

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY     *KW*      
DEPUTY

No. 35580-9-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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TERRI WERON,

Appellant,

vs.

GRANITE SERVICE, INC. d/b/a GIG HARBOR SHELL, EDWARD L.  
STONE, individually and the marital community thereof with JANE  
DOE STONE; and DOES 1-5 inclusive,

Respondents.

BRIEF OF APPELLANT

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## I. ASSIGNMENTS OF ERROR

1. The trial court erred in entering the order of October 13, 2006 granting Granite Services, Inc.'s Motion for Summary Judgment.

2. The trial court erred in entering the order of October 13, 2006 granting Equilon Enterprises LLC's Motion for Summary Judgment.

3. The trial court erred in ruling as a matter of law that a gray unmarked curb did not create an unreasonable risk of harm.

4. The trial court erred in ruling as a matter of law that a gray unmarked curb is an open and obvious condition for which there was no warning required.

5. The trial court erred in failing to consider the violation of the Uniform Building Code as evidence of negligence in its ruling granting Defendants' Motion for Summary Judgment.

6. The trial court erred in ruling that the Uniform Building Code was inapplicable to this matter.

7. The trial court erred in dismissing Granite Services, Inc. as it was the entity that leased the subject matter property from Equilon Enterprises LLP.

8. The trial court erred in substituting its belief rather than allowing the jury to decide.

## II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did Equilon have a duty of care to Ms. Weron?  
(Assignments of Error 2, 3, and 4)

2. Did Granite have a duty of care to Ms. Weron?  
(Assignments of Error 1, 3, 4, and 7)

3. Does an unmarked curb create an unreasonable risk of harm? (Assignments of Error 1, 2, 3, and 4)

4. Is an unmarked curb an open and obvious danger?  
(Assignments of Error 1, 2, 3, and 4)

5. Did Equilon breach its duty to Ms. Weron when it instructed Granite to maintain the curb by painting the curb gray, which is the same color as the concrete sidewalk and driveway? (Assignments of Error 2, 3, 4, 5, and 6)

6. Did Equilon breach its duty to Ms. Weron when it failed to instruct Granite to increase the attention to the curb? (Assignments of Error 2, 3, 4, 5, and 6)

7. Did Granite breach its duty to Ms. Weron when it painted the curb gray and failed to increase the attention to the curb? (Assignments of Error 1, 3, 4, 5, 6, and 7)

8. Is the Uniform Building Code applicable to the exit involved in this case? (Assignments of Error 5 and 6)

9. Did Equilon and Granite violated the Uniform Building Code when there was no ramp for the five-inch change in elevation? (Assignments of Error 1, 2, 5, and 6)

10. Is Granite liable to Ms. Weron when it maintained the curb to Equilon's specifications? (Assignments of Error 1, 3, 4, 5, 6, and 7)

11. Is Granite liable to Ms. Weron when it was acting as an agent for Equilon? (Assignments of Error 1 and 7)

### **III. STATEMENT OF CASE**

#### **A. Procedural History**

The Complaint against Granite Services, Inc. was filed on October 6, 2004 and was subsequently amended on July 12, 2005 to add Equilon Enterprises, LLP, who leased the subject matter property to Granite at the time of the incident. CP 1-5; CP 9-17. Granite filed its Motion for Summary Judgment on September 15, 2006 and Equilon joined in Granite's motion. CP 31 – 43; CP 81 – 88. On October 13, 2006, the trial court heard oral arguments on the motions then subsequently entered the order granting summary judgment. CP 217 – 220.

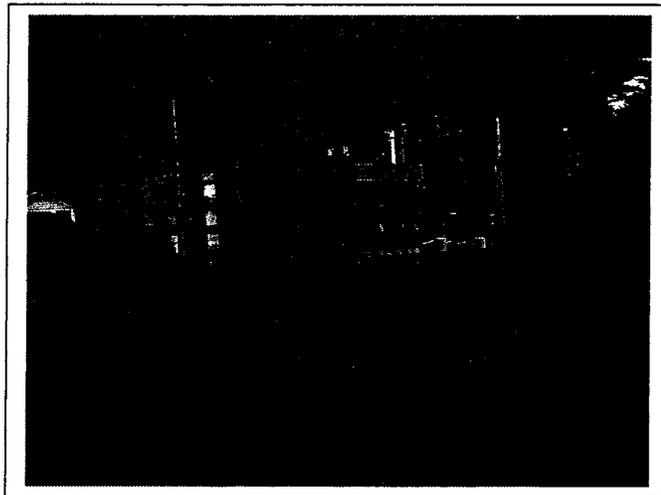
#### **B. Factual History**

This is a trip and fall case in which Ms. Weron fell down a five-inch high curb that was located in her pathway to the convenience store. CP 147. The curb was unmarked as it was painted the same gray color as

the concrete sidewalk below and driveway. CP 147. As a result of her fall, Ms. Weron experienced severe injuries. CP 147. She continues to have difficulties walking because of her pain in her left foot. CP 147.

