



Huckey v. City of Temecula:
The “New” Trivial Defect Rule for Public Sidewalks

February 6, 2020

Presented by: Robert C. Ceccon

The “New” Trivial Defect Rule

- “Jack Cotter, plaintiff's witness, testified that approximately two months after the date of the injury, the depression in the sidewalk, at the scene of the accident, measured about **3/4 of an inch** at its deepest point.”
 - *Felder v. City of Glendale* (1977) 71 Cal.App.3d 719, 721.
- It is also undisputed that the height differential was at its highest at **one and 7/32 inches, or 1.21875 inches**, at the sidewalk's right edge.
 - *Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, review denied (Nov. 13, 2019)

The “New” Trivial Defect Rule

- “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 review denied (Nov. 13, 2019)

The “New” Trivial Defect Rule

1. Facts of the *Huckey* Case
2. Law governing trivial defects on public sidewalks
3. What your city can do to reduce liability

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Location of Huckey's Alleged Fall



Huckey Claim:

Trip and Fall on December 12 at 4:00 p.m.

5. How and under what circumstances did the damage or injury occur? Specify the particular occurrence, event, act or omission you claim caused the injury or damage:

On December 12, 2015, at approximately 4:00 p.m., Claimant, Charles Huckey, was walking on the sidewalk on the northeast corner of Rancho California Road and Meadows Parkway, City of Temecula, CA. As Claimant, Charles Huckey, was walking on the sidewalk, he tripped over a sidewalk panel that was negligently maintained and constituted a dangerous condition. Claimant is informed and believes that the sidewalk is owned, maintained and controlled by the City of Temecula.

Photos Of Huckey's Injuries



Huckey Medical Records: Trip and Fall on December 15, 2015

TVH- Temecula Valley Hospital

Patient: HUCKEY, CHARLES H
MRN: SWH03011831; TVH00427529
DOB/Sec: 6/6/1961 / Male
Attending: Meade, William A MD

Admit: 12/16/2015
Disch: 12/16/2015
FIN: TVH000070764048

Emergency Department

Author: Meade, William A MD

Basic Information

Time seen: Date & time 12/16/15 14:08:00, Provider Assignment
Meade, William A MD assigned at 12/16/2015 13:59

History source: Patient.

Arrival mode: Private vehicle.

History limitation: None.

Additional Information: Chief Complaint from Nursing Triage Note : Chief Complaint

12/16/15 14:02 PST Chief Complaint fell yesterday and hit head on concrete with LOC. states feels confuse today and had head pain. States stopped taking plavix 1 week ago. PT:slow to respond and not acting appropriately triage .

Photographs Examined by a Computer Forensic Expert

DECLARATION OF ERIK HAMMERQUIST

1
2 I, Erik Hammerquist, declare:

3 1. I am an employee of FTI Consulting, Inc. ("FTI") in Los Angeles, California.

4 Since 2007, I have worked in FTI's Computer Forensics practice, where I am a Senior
5 Director. Prior to my employment by FTI, I was employed by INSYNC Consulting Group,
6 Inc. from 2000 until 2007 where I developed and deployed computer network
7 infrastructures and data protection methodologies and performed forensic data collection
8 and analysis in support of investigations and litigations. I have an M.S. in Information
9 Technology. I have substantial experience in the field of information technology, including
10 the investigation and analysis of electronic data. A summary of my experience in this field
11 is set forth in my professional bio, a true and correct copy of which is attached hereto as
12 **Exhibit 1**. I make this Declaration based on my personal knowledge, except where noted
13 below, and could testify competently thereto.

Expert Hammerquist's Opinions Re Dates of Photos



Monday
December 14
4:56 p.m.



Tuesday
December 15
4:36 p.m.



Wednesday
December 16
8:29 a.m.



Wednesday
December 16
9:09 a.m.







10:14:40 10 Q Have you driven that motorcycle in the past
11 month?

12 A Well, like I told you earlier, I don't know.

13 Q Were you driving it in Old Town about two
14 weekends ago?

10:14:57 15 A I don't know.

16 Q You don't remember driving your motorcycle
17 down Old Town Front Street two weekends ago?

18 A I don't know.

11:19:35 14 Q How far is -- was it from your house on
15 Classic Way to Old Town? Approximately how long does
16 it take you to get there?

17 A Well, I have to take a staggered route. So
18 if I went straight, probably five minutes, maybe
19 seven.

11:19:52 20 Q Why did you go all the way to Old Town to go
21 to the gas station? Why didn't you go to one closer
22 to your house?

23 A 'Cause they don't have 76 fuel anywhere, and
24 that's the only fuel I burn in that.

Court of Appeal Mentions Inconsistent Testimony

- “Plaintiff had also been inconsistent about the date he fell. In his deposition, he claimed he fell on the weekend of December 12 or 13, 2015, but he later testified he may have fallen on December 14 or 15, ‘a day or two’ before he went to the hospital.
 - *Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, 1100 review denied (Nov. 13, 2019)

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Government Code Section 830.2

- “A condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition is 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.”

