

Manager/Supervisor Risk Management

#65– 6/21/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: SUBSEQUENT REPAIRS

A claim comes in for a dangerous condition of public property, and a crew is sent out to inspect the site. They discover that there are problems with the area (for instance a raised sidewalk panel, a bad road surface, or maybe a broken playground structure) which may or may not rise to the level of a dangerous condition. What should they do? This is one of those “on the other hand” answers.

The inspection takes away any argument that the entity does not have current notice of the dangerous condition. As previously discussed, the entity has a duty to act reasonably in maintaining and repairing their property; they also might have a duty to warn of the danger. Certainly any subsequent accident at the same site would create an exposure. But if the entity makes repairs or adds warning signs doesn't that seem that on the current claim they are admitting that there was a dangerous condition?

The Government Code states that action taken by the entity after an accident to protect against further similar injuries is “not evidence that the public property was in a dangerous condition at the time of the injury.” The purpose of the non-admissibility of subsequent repairs is to encourage an entity to remedy a dangerous condition of their property by taking away the potential downside of admitting liability on the current claim. This means that the claimant's attorney cannot bring in the changes to prove there had been a dangerous condition of public property; but there are other ways to get the fact that the entity has changed the condition before the jury. When this happens the jury will be instructed that this is not proof that there was a dangerous condition, but is there an effective way to stop them from drawing an obvious inference?

So, on the one hand we do not want to create an inference that there was a dangerous condition, but on the other hand we do not want to see another injury claim coming from the same site. The decision of what to do is very fact specific and requires a weighing of the competing considerations, but in most cases we will recommend making the repairs.

There is, however, a crucial issue: when repairs or changes are made after an injury, it is essential that we document the condition prior to it being changed. WHENEVER AN ENTITY IS MAKING CHANGES TO THEIR PROPERTY THAT IS INVOLVED IN, OR HAS THE POTENTIAL TO BE INVOLVED IN, A CLAIM, CONTACT YCPARMIA SO THAT WE CAN TAKE APPROPRIATE PICTURES, VIDEO AND MEASUREMENTS. Experience has indicated that the photos taken by the entity's crews often lack the probative value needed to address the issues. There is no cost to the member for the early involvement of YCPARMIA, and it can be invaluable in defending the claim.

Next topic: We are moving into a new liability area, Employment Liability