Liability Aspects of Pedestrian Facilities

DETAILS

70 pages | 8.5 x 11 | PAPERBACK
ISBN 978-0-309-30849-6 | DOI 10.17226/22150

AUTHORS

Terri L. Parker and Ronald Effland

Responsible Senior Program Officer: Gwen Chisholm Smith

Legal Research Digest 65

LIABILITY ASPECTS OF PEDESTRIAN FACILITIES

This report was prepared under NCHRP Project 20-6, "Legal Problems Arising Out of Highway Programs," for which the Transportation Research Board is the agency coordinating the research. The report was prepared by Terri L. Parker, Parker Corporate Enterprises, Ltd., and Ronald Effland, Missouri Highway and Transportation Commission. James B. McDaniel, TRB Counsel for Legal Research Projects, was the principal investigator and content editor.

The Problem and Its Solution

State highway departments and transportation agencies have a continuing need to keep abreast of operating practices and legal elements of specific problems in highway law. This report continues NCHRP's practice of keeping departments up-to-date on laws that will affect their operations.

Applications

Walkways and areas where pedestrians cross roads have traditionally been an area vulnerable to tort claims involving pedestrians injured in trip and fall incidents or vehicle accidents. Public agencies also have exposure in terms of Americans with Disabilities Act (ADA) complaints or lawsuits alleging civil rights violations due to inaccessible pedestrian features. In the cases of both tort claims and accessibility-related claims, media highlights may feature unusual cases that are not representative of either jury verdicts or judicial opinions. Regardless of the out-of-pocket costs of litigation, state and local agencies must appropriately construct and maintain their pedestrian facilities in order to maintain a reasonably safe transportation system. The most recent data available at the time of this digest indicates that 4,432 pedestrians died in traffic crashes in 2011, which was a 3 percent increase from the number reported in 2010. In fact, in 2011, pedestrian deaths accounted for 14 percent of all traffic fatalities.

Limited or incorrect information exists about legal aspects associated with the design, construction, inspection, maintenance, and operation of pedestrian facilities.

This digest provides a view and analysis of recent jury verdicts and court decisions addressing tort liability and ADA-related claims covering pedestrian facilities to the extent that information is available. The main objective of this research was to assess liability and claims concerning pedestrian facilities or the lack of such facilities and their interaction with highways. By providing insight into the nature and disposition of pedestrian facility-related claims, the research results should contribute to enhanced safety and accessibility of pedestrian facilities. The digest should be useful to transportation officials, attorneys, engineers, planners, law enforcement officials, pedestrians, and all interested in safe pedestrian traffic.

CONTENTS

I. Introduction, 3

II. Analysis of Legal Issues Relating to ADA Claims, 4

- A. ADA Issues, 4
- B. The Law, 4
- C. No Requirement to Provide Pedestrian Facilities, 5
- D. Department of Justice Jurisdiction, 5
- E. Civil Cases Involving ADA Issues: Causes of Action and Stating a Claim, 7
- F. Defenses, 9
- G. Cases Reported in Traditional Media, 10
- H. Attorney's Fees/Frivolous Lawsuit Legislation, 10
- I. Survey Responses, 11
- J. Conclusion, 12

III. Analysis of Tort Claims, 12

- A. Tort Claims, 12
- B. Plaintiff's Case, 12
- C. Issues of Compliance with ADA and Non-Delegable Duties, 16
- D. Commonly Used Defenses to Plaintiff's Causes of Action, 17
- E. Conclusion, 19

IV. Analysis and Summary of Survey Data, 19

- A. The Formal Survey, 19
- B. Common ADA Issues, 20
- C. Resolution of Tort Claims, 21
- D. Liability Shifting Ordinances and Statutes, 22

V. Risk Management Strategies, 22

- A. Identify Safety Issues, 22
- B. Request Help and Input from the Public, 23
- C. Review the Claims, 23
- D. Provide Tools to Address Problems, 23
- E. Comply with Internal Guidance and Industry Standards, 23

VI. Conclusion, 23

Appendix A: July 2013 Letter, A-1

Appendix B: C.F.R.'s, B-1

Appendix C: Project Civic Access Settlement Agreements, C-1

Appendix D: Summary of Defects Noted in PCA Review, D-1

Appendix E: Pedestrian Facilities National Survey, E-1

Appendix F: Responses to the Pedestrian Facilities National Survey, F-1

Appendix G: Reported Verdicts and Settlements, G-1

LIABILITY ASPECTS OF PEDESTRIAN FACILITIES

By Terri L. Parker, Parker Corporate Enterprises, Ltd.; Ronald Effland, Missouri Highway and Transportation Commission; and Melissa N. Walden, Texas Transportation Institute*

I. INTRODUCTION

This digest addresses legal claims that relate to pedestrian facilities, such as sidewalks and crosswalks, and focuses on allegations of violations of the Americans with Disabilities Act[1] (ADA) and lawsuits alleging that a government agency has been negligent in maintaining its facilities. Limited and sometimes completely inaccurate information can be found in mainstream media regarding the legal aspects of design, construction, inspection, and maintenance of pedestrian facilities. Many of the reported verdicts and settlements are sizeable. These reports may be misleading because they encourage the public to believe that all verdicts and settlements of these claims are sizeable. This research indicates that many tort settlements have a low value and that much tort litigation ends with a defendant's verdict. ADA complaints catch the attention of the public when a disabled person is injured or denied access to a public facility, but in reality numerous ADA complaints are resolved through a mediation process or when injunctive relief is granted to the plaintiff. A detailed analysis of this research can be found in this paper and the appendices.

Regardless of the out-of-pocket costs of litigation, state and local agencies must appropriately construct and maintain their pedestrian facilities in order to maintain a reasonably safe transportation system. The data available at the time of this report indicates that 4,432 pedestrians died in traffic crashes in 2011, which was a 3 percent increase from the number reported in 2010. In fact, in 2011, pedestrian deaths accounted for 14 percent of all traffic fatalities.[2]

The ADA originally required states and local agencies to formulate plans and work towards the goal of compliance with federal law. However, bringing all local, state, and federal governmental agencies into compliance with the ADA has proven to be time consuming and difficult. Upgrades to buildings and pedestrian facilities are expensive and complicated. Sidewalks and crosswalks have become a major source of tort and ADA claims and a reliable source of income for plaintiffs' attorneys in some jurisdictions. ADA claims have become so prevalent in California that a state law prohibiting frivolous claims was enacted.[3]

This publication is written for state and local transportation agencies that are tasked with the construction and maintenance of sidewalks and other pedestrian facilities. It is anticipated that this paper will be valuable to both government agencies and private entities and will contribute to the enhanced safety and accessibility of pedestrian facilities.

In Section I of the digest, landmark ADA cases are outlined to explain the basis of today's legal issues. In the context of transportation litigation, ADA claims are usually based on lack of access to a facility, such as a sidewalk or a public building, by a disabled person. The typical trigger for a claim in the transportation context is the ADA requirement that when an "alteration" to a road surface or other facility occurs, the facility must be improved in a manner that allows ready access to individuals with disabilities, i.e., when a 2-inch asphalt overlay is done on a roadway, the adjacent sidewalks must be upgraded and curb cuts provided. Caselaw relating to the definition of "alteration" is analyzed in this section and the July 2013 Department of Justice (DOJ) memo that specifies which treatments are considered to be maintenance and which constitute an alteration of the sidewalk is highlighted.[4] Settlements and ver-

* Texas Transportation Institute's participation consisted of preparing and conducting the survey and providing responsive data for the report.

[1] 42 U.S.C. 126, §12101. Pub. L. No. 102-25, as amended.

[2] NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, TRAFFIC SAFETY FACTS (August 2013), available at http://www.-nrd.nhtsa.dot.gov/Pubs/811748.pdf.

[3] In September 2012, the California State Legislature enacted SB 1186 in an effort to limit frivolous Disabled Persons Act claims and encourage compliance with disability access laws. It is codified in § 6106.2 of the Business & Prof. Code.

[4] FEDERAL HIGHWAY ADMINISTRATION AND U.S. DEPARTMENT OF JUSTICE, JOINT TECHNICAL ASSISTANCE ON THE TITLE II OF THE AMERICANS WITH DISABILITIES

dicts are presented to illustrate the costs of failure to construct improvements in a timely manner. Additionally, DOJ investigations and settlement agreements are reviewed and discussed. Lessons learned are also included as practical advice for the agencies.

In Section II of the digest, tort claims are reviewed and discussed. Plaintiffs' claims typically include slip and fall and trip and fall accidents. Claims may also be based on the improper location, installation or signing of a crosswalk, or the complete failure to provide or upgrade the facility. Each of these types of cases are discussed, with an emphasis on the "failure to replace or rebuild" and "failure to provide facility" claims as they are nontraditional tort claims. The defenses employed by public agencies such as the "open and obvious" defense, design defense, lack of notice, the de minimis rule, compliance with the ADA and liability shifting ordinances are discussed. Tort verdicts and settlements are also analyzed in this section.

Section III of the digest is devoted to an analysis of the formal survey and survey results and statistical summaries of the data collected in the survey. Section IV contains considerations and recommendations for risk management strategies and recommendations for compliance.

II. ANALYSIS OF LEGAL ISSUES RELATING TO ADA CLAIMS

A. ADA Issues

The main applicable provisions of federal law are set out in their entirety, and other applicable provisions can be found in Appendix B. Some of the most important court cases are reviewed in this section to provide the background for the present state of the law. This section also includes a discussion of the role of the Department of Justice in civil claims and ADA compliant facilities, an analysis of current caselaw, and a review of multiple agencies' experiences with ADA issues. Cases involving compliance with the transition plan are analyzed and reviewed. Finally, reported claims and verdicts are discussed and analyzed.

The typical trigger for a claim against a transportation agency is when an "alteration" to a road surface or other facility occurs and the sidewalk is not altered at the same time to allow ready access to individuals with disabilities, i.e., when a 2-inch asphalt overlay is done, adjacent sidewalks are supposed to be upgraded and curb cuts added or modified to current standards. Until 2013, federal guidance was not completely clear as to which road treatments constituted an alteration and which were merely maintenance.[5] Clarifying guidance and caselaw relating to the definition of "alteration" are discussed below. Government agencies are required by federal law to prepare a "transition" plan that outlines when its facilities will be in full compliance with the ADA provisions.

B. The Law

The Americans with Disabilities Act was signed into law in 1990 and amended in 2008. Revised regulations relating to accessibility standards were published in 2010.[6] The text of the Act can be found at 42 U.S.C. 126, Sections 12101 *et seq*. For the purposes of this article, the pertinent sections are as follows:

> Section 12132. Discrimination
>
> Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
>
> Section 12147. Alterations of existing facilities
>
> General rule. With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of §12132 of this title and §794 of Title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations.
>
> * * * *

Essentially this section of law states that if a public entity chooses to make changes rising to the level of "alterations" to a facility, it must use that opportunity to make the altered portions of the facility accessible. Even though the ADA has been in effect since 1990, some agencies are not in compliance. If a complaint of noncompliance is made to the agency, the complaint will likely esca-

ACT REQUIREMENTS (July 28, 2013), found in Appendix A.

[5] *Id.*

[6] The Department of Justice has an online version of the *2010 ADA Standards for Accessible Design* that can be found at ADA.gov. The 2010 changes encourage agencies to integrate walking and bicycling into their transportation systems. (*See* http://www.ada.gov/2010ADAstandards_index.htm.)

late to involve the Department of Justice if not resolved at the local level. Methods of compliance with the Act have been explained in various CFR sections as noted in Appendix B.

C. No Requirement to Provide Pedestrian Facilities

It is important to note that the ADA does not require public agencies to provide pedestrian facilities and that existing sidewalks, if built on or before January 1992, do not have to be made accessible. But where those sidewalks have been altered since 1992 or were built after 1992, they must be accessible to the disabled.[7] When agencies construct improvements that provide access for pedestrians, the completed project must meet accessibility requirements for persons with disabilities to the maximum extent feasible.[8]

The basic requirements of ADA are that: 1) new construction and altered facilities must be free of architectural and communication barriers; and 2) existing facilities, policies, and programs must be evaluated for discrimination and a plan for modification (a transition plan) must be put in place in a timely manner.

D. Department of Justice Jurisdiction

The DOJ is tasked with enforcement of the ADA. Typically, DOJ gets involved in a situation in one of two ways, either via citizen complaint or through its own investigations. Through investigations, lawsuits, and settlement agreements, the DOJ usually works on behalf of disabled individuals. In the course of litigation, and with the assistance of the DOJ, courts may award a plaintiff compensatory damages or they may impose fines on non-compliant government agencies or businesses. DOJ frequently writes amicus briefs or statements of interest to guide courts in interpreting the ADA.

DOJ provides free mediation services to individuals, parties, and government agencies who are involved in a dispute. The agency provides technical assistance to businesses, states, and local agencies. DOJ also has an informational website and interactive telephone lines and is able to supply technical materials to the public and other government agencies. Annual status reports are posted on the ADA website so that Congress and the public can educate themselves on the activities of the agency.

1. Project Civic Access

Project Civic Access (PCA) is a DOJ program that requires staff of the Disability Rights Section (DRS) to review a community's compliance with ADA and identify modifications to public facilities that are needed for compliance with the law. More than 200 PCA reviews have been conducted by the DOJ in more than 190 locations since the inception of the program. The DOJ has conducted PCA compliance reviews in all 50 states, Puerto Rico, and the District of Columbia. The results of each compliance review are posted on the PCA website to help other communities and state and local agencies understand the types of accessibility issues that the Department of Justice reviews when determining ADA compliance. According to the DRS, an agency should review its facilities with the idea that the pedestrian trip begins where the vehicle trip ends, and both of those trips should be accessible by the public. The guidelines used to evaluate public rights-of-way were developed by a group of access professionals, and are discussed in more detail in Section II. Typical transportation issues addressed during the investigations include: physical modifications to facilities, accessible parking, and accessible routes to and throughout the pedestrian facilities.

The first DOJ settlement agreement was reached with the city of Toledo, Ohio, in August 1999. In that agreement, the city agreed to remove "barriers to access" within its facilities and to relocate some of the activities that were held in locations that could not reasonably be made accessible to individuals with disabilities. The review for ADA accessibility included city owned facilities such as the municipal courthouse, police stations, fire stations, parking garages, museums, city parks and recreation centers, and city administration buildings.

DOJ reports that local agency officials often respond favorably to PCA reviews and assist investigators as they work to review ADA compliance within the community.[9] Local officials are able to provide records about alterations and remodeling work performed within their facilities and rights-of-way. Additionally, local officials are asked to assist investigators as they conduct onsite compli-

[7] 28 C.F.R. 35.149 and 35.150.

[8] *See* CIVIL RIGHTS MEMORANDUM, FHWA, CLARIFICATION OF FHWA'S OVERSIGHT ROLE IN ACCESSIBILITY (September 12, 2006), available at http://www.armor-tile.com/articles/pdfs/DOT-info-Memorandum.pdf.

[9] *Enforcing the ADA, Part 1*, available at http://www.ada.gov/5yearadarpt/ii_enforcing_pt1.htm, site last visited April 25, 2014.

ance surveys to expedite the inspections and to help educate local staff on the items that are covered under ADA provisions. After the PCA follow-up reviews are completed, the city is provided a listing of items that need to be corrected to make their programs and facilities more accessible to all members of the public. Frequently after a DRS official conducts a review of a city's facilities, necessary improvements are set out in a settlement agreement. Normally a city will be allotted three to six months to do the following: set up a system for accepting input from persons with disabilities; identify the roads and highways that have been constructed or altered since 1992; identify sidewalks and crosswalks that have been constructed or altered since 1992; and begin constructing appropriate improvements such as curb ramps or new sidewalks. All these steps have to be reported to DRS officials and the local agency will be monitored for progress. A good source of current information on this process can be found at the Department's *Best Practices Toolkit for State and Local Governments*.[10]

From 2011 to 2013, the DOJ entered into 26 settlement agreements after investigating local and state agencies. Details of those investigations can be found in Appendices C and D. The top five most common ADA deficiencies reported in PCA reviews include: signing within accessible parking areas; excessive slopes within accessible parking areas; handrail deficiencies; excessive slopes within accessible routes; and aisles within accessible parking areas.

- Deficiencies in parking areas are by far the most commonly reported issues. Within that category, problems with signing for accessible spaces and excessive slopes within accessible parking areas are the top two items reported. The large number of deficiencies on items in the parking areas indicates that there is a continuing need for agencies to focus more attention on their parking areas. Having the correct number of accessible spaces in each lot with proper signing, striping, and access aisles is critical to having accessible communities.
- Handrail deficiencies are the next most commonly reported items. Agencies should be aware of the requirements for handrails and upgrade handrail systems necessary to meet current specifications. A common problem with handrails seems to be that they do not include proper extensions onto the approaching surface.
- Excessive slopes within the pedestrian access route are also common deficiencies. Excessive cross slopes and running grades make travel for persons with or without disabilities difficult.
- Another commonly reported deficiency in PCA reports relates to access aisles in accessible parking areas. Missing access aisles, improperly marked access aisles, or access aisles that are too narrow are common problems. Agencies must be sure accessible spaces are adjacent to properly marked access aisles that lead directly to accessible pedestrian routes. Providing the accessible parking space does not ensure compliance with the guidelines. There must be an aisle provided so users can enter and exit parked vehicles.
- Other commonly reported problems in the pedestrian access route include the presence of steps or vertical bumps within accessible routes; curb ramp edge protection or flare problems; excessive slopes within curb ramp spaces; accessible routes that are not firm, stable, and slip resistant; and various surfacing issues within accessible routes.

The number of missing curb ramps reported decreased from earlier periods between 2011 and 2013, as the problem was only noted in 4 of the 23 communities that were involved in PCA reports in that timeframe. Excessive slopes, edge protection, and flared sides were among the top 10 deficiencies reported during 2011 to 2013.

2. Guidelines Used for Facilities Review

Pedestrian Rights-of-Way Access Guidelines (PROWAG) is the set of guidelines that outline technical requirements for the appropriate construction of pedestrian facilities such as sidewalks, crosswalks, medians, islands, bridges, and signals. These guidelines are promulgated by the United States Access Board and were developed by disability organizations, public works departments, and civil engineers. ADA Accessibility Guidelines (ADAAG) is used to evaluate buildings and grounds. Federal Highway Administration (FHWA) guidance states that PROWAG should be followed when ADAAG do not provide a standard that is on point.[11]

[10] Available at www.ada.gov/pcatoolkit/abouttoolkit.htm, site last visited November 11, 2013.

[11] Available at http://www.fhwa.dot.gov/programadmin/pedestrians.cfm, site last visited August 24, 2014.

3. Progress Reports and Continuing Upgrades

Some of the settlement agreements that are entered into as a result of PCA or other DOJ investigations require progress reports and/or additional work to be done on the agency's system. For instance, as a result of a lawsuit and as part of a $1.1 billion 2010 settlement agreement, Caltrans is required to provide a report of ADA compliance progress each year. Initially, Caltrans was required to improve the surface condition of thousands of miles of sidewalks and crosswalks. [12] The Caltrans compliance report now includes data on changes made to its program, resources allocated to ADA programs for the preceding years, the number of ADA complaints received and investigated, and a summary of new projects that have been awarded. In 2007, the city of Chicago settled one of the largest ADA cases in history, agreeing to spend $10 million per year for 5 years on sidewalk accessibility, in addition to the $18 million it spends annually on sidewalk maintenance.

Similarly, in a 2004 agreement, Delaware Department of Transportation agreed to review its 1992 to 1997 resurfacing records to determine which roads had received overlays of more than 3 inches so that it could identify locations that needed curb ramp upgrades or installations. The cost to the agency was estimated to be $800 to $1500 per curb ramp for approximately 1,500 curb ramps. The agency agreed to complete 100 upgrades per year until the deficient locations were in compliance with the law.[13]

E. Civil Cases Involving ADA Issues: Causes of Action and Stating a Claim

In this section, current case law is reviewed and different theories and causes of action are discussed and analyzed. Plaintiffs' causes of action are divided into categories involving alterations and compliance with the transition plan for the purpose of discussion. Many agencies have had difficulties determining when ADA upgrades must be made. The basic answer to the question is that when agencies are performing mere maintenance, upgrades are not required. When a facility is altered, upgrades are required.

To prove a violation of the ADA, a plaintiff must show that he or she is a qualified individual with a disability, that he or she was denied the benefits of public services or programs, and that the exclusion or denial was due to that person's disability.[14] Cases such as *Kinney v. Yerusalim*,[15] *Barden v. City of Sacramento*,[16] and *Californians for Disability Rights (CDR) et al. v. California Department of Transportation*[17] illustrate some of the challenges agencies face with implementation of the ADA requirements.

1. Alterations to the Facility

The law, according to *Kinney v. Yerusalim*, is that whenever an alteration such as a "change to a facility in the public right of way that affects, or could affect, access or use of the facility, including the changes to structure, grade, or use of the facility" is undertaken, the work is subject to ADA requirements and must be brought into compliance. Essentially, an alteration is a change that affects the usability of the facility involved. In *Kinney*, the court defined "alteration" for the purposes of determining when it is necessary to program sidewalk improvements. The city of Philadelphia performed a 1-½ inch asphalt overlay which spanned the length and width of a city block, but didn't install curb ramps at the intersections; the court found the city to be in violation of the ADA.

