



Dangerous Conditions: Avoiding and Defending Public Property Liability

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What is Public Property?

“Property of a public entity” or “public property” are defined as “real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity.”

(Govt. Code § 830(c).)

What is a Dangerous Condition?

Govt. Code § 830. As used in this chapter:

(a) “Dangerous condition” means a condition of **property** that creates a **substantial** (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property **is used with due care** in a manner in which it is **reasonably foreseeable that it will be used.**

A Condition is NOT Dangerous if a Court . . .

“ . . . viewing the evidence, most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.”

(Govt. Code § 830.2.)

Examples from Case Law

- Submerged pipe near surface of recreational waters
(Waters v. City of Los Angeles (1975) 13 Cal.3d 297)
- Inadequately maintained road that had crumbled away
(Elias v. San Bernardino County Flood Control Dist. (1977) 68 Cal.App.3d 70)
- Mud hole in an improved parking strip
(Low v. City of Sacramento (1970) 7 Cal.App.3d 826)
- Boat launching ramp with a missing plank
(Strongman v. County of Kern (1967) 255 Cal.App.2d 308)

Unique Examples

- Park swing moving too fast backward after being pushed
- Window at a public library that is “too clean”
(yes, Plaintiff actually said this in her deposition)
- Crosswalk should have been painted in the middle of a highway
- Assault by a group of energy company employees on land not owned by the public entity

Trivial Defect Doctrine

Hotly litigated issue in potholes or uneven sidewalks cases:
Is the alleged dangerous condition is substantial or trivial?

- The “trivial defect defense,” it is not actually an affirmative defense.
- Rather, the plaintiff has the burden of proof of establishing that the defect *actually* caused his injury and was substantial rather than trivial.



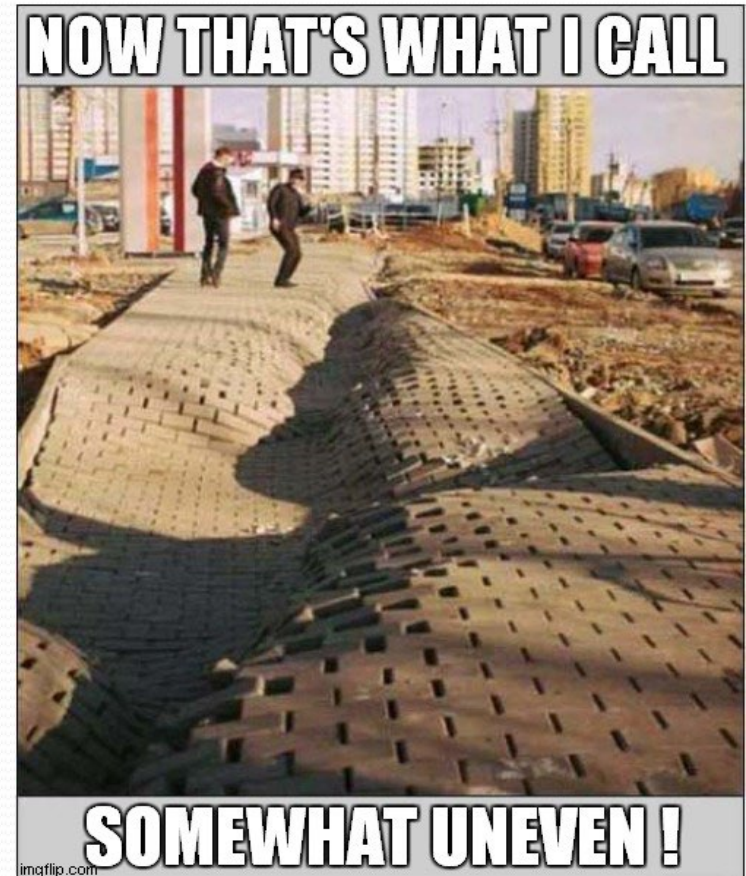
Trivial Defect Doctrine: Sidewalk Edition

First Question: What is the height differential?

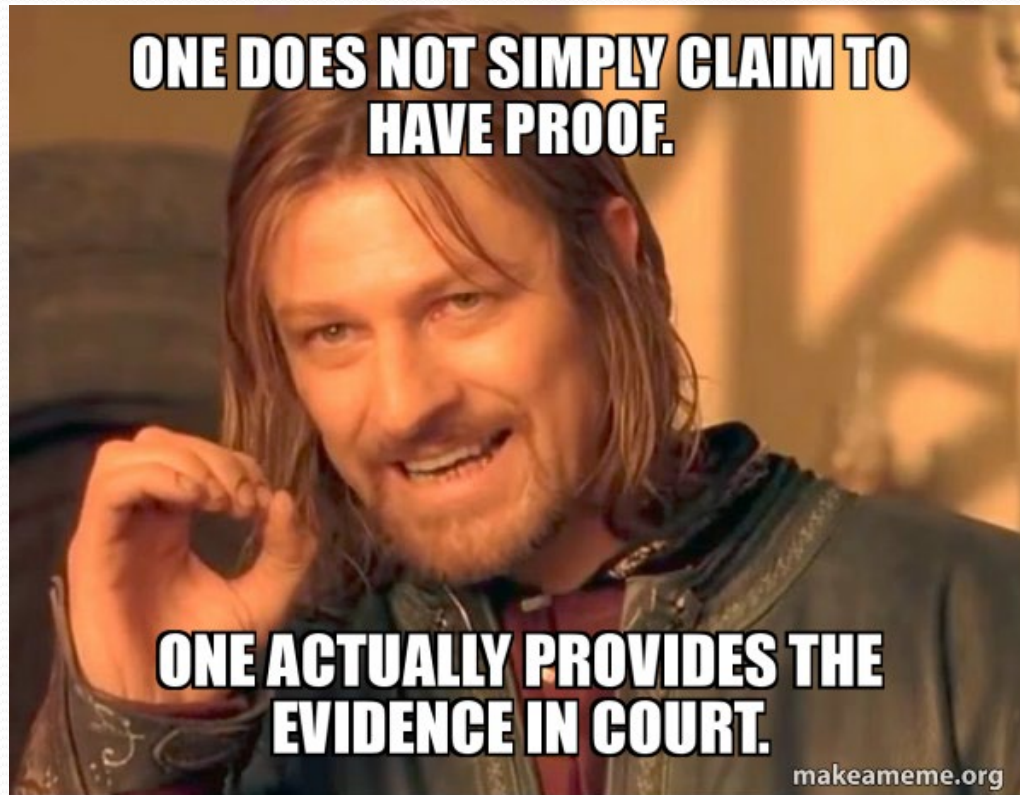
“Sidewalk elevations ranging from three-quarters of an inch to one and one-half inches have generally been held trivial as a matter of law.” (*Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, 1107.)