Two Step Trivial Defect Analysis

1. What is the size of the defect?
2. Are there other circumstances that render the rise dangerous?
 - a. Shadows or debris obscure condition?
 - b. Other accidents?
 - c. Cracked concrete?
 - d. Bad lighting?

Step One: Size Of Defect

Fielder's "Three-Quarter Inch Rule"

- “In the present case the gradual rise from nothing to three-quarters of an inch in the pavement had existed for many years in the same condition and in a much traveled portion of the business section of the city. Many people walked daily over the sidewalk at that point. The defect was plainly visible. Its existence was common knowledge in the community. The plaintiff herself knew of it. She tripped over it in the daytime while she was walking toward the exposed side of the rise, without anything to obstruct her vision of the sidewalk area. She had good eyesight, was an excellent walker and frequently walked several miles in a day.’
 - *Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719, 723

Step One: Size Of Defect

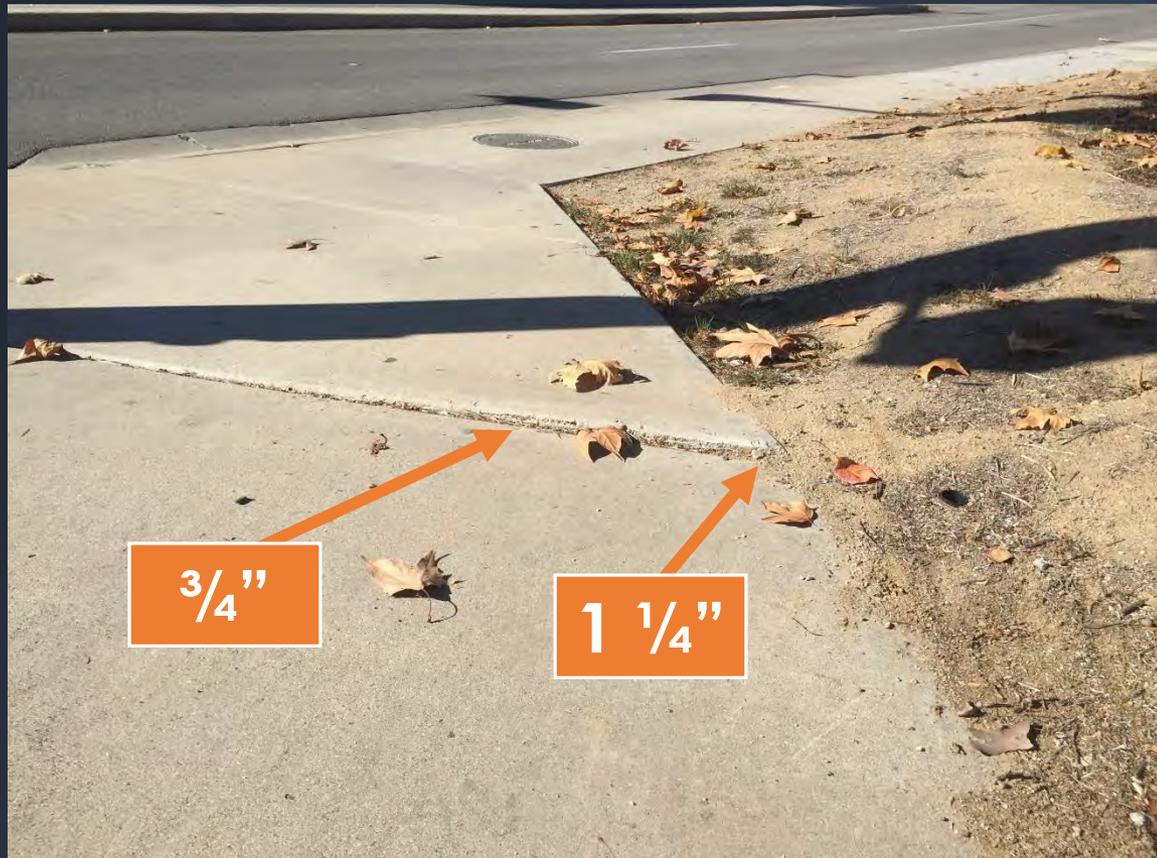
Huckey's "one and one-half inch rule"

- "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. (*Caloroso*, supra, 122 Cal.App.4th at p. 927, 19 Cal.Rptr.3d 254, citing *Barrett v. City of Claremont* (1953) 41 Cal.2d 70, 74, 256 P.2d 977 [and cases cited therein] and *Fielder v. City of Glendale*, supra, 71 Cal.App.3d. at p. 724, fn. 4, 139 Cal.Rptr. 876 [same].) The City's prima facie showing shifted the burden to plaintiff to raise a triable issue of material fact concerning whether the height differential was trivial as a matter of law under the circumstances. (*Aguilar*, supra, at p. 849, 107 Cal.Rptr.2d 841, 24 P.3d 493.)"
- *Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, 1107, review denied (Nov. 13, 2019)

