed these obligations upon the municipal authorities:

(1) Streets must be constructed in a reasonably safe manner, and to this end, ordinary care must be exercised.

*B.S., Lehigh University, 1931; LL.B., University of Pennsylvania, 1936; member of Lackawanna County Bar; Assistant City Solicitor of Scranton.

¹Good v. Philadelphia, 335 Pa. 13, 6A (2d) 101 (1939); McGlenn v. Philadelphia, 322 Pa. 478, 186 Atl. 747 (1936); Norbeck v. Philadelphia, 224 Pa. 30, 73 Atl. 179 (1909); Fritsch v. Allegheny, 91 Pa. 226 (1879); Heinz v. Pittsburgh, 137 Pa. Super. 603, 10A (2d) 100 (1939); Rufo v. Philadelphia, 58 Pa. Super. 638 (1915).

²Bucher v. Sunbury, 216 Pa. 89, 64 Atl. 906 (1906); Brookville Borough v. Arthurs, 130 Pa. 501, 18 Atl. 1076 (1890); Rigony v. Schuylkill County, 103 Pa. 382 (1893); Rapho Township v. Moore, 68 Pa. 404 (1871).

³Lawrence v. Scranton, 284 Pa. 215, 130 Atl. 428 (1925).

⁴Briggs v. Philadelphia, 316 Pa. 48, 173 Atl. 316 (1934); Bruder v. Philadelphia, 302 Pa. 378, 153 Atl. 725 (1931).

⁵The use of the term "street" includes driveways, sidewalks and crosswalks unless otherwise specified. As to grass plots, see Schramm v. Pittsburgh, 337 Pa. 65, 9A (2d) 373 (1939).

⁶Brobston v. Darby, 290 Pa. 331, 138 Atl. 849 (1927); Laurence v. Scranton, 284 Pa. 215, 130 Atl. 428, 41 A.L.R. 454 (1925). See Short v. Carbondale, 249 Pa. 564, 95 Atl. 254 (1915); Brinkos v. McKeesport, 136 Pa. Super. 526, 7A (2d) 516 (1939).

(2) They must at all times be kept in a reasonably safe condition insofar as may be by the exercise of ordinary diligence and supervision. However, in performing this duty, the city is not bound to provide against the possibility of an accident, nor would a mere error in judgment in laying out the way or adopting the plan be negligence.⁷

Consequently, in order to recover for injuries sustained because of the defective condition of a street, a plaintiff must show: A defective condition such as to create liability⁸ and actual or constructive notice to the municipality of the defective condition of the street, before the accident,⁹ or that the defect was created by the municipality.¹⁰ Where the obstruction is one created by a licensee, it seems that the municipality is not liable for the licensee's negligence where the permit is granted for a proper and lawful purpose.¹¹ But it may be liable for its own negligence in failing to make safe a dangerous condition after knowledge or notice of the fact.¹² To create a cause of action there must also have been sufficient time to put the street in a reasonably safe condition¹³ and the defective condition must be the proximate cause of the injury.¹⁴

The plaintiff must be free of contributory negligence¹⁵ and by Act of Assembly, notice of the injury and a concise statement of the cause thereof must be given the proper municipal authorities.¹⁶

These duties, which the law places on a municipality, cannot be transferred to another. A municipality cannot delegate the construction and care of its streets and sidewalks to a private individual or corporation, or even to a quasi-public corporation, and thereby evade its responsibility for such care and supervision. The duty to keep public streets in a reasonably safe condition for travel devolves pri-

⁷Levene v. Pittsburgh, 252 Pa. 181, 97 Atl. 392 (1916).

⁸Burns v. Pittsburgh, 320 Pa. 92, 181 Atl. 487 (1935); Bean v. Philadelphia, 260 Pa. 278, 103 Atl. 727 (1918); McDonald v. Philadelphia, 248 Pa. 145, 93 Atl. 959 (1915).

