

**Sebastian Barszowski**

mgr

Dyrektor Likwidacji Szkód Kancelaria Brokerska WTB sp. z o.o.

sebastian.barszowski@yahoo.com

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**Conditions of road administrator's liability  
for the damages caused by the bad condition of roads**

**Abstract:** Claims of Road users against Road administrators are becoming more and more common. Both pedestrians and drivers expects that road administrator remove danger from the road. But It is not always possible, and sometimes accident may happens. Than important clue is to distinguish, who is responsible for that situation. This article analyzes the conditions of liability road administrator according to specific situations, where road administrators were sued by victims. In contrast to previous academic achievements this article shows activities whose execution or not may result recognition of liability by the court. This publication indicates situations in which the liability the road administrator for the damage caused by the bad conditions of the. The risks that road administrator should in particular oppose are also distinguished. Either explained what the duty of care when performing activities related to maintaining good condition of the road.

**Keywords:** Administrator; Road; Liability; Loss

**Introduction**

One of the most important duties of the road administrator is to prevent the occurrence of hazards on the road. The task is clear from the provisions of the Act of 21 March 1985 on public roads [12]. The legislator, however, does not mention the way in which the condition of the surface ensures the safety of users must be preserved, the work that should be done, nor does not mention of instruments for the organization of road works. To the road operators is entitled to a certain freedom of organization and each of them can within the law introduce its own standards and procedures to maintain the roads and risk prevention. So when you get allegation of work neglect to maintaining roads in good condition, it is necessary to assess the diligence road manager for the activities undertaken in order to protect road users. Attempts to raise the subject of administrator of the road due diligence have already been discussed in the literature [3, 5] However, these considerations do not indicate specific solutions. Tips that can help both road operators and their users to avoid risks, because all these entities should depend on the reduction of harm caused by the poor condition of roads.

The purpose of this paper is to indicate the conditions for road administrators' liability of damages caused by its poor technical condition, and an indication of negligence administrator giving rise to liability for damages suffered by road users. This makes it possible to develop methods for prevention claims for damages and protection against road managers from lawsuits road users. The starting point for the analysis of the problem is apart from the existing scientific achievements judicial decisions in recent years.

The conclusions of this study are important not only for road managers, victims and their representatives but also for employees of insurance companies. Claims of road users in the first place are dealt with just by insurers. Some of the listed later in work decisions relate to exactly matters in which the defendant is insurance, not a road administrator. Road managers entering into the insurance contract civil liability for business and have property to protect against any claims that might lead to road users on their side negative financial effects. Having such insurance does not relieve administrators of roads from the responsibility of taking care of the

surface condition. However, it allows to avoid sometimes very high costs of paying benefits to injured persons.

### **The issue of road administrator responsibility - presumption**

The liability of the road administrator is analyzed on the basis of art. 415 of the Act of 23 April 1964 Civil Code [9]. In order to determine the need to specify the unlawfulness of the action or failure to act the perpetrator, which contributed to the damage. In particular, a question of failure to comply with dos and don'ts of behavior or inaction in a situation requiring action. However, the mere omission or action road administrator is not enough. In order to assess the tort liability must be met three conditions: the event from which the legal system involves liability, damage and a causal link between the event and the damage [4]. To put the conclusions mentioned in the introduction to this work, there is a need to explore how to implement the obligations arising from road managers of more specific laws in line with the recommendations set out in the judgment of the District Court in Olsztyn, [28] and indicate those that best ensure their execution.

### **The existence of damage**

Existence of the damage is relatively easy to demonstrate to the victim. Often, even the manager of the road does not question the fact that the incident occurred in the indicated place and circumstances. However, the law requires that the person who derives legal consequences proved that the damage occurred on the road for which the state is responsible designated administrator [9]. Proving this is not difficult if immediately after damage the victim notifies the police, who will draw up a note confirming the accident. However, if the claimant suffers damage to health, e.g. as a result of slipping on slippery surfaces, the entity which should be notified in the first place are the emergency medical service.

