



# Supreme Court of Maryland

Robert C. Murphy Courts of Appeal Building  
361 Rowe Boulevard  
Annapolis, Maryland 21401

Gregory Hilton,  
Clerk

(410) 260-1500

## Instructions for Filing a Petition for Writ of Certiorari After Appealing from the District Court to the Circuit Court

If you have appealed a District Court judgment to the circuit court and would like to appeal the circuit court's judgment, you may only do so by filing a *petition for writ of certiorari* with the Clerk of the Supreme Court of Maryland. Noting an appeal to the Appellate Court of Maryland is not the correct procedure for seeking review of a circuit court judgment after an appeal from the District Court. You should not file your *petition for writ of certiorari* with the clerk of the circuit court.

A "*petition for writ of certiorari*" is a request to the Supreme Court asking it to review the circuit court's judgment. The Supreme Court does not have to grant your request.

Here is the process you should follow to file your *petition for writ of certiorari*:

1. Timing. Your petition must be filed with the Supreme Court no later than 30 days after the circuit court enters its judgment on its docket.
2. Form.
  - A. If you are representing yourself, you may either file an informal or a formal petition.
  - B. An **informal petition** must contain all of the information required by [Rule 8-303\(b\)\(1\)](#), but you do not have to file any documents with the petition. You

must include a signed certificate of service reflecting service on all parties or their attorneys. See 3.C. below.

Attached is an informal petition format approved by the Supreme Court.

C. If you file a **formal petition**, it must fully comply with Rule 8-303 including having:

- i. A history of the case including case numbers, the name of the court, the name of the judge, and the dates any judgments were entered on the docket, and the other information required by [Rule 8-303\(b\)\(1\)](#).
- ii. Your signature, your address, your telephone number, and your email address, if you have one.

You must also include:

- i. A copy of the circuit court docket entries showing the judgment. You can obtain this from the circuit court clerk.
- ii. A copy of the opinion or order you are appealing.
- iii. A signed certificate of service reflecting the date and manner of service on the opposing party or their attorney if they have one. (See 3.C. below).

Attached is a sample formal petition that was filed in another case.

### 3. Filing and Service.

A. Your petition must be filed with the Clerk of the Supreme Court of Maryland. The address for the Clerk's Office is: 361 Rowe Boulevard, 4<sup>th</sup> Floor, Annapolis, Maryland 21401. You can mail the petition, hand deliver it, or, if you are a registered user, you can electronically file it through the MDEC

system. Emailed petitions are not accepted. If you mail the petition, you need to remember that it must be mailed early enough so that it arrives at the Court before the deadline. (See 1. above).

- B. With your petition you must also pay the \$61.00 filing fee for the petition or include a fee waiver request with your petition. Filing a fee waiver request does not guarantee that it will be granted, and you still may be required to pay the \$61.00 fee if the waiver is denied by the Court.
- C. In addition to filing the petition with the Clerk, you must also serve it on the opposing party or their attorney, if they have one. If your petition does not have a signed certificate of service, it will be rejected. A sample certificate of service is shown below.

This guide is based upon section 12-305 of the Courts and Judicial Proceedings of the Maryland Code and Maryland Rules 8-302 and 8-303. You should review [Rules 8-302 and 8-303](#) for the complete procedure for filing your *petition for writ of certiorari*.

\* \* \*

*Sample certificate of service.*

<p style="text-align: center;"><u>Certificate of Service</u></p> <p>I certify that on _____ (date), I served a complete copy of this petition for writ of certiorari on all parties by _____ (manner of service – U.S. Mail or hand-delivery) to the following persons (including addresses):</p>    <p style="text-align: center;">_____ Signature</p>
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## INFORMAL PETITION FORMAT

IN THE SUPREME COURT OF MARYLAND

\_\_\_\_\_. v. \_\_\_\_\_  
Petitioner Respondent

Petition No. \_\_\_\_\_, September Term, \_\_\_\_\_ (to be filled in by the Clerk)

INFORMAL PETITION FOR WRIT OF CERTIORARI  
(REQUEST FOR REVIEW BY THE SUPREME COURT)

In most cases, you do not have an automatic right to review of your case by the Supreme Court of Maryland. You can submit a request to the Supreme Court to review your case. The Court will then decide whether to grant your request. The request you file is called a “petition for writ of certiorari.” Maryland Rule 8-303 lists the information you must include in your request. If you are not represented by a lawyer, you may file an “informal” petition for writ of certiorari using this form. You must still meet the deadlines found in Maryland Rule 8-302. The Maryland Rules that apply to the process of filing your petition are available [HERE](#).

File the fully completed form and your filing fee (\$61.00) with the Clerk of the Supreme Court. If you cannot afford the filing fee, you may file a fee waiver request. There are three ways to file and pay:

(1) Mail it with your check to:

Supreme Court of Maryland  
361 Rowe Boulevard  
Annapolis, Maryland 21401;

(2) Hand-deliver the form with a check or cash to the address shown above; or

(3) File the form using MDEC, the e-filing system used by the Maryland courts. You must be a registered user of MDEC to file online.



(1) List case numbers in each of the courts where your case has been heard to date (if any):

District Court:

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

Circuit Court:

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

Appellate Court of Maryland:

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

(2) Has this case been decided by the Appellate Court of Maryland?

☐ Yes or ☐ No.

(3) If the case is or was pending in the Appellate Court, were briefs filed?

☐ Yes or ☐ No.

If briefs haven't been filed yet, what date are they due? \_\_\_\_\_.

(4) Did the judgment or decision of the circuit court resolve the entire case with respect to all of the parties?

☐ Yes or ☐ No.

(5) What is the date of the circuit court's judgment or decision? \_\_\_\_\_.

