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## 2001 Survey of Rhode Island Law: Cases: Municipal Law

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**Municipal Law.** *Mercado v. City of Providence*, 770 A.2d 445 (R.I. 2001). In personal injury actions against a city for failure to maintain a sidewalk, the plaintiff must provide notice of the injury to the city within sixty days from the time of the alleged injury.

#### FACTS AND TRAVEL

On July 8, 1996, Dioairo Mercado (Mercado) allegedly fell in a hole that surrounded a water shut off value and injured his left foot and leg.<sup>1</sup> Mercado notified the city council of his claim on August 5, 1997.<sup>2</sup>

On January 12, 1999 Mercado filed a personal injury action against the city in which his sole cause of action was that the city negligently failed to repair or replace the sidewalk.<sup>3</sup> The city denied the claim of negligence in its answer and raised as an affirmative defense Mercado's failure to provide proper notice as required by statute.<sup>4</sup> On February 2, 1999, the city filed a motion for summary judgment, asserting that Mercado failed to comply with the sixty-day notice requirement set forth in section 45-15-9 by filing his claim on August 6, 1997, thirteen months after his injury.<sup>5</sup> The city's motion was heard and granted on June 22, 1999.<sup>6</sup> Mercado filed a timely appeal.<sup>7</sup>

#### BACKGROUND

An individual who suffers an injury as a result of a municipality's failure to maintain its highways or bridges, including its sidewalks, may recover damages<sup>8</sup> provided that the claimant files notice with the municipality within sixty days of the injury.<sup>9</sup> The purpose of the notice provision is to inform the city or town of the location where the injury occurred and the nature of the claim so that the city or town may investigate the circumstances, prepare a

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1. *Mercado v. City of Providence*, 770 A.2d 445, 445 (R.I. 2001).

2. *Id.* at 446.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. R.I. Gen. Laws § 45-15-8 (2001).

9. R.I. Gen. Laws § 45-15-9 (2001).

defense against the allegations or determine the advisability of settling the claim.<sup>10</sup>

#### ANALYSIS AND HOLDING

On appeal, plaintiff argued that, pursuant to *Karczmarczyk v. Quinn*,<sup>11</sup> the required notice was not necessary because the disrepair was the fault of the city's Water Supply Board and not its Department of Public Works.<sup>12</sup> In *Karczmarczyk*, this court distinguished between a municipality's activity as a governmental function and a municipality's activity as a proprietary function. A municipality's statutory obligation to maintain its highways and bridges constitutes a governmental function, while providing a water hose for a third party's needs constitutes a proprietary function.<sup>13</sup> Furthermore, claims alleging failure or negligent performance of a governmental function are subject to the sixty-day notice requirement set forth in section 45-15-9.<sup>14</sup> However, the plaintiff's complaint did not allege negligence by the Providence Water Supply Board, rather the complaint asserted that the city had a duty to maintain its sidewalks and negligently failed to do so.<sup>15</sup> Since maintaining highways and bridges, including sidewalks, constitutes a government function, the plaintiff was required to comply with the sixty-day notice requirement.<sup>16</sup>

#### CONCLUSION

Maintaining highways and bridges, including sidewalks, constitute a government function and not a proprietary function, thus subject to the sixty-day notice requirement set forth in section 45-15-9. Because the plaintiff failed to give the sixty-day notice requirement, his claim must be dismissed.

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10. *Mercado*, 770 A.2d at 447.

11. 200 A.2d 461 (R.I. 1964).

12. *Mercado*, 770 A.2d at 446 (citing *Karczmarczyk v. Quinn*, 200 A.2d 461 (R.I. 1964)).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*