⁹Dress v. Harrisburg, 287 Pa. 157, 134 Atl. 400 (1926); Laurence v. Scranton, 284 Pa. 215, 130 Atl. 428 (1925); Timlin v. Scranton, 139 Pa. Super. 503, 12A (2d) 502 (1939).

¹⁰Rowland v. Philadelphia, 202 Pa. 50, 51 Atl. 589 (1902); Burger v. Philadelphia, 196 Pa. 441, 46 Atl. 262 (1900).

¹¹Levenite v. Lancaster, 215 Pa. 576, 64 Atl. 782 (1906); Susquehanna Depot v. Simmons, 112 Pa. 384, 5 Atl. 434 (1886).

¹²Meyers v. Philadelphia, 217 Pa. 159, 66 Atl. 251, 10 LRA (NS) 678 (1907).

¹³Yeager v. Berwick, 218 Pa. 265, 67 Atl. 347 (1907).

¹⁴Dunkerton v. Borough of North Braddock, 330 Pa. 89, 198 Atl. 677 (1938); Hoffman v. McKeesport, 303 Pa. 548, 154 Atl. 925 (1931).

¹⁵Brown v. Philadelphia, 267 Pa. 183, 110 Atl. 164 (1920); Buchanan v. Grove City, 86 Pa. Super. 178 (1925). As to the care required of children or persons under a disability, see Mulligan v. Homestead Borough, 243 Pa. 361, 90 Atl. 71 (1914). As to knowledge of the defect or danger, see Bookwalter v. Mt. Union, 258 Pa. 209, 101 Atl. 953 (1917). In regard to a choice of ways see Smith v. Pittsburgh, 338 Pa. 216, 12A (2d) 788 (1940); Watts v. Plymouth, 255 Pa. 185, 99 Atl. 470 (1916).

¹⁶Act of 1937, P.L. 2547, 53 P.S. 2774; Lutz v. Scranton, 140 Pa. Super. 139, 13A (2d) 121 (1940).

marily upon the municipality itself.¹⁷ In *Beloud v. Sayre*,¹⁸ a sidewalk was left in a defective condition by a contractor who worked on a building abutting thereon. In a suit against the borough alleging failure to remove the defect the court held that liability existed for injury incurred thereby by the plaintiff.

Where streets are traversed by trolley tracks a street railway is under an implied duty, even in the absence of a contract, ordinance or statute, to keep in proper repair the portions of a highway occupied by its track. The municipality is absolved in such cases, as against the street railway company, from liability for injuries caused by defects in such portions, as the railway company is primarily liable.¹⁹ Of course, the plaintiff can sue and recover from either the municipality or the street railway company, but as between the municipality and street railway company, the latter is primarily liable.

The municipality's duty to exercise reasonable care to maintain streets free from highway defects extends to public alleys and courts. However, what constitutes reasonable care in maintaining alleys and courts may be less care than that required in the case of streets.²⁰

No precise statement can be made which will categorically determine what specific condition in a street is such as to show negligence. In general, the question whether a street is or is not defective must be one of fact and not of law. It depends on a great variety of circumstances, which it is impracticable to synthesise into a legal proposition. For instance, a better and safer condition of roads and walks may reasonably be expected and required in the summer than in the winter time, in populous cities than in unfrequented districts. Much may depend upon the means at command, upon general usage, upon the question of whether the defect is the result of a sudden accident or has been long neglected and whether any prior accident has resulted from the same defect.

As to roadways, if dangerous excavations are made or if dangerous obstructions or conditions²¹ are allowed to remain in the highway, no matter by whom created, the municipality must fill them up, guard them, light them, or otherwise warn travelers against them.²² It must keep its highways in a reasonably safe condition for travel by night as well as by day, by those using them in a proper manner and use reasonable care to that end. The same measure of diligence requires that

¹⁷*Malone v. Union Paving Co.*, 306 Pa. 117, 159 Atl. 21 (1932); *Scott v. Eric*, 297 Pa. 344, 147 Atl. 68 (1929). Compare these cases with *Nelson v. Duquesne Light Co.*, 338 Pa. 37, 12A (2d) 299 (1940); *Briggs v. Philadelphia*, 316 Pa. 48, 173 Atl. 316 (1934).

