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30 March 2026

Randall Y. Kaya, Esq.
Law Offices of Leslie R. Kop
Suite 500
1100 Ward Avenue
Honolulu, HI 96814

Re: *Walsh v MMI Realty Services*
Our File No. 20240171

Dear Mr. Kaya:

In accordance with your request, this report is being prepared to supplement my reports of 05 August 2024 and 12 September 2024. I have been provided with the following additional information:

1) Deposition of Craig W. Walsh
2) Deposition of Marjorie J. Walsh
3) Plaintiff Marjorie J. Walsh and Craig W. Walsh's Arbitration Pre-Hearing Statement; Exhibits A-K; Certificate of Service
4) Video "Reconstruction of Marjorie Walsh's Trip and Fall in the Kahala Mall parking lot, August 16, 2023
5) Video "Kahala Mall Feb 3 2025"
6) Video "Kahala Mall Feb 5 2025"
7) Video "Kahala Mall Jan 3 2025"
8) Plaintiff's Email re: Global Relay 2 (9 pages)
9) Plaintiff's Email re: Global Relay 3 (6 pages)

In addition, a supplemental site inspection was performed on 03 December 2025.

Analysis/Discussion

Within the Arbitration Pre-Hearing Statement, the Walsh's contend the subject storm drain was required to meet ADA guidelines and standards. My previous reports opine that the subject storm

EXHIBIT "C"

drain was not subject to ADA guidelines and standards because the subject storm drain is not part of the accessible route as defined by ADA.

According to *The U.S. Access Board Technical Guide: Accessible Routes*, it explains "the scoping and technical requirements for accessible routes in the ADA Standards."

Section 206.2.1 of the ADA Standards states the following:

> At least one accessible route must be provided within the site to accessible facilities entrances from these site arrival points, where provided:
>
> - accessible parking and accessible passenger loading zones
> - public streets and sidewalks
> - each public transportation stop

The area where the subject drain is located does not fall within any of the 3 "site arrival points". The accessible parking spot is located beyond the crosswalk and in the next aisle of the parking structure. The subject grate would not be a part of the accessible route for the designated accessible parking stall. There is no accessible passenger loading zone in the area. The subject area is not part of the public street or sidewalk. There is no public transportation stop (e.g., bus stop) in the subject location.

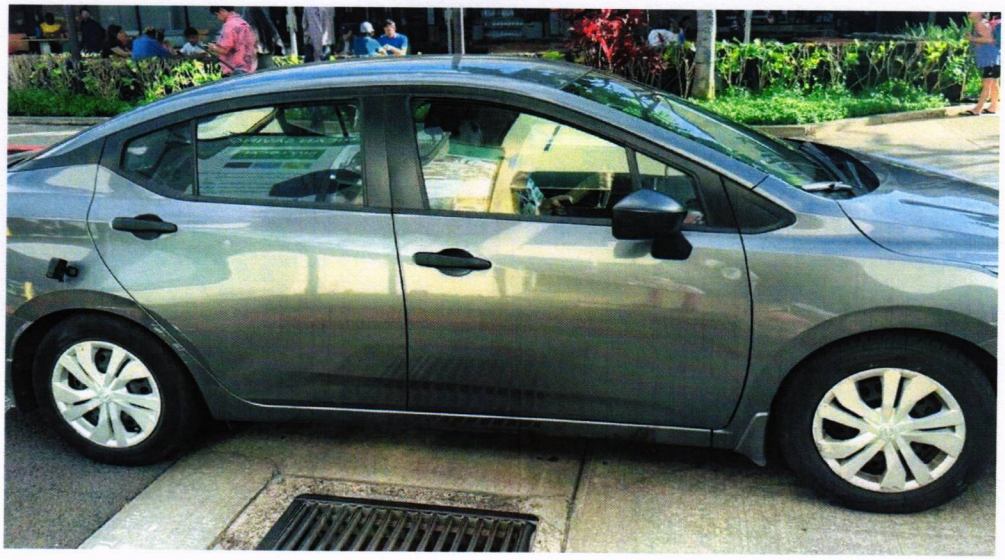
The elevated crosswalk is the accessible route from the sidewalk/entrance of Kahala Mall to the parking structure and the accessible stall in the parking structure. The elevated crosswalk is beyond the posted stop sign and marked stop bar. It provides better visibility of the crosswalk for approaching vehicles as well as eliminates the need for curb ramps on the sidewalks of Kahala Mall and the parking structure.

There is no technical basis or standard to support the conclusion that the subject grate was part of an accessible route and subject to ADA Standards.

ASTM F1637-95 is also referenced in the arbitration pre-hearing statement and "is frequently cited as a standard specification…including OSHA." Based on my review, ASTM F1637-95 is not any part of the OSHA standards/regulations.

ASTM F1637-95 is a voluntary standard that is not adopted by any municipality including includes the City and County of Honolulu where the Kahala Mall is located. Without this ASTM standard being mandatory (e.g., part of the process of permitting and review for construction, or previous complaints or accident history), the ASTM standard is not relevant in the evaluation of the subject grate.

