

Property & Injury Claim

Pedestrian Falls Near a Construction Site

The Problem

The project was a shopping center under construction with two anchor stores already open for business. The injured Plaintiff lived a block away from the project, and regularly visited the operational stores. He would walk along a public sidewalk, then short-cut through the parking lot on the vehicular driveway, rather than walk the slightly longer pedestrian path. On the night of the incident, a vehicle approached while he was on the driveway, near the construction area; to avoid the oncoming car, he stepped up onto the curb, lost his balance, stepped down into the planter area, then fell to the ground. He claimed, and supplied contemporaneous photographs, that he was forced to use the vehicular entrance because our client neglected to provide a pedestrian walkway, and that the vehicular entrance was poorly maintained because it was sandy, and therefore slippery.

The Solution

Pete Fowler Construction was hired by the attorney for the General Contractor to investigate the claims. According to testimony from the grocery store's director and the contractor's staff, multiple pedestrian walkways had been accessible since the store first opened. This fact was verified by the City's Building Department, who had issued a Certificate of Occupancy to the two stores that were open, and would not have done so if a separate entrance for both pedestrians and vehicles was not available.

As for the condition of the driveway, we inspected long after construction was completed. It was clear that the sand the Plaintiff slipped on was a natural part of the desert environment and not a byproduct of the construction site maintenance. Further, we found documentation from the project file that the parking area was no longer under control of the contractor, and had been turned over to the property manager to maintain.

We composed a Report of our findings along with supporting evidence. This was not enough to convince the Plaintiff to settle reasonably. As trial approached, we composed a Trial Presentation with all of the contract language, photographs, and even measurements on satellite imagery depicting the short-cut the Plaintiff took rather than using the sanctioned pedestrian path. We calculated he saved just 2.5 minutes by taking this dangerous route. The presentation was delivered and a reasonable settlement was soon reached.