**1. Ms. Weron did not see the unmarked curb before she fell.**

August 1, 2003, at approximately 11:00 a.m., Ms. Weron drove to the Gig Harbor Shell gas station to purchase gasoline. CP 147. Ms. Weron entered the food mart by walking up the handicap ramp. CP 147. At the food mart, she paid for her gas, bought a lottery ticket, and began to walk out of the food mart. CP 147. As Ms. Weron approached the glass door, her view was partially obscured by orange decals advertising Shell Credit Cards. CP 140; 142; 147; see also A-6; A-7.



CP 142.



CP 142.

Ms. Weron pushed open the door, took a couple of steps toward her car and fell forward onto “all fours”, fracturing her left ankle. CP 147.

Ms. Weron fell off a five-inch high curb that was located in her pathway. CP 127-128. She had not noticed the curb. CP 147. The curb was not marked and it was painted the same color as the concrete sidewalk and driveway. CP 147. There were no visual cues as warnings, accent lighting, warning markings, handrails, or contrast painting. CP 147.

At the time of Ms. Weron’s fall, Equilon was the owner of the real property consisting of the Gig Harbor Shall gas station, which is currently owned by Granite Services, Inc. The gas station was built and operated in 1974. CP 156. The gas station’s most recent remodel occurred in 1991. CP 157. The remodel consisted of new tanks in the ground, new canopy, concrete work, and interior remodeling. CP 157. According to Equilon’s

specifications, Granite maintained the curb by painting the curbs gray with paint provided by Equilon.

**2. Certified Ergonomist testified that Ms. Weron would not have fallen if the curb was marked.**

Equilon and Granite did not disclose an expert to rebut the expert opinions of Certified Ergonomist Daniel A. Johnson, Ph.D. CP 114. Dr. Johnson opined that Equilon and Granite violated the Uniform Building Code requiring that a ramp be placed in the pathway leading to or from an exit. CP 133-134.

Additionally, Dr. Johnson took photographs and measurements of the location of the fall and also examined Ms. Weron's shoes. CP 127. He noted that the change in level caused by the single riser step was not apparent unless one looks directly at the edge of the concrete. CP 128. Dr Johnson further noted that Ms. Weron might have fallen due to an "air step" or a slip. CP 128. An air step occurs when one places a foot forward expecting it to land on the same level as the other foot but, instead, it lands several inches lower, causing the person to stumble forward and possibly fall. CP 128. In the alternative, Ms. Weron might have slipped on the metal strip along the edge of the concrete if she placed the ball of her foot on the metal strip. CP 128.

Dr. Johnson further concluded that the single step riser in this

matter was hazardous. CP 134. People exiting the store would not see the step down as they left the store. CP 134. These people would be distracted by scanning the area for approaching vehicles. CP 134. For demonstrative purposes, Dr. Johnson digitally added a yellow stripe to the edge of the concrete to see if it would increase the visibility of the edge of the sidewalk. CP 135; A-7. The stripe is so obvious it would have drawn Ms. Weron's attention to the step. CP 142.

Dr. Johnson stated three things Equilon and Granite should have done to prevent Ms. Weron's fall and subsequent injuries: (1) eliminate the single riser step as required by the UBC; (2) place a warning stripe to the top surface of the step; or (3) place a ramp at the pathway. CP 135.

In summary, Dr. Johnson concluded:

- If the single step riser had not been there, as required by Code, this fall on a more probable than not basis, would have been averted. CP 135.
- If a warning stripe had been applied to the top surface of the step then Ms. Weron would have been alerted to its existence and this fall, on a more probable than not basis, would be averted. CP 135.
- If a ramp had been presented then, on a more probable than not basis, there would not have been a fall. CP 135.

All of the facts and circumstances of Ms. Weron's declaration and

deposition, as well as Dr. Johnson's site visit and subsequent report show the existence of a material fact; therefore, the trial court erred in granting Defendants' motion for summary judgment.

**3. The trial court even admitted that the curb was not an obvious condition.**

At oral argument, the trial court admitted the curb would have been difficult to see because of the signs on the food mart's glass door:

THE COURT: There is one issue about plain view and I suppose that there is the argument made, as you exit the store, there are **signs or banners on the store's glass doors, which makes it difficult to see the curb.**

(Emphasis added) RP 8.

Additionally the trial court noted that a customer might not have seen the curb because as the customer exits the food mart, he or she may be looking around to avoid being hit by a car.

THE COURT: But, of course, when you exit that store and you have a five-foot three-inch or whatever it is, sidewalk, don't you also have to be **looking around to not get hit by a car that is coming up to the gas pump.**

(Emphasis added) RP 16.

