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Who is responsible for Dangerous Conditions on Roadways?

By Christopher B. Dolan and Aimee Kirby

This week's question comes from Ashely L. from San Jose:

My uncle Ralph was driving his motorcycle in an unincorporated area of San Jose when he lost control and went down. It appears that the road was unkept. I am trying to help my uncle, who doesn't even have email and is not good with using the internet, with his case. The police officer said that the road should have had a sign and a barrier, because lots of accidents happen at that location where my uncle lost control. I am not sure how we go about proving the road caused my uncle's accident. Does whomever own the roadway have insurance, like cars do to pay claims?

Ashely, I am sorry to hear that your uncle was in the accident. The type of case you are describing is called a Dangerous Condition case. These are very complex legal cases, and they are not the kind of case that I advise that injured victims, or their families tackle alone. To prove a Dangerous Condition case, you must prove that the roadway was a dangerous condition, that the government entity who controlled or owned the road, knew or should have known about the dangerous condition, and that they had time and money to fix the condition, but did not. Your family would also have to prove that the dangerous condition in the roadway caused the accident. Dangerous condition cases can involve motorcyclist, runners on a highway, cars, trucks, or even bicycles. The Defendants in these cases are the cities or counties that own the road.

It is important to document the scene immediately with photos if the injuries are serious. The first thing our law firm does is go to the roadway in question or use the police report to pull the location up on Google Earth. Often the police reports for accidents, wherein a roadway condition may have contributed to the loss, do not document the scene well, or even mention a dangerous condition that may have contributed to the accident. We have personally litigated a motorcycle collision wherein a pothole caused the crash, yet no pothole was photographed or even mentioned in the police report. In this case, a witness was able to describe what the motorcyclist hit, and what happen to him, as our client had no memory of the crash.

After visiting the scene, the next thing your attorney should do is research the accident history through the TIMS database maintained by UC Berkeley and issue a Public Records request of the county and city the subject roadway is in. The TIMS database allows you to enter in a county and city pull all accident history for the location by way of a map or a list. This can help us get an initial baseline on whether or not a dangerous condition can be proven. The number of accidents at a location, if it is higher than normal, goes to prove notice of the dangerous condition and that the location is dangerous. You want to look for similar accidents, so in your case you are looking for single vehicle accidents, as opposed to a sideswipe collision. This information is then verified with a public records request to Caltrans for the same data. The TIMS database is free, and so are public records requests typically. Remember, a court will only consider similar accidents in considering whether accident history is relevant to your case.



Another thing you and your attorney should do is get public records request from the entity that owns or controls the subject roadway. These public records requests are usually tailored to government entity claims regarding the location, complaints, roadway work and maintenance, along with evaluations done for repair of the subject roadway such as pavement index reports or permit and bidding documents. Lastly, if the case is near commercial buildings or in a residential area, often our firm will hire a private investigator to conduct additional research. Long term business owners or homeowners may have taken pictures of your alleged dangerous condition. Depending on the type of dangerous condition, these business owners or property owners may have also attended City Council meetings and demanded action or emailed the city. There have even been instances where neighbors complained to the city on social media applications like Nextdoor, which can be used.

Because these types of cases have strict guidelines regarding claim presentation and pleadings it is also advisable to seek counsel to investigate this for you. An attorney can gather this data and advise you of the likelihood of being successful in a dangerous condition case, very quickly. I hope your family continues to heal and you get answers as to what occurred that day for your uncle.

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Christopher B. Dolan is the owner of Dolan Law Firm, PC. Aimee Kirby is Managing Attorney, Torts Practice in our Redondo Beach Office. We serve clients throughout the San Francisco Bay Area and California from our offices in San Francisco, Oakland and Los Angeles. Email questions and topics for future articles to: help@dolanlawfirm.com. Each situation is different, and this column does not constitute legal advice. We recommend that you consult with an experienced trial attorney to fully understand your rights



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The difference between personal injury claims and a workers' compensation claims

By Christopher B. Dolan and Megan Irish



This week's question comes from Kisha J. from San Francisco who asks:

Hi, my friend Angelino is a garage door repair man, and he recently got hurt while on a job. While he was up on the ladder working on the overhead door opener, the homeowner put several boxes behind his ladder. He fell on them when he came down the ladder and broke his ankle. He said he has been off work for a couple of weeks now and is making a worker's compensation claim. I think the homeowner has some responsibility too, because he would not have fallen and broken his ankle if he hadn't put boxes behind him. Is the homeowner responsible too?