Remember: the size of the differential is not always dangerous as a matter of law!

- “[T]he court should *not* rely solely upon the size of the defect.” (*Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719, 725–726 [*Huckey, supra*, at p. 1105 (emphasis in original)].)
- “Instead, the court should [also] determine whether there existed any circumstances surrounding the accident which might have rendered the defect more dangerous than its mere abstract depth would indicate.” (*Fielder, supra*, at p. 732.)



But what must a Plaintiff prove to sustain a dangerous condition claim?



Government Code § 835

Except as provided by statute, a **public entity is liable** for injury caused by a dangerous condition of its property if **the plaintiff establishes** that **the property was in a dangerous condition** at the time of the injury, that **the injury was proximately caused by the dangerous condition**, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, **and that either:**

- (a) **A negligent or wrongful act or omission** of an employee of the public entity within the scope of his employment **created the dangerous condition;**

or

- (b) **The public entity had actual or constructive notice of the dangerous condition** under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

Key Takeaways

- Government Code NOT “Negligence”
- Plaintiff’s burden
- Dangerous Condition
- Causation / Foreseeable Risk and **either**
 1. A negligent act causing the condition **or**
 2. **Actual** notice **or** **Constructive** notice of the condition in time to take measures to protect against the condition.

Actual v. Constructive Notice

Actual Notice – The entity actually knew of the condition and knew or should have known of its dangerous character.

Constructive Notice – The condition existed long enough for the public entity to know or should have known of the alleged dangerous condition and that the condition was so obvious that it should have discovered the condition and its dangerous character if it had used due care.



“Protect Against”

Gov’t Code § 830(b) provides that a public entity can “protect against” a dangerous condition by repairing it, remedying it, or providing safeguards or warnings.

(*Foremost Dairies, Inc. v. State of California* (1986) 190 Cal.App.3d 361, 367.)

A public entity cannot be held liable if:

- Measures already taken to protect against the condition prior to the incident giving rise to Plaintiff’s claim (see Gov’t Code § 830(b)); or
- Plaintiff already knew about the condition. (*Belcher v. City and County of San Francisco* (1945) 69 Cal.App.2d 457, 463; *Bunker v. City of Glendale* (1980) 111 Cal.App.3d 325, 333.)



The adequacy of a warning may be resolved as a matter of law where reasonable minds can reach only one conclusion. (*Foremost, supra*, 190 Cal.App.3d at p.367.)

Government Code Immunities



Trail Immunity (Gov't Code § 831.4)

In a nutshell, public entity is not liable for an injury caused by:

- Any unpaved road which provides access to certain activities
- Any trail used for those activities
- Any paved trail walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property
 - NOTE: Warnings required!



To effectively take advantage of this immunity:

- Post clear labels and signage!
- Paved trail? Still need a clear and distinct warning of any known hazards that are present. (See Gov't Code § 831.4(c).)

Design Immunity

An injury caused by the plan or design of a construction of, or an improvement to, public property and

- A legislative body approved the plan or design before construction or improvement

or

- An employee exercising discretionary authority to give such approval

or

- The plan or design is prepared in conformity with previously approved standards

(Gov. Code 830.6)



How to get Design Immunity

1. A causal relationship between the plan or design and the accident;
2. Discretionary approval of the plan or design prior to construction; and
3. Substantial evidence supporting the reasonableness of the plan or design.

Key Case:

Cornette v. Department of Transportation (2001) 26 Cal.4th 63

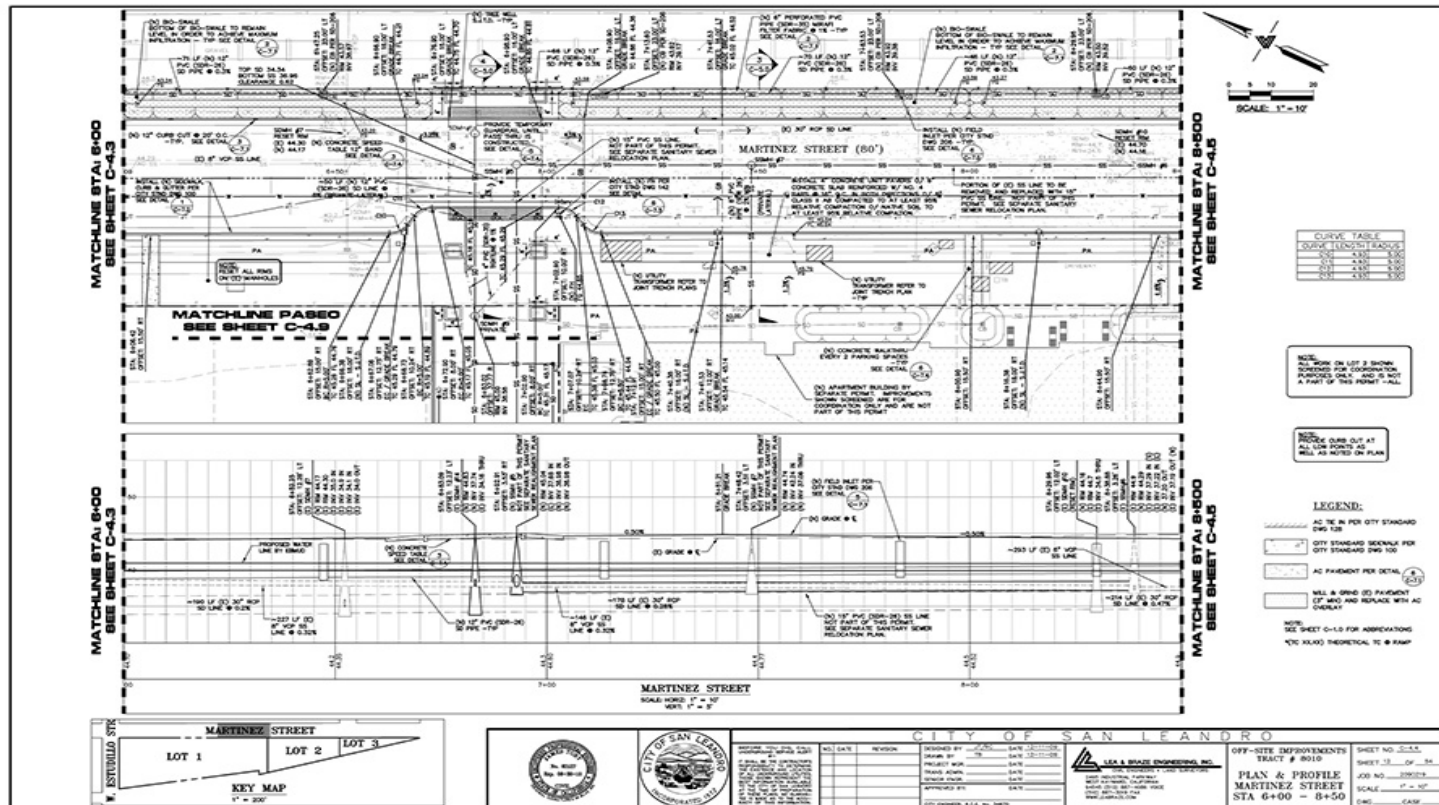
How you lose Design Immunity

Change of condition
(*Cornette, supra*)

As-built different from design
(*Castro v City of Thousand Oaks*
(2015) 239 Cal.App. 4th 1451)

Authority to approve plans not
delegated to person approving them
(*Castro, supra.*)

Get approval for designs *before* construction!



Change in Condition

- Location becomes dangerous because of change in physical conditions
- City had (actual) notice of the dangerous condition
- Had the time and \$ to fix the condition but didn't OR
- Were unable to fix the condition but did not attempt to provide adequate warnings.

(*Cornette v. Dept. of Transportation* (2001)
26 Cal.4th 63)



Tansavatdi v. City of Rancho Pales Verdes (2023) 14 Cal.5th 639

- Design immunity does not categorically preclude failure to warn claims that involve a discretionarily approved element of a roadway
 - Is design immunity is limited to claims alleging that a public entity created a dangerous roadway condition through a defective design?
 - Or does design immunity also extended to claims alleging that a public entity failed to warn of a design element that resulted in a dangerous roadway condition?
- Cal. Gov. Code 830.6 shields public entities from liability for injuries stemming from the design of a roadway's physical features
 - But there's still a duty to warn of known dangers the roadway presents to the public.

Takeaway: Create evaluation systems of roadways and intersections.

- If these areas have a high propensity for accidents or damage due to its design, then you should provide a clear and distinct warning to mitigate against a potential failure to warn claim even if design immunity should apply.

Dog Park Immunity (Gov't Code § 831.7.5)

- “A public entity that owns or operates a dog park shall not be held liable for injury or death of a person or pet resulting solely from the actions of a dog in the dog park.”
- Note: “Public entity” includes, but is not limited to, cities, counties, cities and counties, and special districts (Gov't § 811.2.)



How to get this immunity:

- Clearly and distinctly label all dog parks within your jurisdiction.

Sign Immunity (Gov't Code § 830.4)



“A condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code.”

Sign Immunity: Considerations

- If the public entity has knowledge of a dangerous condition and/or a condition exists that could create a dangerous condition by way of a “concealed trap” at the specific site, then it has a duty to warn about it through the use of a clear and distinct warning.

Weather Immunity (Gov't Code § 831)



- Likely not liable: “an injury caused by the effect on the use of streets and highways of weather conditions as such.”
- Potentially liable: “an injury proximately caused by such effect if it would not be reasonably apparent to, and would not be anticipated by, a person exercising due care.”
- For streets and highways, weather conditions includes:
 - “the effect of fog, wind, rain, flood, ice or snow”
 - Does not include “physical damage to or deterioration of streets and highways resulting from weather conditions.”

Natural Conditions Immunity (Gov't 831.2)



Natural Conditions Immunity (Gov't 831.2)

Key Case: *Goddard v. Department of Fish & Wildlife* (2015) 243 Cal.App.4th 350, 360.

- “Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach.”
- *Unlike* weather immunity, this immunity is “absolute and applies regardless of whether the public entity had knowledge of the dangerous condition or failed to give warning. The legislative purpose in enacting Section 831.2 was to ensure that public entities will not prohibit public access to recreational areas due to the burden and expense of defending against personal injury suits and of placing such land in a safe condition.”

Natural Conditions Immunity (Gov't 831.2)

Key Cases:

- *Alana M. v. State of California* (2016) 245 Cal.App.4th 1482 (*See id.* at p. 1488)
- *Meddock v. County of Yolo* (2013) 220 Cal.App.4th 170 (*See id.* at p. 178.) 
- *Morin v. County of Los Angeles* (1989) 215 Cal.App.3d 184.) (*See id.* at p. 188.)

Hazardous Recreational Activity Immunity (Gov't Code § 831.7.)

Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.”

