

Slips, Trips, and Falls

How to stay on balance and avoid liability pitfalls

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Municipal Duties

What are we responsible for?

1. Duty to exercise "**ordinary care**" in the design, construction, maintenance, and repair of its public sidewalks (and roads) to keep them in a "reasonably safe condition for ordinary travel."



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"Ordinary care" in the design, construction, maintenance, and repair of its public sidewalks (and roads) to keep them in a "reasonably safe condition" for "ordinary travel."

Definitions

- "Ordinary care" means the care a reasonably careful city would exercise under the same or similar circumstances.
- "Reasonably Safe Condition" means the care a reasonably careful city would exercise under the same or similar circumstances.
- "Ordinary Travel" means how a reasonably prudent person would be traveling on sidewalks or roads.

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Municipal Duties

What if we didn't cause the condition?

- The rule is that a city must have (a) notice of a dangerous condition which it did not create, and (b) a reasonable opportunity to correct it before liability arises for negligence from neglect of duty to keep the streets safe. Niebarger v. Seattle, 53 Wn.2d 228, 332 P.2d 463.
- **Actual Notice v. Constructive Notice**
 - Constructive Notice may be inferred by the length of time the dangerous condition existed. *Id.*
 - Almost always a question of fact

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Municipal Duties

“Actual” or “Constructive” Notice

- The plaintiff is excused from proving notice when the City should have reasonably anticipated the condition would develop. Nguyen v. City of Seattle, 179 Wn. App. 155, 165 (2014).
- Constructive notice arises if the condition existed for a period of time so that the municipality should have discovered its existence through the exercise of reasonable care. Niebarger v. City of Seattle, 53 Wn.2d 228, 230 (1958).
- “Whether one charged with negligence has exercised reasonable care is ordinarily a question of fact for the trier of fact.” Bodin v. City of Stanwood, 130 Wn.2d 726, 735 (1996).

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Who else can be Responsible?



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The Abutting Land Owner

What are the abutting landowner's duties?

- Duty to exercise ordinary care in connection with the use of the property so as not to make, or create conditions that make, the adjacent way unsafe for ordinary travel or to cause injury to persons using the public sidewalk.
- Landowner does not become a possessor of public land by performing "neighborly maintenance" – replacing a missing brick, trimming trees.

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The Abutting Land Owner

Rivett v. City of Tacoma, 123 Wn.2d 573 (1994)

- No liability for abutting land owner unless they “cause or contribute” to the condition.

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Why is the Abutting Land Owner Responsible?

- A landowner owes a duty to prevent a hedge or tree planted or preserved on its land from being unreasonably dangerous to ordinary travelers, and to restrain the tree or hedge so as not to injure the pedestrian. Rosengren v. City of Seattle, 149 Wn. App. 565 (2009).
- Hedge or Tree planted by landowner or predecessor in interest?
- What about our Municipal Codes?

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Municipal Codes

Rivett v. Tacoma / Yim v. Seattle

- Rivett: It is unreasonable and “unduly oppressive” to require an abutting landowner to indemnify the City for all sums paid to a person injured on a public sidewalk, especially without a showing the landowner caused or contributed to the condition.
- Yim: Rational basis for Substantive Due Process. Rivett identified as a case regulating the use of property that “may no longer be interpreted as requiring heightened scrutiny”

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The City, Abutting Landowner - Who else?

The Claimant!



- **WPI 12.06** - Every person has a duty to see what would be seen by a person exercising ordinary care.

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The Claimant

"Walking is hard"

The Washington State Supreme Court

- *"Walking, although it becomes automatic by long practice and use, is, after all, a highly complicated process. The body balance is maintained by the co-ordination of many muscles, and their operation is controlled by an intricate system of motor nerves, the failure of any of which for a split second, on account of advancing age or for some other reason, may cause a fall. It is common knowledge that people fall on the best of sidewalks and floors. A fall, therefore, does not, of itself, tend to prove that the surface over which one is walking is dangerously unfit for the purpose."* Knopp v. Kemp & Herbert, 193 Wn. 160 (1938)

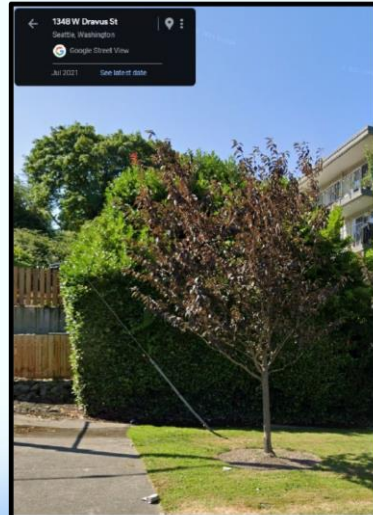
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Recent Case