THE COURT: ....My point is, if you're approaching the door and the banner obscures your view of the step so you never see the step, which is the reason that you

tripped when you walked outside, once you get within 5 feet of it, once you are outside the door, that is, is it reasonable that you are only looking 5 feet ahead or you are looking for traffic that is going to run into you? **How is plaintiff supposed to know, when they never saw the step in the first place**, that the banner didn't have something to do with it, but for the banner, I might have seen it?

(Emphasis added) RP 17-18.

Despite the trial court's awareness of the above-described circumstances that made the curb difficult to see, it ruled as a matter of law that the curb was an obvious condition. RP 29.

Further, the trial court refused to consider the Uniform Building Code in its ruling stating that expert Dr. Johnson was incorrect about the applicability of the UBC.

THE COURT: ....I don't completely discount what he says, but I do note – and it is not entire opinion – I'll grant you that. I'm clear on this. It is not an entire opinion that is a violation of the Uniform Building Code, but that is part of his opinion and he is incorrect about it.

RP 29.

The trial court provided no other explanation in refusing to consider the UBC.

#### IV. SUMMARY OF ARGUMENT

A reasonable juror could find that the unmarked curb in this matter

was not an obvious condition that would eliminate Granite and Equilon's duty to Ms. Weron. Ms. Weron presented pictures of her standpoint as she exited the food mart. The pictures show that she was not been able to see the unmarked curb as she exited the food mart. The curb was painted gray, which is the same color as the concrete sidewalk and driveway and Ms. Weron's view was partially obstructed by the orange decals on the glass door. Even if the door was concrete, as the trial court suggested, Ms. Weron may not have been looking at her feet but instead looking around to avoid being hit by a car. Granite and Equilon should have placed warning signs, including a warning stripe to draw attention to the curb. Further, Granite and Equilon violated the UBC when it failed to build a ramp at the exit of the food mart. In viewing the evidence in light most favorable to Ms. Weron, this court should review the trial court's decision and find that genuine issues of material fact exist.

## V. ARGUMENT

### A. Standard of Review

The standard of review for ruling on a summary judgment motion is de novo. *Stewart v. Estate of Steiner*, 122 Wn. App. 258, 93 P.3d 919 (2004). Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Young v. Key Pharmaceuticals Inc.*, 112 Wn.2d 216 225,

770 P.2d 1982 (1989).

**B. The curb created an unreasonable risk of harm because it was unmarked and decals on the glass door obscured Ms. Weron's view.**

The legal duty owed by a landowner to a person entering the premises depends on whether the entrant falls under the common law category of a trespasser, licensee, or invitee. *Fredrickson v. Bertolino's Tacoma, Inc. et al.*, 131 Wn. App. 183, 189, 127 P.3d 5 (2005). Parties do not dispute that Ms. Weron was an invitee.

A business owner is liable to an invitee for an unsafe condition on the premises if the condition was "caused by the proprietor or his employees, or the proprietor had actual or constructive notice of the unsafe condition." *Wiltse v. Albertson's, Inc.* 116 Wn.2d 452, 460, 805 P.2d 793 (1991). Constructive notice arises where the condition "has existed for such time as would have afforded [the proprietor] of the premises and to have removed the danger." *Ingersoll v. DeBartolo, Inc.*, 123 Wn.2d 649, 652 869 P.2d 1014 (1994). The plaintiff must establish that the defendants had, or should have had, knowledge of the dangerous condition and time to remedy the situation before the injury or to warn the plaintiff of the danger. *Ingersoll v. DeBartolo, Inc.*, 123 Wn.2d at 652.

The trial court in this matter placed greater emphasis on out-of-state cases when Washington has already addressed the issue of whether

unmarked curbs create an unreasonable risk of harm. At least three Washington cases have addressed the issue of unmarked curbs and in all three cases the business owner was negligent. *Tyler v. F.W. Woolworth Company*, 181 Wash. 125 (1935); *Wardhaugh et al., v. Weisfield's Inc.*, 43 Wn.2d 865 (1953); *Heckman v. Sisters of Charity of the House or Providence in the Territory of Washington*, 5 Wn.2d 699 (1940).

**1. Customer had no opportunity to see or know the step was there in Tyler.**

In *Tyler v. F.W. Woolworth Company*, the court affirmed the trial court's judgment for the customer who slipped and fell on a step outside one of the store's entrances. *Tyler v. F.W. Woolworth Company*, 181 Wash. 125, 129, 41 P.2d 1093 (1935). The customer in *Tyler* entered the store through the north ramp and exited through the south ramp. She did not know there was a step down at the south ramp. At the time she was exiting the store through the south ramp, the ramp was crowded with customers entering the store. When she reached the step, the customer fell, not knowing the step was there. *Tyler*, Wash. at 127-128.