Dear Kisha,

Your friend's claim may be both a workers compensation claim and a third-party personal injury claim. The two types of claims are compatible and can be made simultaneously. In the most basic sense, a worker's compensation claim is more limited in the compensation available, but it is often very quickly awarded, and there is no consideration of the injured party's fault. Third-party personal injury claims often yield more compensation, but usually take longer and will examine the injured party's own role in the cause of the injury and harm.

The worker's compensation system is a "no fault" system. So long as the injury occurred while a person was at work, it does not matter who caused the injury. One does not need to prove that the employer or co-workers did anything wrong. Even if the injured party did something wrong, they are still usually covered. The workers compensation system has limited coverage though and is only available to cover medical costs and replace a person's lost wages. Workers' compensation claims do not cover general damages.

In a third-party action, when someone is at fault for doing something wrong, the harmed person can seek to recover both special and general damages. In a third-party action the injured party must prove that a third party was negligent, and that the third party's negligence caused the injury. For example, failing to stop at a red light causing a vehicle collision would likely qualify as negligence by another that caused harm to the injured party. In such a case, special damages are available and cover, in very general terms, things the injured person has receipts for, such as medical bill and lost wages. Moreover, in a third-party action one can also seek to recover general damages, which are typically referred to as pain and suffering. The law includes physical and mental pain and suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress as elements of general damages.

Generally speaking, third-party cases, are brought when someone other than the employer or coworker was negligent. The most common instances where an employee will bring a third-party action for injuries that occurred when they were working, are for defective products (action where a claim is made against the manufacturer of the product used to do a job), the injury was caused by a toxic or illegal substance, the employer did not carry worker's compensation insurance, or the injury was caused by a third-party who was not a part of the company.

Workers Compensation and third-party personal injury claims can be brought at the same time. When they are, then the third-party claim may be required to reimburse the workers compensation claim. For example, if all of your friend's medical bills have been covered in his workers compensation action and he makes a claim for the medical special damages in his third-party action, the worker's compensation matter may seek reimbursement for what has paid out to your friend as replacement wages. The idea here being that the injured party should only recover his lost wages once. If he receives wage replacement from workers compensation, that is also later paid by the third party, it is only fair that the compensation system be reimbursed.

While most jobs have worker's compensation coverage, there are two categories of employees who do not receive coverage for injuries at work under a workers compensation plan. Those two special categories are interstate railroad workers and crewmembers on boats. The railway workers can bring an injury claim under the Federal Employers Liability Act, and vessel crewmembers can bring injury claims under the Jones Act.

In this situation you've talked about the homeowner could face a claim as a third-party defendant. To bring a matter against the homeowner, the homeowner's actions would need to be evaluated to establish if the actions were negligent. An attorney would need to evaluate the circumstances of your friend's fall and see if there is a cause of action against the homeowner. We wish your friend a speedy recovery.

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Implementing Diversity, Equity, and Inclusion (DE&I) Initiatives Within Law Firms and Corporations

By Christopher B. Dolan, Mari Bandoma Callado, and Katelyn P. Dembowski



(DE&I) Diversity, Equity, and Inclusion Initiatives

This week's question comes from Skyler from San Francisco who asks:

There is a lot of talk going on right now about diversity, equity, and inclusion within corporations. Is your firm doing anything to foster diversity yourselves? If so, what can others do to follow your lead?

Thanks for your question, Skyler. In the winter of 2020, senior associate attorney Mari Bandoma Callado approached Dolan Law Firm Founder and Chief Legal Officer Chris Dolan about starting a Diversity, Equity & Inclusion (DE&I) Committee. This was right after the peak of the Black Lives Matter movement in the summer of 2020. Mr. Dolan was immediately on board with her vision. It was an easy transition because our firm has always been supportive of attorneys being involved in DE&I initiatives outside the firm, including but not limited to, sponsoring diverse bar association fundraising efforts, encouraging attorneys to take leadership roles and/or volunteering at community organizations and events. The firm was also very supportive of attorneys with children and has allowed a more flexible schedule for new parents.

However, every organization or law firm is different. There is no "one size fits all approach" to starting a Diversity, Equity and Inclusion Committee or implementing DE&I initiatives. This

article will discuss information on the importance of DE&I and provide tools on how to establish a DE&I committee or initiative as well as reflect on the success and challenges of the Dolan Law Firm's efforts.