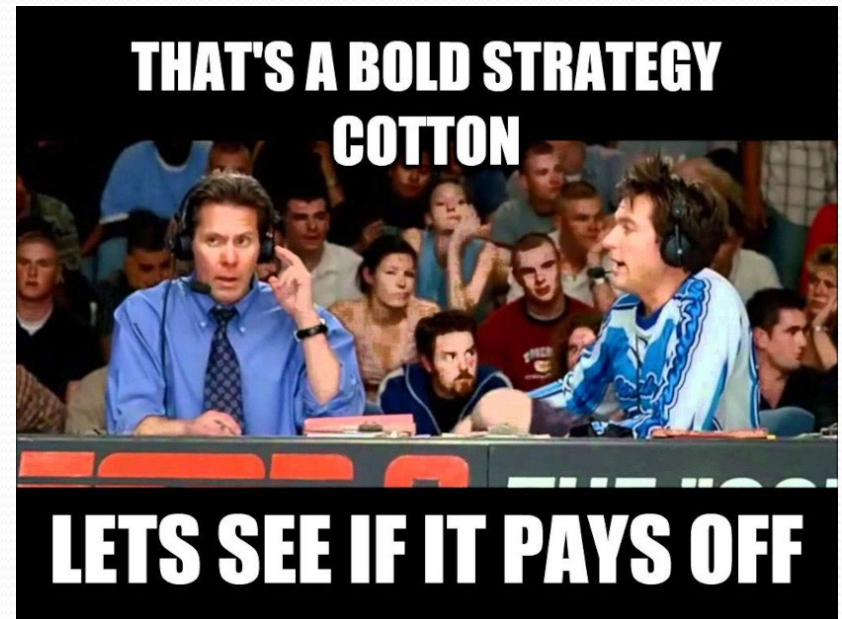


What is a “hazardous recreational activity”?

- “a recreational activity conducted on property of a public entity that creates a substantial, as distinguished from a minor, trivial, or insignificant, risk of injury to a participant or a spectator.” (Gov’t Code § 831.7(b).)
- See Gov. Code § 831.7(b)(3) for the full list of all defined hazardous recreational activities

Five Ways to Lose Hazardous Recreational Activity Immunity (Gov't Code § 831.7(c)(1)(A-E.))

- Failure “to guard or warn of a known dangerous condition or of another hazardous recreational activity known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the hazardous recreational activity out of which the damage or injury arose”
- A fee to engage in the hazardous recreational activity
- Gross negligence in promoting the participation or observance of the activity (promotional literature or a public advertisement or announcement that merely describes the facilities and services on the property does not constitute a grossly negligent promotion.)
- Failure to properly construct or maintain in good repair any structure utilized in the activity
- An act of gross negligence by the public entity or employee of same caused the injury.



Hazardous Recreational Activity Immunity: Signage Considerations

- “No Diving” warnings on piers or near rock formations at beaches
- Public pool signs:
 - “No lifeguards on duty”
 - If there are lifeguards offered, specify when and where they will be located, and ensure they are maintained during those specific time periods.
- Prominently post warnings that apply to the location to warn the public of engaging in hazardous recreational activities
 - Especially if there two known, different types of activities could be engaged in one area (i.e. boating and waterskiing.)

On Waivers: *Whitehead v. City of Oakland* (2025) 17 Cal 5th 735



Holdings

- Civil Code § 1668 trying to exempt anyone from violation of law (intentional or negligent) is unlawful.
- An agreement to exculpate a party for future violations of statutory duty designed to protect public safety is against public policy, and unenforceable.
- Because of Gov't Code § 835, a release cannot exempt a public entity from its statutory duty to maintain roadways in reasonable safe conditions

A Post-*Whitehead* Strategy for Waivers

- Hazardous recreational activity claim waivers?
- Remember: NO general releases to waive Gov't Code § 835 duties
- Focus specifically on the actions within the activity rather than public conditions typically subject to Gov't Code § 835.

Four Tips To Avoid & Mitigate Dangerous Condition Claims



(1) Set Up Inspection Systems

- If the public entity “maintained and operated ...an inspection system with due care and did not discover the condition, it will be difficult to establish that the public entity had the actual or constructive notice required to hold that public entity liable.” (Gov. Code § 835.2 (b)(2))



Our Recommendation: Proactive & Reactive elements

New Pothole Inspection Case: *Restivo v. City of Petaluma* (2025) 111 Cal.App.5th 267

- In March 2021, Plaintiff's skateboard wheel allegedly caught in a "deep crack/pothole" "approximately 6-9 inches in length, 1-2 inches deep and 4-7 inches wide" in the street surface.
- City filed a Motion for Summary Judgment on the basis of triviality, and lack of notice. Trial court granted summary judgment based on lack of notice.
- Court of Appeal affirmed and stated that through a combination of lack of claims to the City and despite a 2019 Pavement Management Report which after inspection deemed the subject road in a "poor" condition, Plaintiff was unable to prove the City had notice of the pothole prior to the incident as it was not noted during the 2019 report.

(2) Remediation Systems

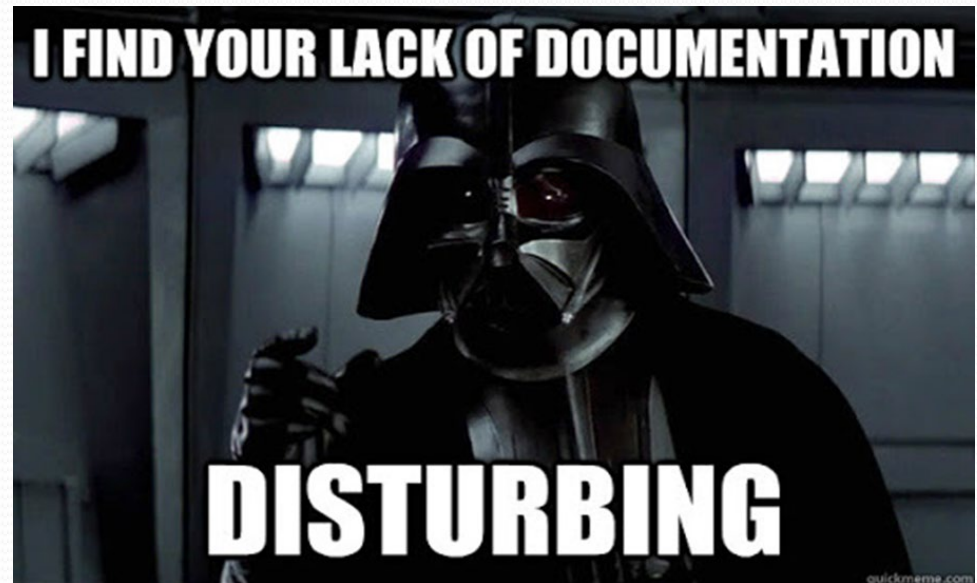


- Ideally, remediate immediately
- But if a dangerous condition cannot be remediated immediately:
 - Remediate as much as possible
 - Place adequate warnings (including temporary warnings like spray painting sidewalk lifts)
 - Assign funding and develop a plan to remediate the issue as soon as you are able.