Barden v. City of Sacramento is another case that has been widely studied by cities, counties, and states. In *Barden*, the plaintiffs brought a class action against the city, alleging that the city violated federal law by failing to install curb ramps in newly constructed or altered sidewalks and failing to maintain existing sidewalks to ensure accessibility for disabled persons. The court found that the prohibition against discrimination in the providing of public services applied to the maintenance of public sidewalks and found that public entities must address barriers to access such as missing or unsafe curb cuts in the sidewalk system. Following the court's ruling, the parties reached a settlement whereby the city agreed to allocate 20 percent of its annual transportation

[12] *Californians for Disability Rights, Inc. (CDR), et al. v. California Department of Transportation (Caltrans)*, available at http://www.dralegal.org/impact/cases/californians-for-disability-rights-inc-cdr-et-al-v-california-department-of, site last visited April 28, 2014.

[13] *Voluntary Settlement Agreement Between the Delaware Department of Transportation, The Legal Aid Society, Inc. and the United States Department of Justice,* available at www.ada.govdeldot.htm, site last visited April 28, 2014.

[14] Weinreich v. Los Angeles County Metropolitan Transportation Authority, 114 F.3d. 976, 978 (9th Cir. 1997).

[15] 9 F.3d 1067 (3d Circuit 1993).

[16] 292 F.3d 1073 (9th Cir. 2002).

[17] 2009 WL 8595755 (N.D. Cal.). 2009 U.S. Dist. Lexis 91490, N.D. (Al. 2009).

budget to make pedestrian walkways accessible to disabled persons. The city was required under the terms of the settlement agreement to install compliant curb ramps at intersections, remove barriers that obstructed the sidewalks such as narrow pathways and abrupt changes in slope, and remove overhanging obstructions.

Lessons Learned: Prior to *Kinney* and *Barden*, many state and local agencies believed that overlay and resurfacing projects were simply maintenance projects and therefore, not subject to ADA requirements. That is not true. Because the difference between maintenance activities and alterations had been difficult for agencies to discern, in July 2013, FHWA issued a new clarification memo. In that memo, maintenance activities are defined as but not limited to: chip and fog seals; scrub seals; joint repairs; pavement patching; diamond grinding, and crack filling and sealing. Alterations include treatments such as: a layer of new asphalt; mill and fill; rehabilitation and reconstruction; and thin-lift overlays. However, pairing more than one "maintenance" activity with another may be considered an "alteration." (See July 2013 memo, attached as Appendix A.)

As part of maintenance operations, the agency must ensure that its day-to-day operations keep the path of travel open and usable for persons with disabilities throughout the year. This includes snow and debris removal, maintenance of pedestrian and wheelchair traffic in work zones, and immediate attention to or corrections of any disruptions to pedestrian traffic.

It is obvious to the practitioner that not only must the alterations be done in a timely manner, but they must be done properly. Multiple instances have occurred in Missouri and other states on state and local routes where new sidewalks have been improperly installed by contractors and the sidewalk has later been taken out or reworked, at considerable cost. Common mistakes include the failure to properly place "ped heads" so that they can be reached from a wheelchair, failure to install curb cuts, and failure to provide an adequate slope for the safe travel of a wheelchair. A sidewalk that cannot be safely traveled is of no use and that sidewalk is likely not reasonably safe for its intended users. Care must be taken by the agency to employ a contractor with experience and knowledge of applicable standards so that costly re-working is not necessary.[18]

2. Transition Plan

A good transition plan is essential to the agency's compliance with ADA requirements and can be a solid defense to an ADA complaint or lawsuit. The court in *Schonfeld v. City of Carlsbad*[19] found that the city was in compliance with the transition plan requirement after a challenge by Schonfeld, and granted the city's motion for summary judgment on that issue. The court pointed out that the city conducted a self-evaluation in a timely fashion, solicited input from appropriate groups and individuals, indexed every street, and inventoried existing and missing curb ramps and then set up a procedure and budget to install 900 curb ramps over a 4-year period. The court also noted that the city had taken steps such as adopting a Pedestrian Action Plan, preparing a Sidewalk Inventory Report, and establishing a priority system to begin sidewalk installation over 5 years with a budget allocation of $300,000 per year.

In *Lonberg v. City of Riverside*,[20] the issue before the court was plaintiff's motion for summary judgment on the question of whether the city had prepared an adequate transition plan. The court reviewed the plan and the accompanying documents which included a plan to improve curb ramps and sidewalks and found that the city did not comply with the minimum federal requirements. The transition plan did not list the physical obstacles in the streets that limited access for the disabled, nor did it identify steps that would be taken during each year of the transition period or indicate when the streets would be made wheelchair accessible. The city's plan was found to be in direct violation of 28 C.F.R. § 35.150(d)(3).

In *Californians for Disability Rights (CDR)*[21] *et al. v. California Department of Transportation (Caltrans)*, individuals and two disability rights

[18] Resources for agencies and contractors are available at https://www.fhwa.dot.gov/accessibility site last visited June 1, 2013.

[19] 978 F. Supp. 1329 (S.D. Cal. 1997).

[20] No. EDCV97-0237-RT, 2000 WL 34602547 (C.D. Cal. June 1, 2000); this case was subsequently reversed and vacated, 571 F.3d 846 (9th Cir. 2009), *cert. denied,* 131 S. Ct. 78, 2010 U.S. Lexis 6408, the Circuit Court citing to Alexander v. Sandoval, 523 U.S. 275 (2001), and finding that 42 U.S.C. 12132 and 28 C.F.R. 35.150(d) do not provide a private right to enforce § 35.150(d)'s transition plan requirements.

[21] No. C-06-5125, 2009 WL 8595755 (N.D. Cal.).

organizations filed suit claiming that pedestrian facilities were not accessible for people with disabilities. The parties eventually reached a settlement with Caltrans that provided access for persons with disabilities to 2,500 miles of sidewalk and "Park and Ride" facilities. One of the main deciding factors noted by the court was that Caltrans had not surveyed its 2,500 miles of sidewalk by the time the action was brought. Therefore, the agency could not and did not know what barriers to access for the disabled existed in its system and for that reason, could not possibly have an adequate plan to address the problem areas. The 2008 settlement required Caltrans to commit to a comprehensive plan which included a financial commitment of $1.1 billion for 30 years.[22]

Lessons Learned: The development of a transition plan takes time and resources, but pays off many ways. The agency can determine the projects that are most needed by comparing the data collected and balancing its resources against its needs. The reviewing court looked favorably on the *Schonfeld v. City of Carlsbad* plan, noted above, which had the following components: a pedestrian action plan involving citizen input, a sidewalk and ramp inventory, and a budget adequate to install the necessary sidewalks over a period of time. Compliance with a good transition plan is a solid defense to an ADA complaint or lawsuit.

The cases below discuss potential defenses to ADA complaints.

F. Defenses

The only real and full defense to an ADA lawsuit or complaint is compliance with the law, although some agencies have successfully defended claims using a feasibility defense. Compliance with the law can be achieved in several ways:

1. Transition Plan

Implementation of and compliance with a *transition plan*, as discussed in the *Schonfeld v. City of Carlsbad* case, is required.

2. Feasibility

The court in *Disabled in Action of Pennsylvania v. Southeastern Pennsylvania Transp. Authority*,[23] examined the definition of "maximum extent feasible" looking at whether the agency could or should consider both technical and economic feasibility when determining whether to make accessibility improvements. At issue was the transportation authority's failure to install an elevator in a facility. The applicable regulation states as follows: "the phrase 'to the maximum extent feasible' applies to the occasional case where the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards...." 49 C.F.R. § 37.43(b). The court found that the narrow exception established in 49 C. F.R. § 37.43(b) contemplated that the "infeasibility" of making the altered portion of a facility would be only "occasional" and would arise from "the nature of an existing facility"—not from the budget limitations of a transportation authority. The court noted that ADA and DOT regulations define feasibility primarily with respect to technical, not economic, concerns.[24] (See also *Roberts v. Royal Atlantic Corp.*,[25] wherein the court held that the ADA's "'maximum extent feasible' analysis does not require the court to make a judgment involving costs and benefits.... the statute and regulations require that such facilities be made accessible even if the cost of doing so—financial or otherwise—is high.")

The cases essentially conclude that a high cost to the agency to do an accessibility improvement as part of an alteration is not a proper consideration or a defense to the failure to include an upgrade to a sidewalk. Cost may be considered, however, when the agency is deciding whether to undertake a stand-alone accessibility improvement outlined in a transition plan. For example, if an agency lists an existing highway in its transition plan as needing curb cuts, but the highway is not scheduled for alteration, the agency may consider the costs to upgrade "unduly burdensome" and not undertake that project for that reason.[26]

There is some indication that an agency may even be required to acquire right-of-way to comply with the ADA. In *Deck v. City of Toledo*,[27] the plaintiff class sued the city regarding noncompliant curb ramps. The city argued that it was unable to comply with the law due to site constraints. The court found in favor of plaintiffs, noting that unless technical compliance would destroy the value and purpose of the improvement, the city had to comply with the law. The court stated that "no citations have been offered by the City to illustrate to the Court why compli-

[22] *See* Survey Response, Caltrans, Section IV.

[23] 635 F.3d 87 (3d Cir. 2011).

[24] *Id*. at 95.

[25] 542 F.3d 363, 371 (2d Cir. 2008).

[26] 28 C.F.R. 35.150(a)(3).

[27] 29 F. Supp. 2d 431 (N.D. Ohio 1998).

ance cannot be attained, even in light of the necessity of a private taking of land." [28]

3. Undue Burden

A related affirmative defense, called the "undue burden" defense, can be made based on 28 C.F.R. § 35.150(a)(3). That section states that an agency is not required to take action that would result in an undue financial or administrative burden. The decision that compliance would result in an undue burden must be made by the head of the agency and be accompanied by a written statement of the reasons for reaching that conclusion.

The undue burden defense is more likely to be successful in a building alteration scenario than a highway improvement situation because a city completing a building improvement can make the argument that other facilities are available or that improvements are not feasible due to historical significance. For example, the "undue burden" defense was unsuccessful in the case of *Culvahouse v. City of LaPorte, Indiana.*[29] Disabled plaintiffs brought a suit alleging impassible sidewalks. The city defended the case offering testimony that adjacent property owners, rather than the city, were responsible for the maintenance of the sidewalks and the cost of repair was an undue burden. The defense failed.

4. Statute of Limitations

These defenses are largely unsuccessful. The Department of Justice interprets Title III and Fair Housing Act provisions to mean that the statute doesn't begin to run, at the earliest, until the construction or alterations at issue have been completed. That interpretation was accepted in *Disabled in Action of Pennsylvania v. Southeastern Pennsylvania Transp. Auth*.[30] (See also *Schonfeld v. City of Carlsbad.*[31]) According to *Frame v. City of Arlington*,[32] the right of action accrues at the time the plaintiffs knew or should have known they were being denied the benefits of the sidewalk, which is defined in that opinion as "the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured."

G. Cases Reported in Traditional Media

A media search was done for ADA verdicts and settlements. Several California cases are highlighted to illustrate common issues. In *Lawson v. City of Stockton*, *CA*,[33] the plaintiff, a paraplegic, was injured when he attempted to cross a city sidewalk which was apparently not accessible via wheelchair. He recovered $80,000 for his injuries and $125,000 in attorney's fees. The court also ordered the city to post signs warning of the inaccessible sidewalk and to install a compliant ramp within one year of the settlement.

In a similar case, *Imperiale v.City of South San Francisco*, *CA*,[34] a wheelchair-bound plaintiff was allegedly unable to access city hall due to the city's failure to comply with the ADA. The plaintiff was awarded $25,000 in damages and his counsel was awarded $65,000 in fees. The city also agreed to create disabled access points for city hall and the library and to create other walkways.

H. Attorney's Fees/Frivolous Lawsuit Legislation

Clearly, the goal of the ADA in the transportation context is to provide full and equal access to highways, pedestrian facilities, and transit systems. The ADA contains both a private right of action for individuals and advocacy groups,[35] and a public right of action by the Attorney General. The only remedies for a private individual under the federal ADA are injunctive relief (which usually means the reconstruction of a sidewalk) and the recovery of attorney's fees and litigation costs.

1. State Laws

State laws also may provide for attorney's fees and statutory damages. For instance, California's Unruh Civil Rights Act allows a minimum of $4,000 per access violation plus attorney's fees.[36] Government agencies and businesses have sometimes found themselves victims of "get rich quick" schemes. A federal judge made the following comments in a 2013 opinion:

> The ADA is a testament to the country's effort to protect some of its most vulnerable citizens. It is one of the most significant federal statutes that was born out of this nation's Civil Rights movement and was enacted to ensure

[28] *Id*. at 434.

[29] 679 F. Supp. 2d 931 (U.S. District Court, N.D. Ind. 2009).

[30] 539 F.3d 199 (3d Cir. 2008).

[31] 978 F. Supp. 1329 (S.D. Cal. 1997).

[32] 657 F.3d 215, at 238 (U.S. Ct. Appeals, 5th Cir. 2011).

[33] No. 2:08-CV-01101. U.S. District Court, E.D. California.

[34] No. 3:10-CV-04932. U.S. District Court, N.D. California.

[35] *Frame*, 657 F.3d 215, at 240.

[36] CAL. CIVIL CODE §§ 51 to 53, inclusive.

> that disabled individuals have equal and safe access to the same benefits and accommodations as every other American. However, a troubling reality is that cases like the one presently before the court have the effect of being less about ensuring access for those with disabilities and more about lining counsel's pocket.[37]

2. California and New York

Due to a problem with a large volume of trivial claims, California enacted a law aimed at frivolous Americans with Disabilities Act access lawsuits in the state. [38] The state reportedly has 12 percent of the country's disabled population, but 40 percent of the nation's ADA lawsuits.[39] In a 2004 opinion, *Molski v. Mandarin Touch Rest*, the court outlined a typical unscrupulous plan:

The scheme is simple: an unscrupulous law firm sends a disabled individual to as many businesses as possible, in order to have him aggressively seek out any and all violations of the ADA. Then, rather than simply informing the business of the violations and attempting to remedy the matter through conciliation and voluntary compliance, a lawsuit is filed, requesting damage awards that would put many of the targeted establishments out of business. Faced with the specter of costly litigation and a potentially fatal judgment against them, most businesses quickly settle the matter.[40]

Similarly, the city of New York has had difficulty defending sidewalk trip and fall and slip and fall cases since the Big Apple Pothole and Sidewalk Protection Corporation was formed in 1982. The Big Apple Pothole and Sidewalk Corporation was established by the New York State Trial Lawyers Association for the purpose of giving notice of sidewalk defects to the city and establish compliance with New York's Pothole Law. The corporation promulgated maps of potholes and other sidewalk defects, which allegedly gave the city notice of problems with its sidewalks. Plaintiffs in litigation frequently asserted that Big Apple maps had given written notice of the defect so that the city should have fixed the problem before the plaintiff's accident occurred. The city paid hundreds of millions of dollars over a period of 2 decades before a 2003 law shifted liability for sidewalk defects to adjacent property owners. [41] After the law changed, the amount of new suits brought against the city dropped significantly, but thousands of cases utilizing the maps as evidence were still pending in 2014.

In *D'Onofrio v. City of New York*,[42] a plaintiff testified that he tripped on a defective subway grating, but the only symbol on the relevant section of the Big Apple map denoted a raised or uneven sidewalk. A jury found that the map provided the city with prior written notice of the defective grate, but the trial court set the verdict aside and the trial court's decision was affirmed on appeal. The appellate court found that the information contained in the maps did not provide the notice required by law: the photos used at trial conflicted with the map, and symbols denoting the alleged defect were illegible. Essentially the court found that the city did not receive notice of and could not be liable for damages due to a defect unless the markings on the map matched the actual conditions of the sidewalk.

While the *D'Onofrio* ruling, and others like it, significantly decreased the sidewalk defect cases that are filed in New York, and the maps are no longer produced by the Big Apple Pothole and Sidewalk Protection Corporation, the city still faces thousands of cases involving alleged defects of their sidewalks and streets.

I. Survey Responses

Formal surveys requesting information about state and local government's ADA experiences were sent to all 50 states and to a mixture of large, small, and medium sized cities and counties. (See Appendices E and F.) Forty-four responses were received and the authors believe the survey responses are indicative of general patterns in the industry. Of the agencies that responded, 21 (47 percent) had received an ADA complaint. Of the complaints that were filed, all except the one in Helena, Montana was resolved without the involvement of FHWA. The state of Pennsylvania reported that an ADA lawsuit was filed relating to installation and remediation of curb ramps that support sidewalks in northwestern Pennsylvania and that a settlement of that matter is pending.

Most of the agencies made changes to their sidewalks in response to the complaints and many of the agencies made changes to their policies as a result of the complaints. For instance, the county of Arlington, Virginia, adopted new policies for accessible rights-of-way in response to a com-

[37] Costello v Flatman, No. 11-CV-287 (E.D. N.Y.) Order and Memorandum dated March 28, 2013.

[38] CAL. BUS & PROF. CODE §6106.2 (2014).

[39] *See* http://www.jacksonlewis.com/resources.php?NewsID=4205, site last visited March 24, 2013.

[40] 347 F. Supp. 2d 860, 863 (C.D. Cal. 2004).

[41] *New York Times*, January 4, 2009.

[42] 901 N.E.2d 744 (N.Y. Ct. App. 2008),

plaint. Caltrans reported that it developed additional training for its construction inspectors as a result of complaints of lack of temporary pedestrian access during the construction process. Changes were also made to snow removal practices as a result of ADA complaints that Caltrans received. The city of Colorado Springs reported that it added curb cuts to some of its sidewalks to facilitate wheelchair access. Other agencies reported adding planned work to transition plans, adding parking spaces or striping to parking lots, adopting Complete Streets Policies, and taking other similar actions in response to ADA complaints.

The city of Helena, Montana, reported that a complainant apparently concluded that the city's response to the complaint was insufficient and involved FHWA after a response by the city to the complaint. FHWA staff negotiated a settlement agreement which required Helena to evaluate its current system and develop a complaint process and transition plan. In addition, the city upgraded the route that the complainant requested.

Two state agencies, California and Pennsylvania, reported paying attorney's fees in relation to ADA litigation. A detailed analysis of the responses to the formal survey can be found in Section III of this paper and the full responses to the survey are found in Appendix F.

J. Conclusion

Compliance with the law by upgrading facilities at the time construction is done is the best defense to an ADA action, although an agency, in limited circumstances, can demonstrate an undue financial burden as a defense to a complaint or suit. The agency must bring its facilities into compliance with federal regulations in accord with its transition plan. The transition plan should be a "living document" that can be altered as the needs of the agency and community change. Additionally, adequate maintenance must occur on existing facilities so that they can be used by all members of the public.

III. ANALYSIS OF TORT CLAIMS

A. Tort Claims

This section addresses tort claims arising out of the design, construction, operation, and maintenance of pedestrian facilities, including their interaction with streets and highways. Plaintiffs' claims typically include slip and fall and trip and fall accidents. Claims may also be based on the improper location, installation, or signing of a crosswalk, or the complete failure to provide or upgrade the facility. Each of these types of cases is discussed in the sections below, with more analysis of the "failure to replace or rebuild" and "failure to provide facility" claims as they are nontraditional tort claims.

To ensure current data, all state departments of transportation were surveyed on their experiences with tort litigation. A cross section of rural and urban cities and counties were also surveyed. Responses from 44 agencies were received. The data received was voluminous, so it is not reproduced in its entirety in this paper. A summary of the survey results can be found in Appendix F and a more detailed analysis of the data received can be found in Section III.

A media survey, with the purpose of locating jury verdicts and settlements, was also done. The results of that survey are noted below.

Additionally, a study of the past 5 years of reported verdicts and settlements was conducted.[43] A summary of those cases can be found in Appendix G. Eighty-three total verdicts and settlements were found in legal and traditional media. Of the verdicts, 19 were in favor of the plaintiff and 34 were in favor of the defendant. Due to the small amount of data involved, the inference that more defendants' verdicts occur is not made by the authors. However, it is noted that many of the plaintiffs' verdicts are under $50,000, and many of the defendants' verdicts involve serious injuries or death. A review of the data also shows that there were some very high plaintiffs' verdicts and settlements, with several exceeding $10 million. A sampling of these cases is detailed below.

B. Plaintiff's Case

After receiving the suit, the agency should evaluate the claim, considering the following factors, since these factors are frequently considered by the courts: the height and width of any variance between sidewalk slabs; the location of the defect or variance (i.e., whether it was near a residential or commercial property or otherwise high volume area; whether the agency had actual or constructive notice of the defect; whether individuals must use the sidewalk to get to the office of the agency); and the economic burden of repairing the area compared to the potential risk of harm.

[43] Resources were the verdicts and settlements in the Westlaw and the Verdict Search databases, as well as newspaper articles.

The last factor suggests a cost-benefit analysis of the costs of any repairs and budgetary concerns or constraints compared to the potential danger to citizens and injuries that they may sustain if they were to trip and fall. The agency must decide whether to repair the allegedly defective area if it has not yet been addressed at the time of the suit. The agency should document the costs associated with the repair and other areas that are similar to the area alleged in the suit to be dangerous. If a choice is made not to repair, or a decision is made that the area at issue is not defective, it is important to note the reasons for the lack of repair in a document that can be located as the suit is defended.