(6) What is the date of the Appellate Court's decision, if any? \_\_\_\_\_.

(7) What issues would you like the Supreme Court to review? Please use the section below to state the issues you would like the Supreme Court to consider. If you need more room, you may attach a separate document up to 15 pages long.

In your statement be sure to:

- Identify the legal issues you want the court to consider.
- Identify the information from the record that relates to those issues. This is also called the supporting facts.
- State why the court should rule in your favor on each of those issues. This is your legal argument.
- State why a review of those issues by the Supreme Court is desirable and in the public interest.
- Cite relevant case law, statutes, rules, or other authorities to support your argument.

You may also attach relevant documents from the record.

**Note:** This form has space for three issues, but you may list more.

**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK  
– PLEASE GO TO THE NEXT PAGE)**

Issue 1:

Supporting facts and argument:



Issue 2:

Supporting facts and argument:

Issue 3:

Supporting facts and argument:

(8) If you haven't already done so, please explain why a review of the issues you identified above is desirable and in the public interest:

(9) If you did not include citations to appropriate legal authority in the discussion of the issues you identified above, you may list or describe that authority here:

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Address

CERTIFICATE OF SERVICE

I certify that on \_\_\_\_\_ (date) I served a complete copy of this Informal  
Petition for Writ of Certiorari on all parties by mailing it to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

**Please note: If the Certificate of Service is not completed, this filing will not be accepted. If you do not serve the other party or parties in this case, this filing may be stricken, and this petition may be dismissed.**

**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK  
– PLEASE GO TO THE NEXT PAGE)**

**IF YOU ARE AN INCARCERATED INDIVIDUAL IN A  
CORRECTIONAL FACILITY, FILL OUT THIS CERTIFICATE**

CERTIFICATE OF FILING (Md. Rule 1-322)

I, \_\_\_\_\_ (name), certify that

(1) I am involuntarily confined in \_\_\_\_\_ (name of facility);

(2) I have no direct access to the U.S. Postal Service or to a permitted means of electronically filing the attached pleading or paper;

(3) on \_\_\_\_\_ (date) at approximately \_\_\_\_\_ (time)

☐ I personally deposited the attached pleading or paper for mailing in a receptacle designated by the facility for outgoing mail;

or

☐ I personally delivered it to an employee of the facility authorized by the facility to collect outgoing mail; and

(4) the item was in mailable form and had the correct postage on it.

I solemnly affirm this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, under the penalty of perjury and upon personal knowledge that the foregoing statements are true.

\_\_\_\_\_  
Signature

## SAMPLE FORMAL PETITION FORMAT

**Filed**

SEP 30 2019

Suzanne C. Johnson, Clerk  
Court of Appeals  
of Maryland

**IN THE COURT OF APPEALS OF MARYLAND**

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**SEPTEMBER TERM, 2019**

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**PETITION DOCKET NO. 304**

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[REDACTED]

**Petitioner,**

**v.**

**MAYOR AND CITY COUNCIL OF BALTIMORE CITY**

**Respondent.**

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**On Appeal from the Circuit Court of Baltimore City  
Circuit Court Case No. 24-C-19-003533  
(The Honorable Lawrence P. Fletcher-Hill, Presiding)**

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**PETITION FOR WRIT OF CERTIORARI**

**Adam M. Spence, Esquire  
Elizabeth H. Johnson, Esquire  
SPENCE | BRIERLEY  
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Towson, Maryland 21204  
(410) 823-5003  
[adam@spencfirm.com](mailto:adam@spencfirm.com)  
Counsel for Petitioner**

[REDACTED]

## **PETITION FOR WRIT OF CERTIORARI**

Petitioner, [REDACTED] [REDACTED] [REDACTED] (“Petitioner”), by Adam M. Spence, Esq., Elizabeth H. Johnson, Esq., and SPENCE | BRIERLEY, and pursuant to Rule 8-301(a)(3) & 8-303 and §§ 12-305 & 307 of the Courts and Judicial Proc. Art., files this *Petition for Writ of Certiorari*.

### **PROCEDURAL BACKGROUND**

This appeal originally arises from a District Court for Baltimore City case styled [REDACTED] [REDACTED] v. *Mayor and City Council of Baltimore*, Civil Case No. 0101-0029420-2018, involving a personal injury claim arising from a slip on a worn-down-smooth manhole cover. Petitioner was successful at the trial level. Respondent then obtained the reversal of the trial court’s decision through appellate review by the Circuit Court. Petitioner now seeks review of the Circuit Court’s erroneous ruling through this *Petition for Writ of Certiorari*.

Because of the posture of this case, the Court of Special Appeals has not heard this appeal nor does it have jurisdiction to do so.

#### **A. Decision of the Trial Court**

After hearing evidence at a full trial, Judge Kevin M. Wilson of the District Court of Maryland for Baltimore City determined that the Respondent (a) was negligent, breaching its standard of care to maintain its walkways in a safe and passable condition by failing to repair a dangerous defect posed by a worn-down-smooth manhole cover in a passage way; (b) had constructive notice of that dangerous defect; and (c) that Petitioner was injured as a result, through no fault of his own. The trial court entered judgment in favor of Petitioner in the amount of \$12,544.00 in compensatory damages, plus (i) costs of \$51.00 and (ii) post-judgment interest at the legal rate.

#### **B. Decision Of The Circuit Court Sitting as an Appellate Court**



Petitioner's success was short lived. The Respondent appealed the trial court's decision to the Circuit Court in the matter styled *Mayor and City Council of Baltimore v. [REDACTED]* [REDACTED] (Appeal) Case No. 24-C-19-003533.