In affirming the trial court's judgment, the court reasoned that the customer attempted to leave the store without any knowledge of the step. She had no opportunity of seeing or knowing that the step was there. There was neither a warning sign, nor a railing. The court ruled that the

store had a duty to maintain its entrance in a condition that a reasonably prudent storekeeper would deem sufficient to protect customers from danger while exercising ordinary care of their own safety. *Tyler v. F.W. Woolworth Company*, 181 Wash. at 129.

The circumstances surrounding the slip and fall in *Tyler* are similar to the circumstances surrounding Ms. Weron's slip and fall in this case. Like the customer in *Tyler*, Ms. Weron entered the store through a separate entrance to the food mart. Ms. Weron had no opportunity of seeing or knowing that the step down was present because the step down was painted gray, the same color as the concrete sidewalk and driveway. While the customer in *Tyler* was unable to see the step down because it was crowded with customers, Ms. Weron was unable to see the step down because her view was partially obscured by the orange decals on the glass door. More importantly, the *Tyler* case was not dismissed before it went before the trier of fact. Genuine issues of material fact exist in this matter and Ms. Weron should have the opportunity to bring her case before the jury.

**2. Store failed to surface the ramp in some distinctive color or design in *Wardhaugh*.**

In *Wardhaugh v. Weisfield's, Inc.*, the court reversed the trial court's order granting a motion for judgment notwithstanding the jury's

verdict in favor of the customer who fell forward when her foot encountered the unnoticed incline of a ramp. *Wardhaugh v. Weisfield's, Inc.*, 43 Wn.2d 865, 868 - 869, 264 P.2d 870 (1953). The court noted an illusion of flatness was created and the store failed to provide warning of the ramp as there were no warning signs or other devices designed to call attention to the ramp. The store also failed to surface the ramp in some distinctive color or design for the purpose of attracting attention to the floor. *Wardhaugh v. Weisfield's Inc.*, 43 Wn.2d at 872.

As in *Wardhaugh*, there was an illusion of flatness that was created in this case. The curb was painted the same gray color as the concrete of the sidewalk and driveway. The pictures taken of the unmarked curb clearly show that a reasonable juror could find the unmarked curb was not obvious and not in plain view. Even the trial court noted the unmarked curb was a "little hard to see." RP 26. Nevertheless, the court ruled against Ms. Weron.

**3. Pedestrian did not notice the step down on the driveway in *Heckman*.**

In *Heckman v. Sisters of Charity of the House or Providence in the Territory of Washington*, the court ruled that the negligence of the hospital was properly submitted to the jury. *Heckman v. Sisters of Charity of the House or Providence in the Territory of Washington*, 5 Wn.2d 699, 707,

106 P.2d 593 (1940). The invitee in *Heckman* tripped and fell while stepping from a sidewalk to a driveway having a slightly lower level. The invitee was following a pathway customarily used by pedestrians entering the ground floor of the hospital. The hospital created a dangerous pathway as the step down from the sidewalk to the driveway way was not illuminated. *Heckman v. Sisters of Charity of the House or Providence in the Territory of Washington*, 5 Wn.2d 699, 709.

*Tyler, Wardhaugh, and Heckman* are all instructive in this case. The trial court erroneously stated that those cases were not directly on point. Like Ms. Weron, all of the invitees in those cases did not see the change in level. Like Ms. Weron, all of the invitees in those cases fell because of an unmarked change in level in their pathway. The following circumstances create a question of material fact for the jury as to whether Equilon and Granite had constructive notice of the unsafe condition:

- The five-inch high curb was unmarked;
- The unmarked curb was located in the pathway to and from the exit of the food mart;
- The sidewalk and the driveway were made of the same material, concrete, and were the same color;
- The unmarked curb was painted gray, the same color as the concrete; and
- The unmarked curb was partially obscured by fluorescent orange advertisement posted on the

glass exist door.

More importantly, the unrefuted Certified Professional Ergonomist Daniel A. Johnson, Ph.D. concluded that the unmarked curb was hazardous and that it was in violation of the Uniform Building Code. While Ms. Weron's expert examined and measured the site, and took photographs of Ms. Weron's pathway, Granite and Equilon only offered the declaration of an account manager who has no credentials to support her opinion that her inspection of the site revealed no unsafe conditions. CP 89-91. She cited to "national standards" required of Shell stations, but failed to even mention the Uniform Building Code. CP 90. Shell's "national standards" certainly do not override the provisions of the UBC.

Equilon and Granite want to avoid liability by arguing that they were not aware of anyone else falling off the curb. However, their proposition lacks merit. Just because no one reported any injuries does not mean no one fell off the unmarked curb as they exited the food mart. Ms. Weron reported the injury because her injuries were severe in light of her rare genetic condition. Equilon and Granite had no way of knowing how many customers fell off the unmarked curb. The trial court erred in ruling against Ms. Weron and barring her from taking her case to a jury just because she is the first person who reported her severe injuries as a result of falling off the unmarked curb. In viewing the evidence in the

light most favorable to Ms. Weron, the trial court should have ruled that genuine issues of material facts exist and Defendants' motion for summary judgment should have been denied.