¹⁸56 Pa. Super. 215 (1914); Compare with *Brinkos v. McKeesport*, 136 Pa. Super. 526, 7A (2d) 516 (1939).

¹⁹*Brobston v. Darby*, 290 Pa. 331, 138 Atl. 849 (1927); *Aikert v. Philadelphia*, 9 Pa. Super. 502 (1899).

²⁰*Musick v. Latrobe*, 184 Pa. 375, 39 Atl. 226 (1898).

²¹*Tubbs v. Berwick*, 262 Pa. 203, 105 Atl. 57 (1918).

²²*Birmingham v. Dorer*, 3 Brewster 69 (1868).

a municipality must clear its highway of obstructions,²³ no matter from what causes they may have come there.²⁴ This duty extends to streets accepted and recognized by the city as such to the same extent as those regularly laid out by the city authorities.²⁵

The liability for defective streets extends to defects in crosswalks for the accommodation of pedestrians in crossing from one side of a street to another. Crosswalks extend the whole distance between the extended boundary lines of intersecting streets, where they meet the sidewalks. The municipal corporation is under a duty to construct and maintain in a reasonably safe condition the street crossing.²⁶ However, maintaining open gutters of suitable size, at street crossings, is not negligence, where they are a common and approved method of construction.²⁷

Given a dangerous condition in or close to a street, the municipality becomes burdened with a duty, to exercise reasonable care to discover the condition and make it safe;²⁸ and this is so, even though the cause of danger is lawful²⁹ or the dangerous condition was wholly the act of a third person.³⁰ In fact, where an opening was made in a street under an invalid or unauthorized permit, it was held that the person making such an opening was a trespasser, and if his work rendered the street dangerous, it is the duty of the municipality, having notice of its condition, to protect the public.³¹

While it is not necessary in every case to guard the sides of a street closed to traffic, it is necessary to take such precautions as will reasonably safeguard the public.³² In such situations a municipality may rope off any part of a street it deems unsafe, and if such barrier is clearly visible to persons driving at night, exercising due care, there is no municipal liability in case of injury.³³ In a recent case it was stated that highways are primarily for public travel and as a consequence must be kept in condition reasonably safe for use by vehicles. When an extraordinary use of the highway is made it is necessary to give warning of the dangerous condition created. Just what warning should be given under the circumstances of the par-

²³McLaughlin v. Corry, 77 Pa. 109 (1875); Norristown v. Moyer, 67 Pa. 355 (1871).

²⁴Kost v. Ashland Borough, 236 Pa. 164, 84 Atl. 691 (1912); (injury from fall of pole erected by light company).

²⁵Ackerman v. Williamsport, 227 Pa. 591, 76 Atl. 421 (1910).

²⁶Chilton v. Carbondale, 160 Pa. 463, 28 Atl. 833 (1894); Easton v. Neff, 102 Pa. 474 (1883); Cf. McConway v. Philadelphia, 209 Pa. 236, 58 Atl. 358 (1904); Wright v. Lancaster, 203 Pa. 276, 52 Atl. 245 (1902).

²⁷Canavan v. Oil City, 183 Pa. 611, 38 Atl. 1096 (1898).

²⁸O'Malley v. Borough of Parsons, 191 Pa. 612, 43 Atl. 384 (1899).

²⁹Ziegler v. Philadelphia, 19 Phila. 400 (1889).

³⁰Nelson v. Duquesne Light Co., 338 Pa. 37, 12A (2d) 299 (1940); Bradford v. Downs, 126 Pa. 122, 17 Atl. 884 (1889).

³¹Boyle v. Hazleton, 171 Pa. 167, 33 Atl. 142 (1895); Birmingham v. Dorer, 3 Brewster 69 (1868).