On August 30, 2019, the Honorable Lawrence P. Fletcher-Hill of the Circuit Court for Baltimore City heard oral arguments on Respondent's appeal on the record after briefing by the parties.

On September 11, 2019, Judge Fletcher-Hill issued his Opinion and Order, from which this *Petition for Writ of Certiorari* arises.

The Circuit Court affirmed the trial Court's decision that the smooth manhole cover was, indeed, a "dangerous defect" and "slippery as ice," which led to Petitioner's injury. However, the Circuit Court then erroneously held that, because Petitioner presented no evidence of prior slipping accidents, the evidence was insufficient as a matter of law to establish the Respondent's negligence. That is, the court held that Petitioner's evidence of the "open and obvious" worn-down-smooth manhole cover was insufficient as a matter of law to create notice necessary to give rise to Respondent's negligence. Accordingly, Judge Fletcher-Hill reversed the District Court's decision by Opinion and Order, dated September 11, 2019 and remanded it, having fully adjudicated all claims between the parties. No formal mandate has issued.

### **QUESTION PRESENTED FOR REVIEW**

WHETHER THE COURT ERRED AS A MATTER OF LAW IN ITS DETERMINATION THAT THE RESPONDENT WAS NOT ON CONSTRUCTIVE NOTICE OF AN OPEN, OBVIOUS & READILY OBSERVABLE "DANGEROUS DEFECT" IN ITS PUBLIC PASSAGEWAYS

To address this Question Presented, there are no pertinent constitutional provisions, statutes, ordinances or regulations.

### **REASON THIS COURT'S REVIEW IS IN THE PUBLIC INTEREST**

It is in the public interest for this Court to review the Circuit Court's decision for two reasons.

First, the Circuit Court's decision, if left unreviewed, permits the Mayor and City Council of Baltimore to abdicate their responsibility to repair open and obvious "dangerous defects" in its public passageways, which can lead to further injuries.

Second, because this is an issue of first impression, it is in the public interest for this Court to provide municipalities with guidance on whether they must replace dangerously worn-down-smooth manhole covers where pedestrians walk or face liability. This issue is distinct from other rulings by this Court regarding sidewalk "variation" liability because of the differing nature of sidewalk surfaces from the clearly visible traction footholds (or not) on discrete manhole covers.

Indeed, because of the lack of case law on the topic in Maryland, the Circuit Court's appellate ruling was based primarily on the application of the law of another jurisdiction (*Lyon v. City of Logansport*, 35 N.E. 128 (Ind. App. 1893)). Applying that case (and the other state's notice requirements), Judge Fletcher-Hill held that because there was no evidence of previous accidents, there can be no constructive notice attributed to Respondent. Maryland, however, does not require "that prior accidents be shown to establish liability," particularly when a condition is dangerous and long existing. *President & Com'rs of Town of Princess Anne v. Kelly*, 200 Md. 268 (1952).

## STATEMENT OF FACTS

On November 27, 2017, Petitioner walked northbound to his car on Guilford Avenue from the Orphan's Court of Baltimore City. Petitioner was wearing "Wingtip" shoes with leather soles to the metered parking on the side of the road. The weather was "fine" with dry conditions and without any rain. As Petitioner entered the roadway to cross Saratoga Street, Petitioner "glanced up to make sure [the light] was green." Petitioner "saw the manhole cover."

Petitioner had "no traction on the manhole cover." Petitioner saw "nothing" on the manhole. Petitioner "hit the manhole cover. It was like hitting a sheet of ice." He "slipped back" and broke his ankle.

## ARGUMENT

### **THE APPELLATE (CIRCUIT) COURT ERRED AS A MATTER OF LAW IN ITS DETERMINATION THAT THE RESPONDENT WAS NOT ON CONSTRUCTIVE NOTICE OF AN OPEN & OBVIOUS "DANGEROUS DEFECT" IN ITS PUBLIC PASSAGEWAYS**

After listening to testimony, reviewing evidence and listening to arguments, the trial court imposed liability on Respondent. The trial court held that Respondent was on notice of the worn-down-smooth manhole which had lost its traction footholds over a long period of time.

On appeal, the Circuit Court disagreed, stating that "in the absence of evidence of actual knowledge by the City [through reporting of prior accidents] ... it is insufficient as a matter of law to create negligence on the part of the City." (Opinion and Order by the Circuit Court for Baltimore City, at 5). In this, the Circuit Court erred as a matter of law. Under Maryland law, Respondent had constructive notice of the dangerously worn-down-smooth manhole cover.

In order for a municipality to be held liable for negligence, a plaintiff is required to show that the municipality had actual or constructive notice. *Colbert v. Mayor & City Council of Baltimore*, 235 Md. App. 581, 588 (2018). "Constructive notice is notice that the law imputes



based on the circumstances of the case. A municipality is charged with constructive notice when the evidence shows that—as a result of the ‘nature’ of a defective condition or the ‘length of time it has existed’—the municipality would have learned of its existence by exercising reasonable care.” *Id.* (citations omitted). It is “not essential to a plaintiff’s case that prior accidents be shown to establish liability,” particularly when the condition is dangerous and long existing. *President & Com’rs of Town of Princess Anne v. Kelly*, 200 Md. 268 (1952).

The evidence in this case supported, as a matter of law, the trial judge’s determination that constructive notice existed. Petitioner submitted into evidence a considerable number of pictures of manhole covers with raised, safe foothold traction near the worn-down-smooth one that Mr. Borgerding slipped on. The one Petitioner fell on had its traction footholds visibly worn smooth over time, leaving it without any remaining safe footholds or grips, and slippery as a “sheet of ice.”