An agency may choose not to make repairs to a facility for any number of reasons. It is important to remember, however, that a sidewalk or other pedestrian facility can still be in a dangerous condition even if the agency can provide reasonable budgetary reasons and defenses for the failure to repair.

A similar analysis to that noted above should be undertaken by the agency regarding all types of pedestrian claims.

In response to the survey, the states of New Jersey and Pennsylvania provided detailed information relating to lawsuits that had been filed against them from the years 2009 through 2013. Pennsylvania indicated that 33 pedestrian related claims had been paid over the past 5 years. Those claims range from slip and fall type claims to larger fatality claims alleging crosswalk inadequacies. New Jersey provided summaries of 14 claims that had been made against the agency. The types of claims ranged from slip and falls to catastrophic injury claims. Only one of the reported claims was a slip and fall; the other claims were quite serious and most of them involved fatalities.

While claims relating to pedestrian facilities are typically a small percentage of the total tort claims filed, they clearly have the potential for very high damages. The following case summaries were developed from formal survey results, reviews of reported jury verdicts and settlements, and reported legal opinions.

1. Slip and Fall and Trip and Fall

These are the most common types of claims involving public entities and pedestrian facilities. Of the 83 pedestrian-related tort verdicts and settlements reported in the media, Westlaw and Verdict Search reports that 58 involved allegations of a trip and fall or slip and fall.[44] Some of these claims were resolved by motions for summary judgment, but many times judges found that the question of whether a defect is trivial or whether a public entity had notice of a defect should be a question for the jury and should not be resolved without a jury.

Most of the slip and fall and trip and fall cases noted herein were defended with an "open and obvious" defense. The reported plaintiffs' verdicts were relatively modest and likely reduced by the fault of the plaintiff. Multiple courts and juries made the comment that government agencies were not insurers of the road and that all parties had the obligation to keep a careful lookout for hazards.

For instance, in *McClelland v. City of Shreveport*,[45] Ms. McClelland was injured while walking on a cracked sidewalk at night. The sidewalk was owned and maintained by the city, but the city did not have a policy for inspecting the sidewalks. Representatives from the city testified that they relied on citizens to report problems with sidewalks and relied on the "open and obvious" defense, as well as the defense that the crack was very minor. The court found that the city had constructive notice of the defect and evenly divided the fault between the plaintiff and the city.

Other cases such as *Schoening v. David R. Lyons Revocable Trust*, in which a jury awarded $725,000 to a woman who slipped on loose gravel on the sidewalk and broke her wrist and fractured discs in her back,[46] and *Jenkins v. City of Atlanta*, in which the city settled the claim for $3 million after Jenkins, who was blind, repeatedly complained about a defective sidewalk and then in 2008 fell and was injured on it,[47] are cause for concern and emphasize the need for safe sidewalks.

2. Failure to Update Pedestrian Crossing Cases

Cases involving the improper location, installation, and signing of a pedestrian crossing or failure to replace or rebuild an existing facility often involve very serious or fatal injuries. For obvious reasons, the governmental entity would like to

[44] *See* Appendix G.

[45] 108 So. 3d. 810 (La. Ct. App. 2013).

[46] Greg Bolt, *Jurors Award $725,000 in Fall*, THE REGISTER-GUARD, Sept. 5, 2013.

[47] Available at http://www.myfoxatlanta.com/story/18441000/city-to-pay-3m-to-settle-lawsuit-over-sidewalk-accident#axzz2wnGVQLGS.

dispose of those cases using motions to dismiss or motions for summary judgment. The reasons those motions are granted are frequently specific to the law of the state where the tort occurred. Defenses such as sovereign immunity, compliance with industry standards, official and discretionary immunity, and the design defense may be helpful in disposing of some or all of the claims.

• In the case of *Nalbandyan v. City of Glendale*,[48] the city prevailed on a motion for summary judgment, using the design defense in response to a lawsuit that alleged the improper location of a sidewalk. Plaintiffs sued the city following their daughter's death when she was struck by an automobile in a crosswalk on her way to school. The court found that the plaintiffs could not prove that the crosswalk, and safety measures and warning devices associated with it, were a dangerous condition of public property. The city was able to show that the crosswalk was designed and constructed in compliance with industry guidelines and engineering standards and because of that, the court granted the city's motion for summary judgment.

• A 4-year-old girl was killed in a Chicago intersection when she was struck by a vehicle in 2006. The operator faced criminal charges for leaving the scene of the fatal accident and died while in prison. Nevertheless, in 2012, the city of Chicago paid $3.25 million in settlement of the claim. The investigation by the city indicated that the crosswalk markings were faded (they had not been re-painted for 6 years) and the warning signs were not properly situated or in compliance with federal and local guidelines, so that parked cars blocked a driver's view of the intersection and the warning signs. (See *Estate of Maya Hirsch v. City of Chicago*.[49])

• In the case of *Bansen v. Booker and City of St Louis*,[50] a wheelchair-bound woman could not maneuver her wheelchair over a broken sidewalk in the city of St. Louis. As Ms. Bansen attempted to get home one evening in December 2005, she maneuvered her wheelchair on to Delmar Boulevard to avoid the sidewalk, and was struck by a vehicle. She died from her injuries. The driver testified that he did not see Ms. Bansen and that a street light in the area was burned out. The city defended the case saying that the sidewalk was not impassable, that Ms. Bansen didn't complain about the sidewalk in her 2 years of living in the area, and that it had already spent over $9 million installing wheelchair curb ramps with a priority on destinations such as hospitals and other high volume pedestrian locations. A 2007 jury awarded damages of $250,000 to Ms. Bansen's family. The city's testimony about upgrading of other facilities such as hospital and school accesses may have assisted them in keeping the damage award relatively low.

• In *Mohammed and Martin v. State of Maryland*,[51] the state's alleged failure to extend a sidewalk "gap" resulted in a verdict of $3.3 million against the entity. The plaintiffs' decedent died after being struck by a vehicle that veered into the shoulder where she was walking after exiting a bus at a bus stop. The plaintiff argued that there were sidewalks at both ends of the street where the accident occurred, and since the state failed to extend the sidewalk to include a sidewalk section, in between the other sidewalk sections where the accident occurred, it was negligent.

• In the case of *Ramirez v. Cities of Cypress and La Palma*,[52] the 16-year-old decedent was struck by a vehicle as she crossed the street in a marked crosswalk. A traffic signal was later installed at this location. The two cities paid $1.1 million each in settlement of the case. The driver pled guilty to a speeding violation and vehicular manslaughter.

• The trial of the case of *Haworth v. City of Kent*[53] resulted in a defendant's verdict. The plaintiff was struck in a marked crosswalk as he walked his bicycle across the street, and suffered a head injury as a result of the accident. He claimed that there had been multiple similar accidents at that location and that warning to motorists of the crosswalk was inadequate. The jury found that neither the city nor the driver involved in the incident were at fault.

---

[48] No. B237953, 2012 WL 5332354 (Cal App. 2012).

[49] *City to Pay $3.25 Million in Traffic Death of Girl near Lincoln Park Zoo*, CHICAGO TRIBUNE NEWS, July 23, 2012.

[50] Heather Ratcliffe, *Jury Faults City, Clears Driver in Death*, ST. LOUIS POST DISPATCH, December 6, 2007, at Al.

[51] Mohammed and Martin v. State of Maryland, 2011 WL 1527646 (Md. Cir. Ct.).

[52] Rebecca Kheel, *Cities to Pay $2.2 Million to Settle Lawsuit Filed in Girl's Death*, THE ORANGE COUNTY REGISTER, November 2, 2013 (available at http://www.ocregister.com/articles/palma-534001-cypress-edison.html, last visited September 25, 2014).

[53] Scott Haworth v. City of Kent and Nataliya Kuzmych, No. 08-2-24286-2 KNT), 2012 WL 2578700 (Wash. Super).

3. Failure to Provide Adequate Crossings

Claims such as: the existing crossing should have been improved; refuge islands or pedestrian signals should have been installed; ambient lighting should have been improved; or speeds should have been reduced in the crossing are discussed in this section. These are the most difficult types of cases to defend simply because they are so all-encompassing. A plaintiff may have comprehensive and seemingly endless lists of what could have been done to make the road reasonably safe, but if some of those items were not done, the plaintiff can argue that the road wasn't safe at the time of the accident.

• In *Cathy Liu vs. Siebert,*[54] Cathy Liu, a young doctor, was struck by a car in an intersection that was marked by a crosswalk, but had no signals and was situated in the middle of an "S" curve. She suffered a serious brain injury as a result of the accident. The intersection accommodated 16,000 to 20,000 vehicles per day. The plaintiff's evidence was that the city's pedestrian safety standards recommended a high volume crosswalk such as this one have either a traffic signal or a pedestrian bridge. Additionally, the plaintiff alleged that motorists' views of the intersection were obstructed by vegetation. The jury awarded $18 million in damages, finding the city 51 percent at fault, the driver 39 percent at fault and the plaintiff 10 percent at fault. Fortunately for the city, the parties had entered into a high-low agreement prior to the conclusion of the trial, capping damages at $6 million. The verdict was entered March 28, 2011.

• Similarly, in 2010, in *Emily Liou v. State of California*,[55] a jury awarded Emily Liou $12 million dollars after Liou was struck in an intersection with a newly painted crosswalk that did not have traffic controls. The jury apportioned 50 percent fault to Caltrans, 30 percent to the driver, and 20 percent to Emily Liou. The plaintiff presented evidence that the crosswalk was not well lit, that there were sight distance deficiencies due to the intersection being located at the crest of a hill, and that a signalized intersection in the distance diverted the attention of drivers. People who lived and worked near the intersection testified that it was dangerous and that they warned others not to use it. According to the plaintiff's evidence, three pedestrians had been killed in the same crosswalk in the 15 years before Liou's accident. The plaintiff also presented evidence that publications issued by FHWA and studies by Caltrans indicated that marked crosswalks at uncontrolled intersections could be more dangerous than unmarked crosswalks because pedestrians get a false sense of security when using a marked crosswalk. Additionally, the plaintiff presented evidence that Caltrans had not studied the pedestrian accident rate on its highways.

• A $90 million verdict in the case of *Davis and Bradley v. Prince George's County Board of Education*[56] in April 2013 was considered by the authors to be punitive in nature. The family of Ashley Davis, a freshman at Crossland High School in Temple Hills, Maryland, sued the Board of Education after her death in September 2009. According to court documents, the plaintiff alleged that the school system did not provide a safe bus stop for students such as Davis and she was forced to take a bus that stopped on the other side of a busy street. She was struck in an intersection in front of the school bus that was waiting for her. Jurors heard testimony that parents in the school district had complained for years about the late school buses and about the unsafe routes that children had to walk to get to school. There was also testimony on an unpopular "cost-cutting" transportation policy that reduced the bus fleet by 130 buses, combined middle and high school students on some of the routes, consolidated drivers' bus routes, and cut the number of school bus stops by 2,350. The policy, which was originally projected to save the school system $10 million, also raised the maximum distance elementary school students walked to school from 1 to 1½ miles.

• In *Salas v. California Department of Transportation*,[57] a pedestrian fatality case, the appellate court affirmed the lower court's grant of summary judgment in favor of Caltrans, finding that the intersection was not dangerous. In making its decision, the court reviewed photographs that showed clear visibility and no sight obstructions at the intersection.

• In *Nguyen v. Le*,[58] the jury found a driver at fault in a pedestrian fatality accident, but not the city of Garden Grove. Decedent was struck and

[54] Liu v. Siebert, verdict entered March 28, 2011. Cal. Super. Ct., Sacramento County, California.

[55] No. CIV460659, 2010 WL 4111548, Cal. Super. Ct., San Mateo County, California.

[56] Ovetta Wiggins, *Jury Awards $90 Million in Prince George's County Wrongful-Death Case*, THE WASHINGTON POST, April 14, 2014.

[57] 198 Cal. App. 4th 1058 (Cal. App. 3d 2011).

[58] 2013 WL 6235143, Cal. Super. Ct., Orange County, California.

killed while he walked through a marked crosswalk. Allegations against the city were that inoperative signal poles that had been installed were confusing to the defendant driver and motorists in general. The jury awarded $290,000 to the family of the decedent against the driver of the vehicle, which was reportedly reduced by comparative fault to $159,500.

- A 6-year-old girl died as a result of an accident in a city intersection in East Palo Alto, California, in September 2011. A settlement in the amount of $125,000 was made in April 2014 between the family that witnessed the accident and the city. Decedent Siorelli Zamora was in a crosswalk at the time of her death. According to the *Palo Alto Weekly*,[59] an 8-year-old boy had been struck in the same intersection 6 months prior to this accident. According to the news article, a city-commissioned report that had been issued the year prior to the accident recommended 15 mph school zones and crosswalk enhancements such as flashing beacons or in-roadway lights.

Lessons Learned: Compliance with internal guidelines, such as the Manual on Uniform Traffic Control Devices (MUTCD) and other industry standards, is an important part of the defense of a tort claim. Not only must the agency comply with internal and external guidance, it must be able to clearly articulate the basis for its compliance with witnesses who are experts in their fields and documentation that supports the position of the agency. Conversely, if the agency cannot establish compliance with industry standards, the defense may suffer. Failure to comply with industry standards may in fact be fatal to the defense.

Documentation of the site of the accident or injury should be obtained as close in time to the incident as possible, as photos and videos of the area taken near in time to the accident in question may be the best evidence for the defense of the case. The documentation must be capable of standing up to close scrutiny and must accurately depict the scene.

When a child or young person is struck and killed or sustains a serious injury in an accident in a pedestrian facility, the payout is likely to be very high, especially if the finder of fact believes the agency had notice of the alleged deficiency of the road.

If a plaintiff can demonstrate notice to the agency of the alleged problem, the value of the case increases significantly. Conversely, the agency is entitled to a reasonable time to react to and/or warn of a condition that needs to be addressed.

Juries may award money to a plaintiff simply to teach an agency a lesson. *Davis and Bradley v. Prince George's County Board of Education* appears to be such a case. While it was a death case, testimony presented on behalf of the plaintiff made the school district appear to be concerned only with cost-cutting measures and not the safety of the students. This evidence alone could explain the jury's award of $90 million.

The "open and obvious" defense is compelling and accepted by juries. Most of the trip and fall and slip and fall cases outlined in Appendix G were defended with that theory. The reported plaintiffs' verdicts were relatively modest and likely reduced by the fault of the plaintiffs. Multiple courts made the comment that government agencies were not insurers of the road and that all parties had the obligation to keep a careful lookout for hazards.

While a jury may be passionate about a case and award damages, the appellate courts are still "gatekeepers" of the law and many times sustain a lower court's grant of summary judgment or motion to dismiss, or will reduce damages that are clearly based on passion rather than the evidence presented by the parties.

C. Issues of Compliance with ADA and Non-Delegable Duties

Issues such as non-compliance with ADA and non-delegable duties may be present in tort cases, but are frequently questions for the jury rather than questions of law.

1. Compliance with ADA

Sometimes the ramp and sidewalk configuration is not in compliance with applicable standards, but the defect does not causally relate to the plaintiff's claim. (See *Burns v. CLK Invs.*,[60] where a jury, in response to interrogatories on a special verdict form, found that the plaintiff tripped and fell on a handicapped ramp that was not built in conformance with ANSI [building code] standards.) The jury also found that the plaintiff's fall was caused by a defect in the ramp, but also that the defect on which the plaintiff

[59] Sue Dremann, *Settlement Reached in Death of East Palo Alto Child; City Settles with Family for $125,000*, PALO ALTO WEEKLY, April 14, 2014.

[60] 45 So. 3d 1152 (La. App. 2010), rehearing denied, 2010 La. App. Lexis 1289.

tripped did not present an unreasonably dangerous condition.

Even if a plaintiff can prove an uneven sidewalk surface, the condition of the sidewalk, if proven dangerous or out of compliance with guidelines, must causally relate to the injury for the plaintiff to be successful in the suit. In *Shifflette v. Missouri Department of Natural Resources (DNR)*,[61] Ms. Shifflette sued DNR alleging that she injured her left shoulder when she tripped and fell while exiting their building. In her response to the DNR's motion for summary judgment, Ms. Shifflette did not dispute that she tripped in the hallway, that she did not know why she tripped or what she tripped on, and that the hallway was not physically defective or dangerous at the time of her fall. She contended, however, that the lack of a handrail on the doorway step caused her to fall after she tripped because she was unable to catch herself and prevent herself from falling. The appellate court, in reviewing the trial court's grant of summary judgment to the state, specifically found that there was no factual basis to support a finding that Ms. Shifflette's injury was the natural and probable consequence of the lack of a handrail on the steps and affirmed the trial court's ruling.

If the plaintiff can prove a violation of the technical guidelines of the ADA caused his or her injury, he or she has likely pled a prima facie case of negligence and the case will likely be allowed to proceed after a motion for summary judgment has been filed. Conversely, compliance with ADA technical guidelines such as PROWAG may be a viable defense to a trip and fall case and the basis for a successful motion for summary judgment.

2. Non-Delegable Duties

Many governmental entities have a non-delegable duty to maintain reasonably safe facilities. Non-delegable duties arise when an entity has a duty (such as safety) that is so important that it cannot be discharged to other entities. This frequently means that the responsibility for maintaining a reasonably safe roadway or roadside cannot be delegated or contracted away.

If a sidewalk is owned by the state, for instance, but the state has contracted with a city for the sidewalk's maintenance, it may still be the state's responsibility to keep the sidewalk reasonably safe. If the city is not performing its duties of maintenance properly, it may be guilty of a breach of contract, but the owner (the state) ultimately may be responsible for the condition of its own property. However, the state Supreme Court in *Paticucci v. City of Hill City*,[62] found that a sidewalk constructed by the state sixty years prior to an accident was the maintenance responsibility of Hill City since the city had entered into an agreement with the state for maintenance of it and exercised sufficient control over the sidewalk. Other states have also been relieved of the non-delegable duty doctrine through caselaw.

Even when a governmental entity has a non-delegable duty to maintain its sidewalks, if a utility company or other entity takes on a repair of the property and does it negligently, the other entity may be held responsible for the repair or defense of the claim rather than the governmental entity. (See *Benedict v. Northern Pipeline Co*.[63])

D. Commonly Used Defenses to Plaintiff's Causes of Action

The following types of defenses to sidewalk claims were frequently noted in the formal survey responses and in the reported verdicts and settlements.

1. Compliance with Industry Standards

Most state agencies have their own internal version of the Manual on Uniform Traffic Control Devices (MUTCD), or simply comply with the federal MUTCD. Compliance with internal policy is a good start to a defense, although in many states, industry compliance is not necessarily a full defense to a lawsuit. FHWA and the United States Access Board reference several publications which detail the appropriate design of sidewalks, if and when that becomes a defense issue.[64]

2. De Minimis Defect

In *Chambers v. Village of Moreauville*[65], the court of appeal found that the city was not negligent or responsible for the plaintiff's injuries due to a fall on a sidewalk with a 1½ inch deviation between sidewalk slabs when the evidence established that the sidewalk had been in that condition for many years and had heavy foot traffic. Chambers is interesting because the appellate court specifically found that the trial court should have considered cost to the city as a factor in de-

[61] 308 S.W.3d 331 (Mo. App. 2010).

[62] 836 N.W.2d 623 (S.D. 2013).

[63] 44 S.W.3d 410 (Mo. Banc 2001).

[64] United States Department of Justice ADA website, http://www.ada.gov/2010ADAstandards_index.htm, site last visited April 27, 2014.

[65] 85 So. 3d 593 (La. 2012).

termining whether the sidewalk should have been repaired before the plaintiff's accident. The court stated that the cost to the city to fix the deviation in question, as well as all the other (many) deviations that were similar to this one, was out of proportion to the gain in fixing the deviations because the risk of someone being seriously injured by the defect was so slight. At the trial court level, the judge found the city to be 100 percent at fault. The appellate court found the city to be 90 percent at fault and the state Supreme Court found the plaintiff to be 100 percent at fault.

Michigan enacted a law in 2012[66] that establishes a presumption that a sidewalk slab differential on a municipal street of less than 2 inches is reasonably safe. In North Carolina, the court in *Strickland v. City of Raleigh*,[67] found that a 1-inch height differential was a trivial defect that did not need to be corrected. But the court in *D'Ambrosio v. City of Phoenix*[68] found that the issue of whether the city had constructive notice of a ½ inch slab differential was for the jury to determine, implicitly finding that even a small differential could be a dangerous condition.

Clearly, it is important to research the law of the jurisdiction where the cause of action accrued before determining an appropriate defense.

3. Open and Obvious

In *Ballog v. City of Chicago*,[69] the court found that an open and obvious defect of a sidewalk did not present a question for the jury when it considered the city's motion for summary judgment. The city argued that alleged defect was an open and obvious condition that did not give rise to a duty of care owed by the city to the plaintiff. The city further argued that the open and obvious condition was not unreasonably dangerous; nor was it reasonable to require the city to anticipate that a pedestrian, in the exercise of ordinary care, would not have taken the precautions necessary to safely traverse the area. This defense is frequently used in lack of crosswalk claims. It is not always reasonable for the government agency to anticipate pedestrian activity at a particular location. In fact, pedestrians tend to cross the street where they want to cross, avoiding crosswalks that are as close as 10 to 20 yards away in order to save a few steps in crossing the street. As noted in the reviews of jury verdicts, the "open and obvious" defense is readily accepted by juries.