Additionally, *Frederickson v. Bertolino's Tacoma* is inapplicable in this case. See *Frederickson v. Bertolino's Tacoma*, 131 Wn. App. 183, 127 P.3d 5 (2005). In *Frederickson*, the customer did not fall off an unmarked curb, but fell off a chair. *Frederickson* dealt with a piece of furniture unlike in this case in which there is a violation of the UBC. There are no codes to govern the condition of furniture in businesses; however there is the UBC to govern the safety and structure of buildings. According to the UBC, which was adopted in Washington, there must be a ramp if there is a change in elevation of less than 12 inches in a pathway leading to or from an exit within a building. In this case, there was no ramp for the five-inch change in elevation.

*Tyler v. F.W. Woolworth Company, supra; Wardhaugh et al., v. Weisfield's Inc., supra; Heckman v. Sisters of Charity of the House or Providence in the Territory of Washington, supra*, provide leading authorities in this matter as all three cases addressed the issue of an unmarked change in elevation and found that such condition created an unreasonable risk of harm.

**C. Equilon and Granite had a duty to Ms. Weron because the curb was not obvious.**

A business owner is liable to an invitee when the dangerous condition of the land was not open and obvious. See *Tincani v. Inland Empire Zoological Society*, 124 Wn.2d 121, 136, 875 P.2d 621 (1994). The trial court erred when it ruled that the unmarked curb was open and obvious as a matter of law. Ms. Weron simply did not see the curb as she exited the food mart. Pictures of the unmarked curb show that a customer would not be able to see the unmarked curb as they exit the food mart. Even the trial court noted that the curb was a “little hard to see.” RP 26.

A reasonable juror could review those pictures and find that the unmarked curb was not an open and obvious danger. Had the Granite and Equilon painted the curb yellow instead of gray, Ms. Weron would have seen the curb and averted her fall. Based on those revealing pictures, Granite and Equilon had every reason to anticipate the harm of the unmarked curb. The trial court erred when it granted Defendants’ motion for summary judgment.

**D. The Uniform Building Code is applicable to the exit involved in this case.**

The trial court erred in failing to apply the Uniform Building Code, which is adopted by Washington in this matter. The purpose of the UBC, which was adopted by Washington, is “to provide minimum standards to

safeguard life or limb, health, property and public welfare....” UBC 102.

The section at issue here is UBC 3301(d), which states in pertinent part:

(d) **Changes in Elevation.** Within a building, changes in elevation of less than 12 inches along any exit serving on occupant load of 10 or more shall be by ramps.

See A-3.

UBC 3301(b) defines the term “exit”:

**EXIT** is a continuous and unobstructed means of egress to a public way and shall include intervening aisles, doors, doorways, gates, corridors, exterior exit balconies, ramps, stairways, smokeproof enclosures, horizontal exit, exit passageways, exit courts and yards.

See A-2.

Granite and Equilon argued that UBC 3301(d) did not apply in this matter because the change in elevation did not exist within a building. Trial court agreed with Granite and Equilon and ruled that the UBC was inapplicable, but provided no explanation other than to state the expert Dr. Johnson was wrong. However, the current version of the Uniform Building Code, now known as International Building Code, clarified the UBC 3301(d) making it clear that UBC 3301(d) does not apply just to the inside of buildings. CP 197.

2003 IBC 1003.5 provides in part:

**Elevation change.** Where changes in elevation of less than 12 inches (305 mm) exist in the means of egress, sloped surfaces shall be used....

See A-4.

The Uniform Building Code is applicable in this case and the issues of whether UBC is applicable and whether it was violated should be for the jury to decide, not the trial court to rule as a matter of law.

A reasonable juror could look at the pictures and see that the curb was still part of the building structure of the gas station. Ms. Weron was still within the building as stated in UBC 3301(d) and there should have been a ramp because there was a five-inch change in elevation. Further, a subsequent amendment to the UBC makes no distinction whether the change in elevation is *within the building* or not. When reading pertinent sections of the UBC, this court should also consider the purpose of the UBC, which is to provide minimum safety standards. Clearly, a ramp at the exit would be safe for customers leaving the food mart. The trial court erred ruling that the UBC was inapplicable in this case and it should have considered the violations of the UBC as evidence of negligence.

**E. Granite is liable under the agency theory.**

An agent cannot escape liability in matters connected with its principal's business. See *Rho Co. v. Dep't of Revenue*, 113 Wn.2d 561,

581, 782 P.2d 986 (1989). In this matter, Granite admitted that it did what it was told to do and maintained the property to Equilon's specifications.

Granite was an agent for Defendant Equilon at the time of Ms. Weron's fall and it should not be dismissed in this case. Both Granite and Equilon should have known of the dangers of the unmarked curb.