There is a reason that the other manhole covers pictured in Plaintiff’s evidence have traction on them: a manhole with worn-down footholds provides no safe foothold and creates a dangerous condition. A similar finding was made in *Lyon v. Logansport*, 9. Ind. App. 21, 35 N.E. 128, 128-130 (1893)(emphasis added)(noted as a better considered authority by *Leonard v. Lee*, 191 Md. 426 (1948)):

the creasings in the gutter crossing had become worn away, so that the surface of the crossing, except for a space of ten or twelve inches on the outer edges, had, by constant use, become as smooth as a polished piece of wood, and very smooth, sleek, and slippery, so that no safe foothold was presented by such crossing...

\* \* \*

This condition, when taken in connection with its location in a public and much-traveled street, and with the other facts descriptive of its character, conclusively shows it to be dangerous. It has been adjudged that parts of a sidewalk or street may be held to be defective, in cases where the circumstances made a case much less strong than this.

Further, the manhole cover without traction footholds in this case was open and obvious, being in the middle of the pedestrian street crossing. The worn-down-smooth manhole cover was

not, as the City suggests, “so minor as to make its discovery unlikely.” *See Leonard v. Lee*, 191 Md. 426 (1948)(“Thus constructive notice is equated to triviality in the holding that the municipality is not chargeable with constructive notice if the defect is so minor as to make its discovery unlikely.”).

Rather, the the worn-down-smooth manhole cover was next to a considerable number of other manhole covers that did appropriately and safely contain raised traction footholds. As testified to by Mr. [REDACTED], “I also took pictures of all the surrounding manhole covers in the area. And the grooves are very pronounced for traction.” Indeed, when looking at the pictures of the varying manholes and addressing an objection to Mr. [REDACTED] testifying to the raised footholds on other manholes, the Judge remarked: “I’m gonna sustain the statement, [a picture of the nearby manhole cover] clearly shows raised marks. All right, so I’ll sustain that.” And “... if you look on the left-hand portion of [Plaintiff’s evidence], [the subject manhole cover] clearly shows there were raised grooves and across the rest of the surface of the manhole cover, they’ve obviously worn down through time.”

Likewise, later during an exchange between counsel, the trial judge noted the significance of the pictures regarding the visible traction or lack thereof:

MR. SPENCE: \*\*\* The first thing we see is our, our exhibit, our Exhibit Two, Plaintiff’s Exhibit Two, which is the, the manhole itself. Clearly visibly slick or smooth. Visibly smooth with no friction whatsoever, except –

MR. POTTER: Objection.

MR. SPENCE: For the tiny bit on the far left side.

COURT: Overruled.

MR. SPENCE: I, I think you can observe that from the picture. You can observe that –

COURT: The pictures are the best evidence, I’ll say that

MR. SPENCE: Absolutely. And also the testimony...

In addition, the undisputed facts and inferences therefrom in this case established that the manhole cover’s condition was long present, having “obviously [been] worn down through time.

So it's obviously been there for quite some time.” Of course, “[n]o greater degree of certainty is required of circumstantial evidence than of direct evidence. In reaching a verdict, you should weigh all of the evidence presented, whether direct or circumstantial.” MPJI-Cv 1:8.

In the exercise of “reasonable care,” the Respondent would have certainly come across and should have noticed the worn-down-smooth manhole cover. Having weighed this and other evidence, the trial judge found constructive notice and imposed liability against Respondent.

Because the Circuit Court erred when it reversed the trial court’s decision, this Court should grant a Writ of Certiorari to (a) review, reverse and remanded this case so as to reinstate the trial court’s judgment against Respondent and (b) establish clear guidance to municipalities as to the replacement of worn-down-smooth manhole covers which can be as “slippery as ice”.

### **CONCLUSION**

For the foregoing reasons, Petitioner, [REDACTED] respectfully requests that this Court grants his Writ of Certiorari and review the decision of the Circuit Court for Baltimore City.

Respectfully Submitted,

[REDACTED]

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Elizabeth H. Johnson, Esq.  
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(410) 823-5003  
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adam@spencefirm.com  
***Attorneys for Petitioner***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of September, 2019, I caused to be served a copy of the foregoing on the following persons or entities via regular U.S. Mail, postage prepaid:

Steven J. Potter, Chief Solicitor  
Department of Law  
Mayor and City Council of Baltimore  
100 Holliday Street, First Floor  
Baltimore MD 21202



Adam M. Spence, Esq.



[REDACTED]

Plaintiff,

v.

MAYOR AND CITY COUNCIL OF  
BALTIMORE,

Defendant.

IN THE  
CIRCUIT COURT  
FOR BALTIMORE CITY

Case No. 24-C-19-003533

**ORDER**

This matter came before the Court on August 30, 2019 on an appeal on the record from the District Court of Maryland for Baltimore City. Defendant Mayor and City Council of Baltimore appealed the District Court's judgment against it. Plaintiff [REDACTED] and Defendant City both appeared at the hearing by counsel.

For the reasons stated in the accompanying Memorandum Opinion, it is this 3rd day of September, 2019, by the Circuit Court for Baltimore City, Part 26, hereby **ORDERED** that the judgment of the District Court of Maryland for Baltimore City is **REVERSED**.

It is further **ORDERED** that this matter is **REMANDED** to the District Court of Maryland for Baltimore City for entry of judgment in favor of Defendant Mayor and City Council of Baltimore.

It is further **ORDERED** that Plaintiff shall pay the costs of this appeal.

Judge's Signature appears on the  
original document

TRUE COPY

TEST

**Judge Lawrence P. Fletcher-Hill**

Judge Lawrence P. Fletcher-Hill

*Marilyn Bentley*

MARILYN BENTLEY CLERK





██████████ ██████████ ██████████  
Plaintiff,  
  
v.  
  
MAYOR AND CITY COUNCIL OF  
BALTIMORE,  
  
Defendant.