4. Lack of Notice

In *Micky v. City of New York*,[70] the plaintiff prevailed when he presented evidence that a document produced by the Big Apple Pothole and Sidewalk Protection Committee noted a sidewalk defect in the area where he fell, and that the city had notice of the defect and was responsible for his injuries. Even though the city argued that the Big Apple Pothole document did not show the specific location of the defect and that it did not have actual knowledge of the defect, the jury and appellate court held the city responsible for the injury. In other jurisdictions, lack of notice is an absolute defense to a claim such as this.

5. Liability Shifting Ordinances

As the name implies, a liability shifting ordinance or statute is intended to shift the risk and responsibility for repair and maintenance of a sidewalk from a governmental entity to a private property owner. Of the entities that responded to the survey (that can be found in Appendix F), 13 agencies reported that they had enacted liability shifting ordinances or that there were state laws that related to the repair of sidewalks and/or snow and ice removal on sidewalks. Only Washington State reported that its ordinance had been successfully challenged and invalidated by the courts.

Alexander v. City of Meadeville[71] involves a liability shifting ordinance. The ordinance required property owners within the city to maintain their sidewalks in a reasonably safe condition, which included keeping them clear of snow and ice accumulations. The ordinance had the following language: "Snow and ice shall be removed from all sidewalks within the city…on the same day that a fall of snow, freezing rain ceases or within the first five hours of daylight after the cessation of any such fall, whichever period is longer."[72] The plaintiff apparently slipped and fell in the early

[66] MICHIGAN COMP. LAWS § 691.1402a (2014). In a civil action, a municipal corporation that has a duty to maintain a sidewalk under subsection (1) is presumed to have maintained the sidewalk in reasonable repair. This presumption may only be rebutted by evidence of facts showing that a proximate cause of the injury was one or both of the following: (a) A vertical discontinuity defect of 2 inches or more in the sidewalk.

[67] 693 S.E.2d 214 (Ct. App. 2010).

[68] No. 1 CA-CV 10-0876, 20011 Ariz. App Unpub. Lexis 1438, 2011 WL 5866923.

[69] 980 N.E.2d 690 (Ill. App. 2012).

[70] 96 A.D. 3d 679 (N.Y. App. Div. 2012).

[71] 61 A.3d 218 (Pa. Super. 2012).

[72] Meadville, Pa, Ordinance 2903 § 745.10(c).

morning on a smooth patch of ice that had been covered by 1 to 2 inches of snow. The snow did not begin until around 11:30 p.m. Testimony established that the owner of the sidewalk consistently cleared it of snow and ice and kept it clear during business hours. The court granted a summary judgment motion against the plaintiff, based in part on the liability shifting mechanism in the ordinance.

Lessons Learned: Liability shifting ordinances appear to be a viable cost-shifting solution. Ann Arbor, Michigan, amended its city code to relieve adjacent property owners from the obligation of sidewalk repair and removing snow and ice when the voters approved a property tax to fund sidewalk maintenance. Similarly, states such as Connecticut and South Dakota indicated that local agencies are required to maintain sidewalks in the state systems.

6. Storm in Progress Rule

Many of the northern states simply cannot keep up with snow and ice removal during winter storms. Neither can adjacent property owners who have the responsibility of removing snow and ice from sidewalks. Because of the impossibility of keeping the roads and sidewalks reasonably safe during severe weather, states such as New York and Rhode Island have adopted a storm in progress rule which simply states that there is no duty to remove snow and ice while a storm is in progress.[73] Under the storm in progress rule as applied to sidewalks, an owner or party in control of real property is not responsible for accidents occurring on the property as a result of the accumulation of snow and/or ice until a reasonable period of time has passed after the end of the storm.[74]

A lull in the storm does not impose a duty on the owner or party in control of real property to remove the accumulation until the storm is entirely over.[75] Additionally, there is no duty to warn of icy conditions during a storm in progress.[76] A Missouri court has noted that when a "general" condition of ice and snow exists, there is no duty to remove it, but if it is known that a particular area of a sidewalk has a melting and refreezing issue, that isolated area must be treated.[77]

E. Conclusion

The successful defense of any case revolves around the facts of the case. In order to present a successful defense, counsel must be able to prove the actual condition of the alleged dangerous location at the time of the incident. This necessarily requires documentation of the scene and repair, if any. Photos of the scene should be taken as soon as the agency is alerted to the incident, using industry accepted methods of measurement of slope and variance between sidewalk slabs. A reconstruction of the accident may need to be obtained. Statements from witnesses and/or employees should be taken and preserved. Documentation of the agency's repair guidelines and guidance to staff on what conditions are acceptable should also be collected as soon as possible after the event, since all that evidence can (and frequently does) disappear.

IV. ANALYSIS AND SUMMARY OF SURVEY DATA

A. The Formal Survey

A formal survey, conducted by Texas Transportation Institute, was sent to 99 government agencies: All 50 states and 49 cities and counties. [78]

[73] Grau v Taxter Park Assocs., 283 A.D. 2d 551, 724 N.Y S.2d 497 (2001).

[74] Sfakianos v. Big Six Towers, Inc., 46 A.D. 3d 665, 846 N.Y.S.2d 584 (2007).

[75] Dowden v. Long Is. R. R.,759 N.Y.S.2d 544 (2003).

[76] Wheeler v Grande'Vie Senior Living Community, 819 N.Y.S.2d 188 (2006).

[77] Maxwell v. City of Hayti, 985 S.W.2d 920 (Mo. App. 1999).

[78] The survey was sent to the following state Departments of Transportation: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

The survey was sent to the following cities and counties: Atlanta, GA; Ann Arbor, MI; Apex, NC; Arlington County, VA; Benton City, WA; Berkeley Heights, NJ; Bernalillo County, NM; Boise, ID; Camden, SC; Chicago, IL; Colorado Springs, CO; Cook County, IL: Clark County, NV; District of Columbia ; Detroit, MI; Franklin Parrish, LA; Greer County, OK; Harris County, TX; Hartford County, CT; Helena, MT; Honolulu HI; Horse Creek, WY; Las Vegas, NV; Lawrence, KS; Little Rock, AR; Louisville, KY; Los Angeles, CA; Mason, OH; Miami, FL; Minneapolis, MN; Nashville, TN; New York,

Responses were solicited in February 2014 and received in March 2014. A total of 44 responses were received.[79] Some responses, such as the one from Los Angeles, California, were simply that they were not able to comment due to pending litigation. Other agencies, such as the city of San Diego, California, responded that they did not have the resources to compile the data requested in the survey. Of the 44 responses received, 41 were considered to be truly responsive to the survey. It is those comments that make up the basis of the information conveyed throughout the body of this paper and that are discussed in-depth in this section.

The research team purposefully directed the surveys to a cross section of small, medium, and large cities and counties, in both urban and rural settings. This was done so that multiple types of agencies could be studied. Responses from small rural counties such as Stone County, Missouri (population 32,202), and larger more metropolitan counties such as Arlington County, Virginia (population 207,627), were received. Responses were received from Washington, D.C. (population 601,723), Colorado Springs, Colorado (population 416,427), Papillion, Nebraska (population 18,894), and Benton City, Washington (population 2,388). Helena, Montana (population 28,190), provided a detailed response as did Little Rock, Arkansas (193,524). The authors believe the data collected is indicative of the both rural and metropolitan areas. Responses were received from 28 state Departments of Transportation and 13 cities and counties.

B. Common ADA Issues

1. Funding

Almost every agency noted funding as an impediment to compliance with federal law relating to their pedestrian facilities.

2. Training

After investigating complaints, several agencies found it necessary to conduct additional training for their employees. For instance, Caltrans trained its construction inspectors on the necessity of placing temporary pedestrian accessible routes in its construction zones. Tennessee is now requiring additional training for staff and local agency partners to ensure ADA compliance during periods of construction. Several states indicated that they simply provided additional education to the public about accessible facilities in response to complaints.

3. Internal Guidance

Arlington County, Virginia, Caltrans, and others developed new policies in response to complaints. Those changes included such items as adding Access Board guidelines for accessible rights-of-way to internal policies and developing new maintenance guidelines about snow removal. A number of responses indicated that changes were made to standard construction plans or design plans. Those changes included reducing maximum slopes on sidewalks and doing more in-depth review and scoping of projects in the design phase. Oregon responded to a complaint by developing a process to approve and document ADA design exceptions for "technically infeasible" and "undue financial burden" situations. The city of Scottsdale, Arizona, responded to a complaint by developing regular inspection and maintenance programs for sidewalks and multi-use paths and adopting a Complete Streets policy that includes requirements for all public and private street improvements.

4. Transition Plan Development and Update

The city of Scottsdale, Arizona, and Caltrans both developed multiyear programs to construct or reconstruct sidewalk ramps in response to complaints. Other states indicated that their transition plans were reviewed and updated annually to ensure that their plans remained viable and responsive to the needs of the community.

NY; Papillion, NE; Philadelphia, PA; Pittsburgh, PA; Polk County, TN; Richardson, TX; Rochester, NY; Salt Lake City, UT; San Diego, CA; Savannah, GA; Scottsdale, AZ; Sharon, MA; Sherwood, OR; Stone County, MO; Tacoma, WA; Vienna, VA; Watkinsville, GA; and Wentzville, MO.

[79] Responses were received from the following states: Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Washington, and Wyoming.

Responses were received from the following cities and counties: Ann Arbor, MI; Arlington County, VA; Benton City, WA; Colorado Springs, CO; District of Columbia; Helena, MT; Lawrence, KS; Little Rock, AR; Mason, OH; Papillion, NE; Savannah, GA; Scottsdale, AZ; Stone County, MO. Responses received from Los Angeles, CA; Chicago, IL; and San Diego, CA, were considered unresponsive as they deferred responses to other agencies or simply did not provide responsive information.

5. Compliance with ADA

Many agencies, such as the New Jersey and Missouri DOTs, simply applied the current ADA regulations to resolve issues or complaints, to bring their facilities into compliance. Several states, such as Maryland and Tennessee, indicated that they were involved with bringing cities and other local agencies into compliance with ADA provisions and that they had developed new policies for sub-recipients of funding. Many states, such as Idaho, initiated a statewide project to address ADA issues.

The city of Helena, Montana, received a complaint regarding unsafe routes of travel from a home to the central business district, which escalated from a local issue to an issue that was addressed by FHWA. In response to that complaint, the city eventually entered into a settlement agreement that required it to create a new transition plan, evaluate and inventory all curb ramps in the city, and create a map of the downtown area indicating the best routes of travel from ADA parking spaces and on the street. Additional steps involving access to a park and other public facilities are also under evaluation.

6. Resolution of ADA Complaints

More than half of the agencies currently are or have been involved with some type of complaint by a disabled person. Almost all the complaints involved access to sidewalks—lack of curb cuts, steep slopes, sidewalks in disrepair—or access to facilities such as parks and buildings via sidewalks. Some of the complaints seemed to be route specific, but the majority seemed to require systematic improvements rather than spot improvements. All but two agencies were able to resolve the complaints or litigation without assistance from FHWA or a court order.

7. Project Civic Access

Over the course of the Project Civic Access (PCA) project, the DOJ has visited more than 100 cities and counties around the country, with the intent of making sure that the cities are accessible for wheelchairs and people with other disabilities. An agency under review is advised to look at its facilities with the idea that the pedestrian trip begins where the vehicle trip ends. The top five most common ADA deficiencies reported in PCA reviews over the last three years include: signing within accessible parking areas; excessive slopes within accessible parking areas; handrail deficiencies; excessive slopes within accessible routes; and aisles within accessible parking areas. If an agency is found to have be noncompliant with PROWAG or other accessibility guidelines, frequently it will be required to enter into a settlement agreement with the DOJ which requires it to become ADA compliant by fixing accessibility issues and establishing a grievance process.

Deficiencies in parking areas are by far the most commonly reported deficiencies. Within that category, problems with signing for accessible spaces and excessive slopes within accessible parking areas are the top two items reported in PCA reviews. The number of deficiencies reported on items in the parking area suggests there is a continuing need for agencies to focus more attention on their parking areas. Having the correct number of accessible spaces in each lot with proper signing, striping and access aisles is critical to having accessible communities.

C. Resolution of Tort Claims

A review of the data contained in Appendix G indicates that a large percentage (58 percent) of the reported tort verdicts and settlements involved either slip and fall or trip and fall claims. Many of those claims involved broken bones; however, most did not involve very serious injuries or fatalities. On the other hand, the claims relating to inadequate or nonexistent crosswalks frequently involved fatal or very serious injuries. Reported verdicts and settlement exceeded $3 million, with several exceeding $15 million. However, there were several defendants' verdicts reported.

Inquiries about how many and what kinds of suits were filed against the agency provided 16 responses, which are analyzed below.

Pennsylvania and New Jersey DOTs provided very detailed information in response to the survey. Pennsylvania provided a synopsis of seven current cases and New Jersey provided a synopsis of fourteen pending cases. A review of their cases indicates trends that seem similar to those noted in the Verdicts and Settlements reporters and other reported cases found later in this section. Of the seven claims that Pennsylvania outlined, six were either trip and fall or slip and fall type cases. Their counsel indicated that two of the cases were essentially not defensible, as the agency knew about the defects in time to remedy them. Other cases were defended on a "lack of notice" defense and "open and obvious" defenses. One serious accident was reported: the case involved a young child darting into traffic and an allegation of lack of appropriate pedestrian crossing markings. The agency intends to defend it with expert testimony

that the crossing was in compliance with industry guidelines.

New Jersey's case summaries indicated some very serious claims were pending: several fatalities involving allegations that insufficient overhead lighting might have caused or contributed to cause the accidents; claims of lack of appropriate crosswalks or warning for the motorist that the crosswalks were in place; and failure to promptly clear snow or ice covered roadways. The agency also reported a trip and fall claim and a slip and fall claim. One of the claims was successfully defended when it was determined that the alleged "dangerous condition" was not on New Jersey right-of-way. One of the claims is being defended with a "storm in progress" defense. New Jersey counsel also reported a type of claim that is somewhat difficult to defend since it lacks any basis in sense: a young lady crossed a busy road and was struck by a vehicle as she attempted to cross. The allegation is that the state should have known that pedestrians would go from a strip club to a motel across a divided highway. While this seems to be a novel claim, Missouri reported two similar claims.

The city of Ann Arbor, Michigan, reported that its statutory defense of governmental immunity is helpful in preventing suits. To make a successful claim against the agency, the plaintiff must show notice of the defect and that the city had an opportunity to fix it prior to the injury. The law also has a requirement to the agency of notice of the injury after it has occurred. The city did report, however, that since the statutory requirement for a claim of a defective sidewalk is a 2-inch differential between slabs, it will settle claims without litigation if the plaintiff is able to prove a 2-inch differential.

Arizona DOT reported five suits from 2009 to 2014 that alleged sidewalk defects. Of those suits, three involved pedestrians struck by vehicles. The claims included negligent construction, inadequate warning of pedestrian traffic, and lack of lighting on the road. One was dismissed as the accident did not occur within the agency's right-of-way, two were settled, and two are ongoing at the time of this report. Defense of an accident that occurred in a construction zone was tendered to the construction company.

Florida DOT reported that it receives numerous personal injury suits from plaintiffs claiming defects relating to elevation differences between slabs, holes, or depressions in sidewalks. Officials defend the claims based on the open and obvious defense, lack of notice, and design immunity. Compliance with standards such as ADA or MUTCD are not normally dispositive of the suits as questions of fact typically remain, keeping the suit from being dismissed prior to trial. Many cases are settled due to risk at trial.

Kansas DOT indicated that it had success with defenses such as: the recreational use exception to the Kansas Tort Claims Act; de minimis defect; open and obvious condition of the sidewalk; no duty to maintain; compliance with national standards at the time of construction; and compliance with the MUTCD. DOTs such as Missouri, New York, New Jersey, and Washington, and the city of Scottsdale, Arizona, had similar responses.

The South Dakota DOT enters into maintenance agreements that require cities to perform maintenance and repair functions. It relies on those agreements to pass along responsibility for repairs. Sovereign immunity is available for discretionary acts done with the exercise of judgment and if there is no liability coverage or if liability coverage is exceeded.

D. Liability Shifting Ordinances and Statutes

Sixteen agencies indicated that they had ordinances or statutes that protected them in the event of a claim of a dangerous condition of a sidewalk. Washington State indicated that the city of Tacoma initiated a liability shifting ordinance in the early 1990s that was successfully challenged; however, it was later rewritten and remains in place today. The advantage to such legislation is that the agency is not responsible for either the funding of the sidewalk repair or the repair itself. Ann Arbor's situation is especially interesting: apparently in the past the city required adjoining property owners to construct and maintain sidewalks, but the city population passed a tax that now funds those repairs and takes the work and responsibility away from the adjoining owner. Other agencies indicated that their state laws require developers to build and maintain sidewalks pursuant to zoning laws, and still others indicated that since state law required municipalities to maintain sidewalks on state routes, they were immune from suit.

V. RISK MANAGEMENT STRATEGIES

Below are the observations of the authors as a result of the data and research collected in this digest.

A. Identify Safety Issues

- Identify safety issues and determine whether they are site specific or whether systematic im-

provements are required. This strategy is appropriate for both ADA and tort claims.

- Establish a baseline. For instance, make sure that all sidewalks are catalogued and their condition as of a certain date is identified as either excellent, adequate, or in need of repair. Once all the sidewalks are identified, plan improvements either in conjunction with projects or in addition to planned projects.
- Have traffic accident data available and use it. When locations are identified that need signals or crosswalks, or other enhancements, make sure the people who can fund those projects have needs data available when funding opportunities arise.

B. Request Help and Input from the Public

- Make sure the lines of communication are open so that complaints and concerns can be addressed by local authorities before members of the public believe they need to escalate their concerns to other authorities.
- Have a user-friendly Web site in place so that suggestions and complaints can be made at any time of the day or night.
- Ensure that staff responds appropriately and in a timely manner to complaints.
- Update the agency's transition plan on an annual basis to ensure that current needs of the community are being addressed.

C. Review the Claims

- Have a strategy and plan to identify trends. For instance, are most defective claims in a particular city or part of town?
- Identify problem areas such as a sidewalk that has failed or is grown over with weeds and communicate those issues to people within the agency that are able to appropriately address them.
- When an incident or accident is reported, document the conditions of the scene as soon as possible. Appropriate documentation may include photographs, videos, and interviews of employees or witnesses. Traffic counts may need to be taken. A reconstruction may also be necessary. Make sure that the people who investigate the claims are adequately trained to take accurate and complete measurements. One of the ways to determine priorities for future projects is to look at past accident history and analyze traffic patterns to determine where the heavily travelled pedestrian areas are located. It has long been noted that if an agency is not in compliance at least with its own guidelines, the case will be very difficult to defend.
- Successful defenses to tort claims frequently include compliance with industry standards, lack of notice, open and obvious conditions, and fault on the part of plaintiff or others. As noted above, the successful defense also depends upon being able to prove the actual condition of the alleged dangerous facility at the time of the incident. This can be proven with photos, video, and other written documentation of the condition and the agency guidelines in place at the time of the incident.

D. Provide Tools to Address Problems

- Provide employees with training so they can recognize problem areas. For instance, construction inspectors should know the maximum slope allowed for sidewalks and the proper locations for buttons on pedestrian signal heads so that they can be reached by people who are in wheelchairs. When a technical problem is identified on a construction project, make sure it can be resolved quickly without the need for extensive negotiation with the contractor.
- Make sure that construction inspectors and maintenance workers adequately provide for wheelchair traffic during construction projects and winter storm events.
- Train designers to be able to produce technically correct design plans and work with planners to identify areas that are in need of upgrades so that those projects can get scheduled in a timely manner.
- Encourage employees who work in the field to identify problem areas, and either schedule them to be fixed or address them with a supervisor.

E. Comply With Internal Guidance and Industry Standards

- Review internal guidelines for consistency and to make sure that the agency intends to do the work that is outlined in the policies. Sometimes guidelines and policies are written to say what the administration hopes its workers will do, rather than reflecting the actual work that is going on in the field.
- Ensure that guidance is both realistic and in compliance with state and federal law.

VI. CONCLUSION

State and local agencies continue to be genuinely and understandably concerned about sidewalk and crosswalk liability. Pedestrian accidents, by their nature, are frequently very serious. The state and local agencies that shared their ADA enforcement experiences as well as

their civil litigation experiences provided information that is very valuable to the entire community. ADA complaints seem to be fairly commonplace, but the reporting agencies' experiences indicate that they can frequently be resolved without the need for costly litigation. The best defense to an ADA complaint is compliance with the law.

Sidewalks can cause safety concerns under the best of circumstances. In order to maintain a reasonably safe pedestrian transportation system, agencies must be vigilant in inspecting and maintaining their property, and take steps to improve the safety of the system whenever the opportunity presents itself.

APPENDIX A—JULY 2013 LETTER

(ADA)/Section 504 - Civil Rights | Federal Highway Administration

U.S. Department of Transportation
Federal Highway Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
202-366-4000

Civil Rights

Civil Rights

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

U.S. Department of Transportation
Federal Highway Administration

Department of Justice/Department of Transportation Joint Technical Assistance[1] on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Title II of the Americans with Disabilities Act (ADA) requires that state and local governments ensure that persons with disabilities have access to the pedestrian routes in the public right of way. An important part of this requirement is the obligation whenever streets, roadways, or highways are *altered* to provide curb ramps where street level pedestrian walkways cross curbs.[2] This requirement is intended to ensure the accessibility and usability of the pedestrian walkway for persons with disabilities.