## **VI. CONCLUSION**

Ms. Weron requests this court reverse the trial court's decision and find that the Ms. Weron presented genuine issues of material fact for the jury. The pictures clearly show that the curb was not obvious as Ms. Weron exited the food mart. The curb was the same color as the sidewalk and driveway and the view of the curb was partially obstructed by signs on the glass door. All of these factors created an unreasonable risk of harm for Ms. Weron.

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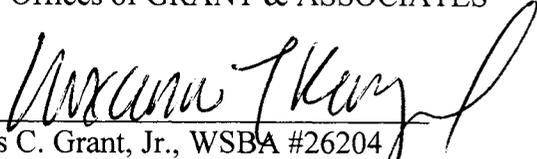
**VII. REQUEST FOR EXPENSES**

Ms. Weron should be awarded her costs incurred on appeal if she prevails. RAP 14.2, 18.1

DATED this 7<sup>th</sup> day of March 2007.

Respectfully submitted,

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# APPENDIX

## Chapter 33 EXITS

### General

**Sec. 3301. (a) Scope and Standards of Quality.** Every building or portion thereof shall be provided with exits as required by this chapter.

The standards listed below labeled a "U.B.C. standard" are also listed in Chapter 60, Part II, and are part of this code. The other standards listed below are guideline standards and as such are not adopted as part of this code (see Sections 6002 and 6003).

#### 1. Power doors

A. U.B.C. Standard No. 33-1, Power-operated Exit Doors

B. U.B.C. Standard No. 43-13, Horizontal Sliding Fire Doors Used in an Exit

#### 2. Stairway numbering system

A. U.B.C. Standard No. 33-2, Stairway Identification

#### 3. Hardware

A. U.B.C. Standard No. 33-4, Panic Hardware

**(b) Definitions.** For the purpose of this chapter, certain terms are defined as follows:

**BALCONY, EXTERIOR EXIT,** is a landing or porch projecting from the wall of a building, and which serves as a required exit. The long side shall be at least 50 percent open, and the open area above the guardrail shall be so distributed as to prevent the accumulation of smoke or toxic gases.

**CONTINENTAL SEATING** is the configuration of fixed seating where the number of seats per row exceeds 14 and required exits from the seating area are side exits.

**EXIT** is a continuous and unobstructed means of egress to a public way and shall include intervening aisles, doors, doorways, gates, corridors, exterior exit balconies, ramps, stairways, smokeproof enclosures, horizontal exits, exit passageways, exit courts and yards.

**EXIT COURT** is a yard or court providing access to a public way for one or more required exits.

**EXIT PASSAGEWAY** is an enclosed exit connecting a required exit or exit court with a public way.

**HORIZONTAL EXIT** is an exit from one building into another building on approximately the same level, or through or around a wall constructed as required for a two-hour occupancy separation and which completely divides a floor into two or more separate areas so as to establish an area of refuge affording safety from fire or smoke coming from the area from which escape is made.

**MULTITHEATER COMPLEX** is a building or portion thereof containing two or more motion picture auditoriums which are served by a common lobby.

**PANIC HARDWARE** is a door-latching assembly incorporating an unlatching device, the activating portion of which extends across at least one half the width of the door leaf on which it is installed.

**PRIVATE STAIRWAY** is a stairway serving one tenant only.

**PUBLIC WAY** is any street, alley or similar parcel of land essentially unobstructed from the ground to the sky which is deeded, dedicated or otherwise permanently appropriated to the public for public use and having a clear width of not less than 10 feet.

**SPIRAL STAIRWAY** is a stairway having a closed circular form in its plan view with uniform section shaped treads attached to and radiating about a minimum diameter supporting column. The effective tread is delineated by the nosing radius line, the exterior arc (center line of railing) and the overlap radius line (nosing radius line of tread above). Effective tread dimensions are taken along a line perpendicular to the center line of the tread.

(c) **Exit Obstruction.** Obstructions shall not be placed in the required width of an exit except projections permitted by this chapter.

(d) **Changes in Elevation.** Within a building, changes in elevation of less than 12 inches along any exit serving an occupant load of 10 or more shall be by ramps.

**EXCEPTION:** Group R, Division 3 Occupancies and along aisles adjoining seating areas.

(e) **Yards, Patios and Courts.** Yards, patios, courts and similar outdoor areas accessible to and usable by the building occupants shall be provided with exits as required by this chapter. The occupant load of such outdoor areas shall be assigned by the building official in accordance with their anticipated use. When outdoor areas are to be used by persons in addition to the occupants of the building, and exits from the outdoor areas pass through the building, exit requirements for the building shall be based on the sum of the occupant loads of the building plus the outdoor areas.

**EXCEPTIONS:** 1. Outdoor areas used exclusively for service of the building may have only one exit.

2. Outdoor areas associated with Group R, Division 3 Occupancies.

(f) **Building Accessibility.** In addition to provisions of this chapter, exits which provide access to, or egress from, buildings for persons with disabilities shall also comply with Chapter 31.