IN THE  
  
CIRCUIT COURT  
  
FOR BALTIMORE CITY  
  
Case No. 24-C-19-003533

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**MEMORANDUM OPINION**

This matter came before the Court on August 30, 2019 on an appeal on the record from the District Court of Maryland for Baltimore City. Defendant Mayor and City Council of Baltimore ("City") appealed the District Court's judgment against it. Plaintiff ██████████ and Defendant City both appeared at the hearing by counsel.

**District Court Proceedings**

Plaintiff ██████████ ██████████ ██████████ brought this action for personal injuries against Defendant City in the District Court of Maryland for Baltimore City. The action was tried in the District Court on May 8, 2019, before Judge Kevin M. Wilson. Judge Wilson found the City to be negligent and entered judgment for Plaintiff in the amount of \$12,544.00. The City noted a timely appeal to this Court.

Mr. ██████████ testified at trial that he was crossing Saratoga Street on foot, at its intersection with Guilford Avenue in downtown Baltimore, when he stepped on a manhole cover, slipped, and fell. The weather conditions were clear and dry. He broke his ankle in the fall. He introduced medical records to support the nature and expense of his medical treatment, and he testified to a period of lost earnings from his law practice.

Mr. [REDACTED] did not testify that the manhole cover was loose. Rather, he testified that the surface was unexpectedly very slick when he stepped on it. He introduced photographs of the cover that show that it was worn over time to the point that almost all of the ridge pattern cast in the metal was worn smooth. He introduced photographs of multiple other underground utility covers at the same intersection that show a variety of raised patterns still present in most of those covers. His theory of negligence at trial and on appeal is that the City had constructive notice of the worn, and therefore, slippery condition of the manhole cover on which he slipped and that the City was negligent in failing to replace the worn cover.

### Discussion

This Court reviews the decision of the District Court as an appellate court and applies the same standard as any appellate court reviewing a trial court decision. *Rohrer v. Humane Soc'y of Washington Cty.*, 454 Md. 1, 21-22 (2017). The Court will reverse a factual finding only if it is clearly erroneous. *Id.* The Court reviews legal conclusions without any special deference. *Id.*

The City argues that it was and is entitled to judgment as a matter of law because Plaintiff's evidence was insufficient to establish negligence or notice of the allegedly dangerous condition. The Court rejects the City's argument that negligence in these circumstances could only be proved by expert testimony concerning the appropriate degree of friction required for manhole covers. If the City can be held liable for a slick manhole cover resulting from wear, then that condition can be proved by lay testimony of the type given by Mr. [REDACTED]. It is within the competence of a lay person to observe the surface of the cover and to note the absence of ridges that were once present, including in contrast to other similar covers in the roadway.

The City does not dispute that it has a "duty of keeping its roads in good repair and in a condition reasonably safe for travel and use by the public." *Board of Cty. Comm'rs for Cecil*

*Cty. v. Dorman*, 187 Md. App. 443, 455 (2009). The City is not required to maintain its streets in “perfect condition and repair,” *Lynch v. Mayor & City Council of Baltimore*, 169 Md. App. 623, 630-31 (1936), and it “is not an insurer of safe passage,” *Smith v. City of Baltimore*, 156 Md. App. 377, 383 (2004).

The City places greatest emphasis on *Leonard v. Lee*, 191 Md. 426 (1948). In that case, the plaintiff slipped on a sidewalk in Towson immediately after exiting a store. *Id.* at 428-29. The plaintiff’s husband testified that, after the accident occurred, “he slid his foot along the sidewalk where she had fallen, and it was very slippery, and he noticed it was on an angle.” *Id.* at 430. The slippery area was about 18 inches in diameter. *Id.* “The only evidence that the sidewalk became slippery through wear was Mr. Leonard’s affirmative answer to a question asked on cross examination by counsel for [one of the private property owners] that ‘what caused your wife to fall was the worn smooth slippery spot on the pavement, is that right?’” *Id.* There was also evidence that one of the private property owners was aware of the issue and had workers try to scuff the surface of the sidewalk. *Id.*

The *Leonard* plaintiffs “strenuously contend[ed] that the slippery condition of the sidewalk constitute[d] an actionable defect.” *Id.* at 434. The Court disagreed, “differentiat[ing] between conditions which will render the municipality liable, and those which are the necessary concomitant of use over a period of time.” *Id.* at 431.

There could not be any inherent lack of care in paving a sidewalk with cement, or in letting a cement sidewalk remain unrepaired, unless it was broken or was in such a condition that it was *obviously* dangerous. Here we have, at most, a case where the pavement became slightly irregular (if it was worn as claimed by one of the plaintiffs) from the action of time, and this Court has already said, in *Cordish v. Bloom*, [138 Md. 81 (1921)], that a municipality is not liable for such a condition.

*Id.* at 434.



To distinguish *Leonard*, Plaintiff [REDACTED] stresses *Lyon v. City of Logansport*, 35 N.E. 128 (Ind. App. 1893), one of the cases from other jurisdictions cited by the *Leonard* Court. 191 Md. at 435-36. The slip and fall in that case occurred on a cast iron “gutter crossing.” *Lyon*, 35 N.E. at 128. Similar to the patterns in the manhole covers, the gutter crossing when new was “perforated with diamond-shaped spaces” and had “creases cast diagonally in the crossing, about one-fourth of an inch in depth and three eighths of an inch wide.” *Id.* Over time, the metal “had become worn entirely smooth on the top, leaving the edges of the diamond-shaped spaces smooth and rounded, and the creasings in the gutter crossing had become worn away, so that the surface of the crossing, except for a space of ten or twelve inches on the outer edges, had, by constant use, become as smooth as a polished piece of wood.” *Id.* There was also specific evidence that “the marshal of the city” had seen at least one person fall at the same point ten months before the accident and that “a policeman of the city” had seen numerous people slip and one person fall at the same crossing. *Id.* at 129. In support of a verdict for the plaintiff, the court noted: “It is also expressly found by the special verdict *that the city did have knowledge* of the character of the crossing for 90 days before the accident. Thus we have the dangerous defect, *knowledge by the city*, and abundant time to repair it.” *Id.* at 130 (emphasis added).