In order to confirm that there has been damage to key may also have witness statements and photographic documentation prepared at the site of damage. Nowadays there are no obstacles to perform several photographs of the road surface on which the damage occurred, because virtually everyone has a cell phone with the ability to take pictures. Photos can have a particularly probative value, if no service will be called to the place of damage.

Sometimes happens that the claims for damages to road administrators are reported even a few years after their inception. This is primarily the result of quite intensive acquisition of companies for damages that are looking for customers interested in obtaining compensation. In such cases often are presented statements of bystanders, who are usually friends or relatives of the victims. The credibility of such statements may be questionable. Therefore, the road administrator, to whom the claim was reported should require the preparation of the most detailed descriptions for each of the witnesses. They should include, inter alia, indications of: the place of the damage, the place where there was a witness during the event, what were the witness and the the victim doing, what action did they undertake, who were announcing and what they were doing before the happening. Sometimes even seemingly insignificant details can have an impact on assigning blame road administrator or the lack of it (e.g. improper footwear the victim in winter).

### **Negligence o road manager resulting in liability for damage due to the poor condition of roads**

In the jurisprudence can face conflicting opinions whether on the basis of tort liability of art. 415 of the Civil Code [11] it is necessary to identify the specific provision of the law that would be affected. On the one hand, courts rule that it is sufficient to prove infringement of generally recognized non-code rules [23]. Condition of the road should be properly controlled and monitored, and the work of road manager organized so that he has the possibility of a timely statement of the way of danger and take action to remove this threat [15, 16]. Therefore, it is not

necessary to demonstrate how the provision has been breached by the manager of the road. Just to show that the road administrator neglected his duties and e.g. did not remove a danger to traffic. You can also meet with the opinion that the road user is not obliged to demonstrate what exactly is fault of road administrator, in the form of an act or omission having the result in damage to the car [28]. As a different interpretation by the courts we can indicate a judgment [22], in which states that if the road managers are accused of negligence in the maintenance of public roads in good condition, it is for the adoption of its responsibilities in this respect it is necessary to determine which specific obligations incumbent on it by law and other regulations not fulfilled. Deeper reflection on the problem, however, leads to the conclusion that in case of damage due to poor technical condition of the trustee fails to fulfill its obligations referred to in the Act on public roads [12]. Thus, a claimant for compensation does not have to necessarily indicate what actions or omissions of road managers gave rise to a danger to road user e.g. craters in the the road. According to the quoted case law of the victim does not have to demonstrate to what the negligence of the administrator came, simply indicate that the result of such negligence, such as eg. loss in the surface, spilled oil slick etc.

Usually it is an entity that derives from the legal consequences must demonstrate the failure to road administrator. In some cases, however, the manager will have to show due diligence to keep streets in good condition for their safer use. The court considering the matter may even adopt by presumption of facts that e.g. in case of considerable size damage on the road surface, administrator was negligent, because this type of damage is created in a relatively long time, which should be sufficient to eliminate the threat. The administrator fulfilling the task of respiratory protection is required to monitor roads, that subordinate to him, among other things quickly remove, mitigate and protect damages that may affect traffic safety. The manager of the road should demonstrate that in an appropriate manner, with due diligence he organized his work so as to maximize the safety and comfort of traffic users. He cannot predicate his defense against liability for the condition of the road on the fact that no one has him informed about that. Managers work should be organized so that it had the possibility of a rapid enough to remove the threat [27]. Public roads should be maintained in a condition precludes the exposure of users in the event, remaining the sole and direct causal connection with the use of them. Whereas administrators' action should be careful, reasonable, prudent, thrifty, prudent and meet the expectations of the environment. This environment, depending on the situation, defines the boundaries of due diligence and patterns of conduct. The phrase, "care generally required" prejudice principle of objective character of the pattern, it means that there are important individual characteristics of the entity from who due diligence is required, whereas count features widely believed to be correct [9]. Considering the responsibility of the road manager for damages caused by the poor condition of the road is not necessary to indicate the fault of individuals directly responsible for the oversight of a particular part of the road. It is enough that there are presumption of a negative assessment of conduct body as such, or at least one of its members (i.e. anonymous fault) [4]. Similar conclusions propounded the Court of Appeal in Lublin, who pointed out that the road administrator takes responsibility for the damage caused as a result of events that occurred when a driver ran over on a stain of oil on the road. Although the road administrator performs his duties in accordance with a predetermined schedule, it has not demonstrated that his actions were carried out in a proper manner [24]. It was not possible in this case to indicate a neglect of a particular person, but to assign a blame to road administrator, his work should be organized in such a way that the liquidation of threats such as an oil slick on the road. The concept of anonymous fault with respect to the road administrator has similar application as in the case of medical processes. If you can not determine which employees staff was negligent and it will be proven that the negligence occurred and the patient suffered, then we are dealing with anonymous guilt. For the mistake of one of the team members corresponds the entire medical facility. It has a duty to use all available organizational and technical measures to