³²Whitman v. Stipp, 270 Pa. 401, 113 Atl. 567 (1921); O'Malley v. Parsons, 191 Pa. 612, 43 Atl. 384 (1899).

³³Clamper v. Philadelphia, 279 Pa. 385, 124 Atl. 132 (1924).

ticular case is for a jury to determine.³⁴ In *Cora v. Borough of Kingston*³⁵ it was held that lights in the vicinity of a rope barrier erected across a highway, together with red lanterns placed on a barrier, was sufficient warning that the road was closed.

In connection with a municipality's duty to light its streets, a distinction must be made between streets which are safe for travel and streets which are unsafe, due to obstructions or excavations.³⁶ In the latter case, lights or other precautions must be used.³⁷ In the absence of charter or statutory requirements, a city is under no obligation to keep its streets lighted, though it has the appliances therefor,³⁸ where the streets are reasonably safe for travel,³⁹ and it may leave them unlighted and not be held liable in damages to a person injured because of such lack of lighting facilities.⁴⁰

In *Canavan v. Oil City*,⁴¹ the court said that "as to whether sufficient light was provided by the city on the night of the accident, we may briefly say there was no legal obligation on a municipality to light its streets when their construction is reasonably safe for travel. This is solely a question for the municipal legislature. It may do many things not enjoined by the law to promote the general well being and comfort of the citizen; but, in not doing that which no statute commands, negligence cannot be imputed to it. This, however, in no sense relieves it from the duty of that ordinary care which requires that temporary excavations for building purposes should be exposed by proper light, or that temporary obstructions of the street by building material should be made conspicuous in the same way."

SNOW AND ICE CASES

A municipality is not liable for injuries resulting from the general slipperiness of its streets or its sidewalks occasioned by a recent precipitation and freezing of rain or snow. The reasoning behind this rule is that persons who undertake to pass over the sidewalks of a street made unsafe or dangerous by freezing of recent falls of snow or rain know their condition and assume the risk, and also it is too great a burden to impose such a duty.⁴² Yet the rule does not extend so far as to

³⁴*Geiger v. Dowdy*, 111 Pa. Super. 485, 170 Atl. 420 (1934) (rope suspended across highway).

³⁵300 Pa. 159, 150 Atl. 384 (1930).

³⁶*Canavan v. Oil City*, 183 Pa. 611, 38 Atl. 1096 (1898).

³⁷*id.* at 617, 38 Atl. at 1098.

³⁸*ibid.*

³⁹*Horner v. Philadelphia*, 194 Pa. 542, 45 Atl. 330 (1900) (stumbling over fire plug due to defective lighting).

⁴⁰*O'Rourke v. Washington*, 304 Pa. 78, 155 Atl. 100 (1931).

⁴¹183 Pa. 611, 38 Atl. 1096 (1898).

⁴²*McDonough v. Munhall Boro.*, 331 Pa. 468, 200 Atl. 638 (1938); *Spencer v. Philadelphia* 276 Pa. 310, 120 Atl. 131 (1923); *Llewellyn v. Wilkes-Barre*, 254 Pa. 196, 98 Atl. 886 (1916); *Gross v. Pittsburgh*, 243 Pa. 525, 90 Atl. 365 (1914); *Holbert v. Philadelphia*, 221 Pa. 266, 70 Atl. 746 (1908).

protect the city from liability for injuries caused to a person by slipping on ice in a street or sidewalk, due to antecedent negligence where it has accumulated because of a defect in a street or walk by reason of the neglect to construct and maintain suitable drains to carry off the water.⁴³ However, the municipality's liability in such cases is secondary and supplemental to that of the occupiers or owners of the property.