(g) **Elevators or Escalators.** Elevators or escalators shall not be used as a required exit.

### Occupant Load

**Sec. 3302. (a) Determination of Occupant Load.** In determining the occupant load, all portions of a building shall be presumed to be occupied at the same time.

**EXCEPTION:** Accessory use areas which ordinarily are used only by persons who occupy the main areas of an occupancy shall be provided with exits as though they are completely occupied, but their occupant load need not be included in computing the total occupant load of the building.

The occupant load for a building shall be determined in accordance with the following:

**1003.3.4 Clear width.** Protruding objects shall not reduce the minimum clear width of accessible routes as required in Section 1104.

**1003.4 Floor surface.** Walking surfaces of the means of egress shall have a slip-resistant surface and be securely attached.

**1003.5 Elevation change.** Where changes in elevation of less than 12 inches (305 mm) exist in the means of egress, sloped surfaces shall be used. Where the slope is greater than one unit vertical in 20 units horizontal (5-percent slope), ramps complying with Section 1010 shall be used. Where the difference in elevation is 6 inches (152 mm) or less, the ramp shall be equipped with either handrails or floor finish materials that contrast with adjacent floor finish materials.

**Exceptions:**

1. A single step with a maximum riser height of 7 inches (178 mm) is permitted for buildings with occupancies in Groups F, H, R-2 and R-3 as applicable in Section 101.2, and Groups S and U at exterior doors not required to be accessible by Chapter 11.
2. A stair with a single riser or with two risers and a tread is permitted at locations not required to be accessible by Chapter 11, provided that the risers and treads comply with Section 1009.3, the minimum depth of the tread is 13 inches (330 mm) and at least one handrail complying with Section 1009.11 is provided within 30 inches (762 mm) of the centerline of the normal path of egress travel on the stair.
3. An aisle serving seating that has a difference in elevation less than 12 inches (305 mm) is permitted at locations not required to be accessible by Chapter 11, provided that the risers and treads comply with Section 1024.11 and the aisle is provided with a handrail complying with Section 1024.13.

Any change in elevation in a corridor serving nonambulatory persons in a Group I-2 occupancy shall be by means of a ramp or sloped walkway.

**1003.6 Means of egress continuity.** The path of egress travel along a means of egress shall not be interrupted by any building element other than a means of egress component as specified in this chapter. Obstructions shall not be placed in the required width of a means of egress except projections permitted by this chapter. The required capacity of a means of egress system shall not be diminished along the path of egress travel.

**1003.7 Elevators, escalators and moving walks.** Elevators, escalators and moving walks shall not be used as a component of a required means of egress from any other part of the building.

**Exception:** Elevators used as an accessible means of egress in accordance with Section 1007.4.

## **SECTION 1004 OCCUPANT LOAD**

**1004.1 Design occupant load.** In determining means of egress requirements, the number of occupants for whom means of egress facilities shall be provided shall be established by the largest number computed in accordance with Sections 1004.1.1 through 1004.1.3.

*Part I*

**ADMINISTRATIVE**

**Chapter 1**

**TITLE, SCOPE AND GENERAL**

**Title**

**Sec. 101.** These regulations shall be known as the "Uniform Building Code," may be cited as such and will be referred to herein as "this code."

**Purpose**

**Sec. 102.** The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction and certain equipment specifically regulated herein.

The purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code.

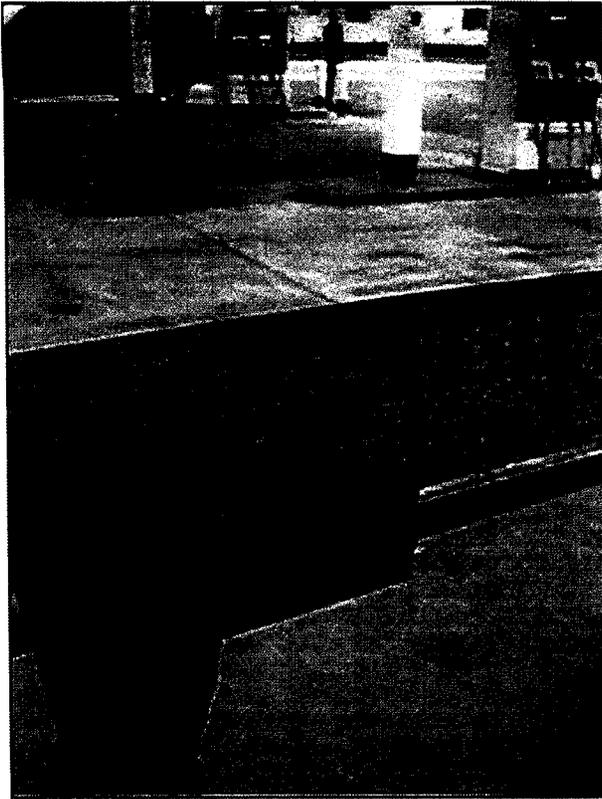


Figure 1. As Ms. Weron started back to her car parked at one of the pumps seen in the background in the left picture, she fell forward, landing at the location she is pointing to in the right picture. The left picture was taken from her eye level over her left shoulder. The advertising decal would obscure the edge of the single-riser step barely detectable below the decal in the left picture.

