

December 1, 2022

Claims Manager
City of Whoville

RE: Our Client: Jane Doe
Your Insured: City of Whoville
Date of Loss: February 25, 2020
Claim Number: _____

Dear _____:

This is a demand for my client, Jane Doe, to settle her claims arising from the trip and fall incident on a City of Whoville sidewalk that occurred on February 25, 2020, in Whoville, Washington.¹

BACKGROUND

Jane Doe is a very pleasant 73-year-old married woman who currently resides in Seattle, Washington. She is very personable and would come across favorably if we are not able to resolve this claim through settlement negotiations and are forced to proceed into litigation.

FACTS OF INCIDENT

On the morning of February 25, 2020, Jane Doe was walking northbound on the northwest side of Smith Street, near Capital Mall Drive, in Whoville, Washington. As she neared the Mattress Firm store, she struck an abrupt, raised edge of a sidewalk panel with her right toe, fell forward, and landed on her left knee, fracturing it.

¹ The information provided in this offer shall not be construed as waiver of my client's physician/patient privilege, right to privacy, or any other rights or privileges. You are expressly prohibited from providing these settlement materials to any third party. You are also prohibited from using the information for any purpose other than for setting monetary base reserves figures and for settlement of this claim.



LIABILITY

Liability of the City of Whoville is evident in this case.

The City of Whoville has a clear duty to keep its public walkways reasonably safe for use for those who use them in ordinary travel. *Fritsche v. Whoville*, 10 Wn.2d 357, 360, 116 P.2d 562 (1941); *Berglund v. Spokane County*, 4 Wn.2d 309, 358-59 (1940); WPI 140.01: Sidewalks, Streets, and Roads – Duty of Governmental Entity. A government may not transfer primary liability for damages caused by defective sidewalks to abutting landowners in the absence of independent acts of negligence by the landowner. *Rivett v. Tacoma*, 123 Wn.2d 573 (1994).

Washington Pattern Jury Instruction 140.01 entitled, “Sidewalks, Streets, Bridges and Roads—Duty of Governmental Entity” reads as follows:

The [city] has a duty to exercise ordinary care in the [maintenance] [repair] of its public [sidewalks] to keep them in a reasonably safe condition for ordinary travel.

See, *Millson v. City of Lynden*, 174 Wn. App. 303, 306, 298 P.3d 141 (2013) (sidewalks). *Keller v. City of Spokane*, 146 Wn.2d at 249.

Bob Jones, CFLC, Plaintiff’s safety expert, reviewed all the relevant information related to this matter and made the following conclusions in his attached report:

1. Ms. Doe sustained injuries from a fall when her foot struck an abrupt vertical face of a concrete panel in the sidewalk. The edge of the panel become exposed when the sidewalk and surrounding ground settled. The height of the raised edge of the sidewalk panel and the width of the gap

between panels exceeded multiple safety standards. An excessive amount of cross slope was present in the sidewalk as Ms. Doe approached the raised edge. No markings or warnings were present at the location to caution pedestrians to a safety hazard. The deteriorating condition of the sidewalk was documented by the historical online images dating back five years before the incident.

2. Based on the findings detailed in Section 5 of this report, the walking surface on the sidewalk constituted a trip hazard. The trip hazard was created in elevation at the exposed edge of a panel measured 1.7" above the surface of the adjoining panel, which greatly exceeded the ¼ inch maximum for elevation change defined in nationally and locally recognized safety standards.
3. The parties responsible for the sidewalk had adequate time and opportunity to be aware of its condition before the incident because historical online images document the condition of the sidewalk as it deteriorated over the last five years. The consequences of allowing the defects to exist were foreseeable.
4. Failure to make timely repairs, observe safety standards, and post warning signs, suggests that the parties responsible for the sidewalk failed to provide reasonable care as it relates to safe use, inspection, and care of the walking surface.
5. On a more probable than not basis, the conditions allowed to exist at the sidewalk directly caused the trip and fall of Ms. Doe.

The City of Whoville did not comply with their legal duties and an incident occurred due to their negligence. Accordingly, they are 100% liable for the harms and losses Jane sustained because of the incident.

Furthermore, there is no evidence to suggest that Jane had any comparative negligence in this case. She was walking on the sidewalk in a reasonable manner. She was not in a hurry as she was walking; she had not been drinking; she was watching where she was going (not looking straight down at the ground, which is not what an ordinary person walking would do); and she was being careful on the broken and deteriorated sidewalk. Jane was acting as an ordinary person would in this situation. Thus, she cannot be found at fault.