So, too, the city may be liable if the snow and ice exists in ridges and little hills and the pavement is permitted to remain in that condition for a length of time sufficient to charge the city with knowledge of the situation and the condition is not remedied.⁴⁴

In summation, it may be stated that the liability of a municipality for injuries to travelers caused by accumulations of ice and snow on its streets depends on whether it has exercised reasonable care and diligence to keep its streets reasonably safe for travelers who are using due care, and its liability should be made to depend upon what is reasonable under all the circumstances paying attention to climatic conditions.⁴⁵

NOTICE

In order to impose liability upon the municipality for defects not created by it,⁴⁶ it must have actual knowledge of the defect or notice of such facts and circumstances as would lead a reasonable person to such knowledge⁴⁷ and a sufficient opportunity to repair.⁴⁸ Although a municipality need not seek defects, it must be vigilant to observe them when they are visible.⁴⁹

Whether notice to particular municipal officers or agents will be imputed to the municipality depends on whether such municipal officer is bound to act on such knowledge.⁵⁰ When a municipal officer is bound to act on knowledge, and the law fixes no channel through which it must reach him in order to impose the duty, the knowledge gained by him as an individual must be imputed to him as an officer. Notice of the defects cannot be brought home to the municipality by evidence that the person who was the chief burgess at the time of the accident had, before he was elected burgess, called the attention of the chief of police to such

⁴³Whitton v. Gable Co., 331 Pa. 429, 200 Atl. 644 (1938); Holbert v. Philadelphia, 221 Pa. 266, 70 Atl. 266 (1908).

⁴⁴Wyman v. Philadelphia, 175 Pa. 117; 34 Atl. 621 (1896); Neistadt v. Philadelphia, 138 Pa. Super. 200, 10A (2d) 77 (1939); Taylor v. Philadelphia, 138 Pa. Super. 194, 10A (2d) 75 (1939).

⁴⁵McCracken v. Curwensville Borough, 309 Pa. 98, 163 Atl. 217 (1932). *Accord* Goodman v. Corn Exchange Bank, 331 Pa. 587, 200 Atl. 642 (1938).

⁴⁶Text to note 30 *supra et seq.*

⁴⁷Lohr v. Borough of Phillipsburg, 156 Pa. 246, 27 Atl. 133 (1893).

⁴⁸Dress v. Harrisburg, 287 Pa. 157, 134 Atl. 400 (1926).

⁴⁹Malone v. Union Paving Co., 306 Pa. 111, 159 Atl. 21 (1932); Rogers v. Williamsport, 199 Pa. 450, 49 Atl. 293 (1901); Mauch Chunk Borough v. Kline, 100 Pa. 119 (1882).

⁵⁰Canfield v. East Stroudsburg, 19 Pa. Super. 649 (1902).

defects.⁵¹ Knowledge by a councilman is not notice to the municipality⁵² but express notice to a councilman, as such, is.⁵³

Notice as applied in these types of cases may be constructive.⁵⁴ Constructive notice of a defective condition in streets will be imputed to a city if the condition has existed for sufficient time to have enabled it by the exercise of reasonable diligence to have acquired knowledge of such condition.⁵⁵

Negligence in not knowing of the dangerous condition may be shown by circumstances.⁵⁶ Constructive notice can only rest on a defect of such character as to be generally noticed, that is, as could and naturally would be seen by travelers using the street or walk.⁵⁷ Where a defect in a highway is so slight as not to attract the attention of pedestrians, it is likewise too unimportant to require the municipality to observe it.⁵⁸ The particular circumstances of each case are in the ultimate analysis, the real test as to whether there was constructive notice.⁵⁹

In particular situations (as distinguished from ice and snow cases) governed largely by the circumstances of the case at bar, notice has been imputed where the defect existed five to six weeks in the case of a sidewalk.⁶⁰ Where the defect existed "a week or more," the court said, "we cannot say that there was no notice."⁶¹ The existence of a defect in a sidewalk "for years" was held to be constructive notice.⁶² Where a city let out a contract for the construction of a sewer in a street and a person was injured one week thereafter by falling into the trench, a jury was permitted to find that the city had constructive notice of the existence of the trench.⁶³ Constructive notice was attributed to a city where a hole fifteen inches by twenty-four inches and six inches deep alongside a street car track existed for four months.⁶⁴ So too, where gutter stones were negligently left in a street for almost

⁵¹*Lohr v. Borough of Phillipsburg*, 156 Pa. 246, 27 Atl. 133 (1893).

