Boster, Kobayashi & Associates, Inc.
Consulting Engineers and Scientists

Thomas A. Boster (1936-2016)
Ted M. Kobayashi
Kenneth C. Berner
Michael J. Braun
Brad M. Wong
Thomas A. Braun

Michael G. Kreutzelman
Chief Executive Officer

59 Rickenbacker Circle
Livermore, California 94551

Send Correspondence to:
P.O. Box 2049
Livermore, CA 94551-2049

Telephone: (925) 447-6495
FAX: (925) 447-6589
e-mail: info@boster-kobayashi.com
www.boster-kobayashi.com

Christian Engelmann
Richard K. Haygood
Paul T. Herman
Darius Russo
Nevin Q. Sams
Dean K. Stolworthy
Bong J. Walsh

05 August 2024

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, a preliminary analysis was performed on the 16 August 2023 incident involving Ms. Marjorie Walsh at the Kahala Mall. To perform this analysis, the following information was provided and reviewed:

1) Complaint and Summons; Personal Injury and Loss of Consortium
2) Plaintiff Majorie J. Walsh's Answers to Defendant's First Interrogatories
3) Plaintiff Craig W. Walsh's Answers to Defendant's First Interrogatories
4) Statement of Marjorie Walsh (dated 15 November 2023)
5) Plaintiffs Marjorie J. Walsh's and Craig W. Walsh's Request to Remove from Court Annexed Arbitration Program, Declaration of Plaintiffs *Pro Se*, Exhibits "A" to "E", Certificate of Service

In addition, a site inspection was performed on 11 April 2024 where photographs and measurements were taken.

Background

The subject incident occurred at the parking lot of Kahala Mall on the roadway fronting Whole Foods Market. On 16 August 2023 at approximately 1628 hours, Ms. Walsh exited her vehicle at a stop sign and reportedly tripped and fell on or near a storm drain.

EXHIBIT "A"

Analysis/Discussion

The area of the subject incident is located on the vehicular travel way between Whole Foods Market/Mall entrance and the mauka side parking structure. In the location there is a stop sign for each direction of vehicular travel (entering and exiting) along with a raised crosswalk extending from the pedestrian walkway of the parking structure to the walkway at Whole Foods Market/Mall entrance. The area is shown in the photograph below.

In the direction towards American Savings Bank, there is a stop bar approximately 13 feet 1 inch from the raised marked crosswalk. Between the stop bar and raised crosswalk there is a storm drain that is approximately 30 inches square in a 1 ½ inch frame (border). This storm drain is located approximately 63 inches from the raised crosswalk. The curb is painted red on both sides of the roadway. On the far side of the crosswalk, there is a ramp on the mauka parking garage walkway that leads to an accessible stall across the parking aisle.

Marjorie Walsh provided a 26-page notarized statement describing the subject incident.

According to her statement, many times in the past, her husband, Craig, would drop her off prior to finding a place to park or drive around the parking lot until she was done shopping (Paragraph 7).

On the date of the incident, Mr. Walsh "fully stopped just shy of the pedestrian crosswalk so [Ms. Walsh] would be near the crosswalk but our car would not block other pedestrians" (Paragraph 11). Ms. Walsh exited on the passenger side. She stated she "stepped out of the car, closed the door and turned to walk behind the car. I promptly tripped on the storm grating or its decaying surround and fell. I fell towards the car and the crosswalk, with my left hand (which I used to stop my fall) going beneath the car" (Paragraph 15).

Ms. Walsh stated she had exited at this location many times before (Paragraph 17).

It is inconclusive as to the cause of Ms. Walsh's fall.

Ms. Walsh stated in paragraph 15 that she "tripped on the storm grating or its decayed surround and fell." Even though she comments about the spacing of the grate bars and its lack of compliance with ADA standards, she does not state within any certainty the tripping mechanism of her fall. Ms. Walsh does not describe in any detail how the condition of the grate bars or "its decayed surround" were a causative factor in her fall.

Ms. Walsh description of her fall is inconsistent with her direction of travel.

As previously mentioned, Ms. Walsh stated she exited the vehicle and turned to walk *behind* the car, but when she fell, she stated she fell towards the car *and* the crosswalk with her left hand going beneath the vehicle. Exiting the passenger side and proceeding to the rear of the vehicle would put her traveling *away* from the crosswalk with her right (not left) side towards the passenger side of the vehicle.

The subject area where Ms. Walsh fell was not required to meet ADA guidelines/standards.

The area where Ms. Walsh was dropped off, which is the area between the stop sign and the raised marked crosswalk, is not part of the accessible route required by ADA. The raised marked crosswalk and ramps leading to the accessible (handicap) stall in the mauka parking structure would be part of the accessible route to the walkway fronting Whole Foods Market and the Mall entrance.

Bryan Myck from the State of Hawaii Disability and Communication Access Board confirmed to Mr. Walsh in an email that any grate openings requirements would only apply to grates that are located *within* (emphasis added) an accessible route. It was stated "[t]he grate shown in the picture is the flared portion of the raised crosswalk and the flared portion of raised crosswalk are typically not part of the accessible route. The striped area of the crosswalks are typically the extents of the accessible portion" (Paragraph 39). The main purpose of the flare is to provide a ramp for vehicular traffic to traverse over the raised crosswalk as opposed to pedestrian travel.

Since the subject area where Ms. Walsh elected to exit her vehicle (between the stop sign and the crosswalk) was not part of an accessible route, the storm drain was not required to be in compliance with ADA standards.

Conclusions

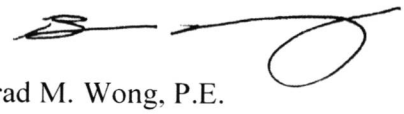
Based on my preliminary analysis, I have reached the following opinions:

- It is inconclusive as to the cause of Ms. Walsh's fall.
- Ms. Walsh description of her fall is inconsistent with her direction of travel.
- The subject area where Ms. Walsh fell was not required to conform with ADA standards/guidelines.

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.