

SMALL BUSINESS ADVOCATE

**> Premises liability –
Outside the store**

by Ross Dwyer, Esq.

Last month we examined premises liability inside a store or business. This month we're heading outside and looking at some situations where businesses can face premises liability for occurrences outside the store.



Ross Dwyer

Parking lots

Don't be fooled into thinking that potential premises liability for your business ends once satisfied customers leave your store with bags full of expensive purchases. Injuries occurring at parking lots owned, operated, controlled, or possessed by a business can result in liability. The parking lot is often an extension of the store and the laws governing premises liability inside the store generally apply to the parking lot. Businesses should timely address dangerous conditions in the parking lot and complete regular inspections using maintenance/sweep logs.

Businesses should also be aware of how the terms of any lease they have with the building owner affect liability. For example, in malls and shopping centers, an injury in a parking lot sometimes results in liability to the owner of the building, and not the individual business.

Sidewalks

Although the general rule in California is that landowners and/or businesses are under no duty to maintain the sidewalks abutting their property or on adjacent properties, many cities – including Oakland – have local ordinances

requiring property owners to repair sidewalks and take affirmative action to keep sidewalks safe. California courts have upheld these local ordinances, which often shift duties and liabilities to the property owners. Thus, a customer or pedestrian injured due to a dangerous condition on a sidewalk in front of a business could result in a costly claim or lawsuit against the business.

Oakland Municipal Code ("OMC") 12.04.020 requires the owners or occupants of property to repair dangerous conditions on sidewalks "in front of" their property once the city gives notice that repairs are required. Under OMC 12.04.030, property owners not thrilled with being required to complete repairs to public sidewalks may elect to have the city do the work. Owners making this election, however, must pay any repair bill plus interest and costs, or risk having a lien filed against their property.

In addition, an Oakland property owner can't rest easy just because a dreaded notice of repair hasn't shown up in the mail. OMC 12.04.070 places an affirmative duty on owners to maintain the sidewalks in front of their property by keeping them free and clear of all "grass, weeds, rubbish or other obstructions or materials" which have accumulated for any reason whatsoever.

Criminal acts

In certain situations, a business can be found liable for third party criminal acts on its property –i.e. a mugging in the parking lot. California law provides that if a property owner has reasonable cause to anticipate wrongful acts of third parties and resulting injuries, that owner has an affirmative duty to control such wrongful acts.

The key concept to keep in mind here is foreseeability. A court determining whether a property owner is liable for the acts of a third party on the property will give significant weight to the foreseeability of the risk. If the risk which resulted in harm was foreseeable, a court will likely find the property owner had a duty to control the wrongful acts of third parties, and impose liability for a breach of that duty.

In that parking lot mugging referenced above, a court might find that the mugging was foreseeable if it had happened before on the property under similar circumstances. ■

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**Join us at our 108th Annual Meeting
Wednesday, June 26
11:30 a.m. – 1:30 p.m. ■**