What is Diversity, Equity and Inclusion (DE&I)

Diversity is expressed in different forms including visible and invisible diversity: race, ethnicity, gender and gender identity, sexual orientation, age, socioeconomic status, language, culture, religious commitments, and (dis)ability status.

However, diversity without "Inclusion" is exclusion. Most lump diversity and inclusion together but they are actually two different things and having diversity does not necessarily translate to inclusion. Inclusion is diversity in action. It's about creating an environment that understands, accepts, and values the differences between people - and not just different backgrounds but different ideas, experiences, and perspectives.

Equity or the experience of fairness is about ensuring that all people have equal opportunities, and that bias, harassment, and discrimination are not tolerated. It involves an understanding that not everyone's path is the same and eliminating the barriers that prevent the full participation of some groups.

Developing a DE&I Strategic Plan

We recommend collaborating with stakeholders and supporters in developing a DE&I strategic plan based on the firm-wide assessment you conduct. It was important for us to take our time in scaling the program and working as a group to build a shared vision and determine our goals. This included extensive discussions within the committee (which included heads of human resources and marketing) and encouraged participation from everyone at the firm by inviting all staff to monthly planning meetings.

The Dolan Law Firm Committee drafted a mission statement and objectives as a group:

Mission Statement:

In order to deliver equal justice for all, the Dolan Law Firm is committed to advancing and nurturing a diverse, equal, and inclusive workplace that reflects the communities we serve.

Implementing DE&I Initiatives

Implement a structure to facilitate your plan. Through our monthly meetings (which were held virtually during the pandemic), we were able to delegate tasks and coordinate the programming and



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to gauge the candidate's interest and/or commitment to DE&I. We also added the mission statement/commitment to DE&I in job postings. The committee continues to collaborate with Human Resources in developing and implementing the DE&I talent acquisition strategy.

3. Marketing and Community Outreach

A DE&I representative is part of the marketing team and assists with ensuring that the firm continues to be connected to the community that we aim to serve. The Committee regularly creates content for the firm's website and social media accounts that highlights the diversity of our team, issue statements that reflect the commitments and values of the firm, and regularly spotlight our team members who are doing incredible things for the community through their leadership roles and volunteer work.

Additionally, the firm is committed to supporting organizations that share the same commitment to DE&I. The firm is a long-time supporter and sponsor of various organizations such as the CAOC Diversity, Equity and Inclusion Committee, the Bay Area Lawyers for Individual Freedom (BALIF), Filipino Bar Association of Northern California (FBANC), East Bay La Raza, and just recently became a sustaining law firm member of the Charles Houston Bar Association.

We hope you found this information useful and if you know any firms or organizations looking to implement more DE&I measures, please do not hesitate to reach out to us.

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activities to fulfill our objectives related to retention, recruitment, and community outreach.

1. Retention

A key component is including an activity or discussion that allowed us to get to know each other better and for employees to be better understand their own experiences and even their own biases. The Committee came up with group activities depending on the presentations we were doing that month, things that were happening at the firm, and/or current events. Sample group activities include:

- Discussion regarding the use of pronouns;
- "Land Acknowledgement" presentation;
- Activity on overcoming imposter syndrome;
- "Wall of Appreciation" which allowed members of the committee to anonymously tell each other things they appreciated about their colleagues;
- Activity on identity and diversity – "How Does the World See You?";
- Discussion on "What is your superpower?"; and

- Check-in on the highlight of your week.

During the first year, we focused on developing DE&I presentations and activities created by our committee members to fulfill the retention objective of our mission statement. Sample presentations include:

- Black History Month presentation on the Unsung S/heroes of the Civil Rights Movement
- Women's History Month Presentation on Intersectionality
- Anti-AAPI Hate Presentation + Bystander Intervention Training
- Celebrating Diversity Month - Presentation on Implicit Bias
- Celebrating Pride Month - Pride Month Presentation
- Anti-Semitism in Progressive Spaces Presentation
- Latinx/Hispanic Heritage Month Presentation

2. Recruitment

It is important for the Committee to be part of recruitment efforts. We have a representative at each attorney and/or staff interview who shared the firm's commitment to DE&I and to ask questions



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\$16 MILLION

**PEDESTRIAN
COLLISION**

\$20 MILLION

**WRONGFUL TERMINATION /
WHISTLEBLOWER
RETALIATION**

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**DEPENDENT ADULT
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