prevent such incidents. [10] Similarly, the road administrator should organize his work so as to eliminate the risks of traffic participants.

The administrator of the way usually serve local government units or the General Directorate for National Roads and Motorways. Responsibility for the actions that inherently belong to public authority and are associated with an imperious action by public authorities is considered on the basis of art. 417 of the Civil Code. It can therefore take a response, or neglect of a public road manager. Mere fact that the body is a budget unit is not sufficient to use the above basis of liability. Similar conclusions were drawn by Supreme Court in its judgments of 10 June 2005 and 26 March 2003 [19, 20]. Business of road manager is not the business of an imperious Treasury. Liability for damage caused by the State or local government bodies outside the sphere *imperium* is considered under the general rules of liability and art. 415 of a Civil Code.

The issue of accountability of the road administrator for the damage caused by the poor condition of roads is very closely related to the issue of due diligence mentioned in Article. 355 of the Civil Code. In carrying out his activities road administrator should demonstrate such care. As the Supreme Court emphasizes [18] diligence does not mean it achieve the result of maintaining roads in a condition for total security of its users, but provides the obligation of measures that are aimed towards increasing the safety and convenience of traffic. So that road administrator must prove in court that he is not responsible for the damage because he complied with the diligence in maintaining the road. This is in a certain degree shifting the burden of proof from the injured person on the road administrator.

### **Road managers' carefulness and examples of negligence**

Negligence of the road administrator can lie on too rare inspection of the technical condition of the road or failure to execute it properly. Road administrator as a professional, one of whose main tasks is to take care of the technical condition of roads should carry out his tasks with particular solicitude [25]. It is unacceptable, that control tour is performed just to make a note. Control is designed to detect and remove threats. This operation must be performed precisely in order to identify dangerous situations and eliminate. The administrator of the road should also cooperate with the authorities such as police, fire brigade, hunting circles etc. because appropriate flow of information allows to protect parts of roads on which threats arise more frequently or periodically. Such cooperation should be the basis, *inter alia*, to improve road marking, as bodies such as the police have knowledge about any risks, the amount of the collision etc. A natural seems to be slowing down traffic and alerting users about particularly dangerous and the cyclic arising threats.

The administrator of the road should mark the places particularly dangerous in such a way that the road user can adjust the speed and riding technique. Questionable situation occurs when a road marking is correct, but there was a damage and the victim alleges that the same warning was not sufficient preventive measure. The court must consider whether the driver adapted his technique to the prevailing driving conditions. Such allegation is very easy to bet, however, to assign responsibility of the road administrator for such an event is often necessary to appoint an expert from the scope of accident reconstruction, who will answer the questions: whether a driver defeated stretch of road with a suitable driving techniques (including speed) and whether the driver in a manner adapted to road signs could have been avoided injury. Another issue is to consider whether, apart from warning drivers about dangers (road signs) road administrator performed any activities related to the removal of threats. Actions concerning only warning drivers against the threat in some situations are insufficient. It is difficult to require from the administrator to secure the road against the intrusion of wild animals (eg. fencing them), but if the threat is for example a breach on the road or spilled oil slick, then he should immediately remove them. No action may be treated as negligence. Placing warning sign does not relieve road administrator from liability for damage resulting from vehicle collisions on the hole in the

road, because it does not exclude the obligation to keep the roads in good condition [27]. If the entity responsible for the condition of roads infringed the duty to maintain its proper condition, the same setting of the warning sign does not free him from responsibility of the damage.