Both *Leonard* and *Lyon* support the City’s position in this case as a matter of law. The *Leonard* Court placed *Lyon* among “[t]he better considered authorities,” 191 Md. at 435, but it did so in distinguishing *Lyon* as a case involving an inherently dangerous and known condition. To this Court, the clearest distinguishing factor was the City of Logansport’s actual knowledge through its agents of multiple prior slipping accidents at that location. There was no sufficient evidence of prior accidents in *Leonard*, and there is no such evidence at all in this action. At oral argument, Plaintiff’s counsel acknowledged that Plaintiff was proceeding in this case entirely on

a theory of constructive knowledge based on an obligation of the City to inspect manhole covers and to discover those that have excessive surface wear.

This Court concludes that, in the absence of evidence of actual knowledge by the City of the condition of the manhole cover, the argument that the City *could* have or *should* have inspected the manhole cover to discover the wear to it is insufficient as a matter of law to create negligence on the part of the City in these circumstances.

**Conclusion**

For these reasons, this Court will enter a separate order reversing the judgment of the District Court.

September 3, 2019

Judge's Signature appears on the  
original document

**Judge Lawrence P. Fletcher-Hill**

Judge Lawrence P. Fletcher-Hill

TRUE COPY  
TEST

*Marilyn Bentley*

MARILYN BENTLEY, CLERK



## Circuit Court of Maryland

[Go Back Now](#)

### Case Information

Court System: **Circuit Court for Baltimore City - Civil System**  
Case Number: **24C19003533**  
Title: **[REDACTED] vs Mayor And City Council Of Baltimore**  
Case Type: **District Court Record Appeal** Filing Date: **06/28/2019**  
Case Status: **Closed/Inactive**  
Case Disposition: **Decision Reversed** Disposition Date: **09/03/2019**  
District Case No: **29420-2018**

### Plaintiff/ Petitioner Information

(Each Plaintiff/Petitioner is displayed below)

Party Type: **Plaintiff** Party No.: **1**

**Attorney(s) for the Plaintiff/Petitioner**

Name: **Spence, Esq. Adam M**  
 Appearance Date: **06/28/2019**  
 Practice Name: **Spence Brierley, P.C.**  
 Address: **409 Washington Ave  
 Suite 1000**  
 City: **Towson** State: **MD** Zip Code: **21204**

## Defendant/Respondent Information

(Each Defendant/Respondent is displayed below)

Party Type: **Defendant** Party No.: **1**  
Business or Organization Name: **Mayor And City Council Of Baltimore**  
Address: **100 N Holliday St.**  
City: **Baltimore** State: **MD** Zip Code: **21202**  
***Attorney(s) for the Defendant/Respondent***

Name: **Potter, Esq, Steven J**  
 Appearance Date: **06/28/2019**  
 Practice Name:  
 Address: **100 Holiday Street**  
**Lower Level 05**  
 City: **Baltimore** State: **MD** Zip Code: **21202**

### Court Scheduling Information

Event Type: **Civil Trial - Fast Track** Notice Date: **08/20/2019**  
Event Date: **08/30/2019** Event Time: **09:00 AM**  
Result: **Held/Concluded** Result Date: **09/03/2019**

## Document Tracking

(Each Document listed. Documents are listed in Document No./Sequence No. order)

Doc No./Seq No.: **1/0**  
File Date: **06/28/2019** Entered Date: **07/01/2019** Decision:  
Document Name: **Record Appeal from District Court**



---

Doc No./Seq No.: **2/0**

File Date: **06/28/2019** Entered Date: **07/01/2019** Decision:

Document Name: **Notice of Record Received**

---

Doc  
No./Seq **3/0**  
No.:

File Date: **07/02/2019** Entered Date: **07/02/2019** Decision:

Document Name: **Expedited Track Scheduling Order Sent**

**Event: CTFT Block Date: 08/30/19 Facility: 403FPARTIES : Potter, Steven 100 Holiday Street Lower Level 05, Baltimore, MD, 21202 Spence, Adam 409 Washington Ave Suite 1000, Towson, MD, 21204**

---

Doc No./Seq No.: **4/0**

File Date: **07/19/2019** Entered Date: **07/22/2019** Decision:

Party Type: **Defendant** Party No.: **1**

Document Name: **Memorandum in Opposition to the Decision of District Court**

---

Doc No./Seq  
No.: **4/1**

File Date: **08/07/2019** Entered Date: **08/08/2019** Decision:

Party Type: **Plaintiff** Party No.: **1**

Document Name: **Memorandum In Response To Appellant's Memorandum In Opposition To The decision Of The District Court.**

---

Doc No./Seq No.: **4/2**

File Date: **08/09/2019** Entered Date: **08/13/2019** Decision:

Party Type: **Plaintiff** Party No.: **1**

Document Name: **Memorandum in Response to Appellant's Memorandum in Opposition to the Decision of the District Court**

---

Doc No./Seq No.: **4/3**

File Date: **08/12/2019** Entered Date: **08/13/2019** Decision:

Party Type: **Defendant** Party No.: **1**

Document Name: **Reply to Appellee's Memorandum in Support of the District Court's Decision**

