

COA Opinion: Municipalities can be held liable in tort for failing to maintain curbs in reasonable repair

22. April 2011 By Gaetan Gerville-Reache

In *Sharp v. City of Benton Harbor*, No. 292389, the Court of Appeals held that municipal governments are not immune from tort claims for failure to properly maintain curbs in reasonable repair. Plaintiff Jeanette Sharp sued the City of Benton Harbor for injuries sustained when she stepped onto a curb, it crumbled, and she fell to the ground. Though a grass verge separated the curb from the sidewalk, the court held that this structure fell within the category of structures that Congress intended to include within the highway exception to the governmental immunity act.

The Court of Appeals decision turned entirely upon its interpretation of Congress's definition of the term "highway." The act states:

Except as otherwise provided in section 2a, each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency.

MCL § 691.1402(1). In defining the term "highway," Congress provided a list of structures that were included and a list of structures that were excluded from the definition of that term. MCL § 691.1401(e). Neither list uses the term "curb." However, the court concluded that these lists were not exhaustive but rather illustrative. Looking at the context in which curbs function and relate to other structures included in the definition of "highway," the court concluded that curbs were intended to be included in what Congress considered to be a "highway" under the governmental tort liability act and that municipal governments could therefore be held liable for injuries resulting from a breach of their duty to keep such structures in reasonable repair. Though the act excludes sidewalks and certain other structures from the scope of governmental agency liability in certain provisions, the Court of Appeals concluded that those special provisions only applied to state and county road commissions, not municipal governments.