An alteration is a change that affects or could affect the usability of all or part of a building or facility.[3] Alterations of streets, roads, or highways include activities such as reconstruction, rehabilitation, *resurfacing*, widening, and projects of similar scale and effect.[4] Maintenance activities on streets, roads, or highways, such as filling potholes, are not alterations.

Without curb ramps, sidewalk travel in urban areas can be dangerous, difficult, or even impossible for people who use wheelchairs, scooters, and other mobility devices. Curb ramps allow people with mobility disabilities to gain access to the sidewalks and to pass through center islands in streets. Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination; some people with disabilities may simply choose not to take this risk and will not venture out of their homes or communities.

Because resurfacing of streets constitutes an alteration under the ADA, it triggers the obligation to provide curb ramps where pedestrian walkways intersect the resurfaced streets. See *Kinney v. Yerusalim*, 9 F 3d 1067 (3rd Cir. 1993). This obligation has been discussed in a variety of technical assistance materials published by the Department of Justice beginning in 1994.[5] Over the past few

years, state and local governments have sought further guidance on the scope of the alterations requirement with respect to the provision of curb ramps when streets, roads or highways are being resurfaced. These questions have arisen largely due to the development of a variety of road surface treatments other than traditional road resurfacing, which generally involved the addition of a new layer of asphalt. Public entities have asked the Department of Transportation and the Department of Justice to clarify whether particular road surface treatments fall within the ADA definition of alterations, or whether they should be considered maintenance that would not trigger the obligation to provide curb ramps. This Joint Technical Assistance addresses some of those questions.

Where must curb ramps be provided?

Generally, curb ramps are needed wherever a sidewalk or other pedestrian walkway crosses a curb. Curb ramps must be located to ensure a person with a mobility disability can travel from a sidewalk on one side of the street, over or through any curbs or traffic islands, to the sidewalk on the other side of the street. However, the ADA does not require installation of ramps or curb ramps in the absence of a pedestrian walkway with a prepared surface for pedestrian use. Nor are curb ramps required in the absence of a curb, elevation, or other barrier between the street and the walkway.

When is resurfacing considered to be an alteration?

Resurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling. Examples include, but are not limited to the following treatments or their equivalents: addition of a new layer of asphalt, reconstruction, concrete pavement rehabilitation and reconstruction, open-graded surface course, micro-surfacing and thin lift overlays, cape seals, and in-place asphalt recycling.

What kinds of treatments constitute maintenance rather than an alteration?

Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray are considered to be maintenance because they do not significantly affect the public's access to or usability of the road. Some examples of the types of treatments that would normally be considered maintenance are: painting or striping lanes, crack filling and sealing, surface sealing, chip seals, slurry seals, fog seals, scrub sealing, joint crack seals, joint repairs, dowel bar retrofit, spot high -friction treatments, diamond grinding, and pavement patching. In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps.

What if a locality is not resurfacing an entire block, but is resurfacing a crosswalk by itself?

Crosswalks constitute distinct elements of the right-of-way intended to facilitate pedestrian traffic. Regardless of whether there is curb-to-curb resurfacing of the street or roadway in general, resurfacing of a crosswalk also requires the provision of curb ramps at that crosswalk.

---

1 The Department of Justice is the federal agency with responsibility for issuing regulations implementing the requirements of title II of the ADA and for coordinating federal agency compliance activities with respect to those requirements. Title II applies to the programs and activities of state and local governmental entities. The Department of Justice and the Department of Transportation share responsibility for enforcing the requirements of title II of the ADA with respect to the public right of way, including streets, roads, and highways.

APPENDIX B—C.F.R.'s

§ 35.150 Existing facilities.

(a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) *Methods*—(1) *General.* A public entity may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of

aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of §35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2)(i) *Safe harbor.* Elements that have not been altered in existing facilities on or after March 15, 2012 and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS), Appendix A to 41 CFR part 101–19.6 (July 1, 2002 ed.), 49 FR 31528, app. A (Aug. 7, 1984) are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.

(ii) The safe harbor provided in §35.150(b)(2)(i) does not apply to those elements in existing facilities that are subject to supplemental requirements (*i.e.*, elements for which there are neither technical nor scoping specifications in the 1991 Standards). Elements in the 2010 Standards not eligible for the element-by-element safe harbor are identified as follows—

(A) *Residential facilities dwelling units*, sections 233 and 809.

(B) *Amusement rides*, sections 234 and 1002; 206.2.9; 216.12.

(C) *Recreational boating facilities*, sections 235 and 1003; 206.2.10.

(D) *Exercise machines and equipment*, sections 236 and 1004; 206.2.13.

(E) *Fishing piers and platforms*, sections 237 and 1005; 206.2.14.

(F) *Golf facilities*, sections 238 and 1006; 206.2.15.

(G) *Miniature golf facilities*, sections 239 and 1007; 206.2.16.

(H) *Play areas*, sections 240 and 1008; 206.2.17.

(I) *Saunas and steam rooms*, sections 241 and 612.

(J) *Swimming pools, wading pools, and spas*, sections 242 and 1009.

(K) *Shooting facilities with firing positions*, sections 243 and 1010.

(L) *Miscellaneous.*

(*1*) Team or player seating, section 221.2.1.4.

(*2*) Accessible route to bowling lanes, section 206.2.11.

(*3*) Accessible route in court sports facilities, section 206.2.12.

(3) *Historic preservation programs.* In meeting the requirements of §35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(4) *Swimming pools, wading pools, and spas.* The requirements set forth in sections 242 and 1009 of the 2010 Standards shall not apply until January 31, 2013, if a public entity chooses to make structural changes to existing swimming pools, wading pools, or spas built before March 15, 2012, for the sole purpose of complying with the program accessibility requirements set forth in this section.

(c) *Time period for compliance.* Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum—

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

(Approved by the Office of Management and Budget under control number 1190–0004)

[56 FR 35716, July 26, 1991, as amended by Order No. 1694–93, 58 FR 17521, Apr. 5, 1993; AG Order No. 3180–2010, 75 FR 56180, Sept. 15, 2010; AG Order 3332–2012, 77 FR 30179, May 21, 2012]

§ 35.151 New construction and alterations.

(a) *Design and construction.* (1) Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(2) *Exception for structural impracticability.* (i) Full compliance with the requirements of this section is not required where a public entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(ii) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(iii) If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities, (*e.g.*, those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(b) *Alterations.* (1) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility

is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

(2) The path of travel requirements of §35.151(b)(4) shall apply only to alterations undertaken solely for purposes other than to meet the program accessibility requirements of §35.150.

(3)(i) Alterations to historic properties shall comply, to the maximum extent feasible, with the provisions applicable to historic properties in the design standards specified in §35.151(c).

(ii) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of §35.150.

(4) *Path of travel.* An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(i) *Primary function.* A ''primary function'' is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out.

(A) Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, and corridors are not areas containing a primary function. Restrooms are not areas containing a primary function unless the provision of restrooms is a primary purpose of the area, *e.g.*, in highway rest stops.

(B) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

(ii) A ''path of travel'' includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(A) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(B) For the purposes of this section, the term ''path of travel'' also includes the restrooms, telephones, and drinking fountains serving the altered area.

(C) *Safe harbor.* If a public entity has constructed or altered required elements of a path of travel in accordance with the specifications in either the 1991 Standards or the Uniform Federal Accessibility Standards before March 15, 2012, the public entity is not required to retrofit such elements to reflect incremental changes in the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.

(iii) *Disproportionality.* (A) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

(B) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

(*1*) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;

(*2*) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;

(*3*) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible

height, installing amplification devices, or installing a text telephone (TTY); and

(*4*) Costs associated with relocating an inaccessible drinking fountain.

(iv) *Duty to provide accessible features in the event of disproportionality.* (A) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(B) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order—

(*1*) An accessible entrance;

(*2*) An accessible route to the altered area;

(*3*) At least one accessible restroom for each sex or a single unisex restroom;

(*4*) Accessible telephones;

(*5*) Accessible drinking fountains; and

(*6*) When possible, additional accessible elements such as parking, storage, and alarms.

(v) *Series of smaller alterations.* (A) The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(B)(*1*) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(*2*) Only alterations undertaken on or after March 15, 2011 shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.

(c) *Accessibility standards and compliance date.* (1) If physical construction or alterations commence after July 26, 1992, but prior to September 15, 2010, then new construction and alterations subject to this section must comply with either UFAS or the 1991 Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(2) If physical construction or alterations commence on or after September 15, 2010 and before March 15, 2012, then new construction and alterations subject to this section may comply with one of the following: The 2010 Standards, UFAS, or the 1991 Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(3) If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.

(4) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.

(5) *Noncomplying new construction and alterations.* (i) Newly constructed or altered facilities or elements covered by §§ 35.151(a) or (b) that were constructed or altered before March 15, 2012, and that do not comply with the 1991 Standards or with UFAS shall before March 15, 2012, be made accessible in accordance with either the 1991 Standards, UFAS, or the 2010 Standards.

(ii) Newly constructed or altered facilities or elements covered by §§ 35.151(a) or (b) that were constructed or altered before March 15, 2012 and that do not comply with the 1991 Standards or with UFAS shall, on or

after March 15, 2012, be made accessible in accordance with the 2010 Standards.

APPENDIX TO § 35.151(c)

Compliance dates for new construction and alterations	Applicable standards
Before September 15, 2010 ..	1991 Standards or UFAS.
On or after September 15, 2010 and before March 15, 2012.	1991 Standards, UFAS, or 2010 Standards.
On or after March 15, 2012 ...	2010 Standards.

(d) *Scope of coverage.* The 1991 Standards and the 2010 Standards apply to fixed or built-in elements of buildings, structures, site improvements, and pedestrian routes or vehicular ways located on a site. Unless specifically stated otherwise, the advisory notes, appendix notes, and figures contained in the 1991 Standards and the 2010 Standards explain or illustrate the requirements of the rule; they do not establish enforceable requirements.

(e) *Social service center establishments.* Group homes, halfway houses, shelters, or similar social service center establishments that provide either temporary sleeping accommodations or residential dwelling units that are subject to this section shall comply with the provisions of the 2010 Standards applicable to residential facilities, including, but not limited to, the provisions in sections 233 and 809.

(1) In sleeping rooms with more than 25 beds covered by this section, a minimum of 5% of the beds shall have clear floor space complying with section 806.2.3 of the 2010 Standards.

(2) Facilities with more than 50 beds covered by this section that provide common use bathing facilities shall provide at least one roll-in shower with a seat that complies with the relevant provisions of section 608 of the 2010 Standards. Transfer-type showers are not permitted in lieu of a roll-in shower with a seat, and the exceptions in sections 608.3 and 608.4 for residential dwelling units are not permitted. When separate shower facilities are provided for men and for women, at least one roll-in shower shall be provided for each group.

(f) *Housing at a place of education.* Housing at a place of education that is subject to this section shall comply with the provisions of the 2010 Standards applicable to transient lodging, including, but not limited to, the requirements for transient lodging guest rooms in sections 224 and 806 subject to the following exceptions. For the purposes of the application of this section, the term "sleeping room" is intended to be used interchangeably with the term "guest room" as it is used in the transient lodging standards.

(1) Kitchens within housing units containing accessible sleeping rooms with mobility features (including suites and clustered sleeping rooms) or on floors containing accessible sleeping rooms with mobility features shall provide turning spaces that comply with section 809.2.2 of the 2010 Standards and kitchen work surfaces that comply with section 804.3 of the 2010 Standards.

(2) Multi-bedroom housing units containing accessible sleeping rooms with mobility features shall have an accessible route throughout the unit in accordance with section 809.2 of the 2010 Standards.

(3) Apartments or townhouse facilities that are provided by or on behalf of a place of education, which are leased on a year-round basis exclusively to graduate students or faculty, and do not contain any public use or common use areas available for educational programming, are not subject to the transient lodging standards and shall comply with the requirements for residential facilities in sections 233 and 809 of the 2010 Standards.

(g) *Assembly areas.* Assembly areas subject to this section shall comply with the provisions of the 2010 Standards applicable to assembly areas, including, but not limited to, sections 221 and 802. In addition, assembly areas shall ensure that—

(1) In stadiums, arenas, and grandstands, wheelchair spaces and companion seats are dispersed to all levels that include seating served by an accessible route;

(2) Assembly areas that are required to horizontally disperse wheelchair spaces and companion seats by section 221.2.3.1 of the 2010 Standards and have seating encircling, in whole or in part, a field of play or performance area shall disperse wheelchair spaces and companion seats around that field of play or performance area;

(3) Wheelchair spaces and companion seats are not located on (or obstructed by) temporary platforms or other movable structures, except that when an entire seating section is placed on temporary platforms or other movable structures in an area where fixed seating is not provided, in order to increase seating for an event, wheelchair spaces and companion seats may be placed in that section. When wheelchair spaces and companion seats are not required to accommodate persons eligible for those spaces and seats, individual, removable seats may be placed in those spaces and seats;

(4) Stadium-style movie theaters shall locate wheelchair spaces and companion seats on a riser or cross-aisle in the stadium section that satisfies at least one of the following criteria—

(i) It is located within the rear 60% of the seats provided in an auditorium; or

(ii) It is located within the area of an auditorium in which the vertical viewing angles (as measured to the top of the screen) are from the 40th to the 100th percentile of vertical viewing angles for all seats as ranked from the seats in the first row (1st percentile) to seats in the back row (100th percentile).

(h) *Medical care facilities.* Medical care facilities that are subject to this section shall comply with the provisions of the 2010 Standards applicable to medical care facilities, including, but not limited to, sections 223 and 805. In addition, medical care facilities that do not specialize in the treatment of conditions that affect mobility shall disperse the accessible patient bedrooms required by section 223.2.1 of the 2010 Standards in a manner that is proportionate by type of medical specialty.

(i) *Curb ramps.* (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

(j) *Facilities with residential dwelling units for sale to individual owners.* (1) Residential dwelling units designed and constructed or altered by public entities that will be offered for sale to individuals shall comply with the requirements for residential facilities in the 2010 Standards, including sections 233 and 809.

(2) The requirements of paragraph (1) also apply to housing programs that are operated by public entities where design and construction of particular residential dwelling units take place only after a specific buyer has been identified. In such programs, the covered entity must provide the units that comply with the requirements for accessible features to those pre-identified buyers with disabilities who have requested such a unit.

(k) *Detention and correctional facilities.* (1) New construction of jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards except that public entities shall provide accessible mobility features complying with section 807.2 of the 2010 Standards for a minimum of 3%, but no fewer than one, of the total number of cells in a facility. Cells with mobility features shall be provided in each classification level.

(2) *Alterations to detention and correctional facilities.* Alterations to jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards except that public entities shall provide accessible mobility features complying with section 807.2 of the 2010 Standards for a minimum of 3%, but no fewer than one, of the total number of cells being altered until at least 3%, but no fewer than one, of the total number of cells in a facility shall provide mobility features complying with section 807.2. Altered cells with mobility features shall be provided in each classification level. However, when alterations are made to specific cells, detention and correctional facility operators may satisfy their obligation to provide the required number of cells with mobility features by providing the required mobility features in substitute cells (cells other than those where alterations are originally planned), provided that each substitute cell—

(i) Is located within the same prison site;

(ii) Is integrated with other cells to the maximum extent feasible;

(iii) Has, at a minimum, equal physical access as the altered cells to areas used by inmates or detainees for visitation, dining, recreation, educational programs, medical services, work programs, religious services, and participation in other programs that the facility offers to inmates or detainees; and

(iv) If it is technically infeasible to locate a substitute cell within the same prison site, a substitute cell must be provided at another prison site within the corrections system.

(3) With respect to medical and long-term care facilities in jails, prisons, and other detention and correctional facilities, public entities shall apply the 2010 Standards technical and scoping requirements for those facilities irrespective of whether those facilities are licensed.

[56 FR 35716, July 26, 1991, as amended by Order No. 1694–93, 58 FR 17521, Apr. 5, 1993; AG Order No. 3180–2010, 75 FR 56180, Sept. 15, 2010; 76 FR 13285, Mar. 11, 2011]

49 C.F.R. § 37.3 defines "**alteration**" as "a change to an existing facility, including, but not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls…" but not "normal maintenance, reroofing, painting or wallpapering, asbestos removal or changes to mechanical or electrical systems…unless they affect the usability of the building or facility."

49 C.F.R. § 37.43(b) states that the "**maximum extent feasible**" rule "applies to the occasional case where the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards through a planned alteration." This is a narrow exception which does not include budget limitations as discussed below.

APPENDIX C—PROJECT CIVIC ACCESS SETTLEMENT AGREEMENTS

Date	Location	State	Details on the major defects noted in the PCA review:
8/8/13	City of Fort Morgan	Colorado	Accessible route widths were deficient, contained steps or vertical bumps, and some accessible route were not firm, stable and slip resistant
7/19/13	Town of Poestenkill	New York	Signage in accessible parking areas and a lift that requires a key to operate
5/31/13	City of West Columbia	South Carolina	Parking area signs, slopes, accessible route slopes, accessible routes that are not firm, stable, and slip resistant
5/9/13	Stewart County	Georgia	Parking area signs, stripes, slopes, access aisles, pavement, accessible route has steps or vertical bumps, accessible routes that are not firm, stable and slip resistant
4/19/13	Jacksonville	Florida	Parking area signs, slopes, access aisles, accessible route width and slopes, curb ramp slopes, flares and edge protection, handrails, ramp slopes, edge protection and accessible routes that are not firm, stable and slip resistant and have vertical drops or drops with unbeveled edges
10/16/12	North Adams	Mass.	Parking area signs, slopes, access aisles, accessible route width, steps, bumps, curb ramp edge or flare issues, handrails, ramp edge protection or flares, accessible routes that are not firm, stable, and slip resistant
10/4/12	Providence	Rhode Island	Parking area signs, slopes, access aisles, accessible route width, slopes, steps, bumps, curb ramp slope, handrails, ramp width, ramp edge protection or flares, accessible routes that are not firm, stable, and slip resistant, ramp edge protection, and an accessible lift or door where assistance with a key is required
9/13/12	Schuylkill County	Penn.	Parking area signs, stripes, slopes, access aisles, accessible route width, slopes, steps, bumps, handrails, ramp edge protection or flares
7/25/12	Kansas City	Missouri	Parking area signs, stripes, slopes, access aisles, accessible route slopes, steps, bumps, curb ramp slope, edge protection or flares, handrails, ramp slope, edge protection, accessible routes that are not firm, stable and slip resistant
7/24/12	Randolph County	Georgia	Parking area signs, stripes, slopes, access aisles, accessible route slopes, steps, bumps, curb ramp slope, edge protection or flares, handrails
7/24/12	City of Wills Point	Texas	Parking area signs, stripes, slopes, access aisles, pavement, accessible route slopes, steps, bumps, curb ramp slope, edge protection or flares, handrails, accessible routes that are not firm, stable and slip resistant
2/8/12	Humboldt	Kansas	Parking area signs, accessible route slopes, accessible routes that are not firm, stable and slip resistant

Date	Location	State	Details on the major defects noted in the PCA review:
11/22/11	Upshur County	Texas	Parking area signs, access aisles, accessible route slopes, curb ramp slope, handrails
9/28/11	Town of Warrenton	Virginia	Parking area signs, slopes, access aisles, accessible route slopes, steps, bumps, surface, curb ramp slopes, accessible lift that requires a key to operate
8/16/11	Montgomery County	Maryland	Parking area signs, stripes, slopes, access aisles, pavement, inaccessible parking areas, accessible route width, slopes, steps, bumps, surface, inaccessible routes, curb ramp slope, landings, edge protection or flares, handrails, ramp slope, landings, edge protection, missing truncated domes
7/26/11	City of Madison	Indiana	Parking area signs, stripes, slopes, access aisles, pavement, inaccessible parking areas, accessible route width, slopes, ramps, steps, bumps, surfaces, inaccessible routes, curb ramp slope, landings, edge protection or flares, handrails, ramp slope, landings, edge protection, lift that requires a key to operate
7/26/11	Daviess County	Kentucky	Parking area signs, stripes, accessible route slopes, steps, bumps, surfaces, curb ramp edge protection or flares, handrails, ramp landings, accessible entrance that requires a key
7/26/11	Norfolk County	Mass.	Parking area signs, slopes, access aisles, accessible route slopes, steps, bumps, curb ramp slope, handrails
6/28/11	Van Buren County	Arkansas	Parking area signs, slopes, access aisles, pavement, accessible route slopes, steps, bumps, surface, handrails, ramp slope, accessible lift that requires a key to operate
4/28/11	City of Independence	Kansas	Parking area signs, slopes, access aisles, accessible route width, slopes, steps, bumps, surface, curb ramp slope, edge protection or flares, handrails
3/2/11	City of Des Moines	Iowa	Parking area signs, stripes, slopes, access aisles, pavement, accessible route width, slopes, steps, bumps, surface, inaccessible routes, ramp slope, edge protection or flares, handrails, ramp landings, accessible routes that are not firm, stable, and slip resistant, missing truncated domes
2/15/11	Town of Swansea	Mass.	Parking area signs, access aisles, pavement, accessible route slopes, steps, bumps, handrails, accessible lift that requires a key to operate
1/28/11	Fairfax County	Virginia	Parking area signs, stripes, slopes, access aisles, pavement, inaccessible parking areas, accessible route width, slopes, steps, bumps, surface, inaccessible routes, curb ramp width, slope, landings, edge protection or flares, obstructed curb ramps, missing curb ramps, handrails, ramp slopes, landings, edge protection