Another important aspect is method of securing the place of a hazardous traffic participants. The danger should be removed as soon as possible, but often time for eliminating breaches of the road depends on the technology. As an example, of improper repair we can mention a situation that was the subject of deliberations of the Regional Court in Sieradz [26]. The administrator of the road filled several times the cavity with unstable mass of cold, which, as it turned out, was repeatedly damaged by moving vehicles, which led eventually to expand the breach in the roadway, which caused damage to the victim's vehicle. The court noted that the road administrator has not shown due diligence because he repaired the surface using unstable product and committed ultimately to expand the cavity in the road. The court did not question the fact that representatives of the managers made a control tour and some action were taken to remedy the identified defects in the road surface, but that fact does not prejudice the road managers' sufficient care to the extent possible to disable its responsibility.

Analysis of the collected material shows that the operation manager of the road should be relevant to arisen risks. This may be slippery surface resulting from precipitation, surface defects, or improper road signs. The road administrator is obliged to cooperate with other services, and monitor the way in order to remove these threats, because even if he did not know of their existence, he still may be responsible for the damages because he did not comply with due diligence to remove them.

### **Irresponsibility presumption of road administrator for the damage caused by the poor condition of roads**

In the preceding chapter it was demonstrated the responsibility of the administrator of the road. However, there are several situations in which he can be released from liability of damage caused on the road of which responsible is the state. Actions of road administrator should aim to ensure the safety of road users, but it has no obligation to achieve a result [1, 3]. This means that there are several situations where you cannot assign the blame to road administrator for the damage arisen on the road for the condition of which he is responsible.

The most commonly cited situation in which the manager is liberated from responsibility for damage is a mismatch between the driver's speed and technique of driving to road conditions [2]. The road user in accordance with Article. 3 Law on Road Traffic [14] is obliged to care or special care, therefore, should try to anticipate dangerous situations and prevent them. Road manager carefulness is connected with the care of the road user behavior for the required safety precautions during a ride [7, 21].

It can be stated that if in the road surface there is a gap or hole, which a driver with ordinary, required precautions when driving is able to see and stop safely before it, then he should do so. On the other hand, the traffic participant is not always able to respond adequately. For example, when he moves directly behind another vehicle that performs in the last minute a rapid obstacle avoidance maneuver. When the threat is well marked and visible from a distance, the road administrator is able to free himself from liability, but every situation is different, and if the road administrator does not make any steps to remove the threat apart from setting the warning signs, the fault can be attributed to him.

The administrator of the road is not able to prevent intrusion of wild animals on the lane. Building a fence along the road pursued by tens of kilometers is very costly and rare activity. The road administrator is required only to warn drivers about the risk in areas where there is a migration of animals. Therefore, he should cooperate with the police, forestry and hunting clubs and mark in the place exposed to the intrusion of wild animals. If the victim shows that on a certain section of the road occurred a collision of other vehicles with animals, and a road administrator does not present documents proving monitoring and appropriate response to threats

(e.g. letters to the police and forest service), then the responsibility for the damage caused by lack of appropriate marking can be assigned to him. The lack of an appropriate exchange of information between the road manager and other entities was indicated as the basis for the payment of compensation by the manager of the road in the judgment of the District Court in Gliwice [29].

Noteworthy is also the problem of winter road maintenance by the manager. Part of the road is also the side of the road and sidewalk. Under Article. 5 paragraph. 1 point. 4 of the Act on maintaining cleanliness and order in communes [13] responsible for ensuring the maintenance of cleanliness and order through the clearing mud, snow, ice and other contaminants from the sidewalks along the property are properties owners. In other cases, for the removal of the slipperiness of the pavement is responsible the road administrator.

