

May 19, 2010

## **Premises Liability for Injuries on Adjacent Public Sidewalks**

Premises liability claims often come in the form of slip and fall cases. These cases typically involve claims for damages against the property owner for injuries suffered while on the subject property. However, there are occasions when a claim may be brought for injuries suffered on adjacent property.

A common example of such a claim involves injuries that occur on sidewalks adjacent to the property in question. For example, a property owner would be liable for drainage of water from its property on to a city sidewalk if that water were to cause an accident. In New Mexico, this is not an uncommon set of circumstances. Often, property owners have sprinklers or other sources of water that drain onto sidewalks or streets causing ice hazards to pedestrian and vehicles alike. There are other occasions where stores, restaurants, or other businesses have water or other liquids that escape from their property on to pedestrian walkways. In these cases, and other cases where a dangerous condition is caused on an adjacent property by the activities of a property owner, the property owner is fully liable for any harm caused by his or her negligence.

The most common situation is codified in New Mexico Uniform Jury Instruction § UJI 13-1316 specifically addresses public sidewalks: "The [owner] [occupant] of property abutting a public sidewalk is under a duty to exercise ordinary care not to create an unsafe condition which would interfere with the customary and regular use of the sidewalk."

If you are injured in such a situation, you or someone on your behalf should immediately collect as much evidence as possible. This would include getting the names, addresses and phone numbers of any witnesses. Even more important, you should get pictures of the accident site as soon after the accident as possible so that you can document the condition of the property at the time of the accident. This would include identifying and documenting the source of the water. As you might imagine, this task is made much more difficult in cases involving ice when pictures are taken later when the ice has already melted.

Failure to document the negligence and liability of the property owner at the time of the accident can make pursuit of these cases substantially more difficult and sometimes impossible due to the lack of evidence to establish the property owner's liability. In addition, public sidewalks may also raise Tort Claims issues against the local government. These claims require that a Tort Claims Notice be sent within 90 days of the accident. Failure to do so will bar the claim.

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Due to the many possible complications associated with these types of cases, it is typically advisable to contact a New Mexico Injury Attorney as soon as possible after the accident.

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