The video showing the 16 August 2023 "reconstruction" of Ms. Walsh's incident shows the location of where Mr. Walsh reportedly stopped to let Ms. Walsh exit the vehicle. A screen shot from the video is shown below.



Based on this location, Mr. Walsh stopped his vehicle on the sloped portion leading to the crosswalk with the front of his vehicle at or just past the front edge of the crosswalk. The front of his vehicle was 13 feet past the painted stop bar. The vehicle would have been biased to the left of the center of the lane by approximately 2 feet (i.e., much closer to the lane divider line than the painted red curb). At this location, when Ms. Walsh opened her passenger, there are no visibility obstructions for her to see where she decided to step. With the vehicle stopped and no other potential vehicles coming from the right side of the vehicle, Ms. Walsh wouldn't have been distracted by other potential hazards for her not to see where she was stepping. There is also no indication that there were any other visibility obstructions, such as the sun, which would have obscured or prevented her from seeing the grate and avoid it if she thought the grate was a hazard.

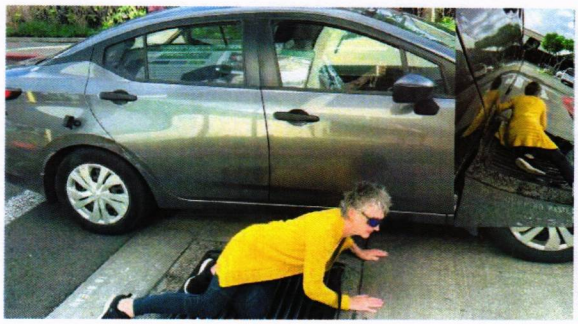
The "reconstruction" shows Ms. Walsh's feet movements when exiting the vehicle and is shown in the following still images from the video.

Ms. Walsh initially steps on the 2nd to 5th grate bars closest to the crosswalk.

She then takes an approximately 25 inch horizontal/lateral step to her right with her right foot to step on the concrete rim around the grate followed by her left foot being place next to her right foot and on the edge of the grate.

This elongated step to the right is unnatural and appears to purposefully avoid the rest of the grate so that her right foot is completely off the grate.

She then does a slight pivot step to the left with her left foot and "re-enacts" the "fall".



The "reconstruction" only appears to show her loss of balance being allegedly caused by the grate. When asked in her deposition of 20 January 2025 about the cause of her trip, the answer was the following starting at Page 50, Line 17:

Q: Okay. And when you say you tripped, what caused you to trip?

A: Well, I don't – I don't know exactly. But when I went back to look at it, there's a gap. There's two of the bars are wider than the rest of the bars, and all the concrete surrounding the grating has deteriorated. So it could have been either catching my foot in the bar on the uneven surround.
Q: Okay. Well, do you know which?
A: No.

The concrete area where Ms. Walsh purposefully stepped in the "reconstruction" showed no signs of deterioration to cause her to lose balance. With Ms. Walsh's left foot pivoted to the left and angled across the bars, there is less probability that a foot would get entrapped within the spacing of the grate bars because her foot would be perpendicular.

Ms. Walsh's final position of her body on the ground – prone with her left hand underneath the vehicle and her legs outward and angled away from the vehicle – is not consistent with the physics of a fall occurring from her left foot allegedly getting caught in the grate spacing and causing a loss of balance.

If her left foot lost balance due to it getting entrapped in the grate spacing, her left foot would have been parallel to the grate spacing and she would be facing away from the side of the vehicle (i.e., her back would be towards the passenger side of the vehicle). A loss of balance to her left would most likely result in an impact to her left side as opposed to falling "face forward" as shown in her "reconstruction". Also, her feet would not have been projected outward away from the vehicle and rearward from the area of her left foot – she would have fallen more forward towards the front of the vehicle.

As previously mentioned, the more Ms. Walsh is turned to the left and facing forward towards the vehicle at the time of her loss of balance, the less likely her loss of balance was caused by the grate or the surrounding concrete.

Based on my review and analysis, the "reconstruction" is not based on reasonable engineering probability.

Conclusions

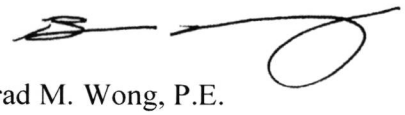
Based on my review and analysis, my opinions are as follows:

1) The subject area where Ms. Walsh reportedly fell is not part of the ADA accessible route nor was it required to be ADA accessible.
2) ASTM F1637-95 is a voluntary standard not adopted by any municipality including the City and County of Honolulu and would not have been reasonably known to Kahala Mall.
3) The "reconstruction" of Ms. Walsh's fall is not based on reasonable engineering certainty.

These findings and opinions are based on information provided to date. If additional information or material is reviewed, supplemental opinions may be formed.

If you have any questions, or if I can be of further assistance, please do not hesitate to call.

Sincerely,



Brad M. Wong, P.E.