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Lynette Paczkowski Secures Appellate Decision Upholding Directed Verdict for National Grid

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Lynette Paczkowski, a partner in the firm's Litigation practice, secured the Massachusetts Appeals Court's affirmation of a directed verdict she obtained for National Grid after three days of trial, at the close of the plaintiff's case.

The plaintiff alleged that she stepped into an uneven depression on Hanover Street in Boston's North End and suffered serious injury to her left foot. She notified the City of Boston of her claim within 30 days, as required by the Road Defect Statute. Approximately 11 weeks later, the City sent a letter to her denying liability and implicating National Grid as the responsible party as a result of gas work it had previously undertaken. The following day, the plaintiff sent notice to National Grid.

When the plaintiff later sued National Grid and the City, National Grid moved to dismiss on the basis of untimely notice under the Road Defect Statute. That motion was denied on the grounds that if National Grid's identity was not reasonable ascertainable to the plaintiff, it was therefore impossible for her to comply with the notice requirement of the Road Defect Statute. In granting the directed verdict at trial, the trial judge found the plaintiff did not notify National Grid within 30 days, and that even if "reasonably ascertainable" were the proper inquiry, the plaintiff's own evidence at trial demonstrated that National Grid's identity as a potentially responsible party was just that. The plaintiff appealed the directed verdict, and the Appeals Court affirmed on the basis of lack of timely notice, never reaching the question of whether National Grid's identity was reasonably ascertainable because, as National Grid argued throughout the case, the statute does not allow for a "reasonably ascertainable" inquiry.