⁵²*Frazier v. Borough of Butler*, 172 Pa. 407, 33 Atl. 691 (1896).

⁵³*ibid.*

⁵⁴*Maric v. Pittsburgh*, 328 Pa. 253, 194 Atl. 902 (1937); *Emery v. Pittsburgh*, 275 Pa. 551, 119 Atl. 603 (1923).

⁵⁵*Dress v. Harrisburg*, 287 Pa. 157, 134 Atl. 400 (1926); *Laurence v. Scranton*, 284 Pa. 215, 130 Atl. 428, 41 ALR 454 (1925); *Llewellyn v. Wilkes-Barre*, 254 Pa. 196, 98 Atl. 886 (1916); *Norbeck v. Philadelphia*, 224 Pa. 30, 73 Atl. 179 (1909); *Duncan v. Philadelphia*, 173 Pa. 550, 34 Atl. 235 (1896).

⁵⁶*McKelvey v. Juniata*, 265 Pa. 56, 108 Atl. 205 (1919).

⁵⁷*Emery v. Pittsburgh*, 275 Pa. 551, 119 Atl. 603 (1923) distinguishing *Davis v. Shenandoah*, 273 Pa. 501, 117 Atl. 207 (1922); *Burns v. Bradford*, 137 Pa. 361, 20 Atl. 997, 11 L.R.A. 726 (1891).

⁵⁸*Malone v. Union Paving Co.*, 306 Pa. 111, 159 Atl. 21 (1932).

⁵⁹*Boyle v. Mahanoy City*, 187 Pa. 1, 40 Atl. 1093 (1898); *Rife v. Middletown*, 32 Pa. Super. 68 (1906); *Boehm v. Bethlehem*, 4 Pa. Super. 385 (1897). See note to *Springer v. Phila.*, 12 Atl. 490 (1888).

⁶⁰*Philadelphia v. Smith*, 23 W.N.C. 242, 16 Atl. 493 (1889).

⁶¹*Butcher v. Philadelphia*, 202 Pa. 1, 51 Atl. 330 (1902).

⁶²*Davis v. Shenandoah*, 273 Pa. 501, 117 Atl. 207 (1922).

⁶³*Gerber v. Philadelphia*, 60 Pa. Super. 119 (1915).

⁶⁴*Murtha v. Philadelphia*, 112 Pa. Super. 426, 171 Atl. 399 (1934).

two months.⁶⁵ Six weeks is a long enough period to visit constructive notice upon authorities of a defect in a sidewalk.⁶⁶ Where the defective condition of a flagstone existed five years, the municipality was held liable.⁶⁷ Where a sidewalk was unsafe for some two months, the city was chargeable with notice.⁶⁸ Constructive notice was imputed where an open meter box twenty inches in diameter and set in a sidewalk was not repaired within twenty-four hours.⁶⁹

On the other hand, defects which have existed for the following periods have been held not to have been in existence a sufficient time to impute notice: A defective sidewalk which had been repaired eighteen days before the accident;⁷⁰ a hole in a sidewalk, covered by a board so as to be invisible, which had existed for twenty-four hours.⁷¹

Where there was evidence that a defect in a much used pedestrian platform owned by the city existed for three days before the injury it was held to be a question for the jury.⁷²

The cases above had reference to defects in streets other than those caused by ice and snow. However, the rules as to constructive notice likewise apply in the case of ice and snow with the qualification that the required time element is generally shorter. In two cases involving snow and ice a verdict for the plaintiff was sustained on four or five days "continuance of a dangerous highway condition."⁷³

Another held three to four days notice was sufficient.⁷⁴ In *Wyman v. Philadelphia*,⁷⁵ only thirty-four hours intervened from the end of the last snowfall to the injury. The municipality's point for binding instructions was declined and a verdict rendered for the plaintiff which was affirmed. In still another case, the municipality was not charged with constructive notice where the elapsed time between the end of the snow storm and the injury was twenty-seven hours.⁷⁶ The court pointed out that in considering what is a reasonable time, the fact that conditions were general throughout the confines of a large city due to a heavy fall of snow was a factor.