(3) Document, document, document!

If it *might* be important, write it down!

- Each and every stage: from design and construction to maintenance and repair of any public property or project
- If it *might* be important, write it down!
- Photos!
 - As soon as possible after receiving a claim
 - Before and after repairs
 - Any changes to the property



Documentation: Sidewalk Edition



Know Your Boundaries

Spread the word

- Clearly delineated borders and boundaries readily accessible to the public in both online and physical format
- If the public entity does not own, operate, control, manage, or employ those working at that property, then it cannot be held liable

Approach to Dismiss Case based on Boundaries

- Confirm to them that the alleged dangerous condition is not within the public entity's jurisdiction
 - Pro-Tip: Look at GoogleMaps
- Share boundary information with Plaintiff and/or their counsel
- Draft declaration that attests to the lack of ownership and control of the property in exchange for a dismissal without prejudice

Roads (Gov't Code § 830.8.)

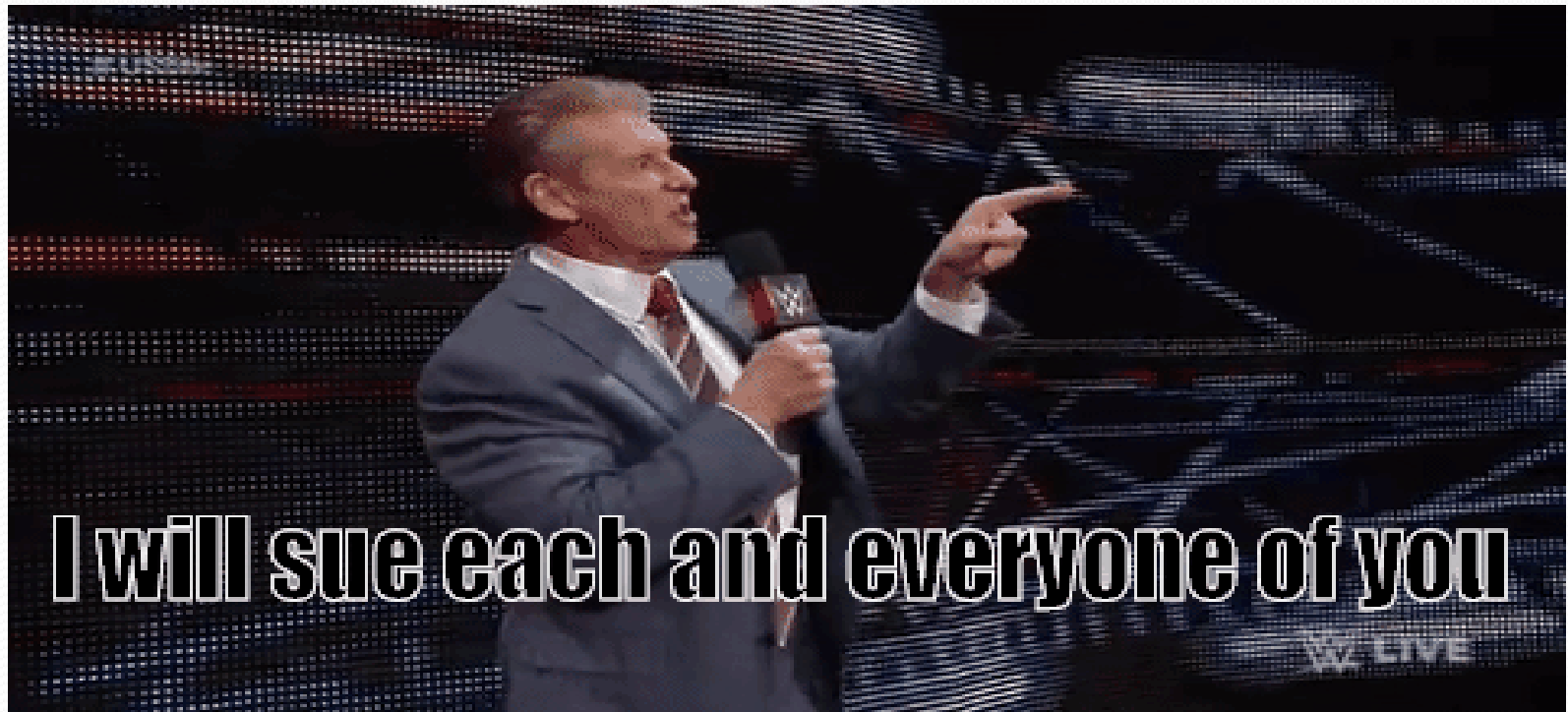
- Likely not liable: an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code.
- Potentially liable: an injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which:
 - Endangered the safe movement of traffic and
 - would not be reasonably apparent to, and
 - would not have been anticipated by, a person exercising due care”



Result:

If Plaintiff claims that a lack of traffic lights or signage made an intersection a dangerous condition, the public entity may not be liable as a result.

How to Approach Claims for Damages



Claims for Damages: Considerations

Claims Database

- Complete, accurate, and up to date database for store and maintain claims against the public entity
- Database searches: location area, date of incident, and when the public entity received claim.

Potential basis for dismissal:

- Plaintiff filed a claim prior to initiating suit but did not within six months of the date of the incident

Late Claims Process

Plaintiff's Application (Govt. Code § 911.4(a)-(b).)

- Written application for leave to present the claim with a proposed claim
- Potential basis for dismissal: Plaintiff filed a claim prior to initiating suit but did not within six months of the date of the incident
- Deadline: No more than one year after the date of the incident giving rise to the claim

Response to Application (Govt. Code Section 911.6)

- Deadline: 45 days to grant or deny the application
- Application deemed denied if no response within 45 days
- *Note*: can extend by written agreement

When you MUST Accept A Late Claim Application
(Govt. Code § 911.6(b)(1-6).)

