

# A Pothole Caused Injuries And Damage To My Car; Can I Sue?

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Dear Ask the Attorney:

I was driving my car on a street in my town in Morris County. I drove into a huge pothole that I had not seen in the road and the car went out of control. I ended up hitting a tree causing injuries to my low back and damage to my car. I have collision coverage with a \$500 deductible. Can I sue for my injuries and for the damage to my car?

Local resident

*Our guest blogger today is **Thomas F. Dorn Jr., Esq.** Mr. Dorn is counsel to the firm of **Einhorn Barbarito** and a member of our **Workers' Compensation** and **Personal Injury** Departments. He was the first attorney in New Jersey to be certified by the Supreme Court of New Jersey as a both a **Civil Trial and Workers' Compensation Attorney**. He concentrates his practice solely in workplace accidents, car accidents, motorcycle accidents and other personal injury matters.*

Dear Local Resident:

Your question raises several potential issues involving medical treatment and the damage to your car. You should contact a personal injury attorney to receive information as to how to proceed with your medical treatment, the use of your automobile insurance to pay for the damage to your car and to discuss what rights you may have to file a personal injury case against the town where the pothole was situated.

Since your injuries occurred on a public street, an official claim (called a Notice of Claim) should be filed against the town and road department where the pothole was located. Furthermore, some roads are owned by the County of Morris or State of New Jersey so those public entities would have to be notified too. Under New Jersey law, this Notice of Claim form must be filed on or before 90 days after your accident. If you file the claim form on day 91 it is too late; only on rare occasions will this requirement be waived.

Additionally, in order to sue a town, city or any public entity in New Jersey for pain and suffering from the pothole accident you have to prove that the public entity knew about the pothole, that the pothole was a dangerous condition and there must be proof that your injury is both permanent and substantial. New Jersey courts have ruled that a fracture and/or surgery do not automatically mean that a person's injury is permanent and substantial. The standard of proof against a public entity is very difficult to meet and is determined on a case by case basis.

Any medical treatment you need should be paid by your automobile insurance company. If you have collision coverage on your car you should submit your claim to your automobile insurance company because they will pay for the damage to your car and may be able to recoup your deductible from the town.

Because the answer to your question depends on the facts, and because there is a 90 day time period to file a claim, you should consult with a personal injury attorney immediately to help you determine your rights and determine what steps you should take now.