Size Of Defect: Appellate Courts Begin Citing Huckey

- “**Absent** evidence of ‘**aggravating**’ circumstances,’ courts have held such defects to be trivial as a matter of law where the height differential between slabs was as much as 1 and 7/32 inches (1.21875 inches). (See *Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, 1108, 1109 [height differential between concrete sidewalk slabs of up to one and 7/32 inches held trivial where “[t]here were no broken concrete pieces or jagged concrete edges,” no evidence of other accidents, and plaintiff failed to show that “dirt and debris, including leaves, and the shadow from a light pole ... obstructed a pedestrian's view of the sidewalk and height differential at the time plaintiff fell”])”
 - *Mollins v. EQR-SOMBRA* 2008 (Cal. Ct. App., Oct. 18, 2019, No. H046172) 2019 WL 5288098, at *3

Huckey alleges he was helping a realtor remove signs when he tripped on this elevation.



Step Two: Shifting of Burden to Plaintiff

Huckey's "one and one-half inch rule"

- "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. (*Caloroso*, supra, 122 Cal.App.4th at p. 927, 19 Cal.Rptr.3d 254, citing *Barrett v. City of Claremont* (1953) 41 Cal.2d 70, 74, 256 P.2d 977 [and cases cited therein] and *Fielder v. City of Glendale*, supra, 71 Cal.App.3d. at p. 724, fn. 4, 139 Cal.Rptr. 876 [same].) The City's prima facie showing **shifted the burden** to plaintiff to raise a triable issue of material fact concerning whether the height differential was trivial as a matter of law under the circumstances. (*Aguilar*, supra, at p. 849, 107 Cal.Rptr.2d 841, 24 P.3d 493.)"
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Are there other circumstances that render the rise dangerous?

- a. Shadows or debris obscure condition?
- b. Other accidents?
- c. Cracked concrete?
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Other Circumstances: Huckey Claims A Shadow Obstructed the Rise



8 5. I have printed out an exemplar screen showing the metadata relating to
9 photograph IMG_2211, which depicts a shadow on a sidewalk, and which is attached to the
10 Plaintiff's Opposition as Exhibit H. (A true and correct copy of that exemplar screen is
11 attached as **Exhibit 3**.) Looking at the metadata, we can determine that the photograph was
12 taken on **January 11, 2016 at 2:03 p.m.** I understand that the area depicted is at Meadows
13 Parkway and Rancho California in Temecula, California. The longitude and latitude stored
14 in the metadata, *33 deg 30' 51.88" N, 117 deg 6' 16.83" W*, is consistent with that location.

Other Circumstances:

Huckey Claims A Shadow Obstructed the Rise

- “In reply, the City argued there was no evidence that any dirt, debris, or a light pole shadow obscured the height differential at any of the times or dates plaintiff was claiming he fell, namely, between 3:00 and 5:00 p.m. on December 12 to 15, 2015. Metadata on plaintiff's phone showed that the photograph plaintiff took of the light pole shadow obscuring the height differential was taken on January 11, 2016, at 2:03 p.m., not ‘**at** about the same **time**’ plaintiff fell, or on January 3, 2016, as plaintiff was claiming.”
 - *Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, 1100 review denied (Nov. 13, 2019)

Other Circumstances: Huckey Claims A Shadow Obstructed the Rise

- **“The** court correctly sustained the City's objections to plaintiff's proffered photographs of dirt, debris, and the shadow obscuring the height differential as lacking in sufficient foundation. **No evidence showed that these photographs were taken at any time near the dates or the times of day plaintiff claimed he fell** or that these photographs showed the conditions on the sidewalk at the time plaintiff fell.”
 - *Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, 1109 [250 Cal.Rptr.3d 336, 348], review denied (Nov. 13, 2019)

Huckey Cited Re Metadata

- The trial court did not abuse its discretion in ruling Local 721 failed to show Reyes transcribed her notes “at or near the time of the act, condition, or event.” Counsel for Local 721 never asked Reyes when she created her handwritten notes or how long after her interactions with Mitchell she transcribed them, and Local 721 provided no metadata or other evidence indicating when Reyes created the files in her personal information manager program. (See *Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, 1100 **[metadata on the plaintiff’s phone showed the date and time the plaintiff took a photograph that the court admitted into evidence].**)”
 - *Mitchell v. SEIU Local 721* (Cal. Ct. App., Jan. 8, 2020, No. B289210) 2020 WL 89826, at *10

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What can your city can do to reduce liability?

- Accurately measure any rise involved in a claim
- Keep accurate maintenance records
- Have a concrete repair program
- Log citizen complaints
- Hire a lawyer that understands the trivial defect rule



Thank you

Robert Ceccon
rcecon@rwglaw.com