

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: DANGEROUS CONDITION – PROXIMATE CAUSE AND FORSEEABILITY

The elements required to prove liability for a dangerous condition of public property include:

- That the injury was proximately caused by the dangerous condition, and
- That the dangerous condition created a reasonably foreseeable risk of the kind of injury that occurred.

With some significant exceptions, these elements are usually not difficult issues on dangerous condition claims; there is a certain common sense that would apply in most instances. Having said that, it is not uncommon for a claimant to suffer an injury, and then go looking for a condition of the property to blame it on. For example a high lip on the edge of road could explain why a car ended up in a ditch, but there has to be some sort of proof that the car actually hit the lip. In these types of cases the proximate cause element is crucial.

The proximate cause element simply requires that the injury be connected, or caused in part, by the dangerous condition. If there is a dangerous condition on the sidewalk, and an accident takes place in the street, there is obviously no causal relationship between the accident and the condition. It is not enough that there is a dangerous condition in the general area; it has to contribute to the actual cause of the accident. Liability for the public entity arises when the condition was a proximate cause, but not necessarily the sole proximate cause. Acts of third parties or even the comparative negligence of the claimant does not break the chain of causation. For example a missing stop sign can still be a proximate cause of an accident even though the claimant was speeding, or was admittedly inattentive.

Foreseeability of injury does not require that the very injury that occurred must have been foreseeable; it is probably enough that the general character of the event or injury be foreseeable. The classic example is an airplane landing on a public road hitting a pot hole. A motorist might be able to recover from a similar pothole accident, but it is probably unforeseeable that a plane would be damaged hitting the same pothole.

What should a supervisor take from this? It is enough that you recognize that there needs to be a connection between the dangerous condition and injury – pretty common sense stuff. Additionally, when in your travels you see a condition that might be considered dangerous, think of the type of injury or damages that it might cause, and the steps that can be taken to protect against that kind of accident.

The next topic deals with a very important topic, the last required element of a dangerous condition: notice.

Next topic: Dangerous Condition – Notice