APPENDIX D—SUMMARY OF DEFECTS NOTED IN PCA REVIEW

			Parking Issues - 1337 Findings						Accessible Route Issues - 598 Findings				
Date	**Location**	**State**	**Signs**	**Stripes**	**Slopes**	**Aisles**	**Pavement**	**Inaccessible**	**Width**	**Slopes**	**Steps/ Vertical Bumps**	**Surface**	**Inaccessible**
8/8/2013	City of Fort Morgan	Colorado	2	1	1	1	1		11	1	3		
7/19/2013	Town of Poestenkill	New York	4							1			1
5/31/2013	City of West Columbia	South Carolina	2		3				1	14			2
5/9/2013	Stewart County	Georgia	8	4	2	3	3	2	1		2		
4/19/2013	Jacksonville	Florida	38		17	18	1	2	15	18	4		4
10/16/2012	North Adams	Massachusetts	32		4	6			4		5		
10/4/2012	Providence	Rhode Island	11	2	4	4			4	5	9	3	2
9/13/2012	Schuykill County	Pennsylvania	4	6	4	2			2	5	2		
7/25/2012	Kansas City	Missouri	58	18	33	25	1	1		13	6		1
7/24/2012	Randolph County	Georgia	10	2	7	1				2	2	1	
7/24/2012	City of Wills Point	Texas	8	3	2	2	5			9	7		
2/8/2012	Humbolt	Kansas	5		1		1			3		2	
11/22/2011	Upshur County	Texas	8		1	4	1			2	1	1	
9/28/2011	Town of Warrenton	Virginia	14	0	20	4				2	2	7	1
8/16/2011	Montgomery County	Maryland	87	44	84	51	4	13	4	57	29	10	9
7/26/2011	City of Madison	Indiana	25	2	7	10	2	3	3	17	20	48	13
7/26/2011	Daviess County	Kentucky	7	2						2	8	5	
7/26/2011	Norfolk County	Massachusetts	8		10	3				4	3		
6/28/2011	Van Buren County	Arkansas	5		9	4	3		1	3	4	2	1
4/28/2011	City of Independence	Kansas	20		2	5			2	5	7	7	
3/2/2011	City of Des Moines	Iowa	73	10	59	26	6		4	25	15	19	5
2/15/2011	Town of Swansea	Massachusetts	13		1	3	14			2	7	1	1
1/28/2011	Fairfax County	Virginia	75	16	124	28	28	24	10	23	28	11	2
			38.7%	8.2%	29.5%	15.0%	5.2%	3.4%	10.4%	35.6%	27.4%	19.6%	7.0%

			Curb Ramps Issues - 340 Findings							Handrail Issues – 273 Findings
Date	**Location**	**State**	Width	Slopes	Landings	Edge Pro-tection or Flares	Obstructed	Missing	Inaccessible Step	
8/8/2013	City of Fort Morgan	Colorado		2	1	2	2			2
7/19/2013	Town of Poestenkill	New York		1					1	1
5/31/2013	City of West Columbia	South Carolina					1		1	2
5/9/2013	Stewart County	Georgia								
4/19/2013	Jacksonville	Florida		8	2	14	3	1		66
10/16/2012	North Adams	Massachusetts				7				11
10/4/2012	Providence	Rhode Island		2						14
9/13/2012	SchuylKill County	Pennsylvania								8
7/25/2012	Kansas City	Missouri		7		2	1	1	1	10
7/24/2012	Randolph County	Georgia		5	1	4			1	2
7/24/2012	City of Wills Point	Texas		2		8				6
2/8/2012	Humboldt	Kansas								1
11/22/2011	Upshur County	Texas		2	1					6
9/28/2011	Town of Warrenton	Virginia		2						
8/16/2011	Montgomery County	Maryland		38	2	25		1		39
7/26/2011	City of Madison	Indiana		4	1	2				8
7/26/2011	Daviess County	Kentucky				2				8
7/26/2011	Norfolk County	Massachusetts		3		1				4
6/28/2011	Van Buren County	Arkansas								7
4/28/2011	City of Independence	Kansas		7		4				6
3/2/2011	City of Des Moines	Iowa		18		15	1			25
2/15/2011	Town of Swansea	Massachusetts		1		1				13
1/28/2011	Fairfax County	Virginia	16	40	2	61	2	7		34
			16	142	10	148	10	10	4	273
			4.7%	41.8%	2.9%	43.5%	2.9%	2.9%	1.2%	

			Ramps Issues - 161 Findings						
Date	**Location**	**State**	Width	Slopes	Landings	Edge Protec-tion	Obstructed	Missing	Inaccessible
8/8/2013	City of Fort Morgan	Colorado							
7/19/2013	Town of Poestenkill	New York							
5/31/2013	City of West Columbia	South Carolina							
5/9/2013	Stewart County	Georgia							
4/19/2013	Jacksonville	Florida		28	3	9			
10/16/2012	North Adams	Massachusetts			1				
10/4/2012	Providence	Rhode Island	4			3			
9/13/2012	Schuylkill County	Pennsylvania		1		10			1
7/25/2012	Kansas City	Missouri		5		2			
7/24/2012	Randolph County	Georgia							
7/24/2012	City of Wills Point	Texas							
2/8/2012	Humboldt	Kansas							
11/22/2011	Upshur County	Texas							
9/28/2011	Town of Warrenton	Virginia							
8/16/2011	Montgomery County	Maryland		27	7	6			
7/26/2011	City of Madison	Indiana		3	2	2			
7/26/2011	Daviess County	Kentucky	1		2	1			
7/26/2011	Norfolk County	Massachusetts	1	1					
6/28/2011	Van Buren County	Arkansas		2					
4/28/2011	City of Independence	Kansas		1					
3/2/2011	City of Des Moines	Iowa		3					
2/15/2011	Town of Swansea	Massachusetts			1	1			
1/28/2011	Fairfax County	Virginia	1	17	7	7	1		
			7	88	23	41	1	0	1
			4.3%	54.7%	14.3%	25.5%	0.6%	0.0%	0.6%

APPENDIX E—PEDESTRIAN FACILITIES NATIONAL SURVEY

Texas A&M Transportation Institute

Liability Aspects of Pedestrian Facilities National Survey

The Texas A&M Transportation Institute is participating in a study of liability aspects of pedestrian facilities. The study will be included in a research paper that will outline legal issues and the recent litigation experiences of public agencies. We are working in conjunction with the **National Cooperative Highway Research Program (NCHRP)**, which conducts research in areas such as highway planning, design, construction, operation, and maintenance nationwide. We believe the publication will be valuable to both government agencies and private entities and will contribute to the enhanced safety and accessibility of pedestrian facilities. The intended audience for the publication is state and local transportation agencies that are tasked with the construction and maintenance of sidewalks and other pedestrian facilities.

It is very important for state and local agencies to appropriately construct and maintain their pedestrian facilities. The federal Department of Transportation has recently announced a new focus on updating and upgrading these facilities. At the same time, sidewalks and crosswalks have become a major source of tort and Americans with Disabilities Act (ADA) claims.

Your participation in this survey will assist in building a resource for public agencies' planning staff, engineering staff, risk managers and attorneys.

You may submit your answers via this form or have a researcher contact you directly if preferred. If direct contact is preferred, please e-mail *p-ericson@ttimail.tamu.edu*. For additional questions regarding this research, please contact Melissa Walden, Ph.D. at 979-845-8514 or mwalden@tamu.edu.

Agency Name: _____

Agency Location: _____

Name and Title of Survey Respondent: _____

Contact Phone: _____ Contact E-mail: _____

ADA ISSUES

In the past five years, has a disabled person filed a formal or informal complaint against the agency? ○ YES ○ NO

If yes, what type of complaint? _____

What were the reasons for the complaint? _____

Was the complaint resolved? ○ YES ○ NO

If YES, how was it resolved? _____

TORT ISSUES

Please answer the following questions based on the last five years:

Has a lawsuit been filed against the agency that related to its pedestrian facilities in any way? For example: a "slip and fall" on a sidewalk? ○ YES ○ NO

Has a claim been made that a facility should have been replaced but wasn't? ○ YES ○ NO

Has a claim been made that the existing facility wasn't "good" or "safe enough" for some reason? ○ YES ○ NO

Please provide details or citations to appellate cases:	
What were the alleged injuries?	
If your agency has had multiple claims, please provide details about the nature of the claims and the alleged injuries:	
What type of defenses have been used? (i.e., the condition was open and obvious, the defect was de minimus, the agency did not have notice of the condition, compliance with the MUTCD or other guidelines?)	

Were the defenses successful? ○ YES ○ NO

LOCAL AGENCIES

Has the agency enacted a "liability-shifting" ordinance? (i.e. Are property owners required to clear ice and snow from public sidewalks that are adjacent to their property in a certain amount of time? Are property owners required to repair sidewalks?) ○ YES ○ NO

Has it been challenged successfully? ○ YES ○ NO

Please provide a citation to the ordinance or include the language here:

This completes the survey. Please press "Submit Responses" below.
Thank you for your assistance!

SUBMIT RESPONSES

APPENDIX F—RESPONSES TO THE PEDESTRIAN FACILITIES NATIONAL SURVEY

Survey Questions	Total Number of Respondents	"Yes" Responses	"No" Responses
In the past five years, has a disabled person filed a formal or informal complaint against the agency?	36	22	14
If yes, what type of complaint?			
What were the reasons for the complaint?			
Was the complaint resolved?	20	20	0
If YES, how was it resolved?			
Did the agency pay attorney's fees to the complainant's attorney?	27	0	27
Did the agency make changes to the sidewalks or other facilities as a result of the complaint?	31	18	13
Were changes in policy implemented as a result of the complaint	31	10	21
What kinds of changes were implemented?			
Has a lawsuit been filed by a disabled person or group representing disabled people against the agency in the last five years?	39	3	36
Did the case go to trial or was it settled?			
What defenses did the agency use?			
Were the defenses successful?	7	0	7
Please provide detail if necessary:			
Did the agency pay attorney's fees to the plaintiff's attorney?	12	2	10
Did the agency make changes to the sidewalks or other facilities as a result of the complaint?	13	5	8
Were changes in policy implemented as a result of the complaint?	14	2	12
What kinds of changes were implemented?			
Has a lawsuit been filed against the agency that related to its pedestrian facilities in any way	38	15	23
Has a claim been made that a facility should have been replaced but wasn't?	35	7	28
Has a claim been made that the existing facility wasn't "good" or "safe enough" for some reason?	36	14	22
Please provide details or citations to appellate cases:			
What were the alleged injuries?			
If your agency has had multiple claims, please provide details about the nature of the claims and the alleged injuries:			
What types of defenses have been used?			
Were the defenses successful?	8	7	1
Has the agency enacted a "liability shifting" ordinance?	24	14	10
Has it been challenged successfully?	15	2	13
Please provide a citation to the ordinance or include the language.			

In the past five years, has a disabled person filed a formal or informal complaint against the agency?				
Agency Name	**If yes, what type of complaint?**	**What were the reasons for the complaint?**	**If the complaint was resolved, how was it resolved?**	**If the agency made changes to sidewalks or facilities, or changes in policy due to the complaint, what kind of changes were implemented?**
Arlington County, Virginia, Office of Human Rights, EEO, and ADA	Public access to sidewalks and curb ramps.	Lack of accessible features/maintenance of accessible features/non-compliance with federal regulations.	Where deficiencies were found, the facility was repaired and brought up to current standards.	New policies were developed to include Access Board draft guidelines for accessible rights of way.
California Department of Transportation	Access barriers.	Various, including lack of curb ramps, no accessible pedestrian signals, no accessible pedestrian detour through construction, sidewalk/driveways impassable due to lifting, overgrown vegetation on sidewalk, signal timing insufficient, uncontrolled right turns endangering pedestrians with sight impairments, obstructions on sidewalks, snow removal practices created a barrier.	The complaints have been resolved either through a maintenance work order, traffic electrical work order, day labor project with Maintenance or a capital project. Many capital projects are currently in the project development process. A few complaints are staying on the transition plan until a planned roadway rehabilitation project removes the barrier. In 2010 Caltrans agreed to a settlement that included allocation of $1.1B for ADA specific projects over the next thirty years (starting at $25M/yr. for the first five years). Includes an annual report to the plaintiffs and a third party review of compliance for the first seven years.	Temporary pedestrian accessible routes through construction zone policies were developed along with training for construction inspectors. Changes were made to maintenance guidance on snow removal practices. Standard plans were reduced from the maximum slopes to allow for construction tolerances. Installation of APS is now required on all signal replacements or signal upgrade projects. Additional funding directed to ADA projects. A new grievance procedure was developed and implemented.
Colorado Springs, City of	Lack of curb cuts for individuals in wheelchairs, business A-frame signs blocking sidewalks for individuals in wheelchairs, main entrance not accessible to a historical City building, can't use a power scooter on some City park trails, lack of picnic tables high enough for individuals in a wheelchair, handicapped parking signage on ground not visible when it snows, and damaged sidewalk in front of citizen's home.	Majority of complaints were about accessibility issues for individuals confined to a wheelchair.	Plan in place to add curb cuts; businesses were notified of being in violation of the ADA regarding A-frame signs; alternate entrance signage was displayed; citizen was notified of park trails that are safe for motorized scooters (provided park maps); informed citizen of picnic tables in the parks that are accessible for individuals in a wheelchair; erected handicapped parking signs that are visible when it snows; and Streets repaired sidewalk for disabled citizen.	

Delaware Department of Transportation	Concern about mobility on a sidewalk from home to bus stop.	The person with a disability was unable to navigate the sidewalks due to ADA noncompliant pinch points in the newly constructed pedestrian access route.	Being actively addressed now. Remedial actions for noncompliant features are planned and will be presented to the complainant.	More in-depth review/scoping of projects in the design phase. Ongoing education regarding ADA compliance.
District of Columbia Department of Transportation	Intersection Repairs.	Sidewalk and curb ramp were noncompliant at an intersection.	A design was developed to fix the noncompliant corner and the entire intersection for ADA Compliance to achieve the Maximum Extent Feasible.	
Florida State Department of Transportation	Personal injury.	Allegations of unsafe condition of sidewalk causing plaintiff to fall out of motorized chair and sustain injury.	Plaintiff dismissed the case when facts learned through discovery revealed serious problems in his theory of liability as well as damages. Plaintiff's counsel was well-known for bringing questionable and even meritless claims.	Not applicable.
Georgia Department of Transportation	Limited/no access.	Damaged curb and sidewalk on GDOT project.	Installed temporary access until the project was completed.	Not applicable.
Helena, City of	Unsafe route of travel from residential home to the central downtown business area. Included concerns about sidewalk conditions and inadequate or noncompliant ADA curb cuts.	The complainant felt the response to address the matter was insufficient and that the Self Evaluation and Transition Plan adopted in 1995 was incomplete and outdated.	A settlement agreement was negotiated by the Federal Highways Department, which included the following requirements: 1. The identified route of travel of the complaint be evaluated and be made a priority for future upgrades. 2. Evaluate the central downtown area and create a map of the downtown indicating the best routes of travel from all ADA parking spaces in public parking lots or structures and on street ADA spaces. 3. Evaluate and inventory the condition of all ADA curb ramps in the City. 4. Using the Curb Ramp Inventory map, include the route of the complaint and identify four additional principal priority routes of pedestrian travel for future upgrades. 5. Update the complaint process to include not only formal written ADA complaints but also any informal complaints and advise the complainant that the matter will be looked into and notification will be sent upon completion of an investigation as to the results of the investigation.	1. The identified route of travel of the complaint was evaluated and was made priority one for future upgrades—All upgrades including new ADA curb cuts were completed in October 2013. 2. The evaluation of the central downtown area and map of the downtown indicating the best routes of travel was completed in the fall of 2009. 3. The evaluation and inventory of all ADA curb ramps in the City was completed in June 2011. 4. Including the complaint route, four additional principal priority routes of pedestrian travel were identified for future upgrades in July 2011. As of today, 02/21/2014, the complaint route has been fully upgraded and funding was secured in January 2014 to address the needed upgrades to priority route number 2.

			6. Conduct a new self-evaluation and create a new Transition plan for the City.	5. The complaint process, to include any type of format and advise the complainant that the matter will be looked into and notification would be sent upon completion of an investigation as to the results of the investigation, was corrected in January 2009. 6. The City started the initial steps of conducting the self-evaluation and transition plan update in 2011. In addition, an engineering firm was contracted in December 2012 and January 2013 to evaluate a park and the first floor of the most used public facility in the City. Additional steps are underway in this process to determine the full scope of the required, including education of staff to complete the process or budgeting additional funds to secure an outside source to complete this requirement.
Idaho Transportation Department	2010—Regarding restrooms and parking spaces at rest areas along I-84 from Boise to Eastern State border. Regarding a service animal refused entrance into a facility at the Black Creek Rest Area. 2011—Regarding sidewalks and crosswalks for Highway 95 in Sandpoint. Regarding service dog banned from inside the restroom area at Midvale. 2012—Regarding sidewalks in the town of Sandpoint.	Access.		ITD is making changes to sidewalks and crosswalks in a statewide project. Customer education is also taking place, both internally and externally. Policy changes were also made at ITD.
Kansas Department of Transportation	An informal complaint from a citizen. Formal complaints from employees that their disability was	The informal complaint was that accessible parking at a safety rest area was not available. The formal complaints regarding the accommodation of disabled	An investigation was conducted at the safety rest area and plans were made to modify the striping in the parking lot. The complainant was notified of the action being taken.	

	not accommodated.	employees do not and did not involve physical access issues.	The formal complaints regarding the accommodation of disabled employees did not and do not involve physical access issues.	
Lawrence, City of		We have received requests for services and modifications that we have been able to work through to an agreeable resolution. No official complaints		Most frequent issues have been ramp modifications and parking in the central business district.
Little Rock, City of	Concerns were raised about pathways and foot bridges at the Little Rock Zoo; steepness, grade, and overall accessibility were the main concerns.	An individual in a wheelchair felt the pathways were not safe.	The City replaced and modified the pathways and footbridges at the Little Rock Zoo.	Staff will make sure all future pathways and footbridges are in compliance with ADA.
Maryland State Highway Administration	Informal complaint, which then become formal complaint against a sub-recipient county. Same complainant also filed with FHWA against Maryland State Highway Administration and the county.	Initially, lack of detectable warning surfaces (DWS) at some locations within a private development, the roads within which were taking into the county system for maintenance. This mushroomed as the complainant starting throwing in all sorts of unrelated issues.	The State issued a directive to the county and an agreement is being prepared that requires the county to install DWS countywide. During the investigation, the State found the county had not updated its self-evaluation or transition plan. They are now under directive and agreement to do so within certain timeframes, etc.	The State required the county to make changes through the installation of DWS and comply with other necessary elements of ADA Title II compliance, i.e., update transition plans, evaluations, as well as other administrative elements. The State is currently rolling out an extensive sub-recipient policy statewide.
Michigan Department of Transportation	Informal complaints.	1) Sidewalk crumbling 2) Snow on sidewalk. Note: MDOT does not own sidewalk and is not responsible for the maintenance of sidewalk. There is no wrongdoing on the part of MDOT.	Complaints are being resolved by other parties. 1) City and county are addressing sidewalk condition. 2) Snow was removed by city.	MDOT does not own sidewalk and is not responsible for the maintenance of sidewalk. No policy changes were necessary.
Missouri Department of Transportation	Accessibility needs along right of way, access to pedestrian push buttons, increased pedestrian access.	Complainants unable to access crosswalks or other pedestrian facilities.	Modifications of facilities in right –of-way	Modifications to facilities in right-of-way
New Jersey Department of Transportation	Lack of handicapped parking, missing and cracked sidewalks, utility pole blocking clear path.	Complainants unable to access home due to lack of parking, unable to navigate pedestrian walkways due to missing or cracked sidewalks, and unable to access sidewalk due to utility pole obstructing path.	NJDOT and/or the Township provided handicapped parking in front of home, repaired sidewalks, and removed or relocated utility pole.	Once NJDOT was advised of the matters, the current ADA federal regulations were applied to resolve the issues (ADAAG and the Department of Justice's Standards for Accessible Design).

Oregon Department of Transportation	Written ADA complaint to FHWA Division Office, which was forwarded to FHWA Headquarters in D.C.	Inadequate ADA ramps and inadequate sidewalk width on a newly reconstructed bridge.	ADA ramps were constructed for the bridge sidewalks. Justification for not providing adequate sidewalk width was provided, stating the limitations of the Bridge Capacity.	Prior to this ADA complaint, ODOT did not have a process to approve and document ADA Design Exceptions for Technically Infeasible and Undue Financial & Administrative Burden. A process was established to approve and document ADA Design Exceptions and the process was put into the ODOT Highway Design Manual.
Papillion, City of	Wanted a sidewalk or trail installed along a roadway section.	Needed a place to ride his wheel chair out of way of vehicle traffic flow.	We are installing a 10-foot-wide trail along this section of roadway, it has taken a little longer than we would like due to it being a federal-funded project.	We were already in the process of having this trail installed along this section of roadway, but NDOR/FHWA changes were implemented and the process is taking longer than expected.
Scottsdale, City of	We receive informal complaints approximately once each month, and approximately two or three formal complaints each year. The complaints are typically missing or substandard sidewalk ramps, inadequate landing areas, inaccessible pedestrian signal activation buttons, damaged or deteriorated sidewalks or multi-use paths, and inadequate bus service.		We resolve complaints as quickly as possible. Typically, the missing or substandard sidewalk ramps require months or years to construct or reconstruct. Many of the inadequate bus service complaints require years to resolve or cannot be resolved.	We have developed regular inspection and maintenance programs for sidewalks and multi-use paths. We have developed multi-year programs to construct or reconstruct sidewalk ramps. We have a City Council-adopted Complete Streets Policy with requirements for all public and private street improvements.
Tennessee Department of Transportation	Non-compliant sidewalk issues.	After completion of roadway construction, sidewalks were not adequately accessible.	Modification/reconstruction of deficient elements.	In all cases, department policy properly addressed the ADA issue under review. Most of the issues were for projects that were locally managed by a sub-recipient entity. Also, in most cases the department requested modifications prior to any complaints by disabled persons. Additional training has been mandated for staff and agency partners to ensure compliance during construction.

