



CARL WARREN & COMPANY

Mastering the Sidewalk Trip & Fall Claim



Chris Kustra and Scott Grossberg recently presented at the Public Agency Risk Management Association (PARMA) conference in Anaheim on how to properly handle a sidewalk trip and fall claim. This session was specifically for employees in the California public sector.

Chris Kustra
Claims Manager
Carl Warren & Company
ckustra@carlwarren.com

Scott J. Grossberg
Founding Partner
Grossberg & Hoehn
sgrossberg@hotmail.com

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Here are a few guiding principles...

Sidewalk Trip and Falls often occur due to:

- Sections of sidewalk raised by tree roots.
- Leaking sprinklers.
- Subsidence runoff from private property.

What's in Your Investigation Toolbox?

- Camera/Cell Phone
- Flashlight
- Ruler/Tape Measure
- Comparison object (e.g. a quarter)
- Level

Measurements & Photographs

- It is imperative that you take photos and measurements before the repairs are made.
- If applicable, measure both the vertical and horizontal displacement.
- If possible, have the claimant place their foot where they tripped and take a photograph of them doing so.
- Take photographs from all directions and at the midpoint and both ends of the lifted panel.
- Look for evidence of prior repairs and the overall condition of the sidewalk.
- Photograph any tree roots/leaking sprinklers/subsidence.

Meeting with the Claimant

- An in-person recorded statement is ideal.
- The goal is to size up the claimant and assess them as a witness, whether or not their story is believable, and to pin as much comparative liability on them as possible.
- Questions to ask, include:
 - What is your familiarity with the location?
 - Is this your regular walking route?
 - What was the purpose of your walk?
 - Where you coming from and where were you going to?
 - What was your walking speed – running or leisurely pace?
 - Where you were you looking?
 - Were you on a cell phone at the time of the incident?
 - Did you notice the sidewalk issue that day or had you noticed it on prior walks?
If yes, why did you not avoid it?

Meeting with the Claimant Continued...

- Did you pass by it without incident on the way to your location and then trip on it on your way back?
- Was anyone with you at the time of the incident?
- Which direction did you fall?
- Exactly where did your foot catch? <have claimant mark a photograph with you there>
- What was the weather like at the time of the incident?
- What was the lighting like?
- Do you wear glasses/corrective lenses? If so, were you wearing them at the time?
- What kind of shoes were you wearing? <photograph the shoes>
- Were you carrying anything?
- Did you take any photographs of the sidewalk? <if so, request copies of them>

Additional Information



- Secure copies of the City's incident report, police report and fire report (if prepared).
 - These reports can contain very useful information (e.g.: unfavorable comments made by the claimant to the First Responders, contact information for witnesses that claimant did not identify, etc.)
- Review Google Maps to confirm whether or not the condition has existed for a significant amount of time.
- Knock on the door of the business or neighbors at the location and obtain statements from anyone knowledgeable of the incident.

Inspection & Maintenance Records



- Does the City have a formal inspection program? If so, was it complied with?
- Secure copies of any written records.
- Has the location been repaired before?
- Have there been prior complaints at the location? If so, what was the City's response?

Comparative Liability



- The claimant's own liability for the accident will reduce all of his/her damages (economic and non-economic).
- Was the problem with the sidewalk caused by a third party, such as a homeowner? If so, the property owner's liability will be significant (e.g. roots from a private tree lifting the sidewalk, leaking sprinklers, subsidence from front yard/slope).

Contracts/Tenders



- What does the contract/agreement actually say?
- Is inspection contracted out or just the maintenance?
- If a cable or utility company is involved, does the City have a contract or franchise agreement with them which requires them to defend and indemnify the City?
- If maintenance is contracted out, secure copies of the City's work order requests.

The Law



- Under the California Government Code, the Plaintiff must prove dangerous condition of public property and then notice.
- Fielder vs. City of Glendale is the controlling case authority: A sidewalk panel lift of 3/4 " or less without other factors (such as jagged edges) is a trivial defect as a matter of law.
- The plaintiff's liability is based on a reasonableness standard.
- Insufficient lighting is not actionable, as case law holds that darkness can not be completely eliminated.
- The Trial immunity (Government Code 831.4) is absolute. Paved paths through a park qualify.

Early Settlement Opportunities



- If liability is problematic, a strong effort should be made to settle the claim as quickly as possible.
- If the claimant does not have an attorney, there is a tremendous opportunity for a value settlement. The claims representative should assure the claimant that he/she will work on getting their claim resolved as quickly as possible so that he/she does not feel pressured to get an attorney.
- It could be that the claimant just wants his/her glasses replaced or his/her medical bills paid for.
- Remember, once an attorney gets involved, the overall cost of the claim increases significantly.

Carl Warren is an employee-owned Third Party Administrator (TPA) with 20+ locations and specializes in property and casualty claims management and subrogation.

Connect with us:

Richard McAbee
Chief Marketing Officer
Tel: 602-485-8228 x101
rmcabee@carlwarren.com