Required Language for Late Claim Rejection Letters

- “The claim you presented to the (insert title of board or officer) on (indicate date) is being returned because it was not presented within six months after the event or occurrence as required by law. See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.
- Your only recourse at this time is to apply without delay to (name of public entity) for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the Government Code.
- You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.”

Govt. Code § 911.3(a)



HOW I TELL THE OFFICE

I won a summary judgment motion

- Does the alleged dangerous condition meet the definition per the Government Code?
- Is the alleged dangerous condition minor or trivial in nature?
- Even if a dangerous condition exists, did the public entity have actual or constructive notice?
- Did an employee of the public entity through negligence or omission create the dangerous condition?
- Did the public entity provide a warning prior to the incident giving rise to the claim?
- Do any immunities apply to the matter?

If the answer is yes to any of the above, then the strategy should focus on preparing to quickly dispose of the matter via an MSJ/MSA.

Considerations For Effective Motions For Summary Judgment

Key Evidence

- Prior claims
- Contracts to construct the location to include construction plans and authorization by the public entity
- Repair and work orders
- Photographs of any prior repairs or warnings applied
- Clear pictures of measurements of the height of any deviations (more on this later)

Discovery Tips: Focus on Claim & Immunity Elements

- Weather at the time of the incident
- Lack of obstructions or debris at the incident location
- Plaintiff's prior knowledge of the area or the alleged dangerous condition
- Plaintiff's prior knowledge and did not report it previously
- Plaintiff's prior knowledge of saw clear and distinct warning

How to Use Medical Records & Billing to Mitigate Plaintiff's Claimed Medical Damages

PLAINTIFF'S ALLEGED INJURY



PLAINTIFF'S ACTUAL INJURY



Pebley v. Santa Clara Organics, LLC (2018) 22 Cal.App.5th 1266

Holding: Even if a Plaintiff has valid medical insurance, they can use a medical provider outside of their insurance plan and would be treated as uninsured in the eyes of the Court.

Results:

- Plaintiff personal injury bar has significantly increased the use of third-party lien-based medical providers to justify grossly overinflated damages
- Procedures can cost between 30-70% less than what is actually billed
- Providers essentially mark up their services, and once a settlement is on the horizon, counsel for Plaintiff will negotiate these rates with the provider knowing full well that the charged amount is nowhere near a fair market rate for the services provided



Howell v. Hamilton Meats & Provisions, Inc. (2011) 52 Cal.4th 541

Holding:

- Held that a Plaintiff can *only* present the amount either they themselves or their insurance company actually paid to the provider at trial and aspects such as contractual adjustments are not allowable in damages calculations. (*Id.* at p. 551.)

Results:

- If a Plaintiff's medical damages are not from a third-party lien-based provider, but rather from a hospital or other medical facility where a Plaintiff's medical insurance was used, then use *Howell* reduction to determine Plaintiff's actual damages.

Howell in Action

- Plaintiff's bill at one provider: \$100,000
 - Contractual adjustment: \$50,000
 - Insurance payment: \$50,000
 - What's the Howell number? **\$50,000**
-
- *Howell* should be a brightline when calculating medical damages
 - It is imperative that a *Howell* reduction of all medical bills (if applicable) be conducted to provide a clear brightline as to the level of exposure a public entity has on any particular case.
 - Beware: many Plaintiff side personal injury attorneys will ignore *Howell* and attempt to justify ludicrous settlement figures based on general damages/pain and suffering

TRADITIONAL MEDICAL PROVIDER



THIRD-PARTY LIEN PROVIDER



**The Most Rewarding Part,
Was When He Gave
Me My Money.**

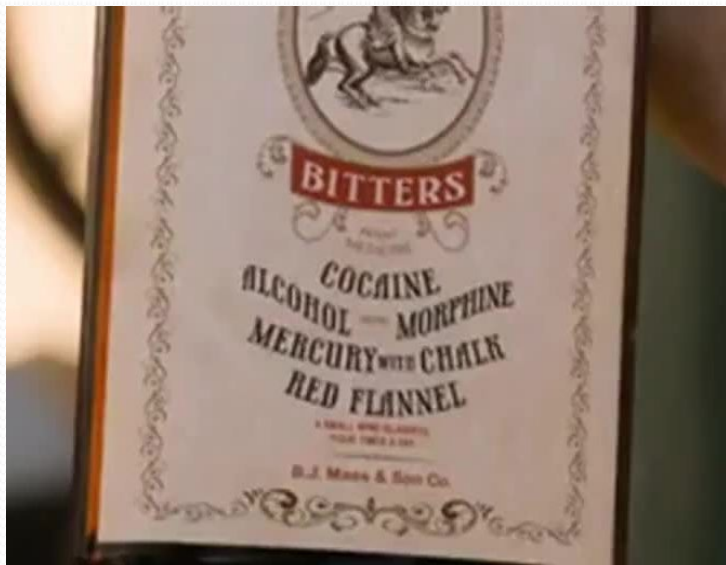
- Dr. Nick Riviera



Strategies For Handling Third Party Lien Providers Billing

- Contact your carrier to inquire if they have any benchmarks or average cost for certain procedures
 - Example: many third-party lien-based providers will charge anywhere between \$1,800-\$3,000 per MRI. Most carriers will indicate that such a procedure typically would cost between \$800-\$1,200.
- Ask questions to demonstrate the provider's propensity to markup their services for nothing more than an increased bottom line to themselves and Plaintiff.
 - “How much do you typically reduce your liens by with a patient”
 - “Do you accept medical insurance”
 - Especially important during depositions!

