

So, What Is A Dangerous Condition? Court of Appeal Rules That Juries Should Decide  
Most Questions Concerning Whether A Sidewalk Suffers From A “Dangerous  
Condition” For Purposes Of The Government Claims Act

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Uneven sidewalks are common and a part of our daily lives. A question that has arisen, insofar as the California Government Claims Act, is what level of unevenness is required to constitute a dangerous condition for purposes of any government liability. In the case of Stack v. City of Lemoore (2023) 91 Cal.App.5th 10 (“Stack” case), the Court of Appeal discussed at length what is a dangerous condition (or not a trivial defect) under the Government Claims Act and the standards involving the personal plaintiff’s knowledge of the condition.

The Stack case presents relatively routine facts. Plaintiff Mark Stack, a jogger, was injured when he tripped over an uneven portion of the sidewalk in the City of Lemoore. Stack was injured while jogging his usual route around his neighborhood, and tripped over a raised slab of public sidewalk on the west side of Fox Street, in the City of Lemoore (Plaintiff admitted to having jogged this route some 300 times before the accident). Photographs of the sidewalk admitted at trial show a panel of concrete sidewalk, the edge of which was elevated about 1¾" above its neighboring panel. The matter went to trial and Stack prevailed and was awarded \$90,000 (he suffered a fractured wrist).

On appeal, the City of Lemoore argued that the alleged defect in the sidewalk was not a dangerous condition on public property in violation of *Government Code* § 835 (i.e. the condition was trivial as a matter of law). The Court of Appeal affirmed, expressing that, even a relatively minor breach in the sidewalk (with a 1¾" differential) could be considered by a jury to be a dangerous condition, even though the condition was known to the Plaintiff. This, of course, is a low threshold. However, it is noted that the City of Lemoore failed to put on direct evidence of the extent of the differential other than photos. The Court of Appeal also noted that pine needles and debris which were at the base of the change in elevation obscured the crack even though plaintiff was familiar with the area and was aware of the change in elevation. The Court of Appeal also made its ruling noting that the lighting was adequate.

The Stack case is important in that it holds that the question of a "dangerous condition," which would result in liability to a municipality, is largely going to rest with the jury. Stated differently, the defense of a “trivial defect” (as a matter of law) will be limited to, perhaps, changes in elevation of an inch or so or less and the plaintiff’s familiarity with the alleged defect may be disregarded if there is some evidence of an obstruction in viewing the alleged condition.

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