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Lesley Mettler Auld
v.
City of Seattle, 14th & Dravus, LLC

King County Cause No. 22-2-08004-3 SEA

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The City's Municipal Code

- The SMC states private property owners “are responsible for ... maintaining street trees and other vegetation in abutting public places.” SMC 15.43.040 (A)(1).
- "Street tree" means “any tree planted or growing within a public place[,]” and "public place" means “public right-of-way and the space above or beneath its surface, whether or not opened or improved, including streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, planting strips, squares, triangles, and plazas that are not privately owned.” SMC 15.02.046(I), (T).
- SMC requires property owners to remove vegetation from adjacent planting strips that constitute a safety hazard, and to remove vegetation from abutting sidewalks; “vegetation” includes moss and algae. SMC 10.52.010(L),

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Deposition Testimony

City of Seattle Witness:

- Q: Okay. Is it your understanding that it is solely and only the property owner of 14th and Dravus's obligation and responsibility to keep the sidewalk in safe condition?
- A: Yes, it is their responsibility. The adjacent property owner is responsible for keeping -- maintaining the sidewalk in safe condition. So sometimes it could be the City, if it's a City property.
- A: It's -- It's the adjacent property owner's responsibility.
- Q: And in this case, that's 14th & Dravus LLC?
- A: Correct.

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Deposition Testimony

Abutting Property Owner Witness

Q: (By Mr. Lombardi) We've talked a lot about cleaning it. Prior to this lawsuit, had 14th & Dravus hired anyone to evaluate the location where my client was injured?

A: The City sidewalk, we did not.

Q: Okay. Why not?

A: It's a City sidewalk. I felt like all we could do was report it to the City, as we did [after this lawsuit was filed]. We don't have authority to repair it or tear it up or any of the other things that we would need.

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How did the jury interpret this?



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Did the jury side with the City?

QUESTION 5: Assume that 100% represents the total combined fault that proximately caused Plaintiff's injuries or damages. What percentage of this 100% is attributable to Defendant City of Seattle's negligence, and what percentage of this 100% is attributable to Defendant 14th & Dravus LLC's negligence? Your total must equal 100%.

ANSWER:

To Defendant City of Seattle:	<u>48</u> %
To Defendant 14 th & Dravus LLC:	<u>52</u> %
Total:	100%

(DIRECTION: Sign this verdict form and notify the bailiff)

DATE: 6/20/24

Craig R. Buckland
Presiding Juror

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What did the jury award?

QUESTION 4: What do you find to be Plaintiff Lesley Mettler Auld's amount of damages as set forth below?

ANSWER: **Lesley Mettler Auld's:**

Past Economic Damages:	<u>\$364,456.26</u>
Future Economic Damages:	<u>\$2,350,000</u>
Past Noneconomic Damages:	<u>\$2,920,000</u>
Future Noneconomic Damages:	<u>\$7,525,000</u>
TOTAL:	<u>\$13,159,456.26</u>

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ADJUDICATION & JUDGMENTS

This matter was tried to a jury, which returned a verdict on June 20, 2024, against Defendants City of Seattle and 14th & Dravus LLC, jointly and severally, as follows:

\$ 13,159,456.26 to Lesley Mettler Auld

Therefore, it is ORDERED, ADJUDGED, and DECREED that Plaintiff Lesley Mettler Auld is awarded judgment against Defendants City of Seattle and 14th & Dravus LLC, jointly and severally, in the following amount of \$ 13,159,456.26. Judgment interest shall accrue as provided under RCW 4.56.110.

DATED this JUN 20 2024



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So what can we do in litigation?

- Make friends - Co-Defendant? Plaintiff's counsel?
- Be open - agreements with Plaintiff's counsel and co-Defendant.
- Split expert costs.
- Agree on a liability split with abutting property owner before trial. Maybe arbitrate apportionment after the verdict.
- Research, Research, Research - Judge, opposing counsel, counsel for co-defendant.

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Best option?

Avoid litigation

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How can we avoid litigation?

- Sidewalk Maintenance Programs – if you don't have one, consider starting one!
- Be mindful of capacity and budget.
- Good deeds gone wrong – “Notice.”
- Be mindful of capacity and budget.
- **BE MINDFUL OF CAPACITY AND BUDGET**

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Questions?

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