---

Doc  
No./Seq **5/0**  
No.:

File Date: **08/20/2019** Entered Date: **08/20/2019** Decision:

Document Name: **Batch Hearing Notice Sent**

**Event: CTFT Block Date: 08/30/19 Facility: 403FPARTIES : Potter, Steven 100 Holiday Street Lower Level 05, Baltimore, MD, 21202 Spence, Adam 409 Washington Ave Suite 1000, Towson, MD, 21204**

---

Doc  
No./Seq **6/0**  
No.:

File Date: **08/30/2019** Entered Date: **08/30/2019** Decision:

Document Name: **Open Court Proceeding**

**Francis Boergerding Jr. Vs. M & CC8/30/2019 Case submitted to court for determination without the aid of a jury. (Fletcher-Hill, J) 8/30/2019 The decision of the district court is heard and hereby held "Sub-Curia"; order to be filed. (Fletcher-Hill,J)**

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Doc  
No./Seq **6/1**  
No.:

File Date: **09/11/2019** Entered Date: **09/11/2019** Decision:

Document Name: **Memorandum Opinion and Order**

**It is this 3rd day of September, 2019: ORDERED that the judgment of the District Court of Maryland for Baltimore City is REVERSED. It is further ORDERED that this matter is**

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**REMANDED to the District Court of Maryland for Baltimore City. It is further ORDERED that Plaintiff shall pay the costs of this appeal. Judge Fletcher-Hill.**

Doc No./Seq No.: **6/2**

File Date: **09/11/2019** Entered Date: **09/11/2019** Decision:

Document Name: **Copies Mailed**

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## DISTRICT COURT OF MARYLAND

[Go Back Now](#)**Case Information**Court System: **DISTRICT COURT FOR BALTIMORE CITY - CIVIL SYSTEM**Case Number: **010100294202018** Claim Type: **TORT**District/Location Codes: **01 / 01** Filing Date: **12/03/2018** Case Status: **APPEALED****Complaint, Judgment, and Related Persons Information***(Each Complaint, Hearing, Judgment is listed separately, along with each Related Person)***Complaint Information**Complaint No: **001** ( [REDACTED] ) Vs: **(MAYOR AND CITY COUNCIL OF BALTIMORE )**Type: **REGULAR CLAIM**Complaint Status: **APPEALED**Status Date: **05/17/2019** Filing Date: **12/03/2018** Amount **\$30000** Last Activity Date: **07/01/2019****Judgment Information**

Judgment Type: **TRIAL JUDGMENT ENTERED** Judgment Date: **05/08/2019**  
 Judgment Amount: **\$12,544.00** Judgment Interest: **\$0.00** Costs: **\$51.00** Other Amounts: **\$0.00**  
 Attorney Fees: **\$0.00** Post Interest Legal Rate: **X** Jointly and Severally: In Favor of Defendant:  
 Possession Of Property Claimed valued At: **\$0.00** Is Awarded To The: Together With Damages Of: **\$0.00**  
 Value Of Property Sued For: **\$0.00** Plus Damages Of: **\$0.00** Is Awarded To The: Dismissed With Prejudice:  
 Replevin/Detinue Amount: **\$0.00**  
 Recorded Lien Date: **05/08/2019** Judgment renewed Date:  
 Renewed Lien Date: Satisfaction Date:

**Related Person Information**

Name: **POTTER, STEVEN J**  
 Connection to Complaint: **ATTORNEY FOR DEFENDANT**  
 Address: **1ST FLOOR**  
 City: **BALTIMORE** State: **MD** Zip Code: **21202**

If Person is Attorney: Attorney Code: Attorney's Firm: **100 HOLLIDAY STREET**

Name: **SPENCE, ADAM M**  
 Connection to Complaint: **ATTORNEY FOR PLAINTIFF**  
 Address: **409 WASHINGTON AV #1000**  
 City: **TOWSON** State: **MD** Zip Code: **21204**

If Person is Attorney: Attorney Code: **006576** Attorney's Firm: **LAW OFC SPENCE BRIERLEY**

Name: **MAYOR AND CITY COUNCIL OF BALTIMORE**  
 Connection to Complaint: **DEFENDANT**  
 Address: **S/O: ANDRE M. DAVIS**  
 Address: **100 N. HOLLIDAY ST STE 101**  
 City: **BALTIMORE** State: **MD** Zip Code: **21202**

Name: **BORGERDING, FRANCIS X JR**  
 Connection to Complaint: **PLAINTIFF**  
 Address: **4912 FORGE HAVEN DRIVE**  
 City: **PERRY HALL** State: **MD** Zip Code: **21128**

Name: **KRAUSE, EVAN**  
 Connection to Complaint: **PRIVATE PROCESS SERVER**  
 Address: **P.O. BOX 15**  
 City: **FELTON** State: **PA** Zip Code: **17322**

Name: **GBMC HOSPITAL**

Connection to Complaint: **WITNESS FOR DEFENDANT**  
 Address: **ATTN MEDICAL RECORDS**  
 Address: **6701 N CHARLES ST**  
 City: **TOWSON** State: **MD** Zip Code: **21204**

#### Case History Information

(Each Event listed for the case is listed below in chronological order)

Type: **INITIAL CASE FILING** Complaint No.:

Date: **12/03/2018** Comment: **INITIAL CASE FILING**

Type: **TRIAL** Complaint No.:

Date: **12/06/2018** Comment: **TRIAL SET FOR: 03062019;TIME: 0830A;LOC:01;ROOM:**

Type: **COMMENT** Complaint No.:

Date: **12/06/2018** Comment: **REG 49-11351197 12/04/2018**

Type: **COMMENT** Complaint No.:

Date: **12/06/2018** Comment: **JKT TO RR**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **12/06/2018** Comment: **NOTICE OF INITIAL TRIAL (ATP)-D1**

Type: **SUMMONS RENEWAL FILED** Complaint No.: **001**

Date: **02/04/2019** Comment: **SUMMONS RENEWAL ;DEF;REQ BY ATP**

Type: **TRIAL/HEARING POSTPONEMENT** Complaint No.:

Date: **02/06/2019** Comment: **TRIL;03062019;0830A;01;SRNW;BY CLK;PREV SET ON 12062018**

Type: **COMMENT** Complaint No.: **001**

Date: **02/06/2019** Comment: **REGISTER 52 11616350 02/05/19**

Type: **COMMENT** Complaint No.:

Date: **02/06/2019** Comment: **JKT TO RR**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **02/06/2019** Comment: **NOTICE OF TRIAL POSTPONEMENT (ATP)-C1**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **02/06/2019** Comment: **NOTICE OF SUMMONS RENEWAL (ATP)-P1**

Type: **SERVICE** Complaint No.: **001**

Date: **02/13/2019** Comment: **SRNW;02042019;DEF;SV-SERVED ;**

Type: **INTRODUCTION OF MEDICAL, DENTAL, AND HOSPITAL RECORDS** Complaint No.: **001**

Date: **02/14/2019** Comment: **INTRODUCTION OF MEDICAL, DENTAL, AND HOSPITAL RECORDS**

Type: **INTRODUCTION OF BUSINESS RECORDS** Complaint No.: **001**

Date: **02/14/2019** Comment: **PLN**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **02/25/2019** Comment: **NOTICE OF OUTCOME OF SPECIFIC SERVICE - SRNW(ATP)-A2**

Type: **NOTICE OF SERVICE OF PRE-JUDGMENT INTERROGATORIES** Complaint No.: **001**

Date: **02/26/2019** Comment: **NOTC OF SERV: PRE-JUDGMENT INTERROGATORIES FILED BY;DEF**

Type: **INTENTION TO DEFEND FILED** Complaint No.: **001**

Date: **02/26/2019** Comment: **INTENTION TO DEFEND FILED /NO REASON GIVEN**

Type: **NOTICE SENT** Complaint No.: **001**

Date: **02/28/2019** Comment: **NOTICE OF FILING OF INTENTION TO DEFEND (ATP)-B1**

Type: **NOTICE OF SERVICE OF PRE-JUDGMENT INTERROGATORIES** Complaint No.: **001**

Date: **03/04/2019** Comment: **NOTC OF SERV: PRE-JUDGMENT INTERROGATORIES FILED BY;PLN**

Type: **COMMENT** Complaint No.: **001**

Date: **03/06/2019** Comment: **REC'D DUPLICATE SERVICE**

Type: **NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES** Complaint No.: **001**

Date: **03/12/2019** Comment: **NOTC OF SERV: ANSWERS TO INTERROGATORIES FILED BY ;PLN**

Type: **SUBPOENA ISSUED** Complaint No.: **001**

Date: **03/26/2019** Comment: **SUBPOENA ISSUANCE ;WID;REQ BY ATD**

---

Type: **NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES** Complaint No.: **001**

Date: **03/27/2019** Comment: **NOTC OF SERV: ANSWERS TO INTERROGATORIES FILED BY ;PLN**

---

Type: **NOTICE SENT** Complaint No.: **001**

Date: **04/05/2019** Comment: **NOTICE OF HEARING/TRIAL - TRIL (ATD)-Z1**

---

Type: **NOTICE SENT** Complaint No.: **001**

Date: **04/05/2019** Comment: **ALSO SENT TO - ATP,**

---

Type: **SERVICE** Complaint No.: **001**

Date: **04/05/2019** Comment: **SUBP;03262019;WID;SV-SERVED ;001**

---

Type: **NOTICE SENT** Complaint No.: **001**

Date: **04/08/2019** Comment: **NOTICE OF OUTCOME OF SPECIFIC SERVICE - SUBP(ATD)-A2**

---

Type: **COMMENT** Complaint No.: **001**

Date: **05/08/2019** Comment: **KEY POINTS 950 11:12**

---

Type: **TRIAL JUDGMENT ENTERED** Complaint No.: **001**

Date: **05/08/2019** Comment: **TRIAL JUDGMENT ENTERED**

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Type: **TRIAL DELETE** Complaint No.:

Date: **05/08/2019** Comment: **TRIL;05082019;0830A;01;BY OAH;JUDGMENT ENTERED**

---

Type: **NOTICE SENT** Complaint No.: **001**

Date: **05/08/2019** Comment: **NOTICE OF JUDGMENT ENTERED - (ATD)-J1**

---

Type: **NOTICE SENT** Complaint No.: **001**

Date: **05/08/2019** Comment: **ALSO SENT TO - ATP,**

---

Type: **APPEAL TO CIRCUIT COURT** Complaint No.: **001**

Date: **05/16/2019** Comment: **I;06282019;APPEAL TO CIRCUIT COURT ;ATD**

---

Type: **TRANSCRIPT COST IN APPEAL** Complaint No.: **001**

Date: **05/16/2019** Comment: **TRANSCRIPT COST IN APPEAL ; ;REQ BY ATD**

---

Type: **TRANSCRIPT COST IN APPEAL** Complaint No.: **001**

Date: **06/21/2019** Comment: **TRANSCRIPT COST IN APPEAL ; ;REQ BY ATD**

---

Type: **COMMENT** Complaint No.: **001**

Date: **07/01/2019** Comment: **MAILED DC/66 TO ALL PARTIES**

---

Type: **COMMENT** Complaint No.:

Date: **07/01/2019** Comment: **JKT TO RR**

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