Vermont Agency of Transportation	Employment discrimination.	The complainant, who had been employed as a civil engineer, alleged that the State failed to provide him with reasonable accommodations for his mental disabilities.	A three-judge panel of the Vermont Supreme Court affirmed the trial court's dismissal of the complaint: https://www.vermontjudiciary.org/UPEO2011Present/eo12-339.pdf	

Has a lawsuit been filed against the agency that relates to pedestrian facilities in any way?				
Agency Name	**Please provide details or citations to appellate cases:**	**What were the alleged injuries?**	**If your agency has had multiple claims, please provide details about the nature of the claims and the alleged injuries:**	**What types of defenses have been used? (i.e., the condition was open and obvious, the defect was de minimus, and the agency did not have notice of the condition, compliance with the MUTCD or other guidelines?)**
Ann Arbor, City of	Under Michigan law, local governments have immunity from tort liability except in limited circumstances. By statute, only certain "defects" in a roadway or sidewalk (and compliance by the claimant with certain notice requirements) can be the basis for a claimant to avoid the governmental immunity bar to liability. Most claims are rejected because they do not avoid governmental immunity and most claims do not become lawsuits. In the last 5 years, we settled two cases arising from sidewalk incidents—one in which a bicyclist hit a tree with her handlebar at a point where there was a height discrepancy between sidewalk flags due to tree roots. Under the current statute, the discrepancy would not be a defect that would avoid immunity but at the time, the law was in flux. The other case we settled was one in which the plaintiff claimed of uneven pavement in excess of 2 inches.	Two lawsuits: Case (1) - fractured hip and soft tissue injury; case settled. Case (2) - alleged fractured hip; case dismissed on City's motion for summary judgment.	Because most claims are rejected as barred by governmental immunity, we often do not learn the details of whatever injuries might be claimed. Aside from the two lawsuits listed in answer to the previous question, we have had a few claims, most of which have not proceeded past the initial notice of claim letter. Two, both claiming uneven pavement in excess of 2 inches (the current statutory requirement for a claim), involved knee or leg injuries and were settled without litigation.	(1) Governmental immunity; (2) not a defect giving rise to liability under the law (part of the governmental immunity bar to liability); (3) did not have prior notice and an opportunity to correct (part of the governmental immunity bar to liability); (4) claimant failed to give proper notice of his/her claim (part of the governmental immunity bar to liability).

Arizona Department of Transportation		(2009)—Struck by vehicle causing death, (2011—Struck by vehicle, (2011)—Vehicle and pedestrian collision, (2012)—Struck by vehicle, (2012)—Left forearm was punctured by an ADOT sign/post.	(2009)—Allegations that while crossing the road, claimant was struck by vehicle causing death. Settled —indemnity paid. (2011)—Claimant was struck by a vehicle while jay-walking; four street lights were not functioning at the time of the accident. Settled indemnity paid. (2011)—Claimant alleges negligent construction, which resulted in a vehicle and pedestrian collision. Denial—Not ADOT's jurisdiction. (2012)—Claimant alleges son was struck by a vehicle while crossing the street due to inadequate warning to vehicles of pedestrian traffic. Ongoing. (2012)—Claimant alleges when he was walking through a construction zone, his left forearm was punctured by an ADOT sign/post. Tendered.	
Arkansas State Highway and Transportation Department	Claimant was walking on a grassy area approximately six feet from the sidewalk and fell into an open man hole.	Abrasions and a sprained knee.	1. Claimant was walking on a grassy area approximately six feet from the sidewalk and fell into an open man hole. 2. Claimant stepped into a hole near a utility pole next to a curb. Injured right knee and right arm. 3. Claimant was in a crosswalk in a median and the toe of her shoe	1. Contributory negligence, third party liability. (Case has not been adjudicated.) 2. Third party liability. 3. Department did not breach a legal duty owed to claimant and claimant did not respond to Department's Motion to Dismiss.

			hung on a raised area of the pavement. Injured right shoulder.	
Florida State Department of Transportation			FDOT receives numerous personal injury lawsuits from plaintiffs alleging injuries from falls caused by unsafe sidewalk and curb conditions such as difference in elevation between sidewalk slabs, the existence of holes or depressions, or the presence of gravel or objects. Allegations usually include failure to inspect, maintain, repair, and warn of the allegedly dangerous condition, and that their injuries render them permanently disabled to some degree.	Defenses usually include open and obvious, lack of prior notice, and design immunity. Facts learned through discovery often lead to a defense that the fall did not happen at the location alleged, or that the alleged injury was caused by a prior or subsequent event. The defenses of compliance with ADA standards or the MUTCD are usually not dispositive; usually some fact question remains, requiring the case to continue to a jury trial. Because of the high cost of defending even a meritless case, and because jurors are unpredictable and often have a negative animus against state and government defendants, most cases are settled well before trial.
Hawaii Department of Transportation		1. Person tripped over a cable stretched across the sidewalk and fell, sustaining bodily injuries. 2. Person tripped over portion of a concrete slab, fell, and sustained serious personal injuries.	Multiple claims regarding sidewalk. However, these claims are still active and we are unable to provide any additional information.	The cases described above were settled prior to trial.
Kansas Department of Transportation	A disabled gentleman fell on a sidewalk ramp maintained by a city. KDOT was granted summary judgment at the district court as having no duty to maintain the sidewalk. No appeal was taken. A claim has been made that KDOT failed to maintain a sidewalk at a safety rest area. No lawsuit has been filed at this time.	The disabled gentleman claimed that he injured his testes. In the claim, allegations have been made that the claimant injured her hand/thumb and her knees.		KDOT had no duty to maintain the sidewalk. In appropriate circumstances, KDOT would anticipate using the recreational use exception to the Kansas Tort Claims Act, the defect was de minimus, the condition was open and obvious, and/or that KDOT had no duty to maintain.

Lawrence, City of	Under Kansas law, sidewalk maintenance is the responsibility of the adjacent property owner.			
Mississippi Department of Transportation	More than 5 years ago, the Mississippi Transportation Commission was a defendant in an ADA suit that was settled for the amount of the Attorney fees and an agreement to update its ADA compliance. We have experienced nothing since then.			
Missouri Department of Transportation	Lawsuits include slip and fall and trip and fall, failure to provide crosswalks.	Numerous including abrasions and broken bones due to injury in area that plaintiff said should have been a crosswalk. The agency has been sued twice with allegations that a crosswalk should have been in place and was not. One of those accidents resulted in a fatality.	Trip and fall, slip and fall, failure to provide facilities or upgrade facilities.	Notice, open and obvious condition, compliance with internal policy and MUTCD.
New Jersey Department of Transportation				No dangerous condition as defined in N.J.S.A. 59:4-2, Design Immunity; N.J.S.A 95:4-6, failure to provide signals; N.J.S.A. 4-5, Weather Immunity, not our property.
New York State Department of Transportation	In the past 5 years we have received multiple lawsuits that allege that defects in the SW have resulted in trip and fall accidents that injured a claimant. Generally speaking, a large crack, or differential settlement of some slabs that may have resulted in a toe stubbing lip that allegedly was the cause of the trip and fall.	Numerous in nature from a broken bone/wrist, ankle, knee cap, or multiple bruises and injuries to muscular or abrasions to skin, etc. Nothing so severe as dramatic brain injury or similar.	In the past 5 years we have received multiple lawsuits that allege that defects in the sidewalk have resulted in trip and fall accidents that injured a claimant. Generally speaking, a large crack, or differential settlement of some slabs that may have resulted in a toe stubbing lip that allegedly was the cause of the trip and fall.	Notice, Maintenance Jurisdiction wasn't NY State—municipal, designed and constructed in compliance with good engineering standards and practices and simply an issue with the pedestrian failing to pay attention. In some instances, the claimant may be correct that maintenance or replacement was due, and the dangerous condition did contribute to a fall. We then take responsibility and settle these cases.

Savannah, City of	Claimant tripped over a 1/4 inch elevated brick while walking down sidewalk. Claimant tripped over elevated crack in sidewalk while walking.	Sprains, lacerations, and fractured right knee.	Sprains, lacerations, and fractured right knee.	Generally, the City does not have prior knowledge of a specific defected area. We utilize the sovereign immunity defense and sometimes settle with minimal contribution in lieu of cost of defense.
Scottsdale, City of	One multi-use path frequently used by bicyclists had reverse super-elevation and a longitudinal uneven joint. This resulted in two lawsuits that were settled prior to trial—one for approximately $100,000 and the other for approximately $400,000. (The path was re-constructed prior to settlement.) Two current lawsuits are in process pertaining to a multi-use path horizontal curve at a "T-intersection" of paths prior to a tunnel. (The path is being re-designed.)	Broken collarbone, broken arm, broken ribs, damaged wrist, serious abrasions and cuts.		Conditions were obvious. Compliance with MUTCD. Compliance with national requirements at time of initial construction and reconstruction. Defense in past litigation were partially successful as they were settled prior to trial.
South Dakota Department of Transportation	Patitucci v. City of Hill City and Granite Sports Inc., 2013 S.D. 62.			All of the listed examples have been used or would be used. In addition, the department enters into agreements with cities requiring cities to perform certain maintenance and repair functions on state highways within the jurisdiction of the cities. DOT relies on these agreements to pass along these responsibilities. Sovereign immunity is also available for discretionary acts, including design decisions that require the exercise of judgment. Sovereign immunity is also available if there is no liability coverage or to the extent liability coverage is exceeded.

Washington State Department of Transportation	No appellate cases.	Alleged injuries to face and body injuries (abrasions to trunk and face, broken teeth, bone injuries).	Only one claim, not ADA, but pedestrian related to wheelchair fall. Alleged injuries to face and body injuries (abrasions to trunk and face, broken teeth, bone injuries).	Notice of defect and compliance with existing design criteria. Settled prior to trial.

The following chart summarizes the responses received from cities and states regarding their liability shifting ordinances.

Agency Name	**If the agency successfully enacted a "liability shifting ordinance," please provide a citation to the ordinance or include the language here:**
Ann Arbor, City of	Prior to a legislative change, property owners had responsibility under City Code for repair as well as for snow, ice, and debris removal. The City Code was amended to relieve most property owners of the repair obligation, based on a voter-approved millage to fund sidewalk repairs by the City. Adjacent property owners still have an obligation to clear ice, snow and debris. See Sections 4:58 - 4:63 of the Ann Arbor City Code: http://library.municode.com/index.aspx?clientId=11782&stateId=22&stateName=Michigan Michigan courts have held that a city cannot shift liability to the adjacent property owner, even if the property owner was obligated to make the repairs to the sidewalk. See City of Ann Arbor v. Regents of the University of Michigan, 1997 WL 33344725 (No. 197238, Mich. Ct. App. July 1, 1997); Bivens v. Grand Rapids, 443 Mich. 391, 397; 505 NW2d 239 (1993).
Arlington County, Virginia, Office of Human Rights, EEO, and ADA	All Arlington County property owners are required to clean snow and ice from the entire width of the sidewalk after an event. http://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/28/2013/12/Snow-Removal-Ordinance.pdf
Benton City, City of	Abutting property owners must construct and maintain sidewalks. The duty and expense of inspection repair and snow removal falls on the adjacent property owner. http://ci.benton-city.wa.us/BCM%20CODE/Ch.%2012.05.docx
Colorado Springs, City of	Private Property Owner's Responsibility - Parking Lots, Driveways and Sidewalks. What is the property owner's responsibility with regard to snow and ice? City maintenance personnel and equipment cannot clear snow on private property. This includes parking lots, driveways and sidewalks for both residences and places of businesses. Residential property owners are responsible for clearing any sidewalks in front of their property within 24 hours of when snow stops falling. The City will initially give written notice to property owners who fail to clear their sidewalks in a timely manner. Ultimately, the Engineering Inspection Division can impose fines for those who do not comply (see City Code Chapter 3, Article 4 - Sidewalks, or click here for more information, including tips to help with sidewalk snow removal). ORDINANCES PENDING CODIFICATION. Ordinances listed below have been passed by the city, but have not been incorporated in the actual city code. Please contact the office of the city clerk if there are any questions concerning the ordinances listed.

Agency Name	If the agency successfully enacted a "liability shifting ordinance," please provide a citation to the ordinance or include the language here:
	There are no City requirements relating to the condition of private driveways in winter storm situations. However, it is a violation of City ordinance to pile shoveled snow in a street, or on another person's property. The best place to shovel snow is onto your lawn.
Florida Department of Transportation	FDOT often has agreements with local municipalities or counties placing maintenance and repair responsibility on them, and requiring them to defend and indemnify the FDOT in any claims or suits arising from alleged negligent repair or maintenance. However, plaintiffs' attorneys usually craft the allegations to try to keep both the municipality or county and FDOT in the case so as to maximize recovery potential. The municipalities and counties under such agreements usually pick up FDOT's defense and indemnify it, but sometimes they do not, which complicates the defenses and makes the litigation even more expensive. While defendants may agree that they may ultimately prevail at trial, as referenced above getting there is very costly, and juries are unpredictable and often are prejudiced against the State and government defendants in general, so most cases end up being settled rather than tried.
Helena, City of	7-8-1: SNOW AND ICE: During the time of year when the fall of snow creates or tends to create obstructed sidewalks or creates slippery sidewalks, it shall be the duty of every owner, lessee or occupant of premises in front of and/or to the side of which there is a sidewalk, to remove said snow, ice or obstruction within reasonable time after said snow has been deposited thereon, so as to avoid the walks becoming treacherous or dangerous to the users of sidewalks in the city. (Ord. 2025, 1-24-1977)
Kansas Department of Transportation	KDOT is not a local agency. Kansas has numerous cities that have enacted local ordinances shifting the burden of sidewalk maintenance to the adjacent property owner.
Lawrence, City of	Ordinance 8324, December 2008 Requires property owners to remove ice and snow from sidewalk within 48 hours of end of snowfall / ice accumulation.
Maryland State Highway Administration	Various local municipalities, entities, HOAs, etc., in the State of Maryland may have "liability shifting" ordinance, rules, etc. On the State level, please refer to Sections 8-629 and 8-630 of the Transportation Article.
Mason, City of	521.06 DUTY TO KEEP SIDEWALKS IN REPAIR AND CLEAN. (a) No owner or occupant of lots or lands abutting any sidewalk, curb or gutter shall fail to keep the sidewalks, curbs and gutters in repair and free from snow, ice or any nuisance, and to remove from the sidewalks, curbs or gutters all snow and ice accumulated thereon within a reasonable time, which will ordinarily not exceed 12 hours after any storm during which the snow and ice has accumulated. (R.C. § 723.011) (b) Whoever violates this section is guilty of a minor misdemeanor.

Agency Name	If the agency successfully enacted a "liability shifting ordinance," please provide a citation to the ordinance or include the language here:
New Jersey Department of Transportation	Maintenance Policy: As per NJAC 16:38-1.2, maintenance of sidewalks or driveways within the ROW limits shall be the responsibility of the owner of the abutting property regardless of the conditions of original construction. Snow Removal Policy: Owners of the property abutting a highway, road, street or thoroughfare under State jurisdiction shall be entirely responsible for the clearing of snow and ice from all abutting sidewalks and abutting driveway cuts, openings or aprons, whether or not they are located on public or private property.
New York State Department of Transportation	NYS Highway Law Ref. to Section 54 and 58 in addition to case law decisions.
South Dakota Department of Transportation	South Dakota Codified Law 9-46-2.
Vermont Agency of Transportation	A state statute authorizes municipalities to adopt local ordinances requiring removal of snow and ice from sidewalks by the owner, occupant or person having charge of abutting property. See Vt. Stat. Ann., tit. 24, section 2291(2). However, another state statute provides for landowner immunity from claims by persons using sidewalks constructed on the landowner's property. See Vt. Stat. Ann., tit. 19, section 2309.
Washington State Department of Transportation	Agencies have enacted these types of ordinances: Clark County Code Ch. 12.26—Sidewalk Maintenance and Repair Cheney Municipal Code Ch. 12.20—Construction of Curbs and Sidewalks Duvall Municipal Code Ch. 8.02—Sidewalk Repair and Maintenance Edmonds City Code Ch. 9.20—Sidewalk Construction and Maintenance Kirkland Municipal Code Ch. 19.20—Sidewalks, Curbs and Gutters—Construction and Maintenance Longview Municipal Code Ch. 12.28—Sidewalk Construction, Maintenance and Repair Puyallup Municipal Code Ch. 11.20—Sidewalk Construction and Reconstruction Seattle Sidewalk Maintenance and Repair SDOT Client Assistance Memo 2208, 01/2010 Snohomish Municipal Code Ch. 1.—Sidewalk Maintenance and Repair Tacoma Tacoma Municipal Code Ch. 10.18 Sidewalks—Construction, Reconstruction and Repair Tacoma Municipal Code Ch. 10.20—Sidewalks—Repairs Pursuant to Agreement.
Wyoming Department of Transportation	We do not have an ordinance but rather state statute that requires that towns of 1500 or more are responsible for snow removal. Towns under 1500 the department takes care of snow removal along our highways. Cities can pass ordinances for snow removal and time frames.

APPENDIX G—REPORTED VERDICTS AND SETTLEMENTS

Using Westlaw and Verdict Search, commonly used Internet legal resources, the following verdicts and settlements were located.