A study of all the cases shows that no general rule in snow and ice cases can be stated. A distinction must be made between parties primarily and secondarily

⁶⁵*Symons v. Philadelphia*, 19 Phila. 417 (1889).

⁶⁶*Dunn v. Westview Borough*, 70 Pa. Super. 228, 65 P.J.L. 749 (1918).

⁶⁷*Emery v. Pittsburgh*, 275 Pa. 551, 119 Atl. 603, 70 P.J.L. 533 (1923).

⁶⁸*McDonald v. Scranton*, 28 Lacka. Jur. 288 (1925).

⁶⁹*Waltz v. Dickson City*, 24 Lacka. Jur. 124 (1922).

⁷⁰*Rogers v. Williamsport*, 199 Pa. 450, 49 Atl. 293 (1901).

⁷¹*Yeager v. Berwick*, 218 Pa. 265, 67 Atl. 347 (1907).

⁷²*Jeske v. Pittsburgh*, 110 Pa. Super. 274, 168 Atl. 323 (1933).

⁷³*Beebe v. Philadelphia*, 312 Pa. 214, 167 Atl. 570 (1933); *Llewellyn v. Wilkes-Barre*, 254 Pa. 196, 98 Atl. 886 (1916); *Meyers v. Philadelphia*, 217 Pa. 159, 66 Atl. 251 (1907).

⁷⁴*Reed v. Schuylkill Haven*, 22 Pa. Super. 27 (1903).

⁷⁵175 Pa. 117, 34 Atl. 621 (1896).

⁷⁶*Beebe v. Philadelphia*, 312 Pa. 214, 167 Atl. 570 (1933).

liable. In the latter situation, a longer time must elapse in order to impute notice.⁷⁷ The Pennsylvania Supreme Court sums up constructive notice in this type of case as follows: "***** it is impossible to fix any definite time as a minimum from which a jury should or should not be allowed to find constructive notice of such a defect *****."⁷⁸

In conclusion, it may be stated that, in the construction and maintenance of its sidewalks, crosswalks and roadways, a municipality is answerable in damages for a lack of ordinary or reasonable care. It is not liable as an insurer, nor chargeable in consequence of the existence of latent defects which ordinary skill and diligence would not detect.⁷⁹ Neither is it expected to make extraordinary exertions, nor to make use of the very best means and appliances; but it is held to the same rule of diligence which is expected of private persons in the conduct of any business involving a like danger to others;⁸⁰ and whether it has exercised this degree of diligence is, in general, a question of fact for the jury.⁸¹

SCRANTON, PA.

HENRY S. SAHM

⁷⁷*ibid.*

⁷⁸*ibid.*

⁷⁹*Fitzpatrick v. Borough of Darby*, 184 Pa. 645, 39 Atl. 545 (1898); *Duncan v. Philadelphia*, 173 Pa. 550, 34 Atl. 235 (1896).

⁸⁰*Levine v. Pittsburgh*, 252 Pa. 181, 97 Atl. 392 (1916); *Norbeck v. Philadelphia*, 224 Pa. 30, 73 Atl. 179 (1909); *Burns v. Bradford*, 137 Pa. 361, 20 Atl. 997, 11 L.R.A. 726 (1891); *Rapho v. Moore*, 68 Pa. 404 (1871).

⁸¹*Henry v. Williamsport*, 179 Pa. 465, 47 Atl. 740 (1901); *O'Brien v. Borough of Jeanette*, 128 Pa. Super. 443, 194 Atl. 314 (1937); see generally *German v. McKeesport*, 137 Pa. Super. 41, 8A (2d) 437 (1939).