Snake Oil Procedures: Platelet Rich Plasma (PRP) Injections



Our Recommendation

- Reject any claim for PRP injections given the exorbitant cost and lack of proven medical efficacy

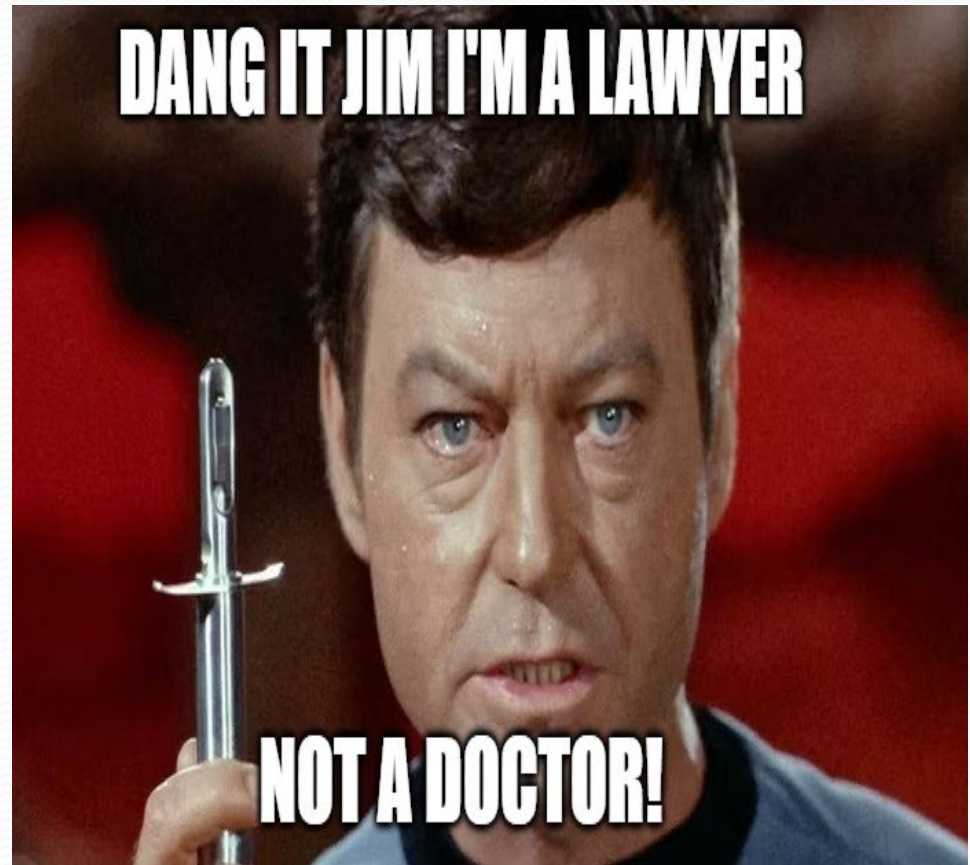
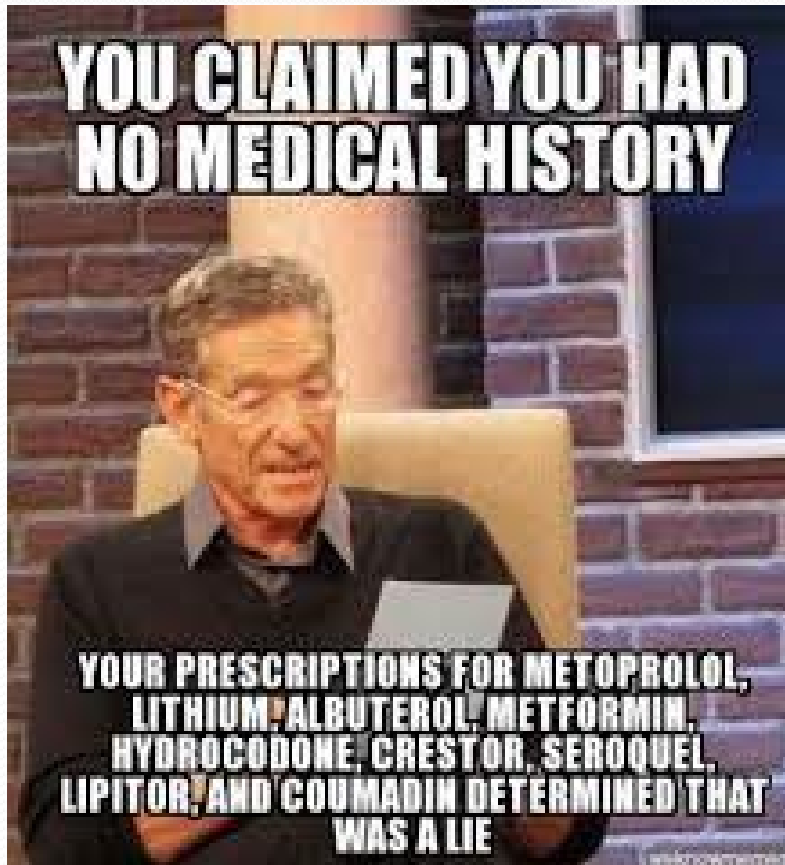
The Procedure

- Patient's blood is extracted, cycled through a centrifuge, and reinjected into the affected area
- Providers claim this stimulates healing by using the patients stem cells

Efficacy?

- Little to no reputable medical journals substantiate the viability of this treatment
- Can cost \$15,000-\$25,000 per injection
- Even if a reputable provider were to offer it, PRP usually costs between \$600-\$800 per injection

Medical Record Review Tips



Pre-existing Conditions

- “Eggshell Plaintiff” vs. a Plaintiff’s pre-existing condition, especially the surrounding circumstances of it, can lead to invaluable information.
- Example Strategy
 - Plaintiff tells you in deposition that in the three years prior to the incident they fell in a similar manner on more than one occasion
 - Find those records
 - Evaluate the notes from both doctors and nurses to determine the level of damages from each fall
- While the incident you are defending could exacerbate a pre-existing condition, the right information can show that the incident was neither the mechanism or a cause of Plaintiff’s alleged injuries

But what am I looking for?