INJURIES

| <u>NATURE OF INJURY</u> | <u>ICD-10 CODE</u> |
|--|--------------------|
| 1. Displaced comminuted fracture of left patella | S82.042A |
| 2. Unspecified fracture of left patella | S82.002A |
| 3. Left knee pain secondary to patella fracture | M25.562 |
| 4. Spinal stenosis of lumbar region | M48.062 |
| 5. Pain in right hip joint | M25.551 |

TREATMENT

Whoville Orthopaedic Associates

Dates of Treatment: 02/26/20 – 01/07/21

No. of Visits: 24

On February 26, 2020, Jane sought evaluation with Clint Miller, PA-C, of Whoville Orthopaedic Associates. She noted landing directly on her left knee during her fall, sharp left knee pain worse when walking, being unable to fully extend her knee, and no relief with elevating and icing the night before.

Mr. Miller examined her, discovered moderate left knee pain and patellar crepitation with flexion and extension, soft tissue swelling, joint effusion, and ecchymosis of her left knee, difficulty with straight leg raising, quadriceps weakness secondary to pain, and medial and lateral joint line and patella tenderness, and obtained left knee x-rays which identified a comminuted Y type fracture of the patella. Jane was diagnosed with fracture of left patella, advised surgical intervention was likely, and directed to remain limited to no weightbearing until assessment by an orthopedic surgeon.

Jane returned to the clinic on February 28, 2020, for follow-up with Owen Harris, PA-C, and reported a pain level of 7-9/10 in severity exacerbated by walking, standing, stairs, squatting, kneeling, pivoting, twisting, and prolonged sitting, associated pain at night, numbness, swelling, instability, and stiffness, and treating her symptoms with a knee immobilizer, walker, ice/heat, and Tylenol.

Mr. Harris examined her and noted left knee swelling, ecchymosis along the lateral aspect of her calf, patella abrasions, lateral, medial, and superior/inferior pole patella tenderness. He diagnosed her with displaced comminuted fracture of left patella, recommended operative treatment, scheduled repeat x-rays, and referred her to physical therapy. Jane followed up on March 6, 2020, with Mr. Harris, underwent repeat left knee x-rays, and was given instructions on use of her knee immobilizer.

On June 5, 2020, Jane returned to Mr. Harris with continued limitations with kneeling or squatting without pain, burning sensations with activity, catching sensations, give away episodes with prolonged standing, and being unable to schedule physical therapy due to the pandemic. Mr. Harris obtained repeat x-rays which showed a non-healing fracture, diagnosed her with left knee pain secondary to patella fracture, and instructed her to increase activities as tolerated.

On July 16, 2020, Jane underwent a left knee MRI which identified:

1. A comminuted fracture of the patella appears nonunited by MRI. Secondary chondromalacia and developing arthritis of the retro patellar facet;
2. Tendinosis of the quadriceps and patellar tendons;
3. Knee joint effusion and osteoarthritis.

Jane returned to the clinic for consultation, and to discuss the results of her MRI, with Dr. Zachary Abbott on July 22, 2020. She noted swelling above her left knee, aching pain above her kneecap, sharp pain, and difficulty with stairs. Dr. Abbott reviewed her MRI results, advised Jane she had a nonunion fracture, and recommended continued observation with nonoperative treatment including bracing, exercises, and topical anti-inflammatories.

Dr. Abbott continued to oversee Jane's care over the next several months which consisted of a referral for an updated lumbar spine MRI and two right intra-articular hip injections, which provided temporary pain relief. On a return visit to Dr. Abbott on November 2, 2020, Jane was referred to Dr. Thomas Helpenstell to discuss a total right hip replacement.

Jane consulted with Dr. Thomas Helpenstell on November 9, 2020, and discussed persistent right hip pain radiating into her groin, at a 6/10 on the pain scale increased with walking, standing, using stairs, putting her socks and shoes on, and sitting, weakness in her legs, pain at night, and catching and grinding sensations. Dr. Helpenstell examined Jane, identified decreased range of motion with internal rotation reproducing groin pain, reviewed her recent x-rays, and recommended a right total hip replacement.

On December 3, 2020, Jane presented to Lori Cardwell, PA, for a pre-operative screening and noted ongoing right hip pain with no improvement with a recent cortisone injection, pain medications, anti-inflammatories, home exercise, activity modification, and rest. Ms. Cardwell examined her, prescribed a front-wheel walker, Oxycodone and Colace for after surgery, and placed her on the surgery schedule.

