

A COSTLY FALL

Who's responsible for public property incidents?

BY MICHAEL F. YOSHIBA, ESQ.



Public agencies maintain and control the tap water you drink, the air you breathe, the waste you produce, the streets you travel on and the sidewalks you traverse. These underappreciated core public functions are essential to daily living in our modern society. But we tend to only notice these public functions when they are made unavailable or we are inconvenienced by water service testing, road closures, traffic diversions and sidewalks that are in disrepair. This is one such instance.

One of the earliest legal cases that I worked on for Caltrans Legal involved a pedestrian claiming an injury that happened while she was walking on a sidewalk at the intersection of a State highway and a local City street. Let me explain how and why the Caltrans Maintenance Department, the City Public Works Department and their respective legal counsels became inextricably involved in this “trip and fall” case, and why keeping records is of the utmost importance.

The Incident

The claimant, we’ll call her “Mrs. M,” was an 86-year-old city resident out doing her daily errands and traveling around the city by local bus service. Mrs. M described herself as slow but very mobile and self-reliant for her age. She claimed that prior to this incident, she didn’t require any walking assistive devices such as canes or crutches. On this day, she was wearing her prescription glasses and

comfortable, hard sole shoes with small heels. The weather was clear and dry with a few patchy clouds.

Mrs. M was traveling in a bus northbound, but she needed to get off that bus and transfer to another one for the final leg on her journey home. This was the same route that she had taken for many years prior to this fateful day. After exiting the bus, she approached an intersection and moved towards the pedestrian signal button mounted directly on the traffic signal pole. After pushing and activating the pedestrian crossing button, she waited to cross while her shoes extended slightly over the curb, facing in the direction of the intended crosswalk. But before the signal changed, a speeding car hastily turned right in front of her, causing her to “backwards shuffle.” During the backwards shuffle, the heel of her shoe caught on an obstruction protruding from the sidewalk and she proceeded to fall to the ground. After picking herself up, she managed to get home without further incident.

However, a few hours after arriving home, Mrs. M began to feel pain in her left knee. The knee began to swell, but she didn’t seek treatment for three days. It was noteworthy from her testimony at deposition that the first call she made to anyone concerning her injury was to the attorney representing her in this lawsuit. The next call that she made was to a chiropractor recommended by her attorney. Her attorney later recommended that she contact a specific physician for an x-ray



Michael Yoshida is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.

of the injured knee to opine whether there was any structural damage to her knee which would require repair. The physician told her that she needed surgery and physical therapy for her injured knee. The estimate of total past and future medical costs, pain and suffering was \$60,000.

The Case Goes to Court

The attorneys and experts for the State and City inspected the area where Mrs. M purportedly tripped, fell and was injured. Near the accident site, there was a piece of an old metal bolt protruding a quarter of an inch above the surrounding concrete sidewalk. The bolt appeared to be the remnant of a freestanding pedestrian crossing button that had been all but removed, except for the protruding metal bolt. Mrs. M specifically claimed in her lawsuit that the quarter inch bolt was a dangerous condition of public property that caused her to snag her shoe while doing a backwards shuffle to avoid the speeding car, causing her to fall awkwardly and twist her knee.

Who's Responsible?

The State and City researched their respective records to determine which public agency owned and maintained this sidewalk area. The public entities also searched for records to identify who physically removed the pedestrian crossing button pole and left the protruding bolt in the sidewalk area.

Unfortunately, neither the State nor the City could locate records with accurate maps or the specific agreement verifying/absolving the parties of responsibility from ownership or maintenance. Therefore, while neither the State nor the City wanted to have to defend this case, both ended up having to expend time, resources and costs in this matter.

The case ultimately resulted in a settlement with the plaintiff, where both the State and City each reluctantly paid a portion. Whether the exculpatory contract terms, maps and documents were lost, misplaced, destroyed or never contemplated will never be known—perhaps until the next “backwards shuffle” lawsuit. ☹



PERCHERON

“I give my full attention to each detail on every project to ensure deadlines are always met.”

Jessica, Director - Title



DISCOVER THE PERCHERON EXPERIENCE

FULLY INTEGRATED LAND SERVICES YOU CAN COUNT ON

From right-of-way to surveying, lease acquisitions to environmental support, Percheron delivers consistent, reliable and fully integrated land services throughout the United States. You need people on your side who know every aspect of the industry. We bring together the right people, process and technology to create the complete Percheron Experience—so you get consistent results, every time.