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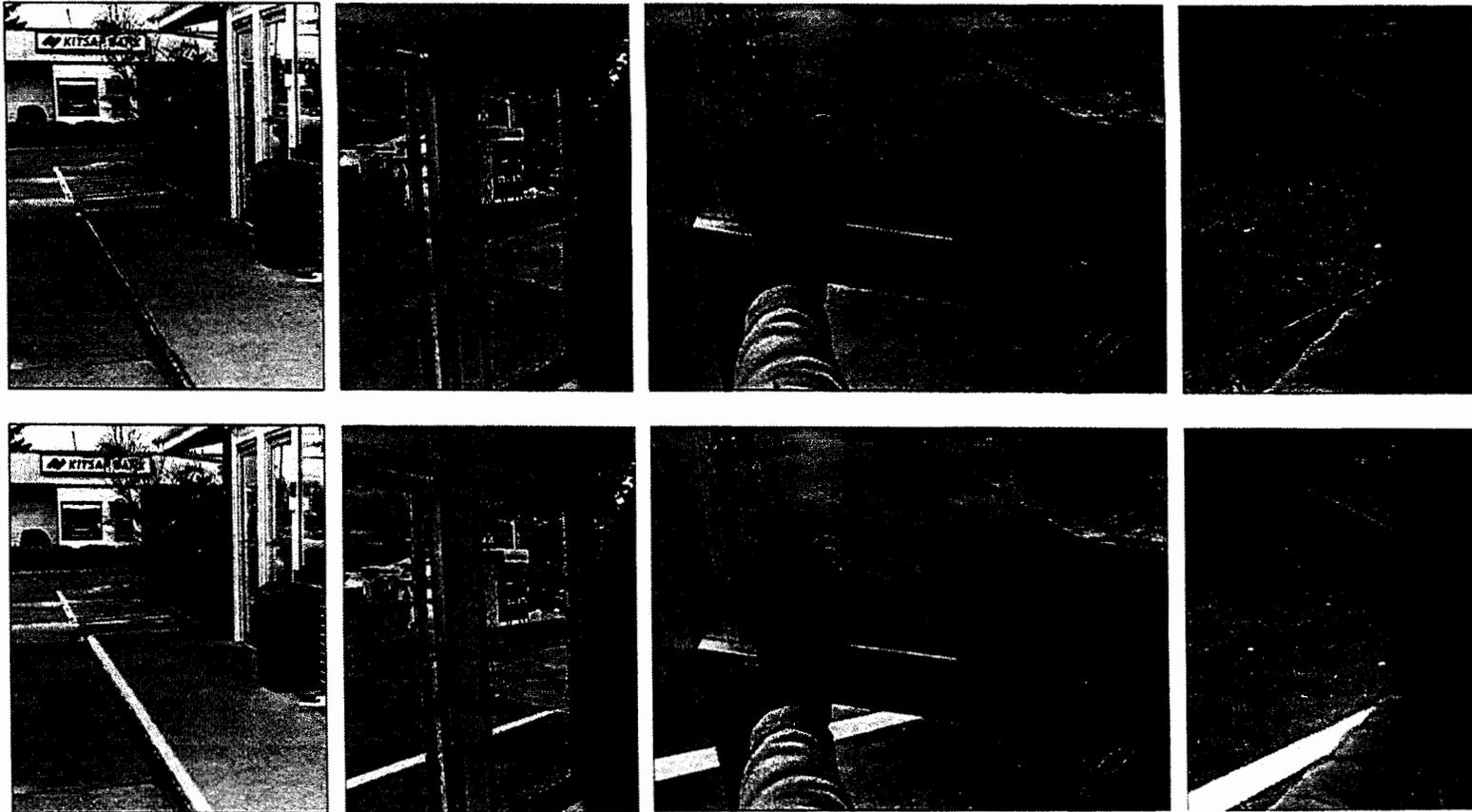


Figure 2. (Top) Photographs of the sidewalk and driveway where Ms. Weron fell. The top right three photographs were taken over her shoulder at her eye height and show some of what was visible to her. (Bottom) The same four pictures as above except a yellow stripe has been digitally added. The stripe increases the attention attractiveness of the edge of the sidewalk.

Certificate of Service

I certify that on the 7<sup>th</sup> day of March 2007, I caused a true and correct copy of this Brief of Appellant to be served on the following in the manner indicated below:

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