Following surgery, Jane continued her post-operative care in the clinic with Dr. Helpenstell and Ms. Cardwell, over the next several months, which included staple removal and placement of steri-strips, a referral to physical therapy, a home exercise program, medication management, and self-care instructions.

Following a pre-operative therapy evaluation on December 4, 2020, Jane returned to physical therapy with Katelyn Harrell, PT, on December 15, 2020 with right hip pain at a 3/10 in severity. Ms. Harrell examined her, noted decreased right hip flexion and abduction, right hip weakness, and impairments impacting her ability to stand and walk for long periods of time, and recommended a return to therapy twice per week.

Jane was treated with a series of six visits which included therapeutic exercises, neuromuscular re-education, therapeutic activities, vasopneumatic therapy, and home exercise instruction. On January 7, 2021, she was discharged to her independent home program due to concern with COVID related issues and transportation. On her final visit, she was noted to continue to ambulate with an antalgic gait pattern with decreased right knee flexion during swing phase and significant lateral lean with ambulation.

Providence Health & Services

Date of Treatment: 12/08/20 – 12/09/20

No. of Visits: 1

On December 8, 2020, Jane presented to Providence St. Peter Hospital, was admitted, placed under general anesthesia, and underwent a right total hip arthroplasty performed by Dr. Helpenstell. She remained in-patient overnight for observation, physical and occupational therapy evaluations, and pain management and was discharged the next day to her spouse with instructions to follow-up in the clinic.

SPECIAL DAMAGES

MEDICAL EXPENSES

Jane has incurred medical expenses for treatment of the injuries sustained in this incident. The total incurred medical expenses are as follows:

| | |
|---------------------------------|--------------------|
| Whoville Orthopaedic Associates | \$14,199.28 |
| Radia Imaging | \$898.50 |
| Providence Health & Services | \$54,877.23 |
| TOTAL: | \$69,975.01 |

GENERAL DAMAGES

The guiding principle of tort law is to make the injured party as whole as possible through pecuniary compensation. *Aker Verdal, A/S v. Lampson*, 65 Wn. App. 177 (1992). Besides specially proven damages (medical expense, wage loss, etc.), an injured person may also recover general damages for disability, disfigurement, pain and suffering, loss of the ability to enjoy life, loss of earnings capacity, and loss of consortium. Disability is a very general term and means the inability to lead a normal life. *Kirk v. WSU*, 109 Wn.2d 448, 746 P.2d 285 (1987). The term does not just refer to impairment of working capacity but includes all aspects of life including sleeping or leisure activity. *Parris v. Johnson*, 3 Wn. App. 853, 479 P.2d 91 (1970).

Negligently inflicted mental distress is compensable. *Hunsley v. Giard*, 87 Wn.2d 424, 553 P.2d 1096 (1976). So is distress about the fear of the future consequences of an injury. *Elliott v. Aerosmith*, 149 Wn. 631, 272 P. 32 (1928). Loss of ability to enjoy life is a proper element of damages, and if there are special artistic or athletic skills, separate or added distress compensation is appropriate. *Kirk* at 460-461. The injured person's anxiety and worry are compensable. *Freeman v. Intalco Aluminum Corp.*, 15 Wn. App. 677, 552 P.2d 214 (1976).

The injuries arising from this incident have had a significant impact on every aspect of Jane's life and these permanent injuries will continue to have a negative impact for the rest of her life.

IMPACT ON JANE'S LIFE

The impact of the incident on Jane's life is best described in her own words:

The negligence of the City of Whoville caused Jane to suffer physical and emotional injuries. She is entitled to recover damages for all personal injuries caused by this incident, including damages for past and future medical expense, pain and suffering, loss of enjoyment of life, and emotional distress. In sum, Jane, is an individual who, through no fault of her own, has suffered painful injuries that have impacted and will continue to impact her for the remainder of her life.

SETTLEMENT PROPOSAL

Considering the clear liability in this case and the injuries clearly proximately caused, as well as the damages documented herein, demand is made for \$_____ for full and final settlement of Jane's claim. Please bear in mind that the minimal amount of Jane's special damages is not indicative of the severity of her injuries or the full extent of her damages related to this incident. This offer to settle will remain open through _____, 2022.

I look forward to your response.

Very truly yours,
JOHNSON & JOHNSON

Steve J. Johnson
Attorney at Law

Enclosures

1. Expert Liability Report of Bob Jones.
2. Scene Photographs.
3. Medical Billing Summary.
4. Whoville Orthopaedic Associates Medical Billing & Records;
5. Radia Imaging Medical Billing;
6. Providence Health & Services Medical Billing & Records.

cc: Client