

COA Opinion: To Sue A Local Government For An Injury From A Defective Sidewalk, The Plaintiff Must Specify The Exact Address Of The Defect

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Under a Michigan statute, local governments waive their immunity for suits arising from a failure to maintain the highway or sidewalk in “reasonable repair so that it is reasonably safe and convenient for public travel.” MCL 691.1402(1). But for this waiver to apply, the plaintiff must notify the local government within 120 days of his injury and must “specify the exact location” of the defect. MCL 691.1404(1). In *Thurman v. City of Pontiac*, the Court of Appeals held that a man who tripped on a cracked sidewalk and sustained injuries could not bring his suit because his notice was not sufficiently precise: he listed the address as “35 Huron, Pontiac, Michigan,” but did not specify whether he meant 35 *West* Huron or 35 *East* Huron.

In its per curiam opinion, the Court noted that it had previously held that using an address was not sufficient if the defect was actually across the street from the address provided and also approximately 40 yards away from the address, *Smith v City of Warren*, 11 Mich App 449 (1968), and that identifying an intersection is not sufficiently precise if the notice does not specify which corner the defect is at, *Dempsey v Detroit*, 4 Mich App 150 (1966). In addition to the absence of “West” or “East” in the address, the Court also concluded that the location was not specific enough because it did not say whether the “35 Huron” address was on the north or south side of the street. The Court, however, did not indicate that the address was for the wrong side of the street (as in *Smith*), and so apparently overlooked the general rule that odd-numbered addresses tend to be on one side of the street and even-numbered addresses on the other side. The Court of Appeals also refused to consider photographs of the defect that the plaintiff submitted when he opposed the

government's motion for summary disposition because the photographs were not submitted within 120 days of his injury.