In case of the road slippery during the winter, rules require drivers to special care and driving with a safe manner. If the road because of black ice and relatively slight width was dangerous, regardless whether and to what extent the service road discharged the obligation of appropriate protection of the road for traffic, drivers of motor vehicles are required to adapt to the real conditions [8, 17]

### Summary

On the basis of case-parsed we can distinguish certain categories of events, the occurrence of which may exclude liability for damage road administrator or help to assign it. Each of them contains a list of reasons and circumstances enabling the identification of the person responsible for the damage. The first group are the situations that often occur on roads where there can be expected, but the road user is surprised by them and as long as he do not notice them or come into contact, there is no possibility of an appropriate response. These are for example craters in the road, slippery conditions caused by the continuing runoff substances from the fields to the road, structures posing a potential danger. The other situations are unusual. Those whose occurrence is difficult to predict, are very rare, as damage to the road infrastructure elements by hooligans, which poses a threat to road users, the oil applied on the road by a third party and other substances that cause slipperiness. The third group are situations which the road user should expect and predict their occurrence, for example slippery road created as a result of snowfall, parts of trees damaged by hurricane-force winds, the intrusion of wild animals at a marked location and other caused by natural forces.

The analysis of cited judgments shows that it is very difficult to evade road administrator of the responsibility for the damage when it occurs in circumstances that belong to the first category. Only an obvious indication of driver error, force majeure or actions of others may release the manager of liability for damage. Demonstration by the manager that he complied with the required due diligence in preventing the danger is very difficult, because at the moment there are no guidelines that could form a basis to recognize that has fulfilled his responsibilities. During the trial, he may try to present as evidence the procedures of other road managers and compare them with his own actions. However, it is difficult to assess the probative value of such documents. Perhaps the assessment made in the near future by the courts will develop a clear position on the specific behavior of managers in every situation.

Liability for damages arising from the situation indicated in the second category is also often attributed to the manager of the road, but this is no longer so clear. Maintenance of roads in good condition must be judged within reasonable limits, in light of the principles of life experience because administrator of the road is not able in a very short time to check all subordinate roads. Therefore, in case of damage the objects located by the road by hooligans, it is difficult to require that the administrator of the road immediately after the incident remove the threat. These types of situations are not as common as e.g. the formation of rifts in the road, which are also usually preceded by cracks.

The easiest to free from liability for damages within the directory of the third category. The negative effects of the forces of nature can be some approximation to predict. Synoptics often warn against the possibility of hurricane winds, snowfall, blizzards and other adverse events. Vehicle owners expecting the occurrence of negative phenomena should not leave their vehicles under trees. In the event of damage to the car by the healthy limb, which broke under the weight of snow, the court may determine the conditions for the assignment of liability to anyone due to force majeure. Responsibility of road administrator for damages caused during snowfall and slippery winter can also be effectively questionable by proving the fact, that a user was not cautious. However, the administrator will have to show that at that time he did not neglect the work in order to remove the slipperiness of the road surface. It may be necessary to present documents confirming the execution of activities from the moment of danger. Unquestionable thing is that the priority in clearing snow to road of high importance communications, and heavy traffic. We cannot forget about the need to remove the slimy fragments of roads designed for pedestrians. Somehow this obligation rests on the owners of the property adjacent to sidewalks, however, if the pavement is not directly adjacent to any real estate, the obligation to remove slipperiness will also pertain to the pavement.

One of the conclusions of the examined cases, is insufficient analysis of the circumstances of events by insurers. In all discussed in this paper issues before filing a lawsuit in court, victims have reported their claims to insurance companies that were representing road managers within the framework of liability insurance. Insurers considering each case base its reasoning primarily on statements by the insured in terms of accepting responsibility. If, therefore, the road administrator does not feel responsible for the damage, and this position will present it to the insurer, the insurer refuses to pay compensation. Road managers sometimes answer questions asked by insurers vaguely, provide documentation that is incomplete, and insurers are obliged to make the decision about granting or refusing to pay compensation as soon as possible. This causes a lot of errors, because it is difficult to require from the employees of insurance companies to performed a thorough analysis exactly as a court. They should confront collected documents together and if there is a discrepancy in the information provided by victims and road managers they should aim to make the most of their explanations. In many situations, it is difficult to say whether the road administrator neglected his duties, which confirms the fact that many of the cases are examined by the courts. Insurers, however, should treat the information provided by the road managers more critical and confront them with the statements of victims.

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