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Companies can't rely on bureaucratic delays to protect themselves from suits over shoddily placed utility covers on local roads

By adamg on *Wed, 05/08/2019 - 12:08pm*

The Supreme Judicial Court ruled today that a bicyclist can sue the downtown-Boston steam company for injuries he suffered when an allegedly misaligned utility cover on New Sudbury Street threw him to the ground, because the state law that governs complaints about road repair only refers to the government bodies that own the roads, not private companies that may have done something to cause a problem on those roads.

The ruling by the state's highest court reverses a Superior Court judge's decision to dismiss Richard Meyer's suit because he filed a formal complaint with Veolia a week past the 30-day limit set by the state's road-repair law - a statute so ancient it still refers to "horses, teams, vehicles and carriages." Meyer filed his demand for payment late because he had originally first formally complained to the city of Boston, which rejected his demand 31 days after the incident, after determining that Veolia, not the municipal Public Works Department, was to blame for the misaligned pipe cover.

The SJC concluded that the law in question specifically refers only to actions of governmental or quasi-governmental bodies, and that private concerns, such as Veolia, remain subject to lawsuits under standard tort law, which does not have a 30-day notification requirement.

According to Meyer's complaint, on July 1, 2013, he was biking down New Sudbury Street when a utility cover, no more than a foot in diameter, and set at an improper angle to the rest of the

street, caught one of his wheels, throwing him to the ground and injuring him.

The justices had to try to tease out what legislators might have meant in the 19th-century law, which actually has its origins in an even older law dating to 1786, and which has two separate sections that relate to complaints over road repair, one of which clearly refers to governmental bodies, the other of which makes it sound like it might also apply to "persons," which, as Mitt Romney instructed us, companies are considered a class of.

The court concluded that the second section, which relates to the notification time prior and which is the one that refers to "persons," is subordinate to the first, which only mentions government bodies. And, the court continued, "persons" was left in only for historic reasons, hearkening back to the days when private individuals actually did run and maintain entire roadways in the state, a practice Massachusetts long ago abandoned.

> *In sum, the road defect and notice statutes provide for liability and notice to governmental and quasi governmental entities responsible for the roadways. Private parties are not covered by these statutes when they cause particular defects in public roadways; rather, they are subject to suits in tort. This becomes evident with close examination of the statutory text, the legislative history of the statutes, and case law, as well as consideration of the practicalities of notice within thirty days.*

To reach its conclusions about the nature of the "persons" mentioned in the state law, the justices reached back to an 1883 ruling, written by then SJC Justice Oliver Wendell Holmes, Jr. involving injuries suffered by Bostonians tripping over the covers of "coal holes" - the underground vaults homes in the tonier sections of Boston used to have, which were supplied via round, normally covered holes in the sidewalk out front. Pedestrians who keep their heads down can still see some of these holes on Back Bay and South End streets.

A Commonwealth Avenue coal-hole cover:

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📄 Entire Meyer decision	144.08 KB

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