Date	Verdict	Name of Case [Location]	Amount	Details	Source
8/23/2013	Defendant	Ola Horton v. City of Chicago [Cook County, IL]	N/A	Plaintiff claimed she fell on a buckled portion of sidewalk while taking photos of her son. The jury found that the sidewalk was reasonably safe.	VS
8/22/2013	Defendant	McGhee v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged he fell into a hole on a city sidewalk. In defending the claim, the city disputed the manner of injury.	VS
4/12/2013	Defendant	Parsi v. City of Los Angeles [Los Angeles County, CA]		Plaintiff contended he tripped and fell on poorly maintained sidewalk. Jury found that sidewalk was safe.	Westlaw
4/10/2013	Defendant	Cataudella v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged that the height differential between the sidewalk and curb caused her to fall and be injured. The case was defended using an "open and obvious" defense.	VS
4/8/2013	Defendant	Eleni and Kosta Politopoulos v. City of New York Queens Supreme Court, NY [Queens County, NY]	N/A	Plaintiffs sued the city and an adjacent property owner, alleging a sidewalk defect.	VS
3/19/2013	Defendant	Mary Nicole Wheeler v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged she was injured by a broken sidewalk. The city defended with an "open and obvious" defense.	Westlaw
3/19/2013	Defendant	Wheeler v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged that she fell on a broken sidewalk. The city defended with an "open and obvious" defense.	VS
3/14/2013	Defendant	Jerome Maher v. City of Chicago [Cook County, IL]	N/A	Defendant argued condition of 2 ½ inch deviation between sidewalk slabs was open and obvious.	VS
2/19/2013	Defendant	Neal v. JCP&L [Monmouth County, NJ]	N/A	Plaintiff alleged that the defendant utility company installed a utility pole and left the surrounding area in a dangerous condition, causing plaintiff to fall. Utility defended arguing that there was no evidence that it caused the condition and that a non-defendant city should have repaired the sidewalk if it was defective.	Westlaw
9/14/2012	Defendant	Darryl Duncan v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged that he fell on a broken sidewalk. The city defended with an "open and obvious" defense.	VS

Date	Verdict	Name of Case [Location]	Amount	Details	Source
8/24/2012	Defendant	Mattus v. City of Philadelphia and PennDOT, Philadelphia County	N/A	Defendants argued elderly pedestrian who tripped and fell on a sidewalk failed to keep careful lookout	VS
7/3/2012	Defendant	Ann Raychel v. City of New York and New York City Department of Transportation et al [New York County, NY]	N/A	Plaintiff was injured in an area that had been excavated by the city. She alleged the city was negligent in maintaining the area in an unsafe condition.	Westlaw
5/29/2012	Defendant	Leather v. City of Tampa [Hillsborough County, FL]	N/A	Plaintiff Leathers, who was in a wheelchair, attempted to cross the road at an intersection when he allegedly encountered holes and cracks in the road and on the sidewalk ramp which caused him to be thrown from the wheelchair onto the ground.	Westlaw
4/9/2012	Defendant	Scott Haworth v. City of Kent and Nataliya Kuzmych [King County, WA]	N/A	Plaintiff was struck by a vehicle as he attempted to cross the crosswalk. Plaintiff alleged crosswalk was dangerous based on traffic volume and speed, inadequate crossing gaps and lack of proper signing. Plaintiff also claimed there were multiple similar accidents and other pedestrian fatalities. Neither driver, defendant or city was found at fault by the jury.	Westlaw
3/28/2012	Defendant	Lillie Gibson-Howard v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged that the city allowed a sidewalk to be cracked and broken and failed to repair it. The jury found that the city would not reasonably expect people on the property would not discover or realize the danger and that the city was not and should not have been aware of the condition when the accident occurred.	Westlaw
3/14/2012	Defendant	Barbara Lyles v. City of Camden, SC, Kershaw County	N/A	Plaintiff claimed city failed to correct known sidewalk defect.	VS
2/28/2012	Defendant	Campbell v. The City of New York [New York County, NY]	N/A	Plaintiff alleged a defect in the sidewalk due to an improperly placed manhole cover. The jury found that the city did not create or cause the condition.	Westlaw
2/6/2012	Defendant	Rice-Mosley v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged the city created a dangerous hole in the sidewalk and failed	Westlaw

Date	Verdict	Name of Case [Location]	Amount	Details	Source
				to maintain the sidewalk in a safe condition.	
12/9/2011	Defendant	Leroy Singleton v. City of New York and others [Bronx County, NY]	N/A	Plaintiff fell on icy sidewalk, defendant claimed no chance to clear walks	VS
10/18/2011	Defendant	Smith v. City of Clearwater [Pinellas County, FL]	N/A	Plaintiff alleged that her fall resulted from a slippery condition of the sidewalk due to defendant city's failure to maintain it. The city defended, arguing that the sidewalk was routinely maintained and not excessively slippery or dangerous.	Westlaw
8/25/2011	Defendant	Angela Storino v. City of Chicago [Cook County, IL]	N/A	Plaintiff claimed that she tripped over sunken and cracked sidewalk. A jury found in favor of the city, finding that the sidewalk did not present an unreasonable risk of harm.	Westlaw
8/5/2011	Defendant	Nelson v. Kent and others [San Bernardino, CA]	N/A	Thirteen-year-old boy struck and killed in crosswalk. Defendant city of Rancho Cucamonga filed successful motion for summary judgment based on proximate cause. Plaintiff claimed that the in-roadway warning light intensified the risk for crosswalk users.	Westlaw
7/1/2011	Defendant	Ochoa v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged city maintained an uneven sidewalk surface, which caused her to fall. City defended with an "open and obvious" defense.	Westlaw
6/10/2011	Defendant	Manzos v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged that she fell on an unstable and uneven sidewalk. The city defended the claim with an "open and obvious" defense.	Westlaw
4/12/2011	Defendant	Booker Laster v. City of Chicago [Cook County, IL]	N/A	The city of Chicago was allegedly doing construction work on the sidewalk. Laster said he fell due to trenches running parallel to the newly laid sidewalk which had not been covered. The city defended asserting that plaintiff was negligent in failing to maintain a proper lookout and failing to avoid the condition he alleged was unsafe.	Westlaw
3/21/2011	Defendant	Dilbeck v. Port Auth. of Allegheny County [Allegheny County, PA]	N/A	Plaintiff alleged the city and others maintained a crosswalk that was dangerous because it contained confusing and misleading pavement markings and improper warnings.	Westlaw

Date	Verdict	Name of Case [Location]	Amount	Details	Source
1/28/2011	Defendant	Lynn A. Boisvert v. Town of Newington and Newington Board of Education [Hartford, CT]	N/A	Plaintiff was injured when she slipped and fell on water that had accumulated on the sidewalk. The city defended the case arguing that the sidewalk was not under its control and the plaintiff caused her own fall.	Westlaw
9/9/2010	Defendant	Vonella v. City of Hartford	N/A	Plaintiff alleged city was negligent for failing to warn of or repair pothole. Court ruled that since fall happened in daytime hours, the condition was open and obvious and plaintiff was at fault for failing to watch where she was walking.	Westlaw
8/13/2010	Defendant	Carpenter v. Borough of Yeadon, Delaware County, PA [Delaware County, PA]	N/A	Defense claimed mechanics of fall didn't match injuries that allegedly occurred on sidewalk.	VS
6/10/2010	Defendant	Trujilo v. County of Los Angeles, City of Los Angeles and others [Los Angeles County, CA]	N/A	Crossing guard and public entities not to blame for injuries and death of young girls. Plaintiffs alleged that crossing guard was negligent and that insufficient traffic controls had been installed at the crosswalk.	VS
1/8/2010	Defendant	Milagros Ramirez v. City of New York [New York County, NY]	N/A	The alleged dangerous condition was a pothole filled with water that caused plaintiff's fall. Plaintiff argued that the city had notice of the defect and had negligently repaired it. The city defended the case by arguing that plaintiff could not prove how the accident occurred.	Westlaw
1/16/2009	Defendant	Parent v. State of California DOT [Orange County, CA]	N/A	Car hit pedestrian in marked crosswalk that did not have traffic signals. Plaintiff suffered severe brain injury. The driver of the vehicle settled with plaintiff during jury deliberations but Caltrans was found not at fault by the jury.	VS
11/1/2008	Defendant	Zibell v. County of Westchester [Westchester County, NY]	N/A	Plaintiff alleged that crosswalk signing was defective and the green light timing on signal was too short but admitted not pressing the pedestrian signal button. Evidence was presented that he did not attempt to cross the street within the crosswalk.	Westlaw
2/26/2008	Defendant	Madrzyk v. City of Chicago [Cook County, IL]	N/A	Plaintiff alleged she tripped and fell on a cracked and broken sidewalk. The jury found that the sidewalk did not present an unreasonable risk of harm to plaintiff.	Westlaw

Date	Verdict	Name of Case [Location]	Amount	Details	Source
11/19/2013	Plaintiff's	Thanh Nguyen v. Tam Van Le, City of Garden Grove and Macadee Electrical Construction [Orange County, FL]	$290,000	Pedestrian was struck and killed by motorist as he was walking in a marked crosswalk. According to the city of Garden Grove, at the time of the incident, the city, through its contractor, Macadee Electrical Construction, had installed pedestrian signal poles as part of the "Safe Passages to School Act" in close proximity to the accident area. Pole was not energized as it was planned to be relocated. Award was reduced to $159,000 after decedents fault calculated.	Westlaw
9/13/2013	Plaintiff's	Eugene, Oregon Schoening v. Lyons, Lane County, OR	$725,000	A woman who slipped on gravel broke her wrist and fractured and herniated disks in her back. Plaintiffs alleged that gravel had migrated from a nearby unpaved section of sidewalk and created a dangerous condition, The jury agreed, faulting the building owners and awarding Schoening $550,000 for economic damages and $175,000 for pain and suffering.	Westlaw
5/16/2013	Plaintiff's	Marcia Saft v. Consolidated Edison Company of New York Inc. [New York County, NY]	$50,000	Plaintiff tripped over wires on a sidewalk. Alleged defendant should have put up a barrier or warned of condition. Plaintiff 50% at fault. Defendant 50% at fault.	Westlaw
4/5/2013	Plaintiff's	Davis and Bradley v. Prince George's County Board of Education, Prince George's County, MD	$90,357,776	13-year-old girl killed crossing busy street to get to school bus. School was in the middle of a bus budget reduction at the beginning of the school year when routes were not yet worked out.	VS
1/14/2013	Plaintiff's	Elana Vernesa v. City of New York and others. [New York County, NY]	$200,000	Arbitration award. Sidewalks displaced, plaintiff claimed warning flag was a hazard.	VS
10/24/2012	Plaintiff's	Guzi Kharimova v. City of New York and others [New York County, NY]	$307,000	Loose bricks in sidewalk alleged to be hazardous and causing plaintiffs' injury.	VS
10/22/2012	Plaintiff's	Imperiale vs. City of South San Francisco [U.S. District Court, N.D. California]	$90,000	Plaintiff, who was wheelchair bound, claimed that he was unable to access city hall due to the city's failure to comply with ADA provisions. Plaintiff	Westlaw

Date	Verdict	Name of Case [Location]	Amount	Details	Source
				was awarded $25,000 and his counsel received $65,000 in fees. The city agreed to create a disabled van access to the library and create other accessible walkways.	
9/26/2012	Plaintiff's	Mata v. City of New York [New York County, NY]	$5,700,000	Crosswalk surface alleged to be hazardous due to frame of ventilation grate. Back injury.	VS
3/5/2012	Plaintiff's	Arnold v. City of Philadelphia, Philadelphia County, PA	$12,211	Trip on broken sidewalk allegedly led to plaintiff's broken teeth.	VS
2/6/2012	Plaintiff's	Sutherland v. City of New York and NY Transit Authority [New York County, NY]	$150,000	Sloppy roadwork allegedly created tripping hazard for plaintiff.	VS
2/2/2012	Plaintiff's	Concha v. City of New York [New York County, NY]	$116,000	City allegedly ignored reports of pothole in crosswalk where plaintiff's fall occurred.	VS
10/17/2011	Plaintiff's	Elizabeth Colbert v. City of Orlando and Orange County School Board [Orange County, FL]	$5,228	Plaintiff claimed injuries occurred when she tripped and fell over sidewalk slabs that had a one inch difference in elevation.	Westlaw
3/28/2011	Plaintiff's	Liu v. City of Sacramento and others [Sacramento County, CA]	$18,264,142	Plaintiff claimed that the city negligently designed, configured and constructed the crosswalk where she was injured. Allegations were that motorist's views were obstructed by vegetation, a curve and a utility box and that the warning signs were inadequate to warn pedestrians and motorists.	Westlaw
3/3/2011	Plaintiff's	Elizabeth Moore v. State of California [San Bernardino County, CA]	$123,841	Plaintiff alleged injuries occurred when she tripped and fell on an uneven sidewalk pavement.	Westlaw
3/1/2011	Plaintiff's	Vicki Mohammed and Kayla Martin v. State of Maryland [Prince George's County, MD]	$3,300,000	Accident occurred after decedent exited a bus and was struck by a vehicle that veered onto the shoulder from the roadway. Plaintiffs alleged the state was negligent for failing to extend a sidewalk to include a section where the accident occurred and that the state's failure to provide safe access across the "gap" in sidewalks resulted in decedent's death.	Westlaw
2/25/2011	Plaintiff's	Hancock v. City of Atlanta [Fulton County, GA]	$1,144,750	Plaintiff alleged that her shoe was caught in broken or uneven pavement in a crosswalk, causing her fall. She was awarded $2499 in medical ex-	Westlaw

Date	Verdict	Name of Case [Location]	Amount	Details	Source
				penses, $125,000 in lost wages and over $1 million for pain and suffering.	
2/2/2011	Plaintiff's	Robyn Womac v. Texas Department of Transportation [Brazos County, TX]	$250,000	Womac claimed she was thrown from her bicycle when she encountered re-bar protruding from a roadway that had been repaired by TXDOT or one of its contractors.	Westlaw
7/1/2010	Plaintiff's	Liou v. State of California [Millbrae, CA]	$12,200	Suit alleged marked crosswalk was dangerous because even though the intersection was very busy, there were no pedestrian signals.	VS
4/1/2009	Plaintiff's	Aguado v. City of Chicago [Cook County, IL]	$227,200	Plaintiff alleged injuries occurred when she was crossing a street after a rain and the pothole she encountered was filled with water so she didn't see it.	Westlaw
11/4/2013	Settle-ment	Newsome v. City of Maryland Heights [St. Louis County, MO]	$27,500	Snow pile, which caused ice to melt, run downhill and then re-freeze, was created by the city's contractor.	MLW
11/2/2013	Settle-ment	Ramirez v. Cities of Cypress and La Palma [Orange County, CA]	$2,200,000	16-year-old decedent attempted to cross two city streets in a marked crosswalk. A stop light was installed after the accident. Both cities paid $1.1 million in settlement of the claim.	Orange City Register
8/8/2013	Settle-ment	Dorothy Grantham v. City of Chicago [Cook County, IL]	$15,000	Woman tripped on faulty ADA ramp, claimed city knew about defect.	VS
6/17/2013	Settle-ment	Goldberg v. City of Chicago [Cook County, IL]	$16,500	Crack in sidewalk.	VS
6/10/2013	Settle-ment	Carmen Campos v. City of Los Angeles [Los Angeles County, CA]	$100,000	Fall in pothole allegedly caused knee injuries.	VS
4/22/2013	Settle-ment	Lynch and Satoro v. City of San Jose, [Santa Clara County, CA]	$20,000	Unrepaired sidewalk allegedly caused ankle fracture.	VS
12/10/2012	Settle-ment	Alex Reitzer v. City of New York and Empire City Subway [New York County, NY]	$825,000	Damaged sidewalk, ignored for years, allegedly caused plaintiff's injuries.	VS
12/2/2012	Settle-ment	McDaniel v. Louisi-ana Bd. of Trustees for State Colleges and Universities [D.C. of Louisiana,	$2,500	Pedestrian was struck while walking in a crosswalk near a state university campus by a motorist who failed to see her in the crosswalk. Plaintiff alleged defendants failed to post visible and appropriate signs and failed to warn	Westlaw

Date	Verdict	Name of Case [Location]	Amount	Details	Source
		Parish of Calcasieu, LA]		motorists of the crosswalk.	
11/1/2012	Settle-ment	Patricia Poindexter v. City of Detroit [Wayne County, MI]	$182,500	Sidewalk injury claim due to trip and fall.	VS
8/29/2012	Settle-ment	Quinn v. City of Chicago [Cook County, IL]	$170,000	Plaintiff reportedly tripped and fell in a pothole in a street owned by defendant City of Chicago. Quinn was reportedly crossing the street in a crosswalk at the time of his fall. The plaintiff contended the defendant negligently failed to maintain the property.	Westlaw
8/22/2012	Settle-ment	Lada Peters v. City of Detroit [Wayne County, MI]	$85,000	Bicyclist struck defective sidewalk causing plaintiff's dental injury.	VS
6/13/2012	Settle-ment	Merabi v. City of Los Angeles [Los Angeles County, CA]	$170,000	Merabi was walking down the sidewalk when she allegedly fell and crushed her knee cap. Plaintiff claimed the sidewalk constituted a dangerous condition because there were depressions and/or holes in the sidewalk, jagged breaks in the sidewalk and differing heights along various portions of the sidewalk.	Westlaw
4/23/2012	Settle-ment	Estate of Maya Hirsch v. City of Chicago [Cook County, IL]	$3,300,000	Four-year-old girl killed in intersection. Plaintiff claimed traffic control devices improperly located and deteriorated (crosswalks were faded and hadn't been painted for 6 years.)	VS
4/17/2012	Settle-ment	Minnie Franklin v. City of New York and others [New York County, NY]	$57,500	Plaintiff claimed city ignored sidewalk after blizzard, causing her to slip and be injured.	VS
3/27/2012	Settle-ment	Kalanta v. City of Waterford and others [Stanislaus County, CA]	$1,850,000	16-year-old struck and killed while bicycling through intersection at dusk. Intersection was marked as crosswalk but drivers frequently failed to stop for pedestrians.	VS
3/19/2012	Settle-ment	Livermore v. County of Los Angeles [Los Angeles County, CA]	$45,000	Livermore reportedly slipped and fell while attempting to step into a crosswalk from the curb at the entrance to Farnsworth Park in Altadena, Calif. The curb was constructed with large, irregularly shaped river rocks set into a concrete mortar. Plaintiff alleged defendant maintained a dangerous condition at the property and failed to remedy the condition or adequately warn	Westlaw

Date	Verdict	Name of Case [Location]	Amount	Details	Source
				of its danger. Settlement occurred after defendant's motion for summary judgment was granted and plaintiff appealed.	
3/3/2012	Settlement	Michael Donovan v. City of Glendale, CA [Los Angeles County, CA]	$125,000	Plaintiff alleged sidewalk crack caused injury.	VS
12/12/2011	Settlement	Troy Bell v. Byung K. Kim and Kyung Shik Kim i/t/a Sandwich Works, and the City of Philadelphia [Philadelphia County, PA]	$4,500	Plaintiff tripped and fell due to a raised and uneven portion of sidewalk that was covered with grating. He reportedly sustained injuries to his back and right foot. He alleged defendants possessed, maintained and controlled the area where he fell and the defendants were negligent in permitting the existence of a dangerous condition, failing to warn the public of the dangerous condition, and failing to correct the condition.	Westlaw
11/21/2011	Settlement	Davis v. City of Buffalo, Erie County, NY	$150,000	Plaintiff tripped over the base of a parking meter which stuck out of the sidewalk.	Buffalo News
7/5/2011	Settlement	Orduno v. City of Oakland [Alameda County, CA]	$750,000	Plaintiff alleged the roadway existed in a dangerous condition at the time of the collision under the totality of the circumstances, including a row of trees blocking drivers' views, high volume and speed of traffic, lack of a left-turn leg or control of left-turning traffic, and pedestrian protection. This, combined with the high volume of similar collisions, allegedly created a dangerous condition.	Westlaw
6/14/2011	Settlement	Sagez v. City of St Louis [St. Louis County, MO]	$60,000	Previous injuries on this uneven stretch of sidewalk apparently motivated city to settle. Plaintiff tripped on sidewalk in the dark.	MLW
5/9/2011	Settlement	Khaikin v. City of New York and others, New York County	$51,500	Trip on uneven sidewalk allegedly caused plaintiff's injuries.	VS
4/17/2011	Settlement	Sheila Joy v. The City of Alexandria [Alexandria , VA]	$20,000	Plaintiff said she tripped and fell at the junction of the sidewalk curb cut and the road. D&F Construction and Lobo Construction Company reportedly	Westlaw

Date	Verdict	Name of Case [Location]	Amount	Details	Source
				constructed the curb cut. Joy claimed she sustained injuries as a result of the incident.	
1/10/2011	Settlement	Xiao P. Chen v. City of Seattle and Peter Walton Brown [King County, WA]	$3,150,000	Plaintiff decedent was struck in a marked crosswalk on a wet night. He was wearing dark clothes. Defendant settled after their motion for summary judgment was overruled by an appellate court.	Westlaw
6/25/2010	Settlement	Padilla v. City of New York et al [New York County, NY]	$285,000	The 44-year-old plaintiff alleged that she tripped and fell in a pothole while walking across Sixth Avenue at its intersection with 37th Street in Manhattan. Plaintiff maintained that the city negligently failed to correct a defect in the crosswalk in which a several inch piece of roadway was missing, despite prior written notice.	Westlaw
12/12/2009	Settlement	Kremitzki v. City of Mattoon, IL, and others [Coles County, IL]	$157,500	Plaintiff fell on sidewalk that was allegedly damaged and not repaired by city employees during a water line project. The verdict of $175,000 was reduced by 10% for plaintiff's fault.	Herald and Review, Decatur, IL
12/3/2009	Settlement	Lawson v. City of Stockton, CA, U.S. District Court, E.D. [U.S. District Court, E.D. California]	$205,000	Plaintiff, a paraplegic, was injured when attempting to cross a sidewalk. He recovered $80,000 for bodily injury, $125,000 in attorney's fees and the court ordered the city to post signs warning that the sidewalk was not accessible and that the city was required to install a compliant ramp within one year of the judgment.	VS
8/11/2008	Settlement	Ean Plant v. First Continental Corporation et al [Orange County, FL]	$4,000,000	Plaintiff Miranda Plant, 16-year-old student on vacation from England, attempted to cross Poinciana Boulevard in Osceola County when she was struck in the crosswalk by a vehicle driven by Marlon Cabeza. Cabeza fled the scene. Plant sustained serious injuries.	Westlaw
6/2/2008	Settlement	Pulido v. City of West Hollywood [Los Angeles County, CA]	$3,600,000	Plaintiffs attempted to cross the road in black clothing in the rain and were struck in the middle of the intersection. Crosswalk lights were not func-	Westlaw

Date	Verdict	Name of Case [Location]	Amount	Details	Source
				tioning at the time of the accident. After a jury verdict finding that West Hollywood was 23% at fault and plaintiffs were 77% at fault, plaintiffs settled before the damages phase. Plaintiff Pulido: $3.1 million; plaintiff Greene: $500,000.	
1/29/2008	Settlement	Tina Scott v. City of Chicago [Cook County, IL]	$450,000	Plaintiff alleged that the city failed to inspect the crosswalk and failed to repair the hole.	Westlaw

ACKNOWLEDGMENTS

This study was performed under the overall guidance of the NCHRP Project Committee SP 20-6. The Committee is chaired by MICHAEL E. TARDIF, Friemund, Jackson and Tardif, LLC. Members are RICHARD A. CHRISTOPHER, HDR Engineering; TONI H. CLITHERO, Vermont Agency of Transportation; JOANN GEORGALLIS, California Department of Transportation; JAMES H. ISONHOOD, Mississippi Office of the Attorney General; THOMAS G. REEVES, Consultant, Maine; MARCELLE SATTIEWHITE JONES, Jacob, Carter and Burgess, Inc.; ROBERT J. SHEA, Pennsylvania Department of Transportation; JAY L. SMITH, Missouri Department of Transportation; and JOHN W. STRAHAN, Consultant, Kansas.

JANET MYERS provided liaison with the Federal Highway Administration, and GWEN CHISHOLM SMITH represents the NCHRP staff.

Transportation Research Board
500 Fifth Street, NW
Washington, DC 20001

ISBN 978-0-309-30849-6

Subscriber Categories: Law • Pedestrians and Bicyclists