- Plaintiff has sustained falls multiple times prior to the incident, and has had a prior surgery
 - See if a surgeon recommended a further surgery prior to your incident
 - If so, you can use that to demonstrate that the incident did not cause the need for the surgery, and the public entity is therefore not liable for the cost of said surgery.
- Back injuries are common in personal injury cases
 - Don't let medical terminology or the presence of disc bulges cause undue panic.
 - Back muscles and discs degradation can naturally occur as we age
- Look at Plaintiff's line of work, (i.e. if they work in construction, or any position that requires constant physical exertion)

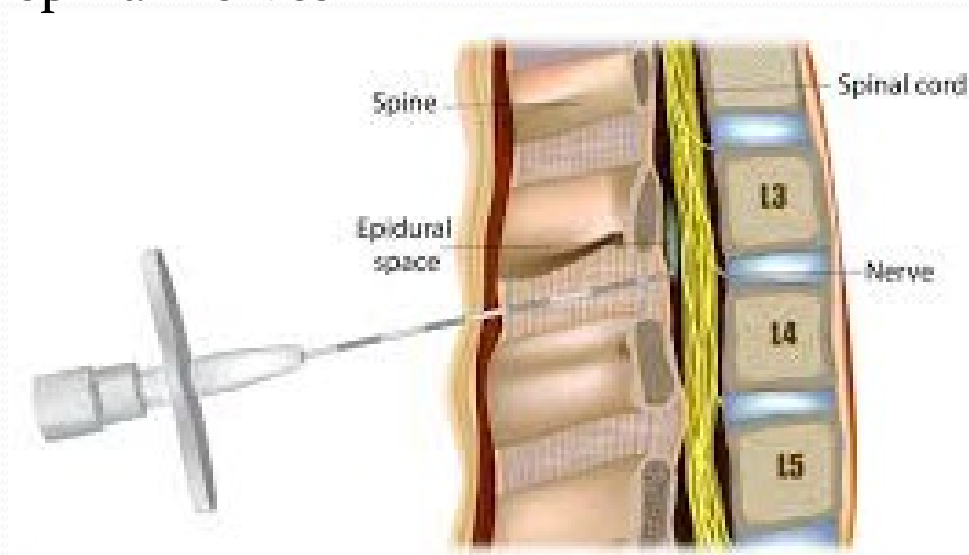
Epidural Steroid Injections (ESI) & Radiofrequency Ablations (RFA)



Epidural Steroid Injections (ESI)

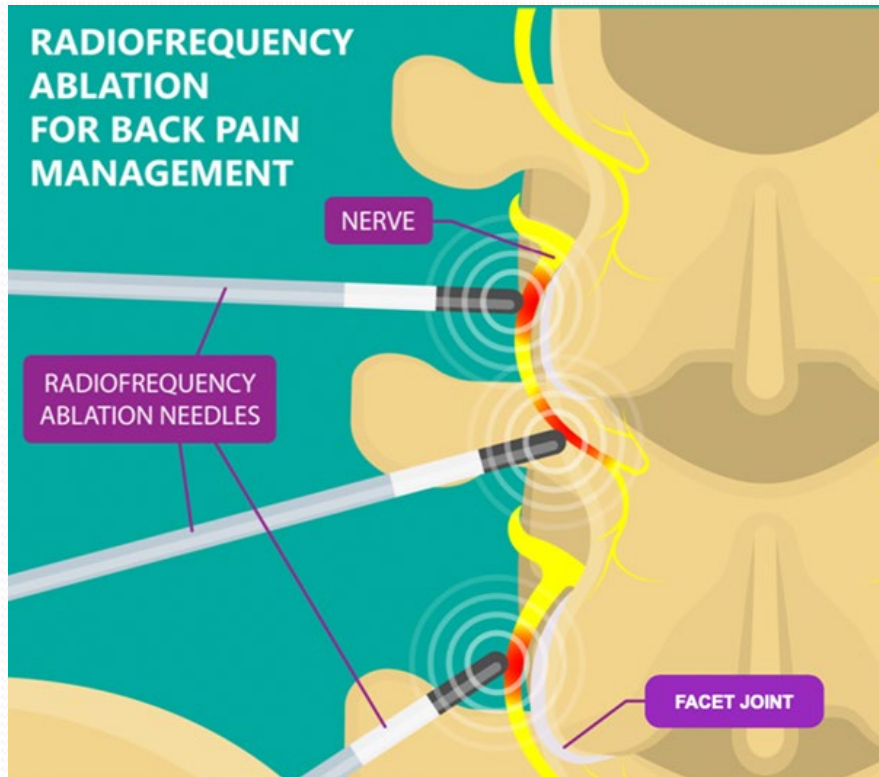
Steroid or corticosteroid injection into the epidural space around the spinal nerves

- Commonly sought for soft tissue injuries such as neck and lower back pain
- ESIs (and RFAs) are rarely necessary *unless* the pain/injury is severe and long lasting
- Supposed to last several months
- More than 3 ESIs within a 12-month period in any one area of the body no recommended
- However, Plaintiffs often have back-to-back injections in the same area approximately 2-3 weeks apart claiming that they feel no lasting relief.



Radiofrequency Ablations (RFA)

Essentially burns off nerve endings in certain areas of the body to stop them from sending pain signals to the brain.



- Only conducted after several ESIs and the pain continues to return
- Similar to ESIs while this procedure has medical efficacy, the conditions and cost should be highly scrutinized.
- Costs:
 - Reputable: \$2,000-\$4,000 per procedure
 - Third-party lien-based providers: \$20,000-\$25,000 per procedure

Medication Review Strategy

JUST SAW AN AD FOR A PAIN MEDICATION.



Medications & Mitigating Damages: An Example

Symptoms vs. Cause

- Since the incident took place, Plaintiff claims to suffer from dizziness and foggy memory – common justifications for a Traumatic Brain Injury (“TBI”) diagnosis.
- But Plaintiff was taking Xanax for anxiety and an opioid such as Oxycodone
 - Combination could easily explain both symptoms
- When creating discovery or deposition questions, ask about Plaintiff:
 - What do they use the medications for?
 - Frequency and usage of each medication?
 - Previously taken prior to the incident?

Plaintiff's Adherence to Medical Advice

- A Plaintiff suffers from uncontrolled (not medicated) Type 2 Diabetes
- Symptoms of uncontrolled Type 2 Diabetes include numbness in extremities such as the legs and arms, even to the point where there would be difficulty walking
- Plaintiff's failure to take prescribed medication to control their diabetes can explain various symptoms that counsel will allege were a result of the incident.

Thank you for joining us



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