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PREMISES LIABILITY
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Missouri is a state where premises liability is governed less by statutes and regulations and relies more heavily on the common law and case law interpretation. However, the purpose of Missouri's premises liability laws is to encourage landowners to control and maintain their property in a reasonably safe condition and to warn or remedy any dangerous conditions of which they know to protect entrants on the land. If an injury occurs due to the landowner's negligence, then the injured individual may receive compensation if they can prove notice of the condition and causation of the injury. Below are some of the types of claims and issues addressed under Missouri premises liability and options for defending those actions. This serves as a general overview, but is not completely exhaustive of all the issues that a landowner may face in Missouri regarding premises liability:

Missouri's approach to premises liability is based on the Restatement (Second) of Torts section 328E and section 343,343A, and 332. *See*, Harris v. Niehaus, 857 S.W.2d 222, 225–26 (Mo. banc 1993) (adopting, inter alia, Restatement (Second) of Torts sections 343, 343A, and 332); Bowman v. McDonald's Corp., 916 S.W.2d 270, 285 (Mo.App.W.D.1995) (adopting, inter alia, Restatement (Second) of Torts section 328E).

Under Missouri law, a landowner is subject to liability to an invitee for injuries "caused by a condition on the land *only if* the landowner:

a) knows or by the exercise of reasonable care would discover the condition, **and**

b) should realize that it involves an unreasonable risk of harm to such invitees, **and**

c) should expect that they [*invitees]* will not discover or realize the danger or will fail to protect themselves [*the invitees*] against it, **and**

d) [*the landowner*] fails to exercise reasonable care to protect them against the danger." Harris v. Niehaus, 857 S.W.2d 222, 225-26 (Mo. banc 1993); Ford v. Ford Motor Co., 585 S.W.3d 317 (Mo. Ct. App. 2019)

A key to proving liability in a premises liability case, is proving notice. If an injured individual cannot prove actual or constructive notice, then there is no submissible case. Ford v. Ford Motor Company, 585 S.W.3d 317 (Mo. Ct. App. W.D. 2019); Breckinridge v. Meierhoffer-Fleeman Funeral Homes, Inc., 941 S.W.2d 609, 611 (Mo. App. W.D. 1997).

Missouri courts use the status of the entrant on the property to determine the specific duty of care owed by the landowner. Adams v. Badgett, 114 S.W.3d 432, 436 (Mo.App.E.D.2003); Medley v. Joyce Meyer Ministries, Inc., 460 S.W.3d 490 (Mo. Ct. App. 2015.

It is well-settled law, in Missouri, that three broad categories of plaintiffs are recognized in such cases: (1) trespassers; (2) licensees; and (3) invitees. Cochran v. Burger King Corporation, 937 S.W.2d 358, 361 (Mo. App. W.D. 1997); Carter v. Kinney, 896 S.W.2d 926, 929 (Mo. 1995).

Below is a table identifying the potential types of entrants on property and the duty owed by the landowner to each entrant.

Type of Entrant	Duty Owed by Landowner
Invitee An invitee is a "person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land." Carter v. Kinney, 896 S.W.2d 926, 928 (Mo. banc. 1995). An individual entering on property has the status of an invitee when the possessor "invites him with the expectation of a material benefit" or extends an invitation "to the public generally." Adams v. Badgett, 114 S.W.3d 432, 437 (Mo.App.E.D.2003). "Any words or conduct of the possessor which lead or encourage the visitor to believe that his entry is desired may be sufficient for the invitation." Taylor v. Union Electric Co., 826 S.W.2d 57, 59 (Mo.App.E.D.1992) Aziz by & through Brown v. Jack in the Box, E. Div., LP, 477 S.W.3d 98 (Mo. Ct. App. 2015). A person is an invitee if the premises are thrown open to the public and the party enters for the purposes for which they are thrown open. Carter v. Kinney, 896 S.W.2d 926, 929 (Mo. 1995); Scholdberg v. Scholdberg, 578 S.W.3d 831 (Mo. Ct. App. 2019).	A landowner owes a duty to protect invitees against both known dangers and those that would be revealed by inspection [*constructive notice*]. Carter v. Kinney, 896 S.W.2d 926, 928 (Mo. banc. 1995); Adams v. Badgett, 114 S.W.3d 432, 438 (Mo.App.E.D.2003). A landowner owes a duty to protect the invitee if the landowner knew: (a) a dangerous condition existed on his premises which involved an unreasonable risk; (b) by using ordinary care should have known of the condition; and (c) landowner failed to use ordinary care in removing or warning of the danger. Rycraw v. White Castle Sys., Inc., 28 S.W.3d 495, 499 (Mo. Ct. App. 2000). A landowner may have either actual or constructive notice (meaning it could have been discovered through reasonable inspection). Hunt v. National Supermarkets, Inc., 809 S.W.2d 157, 159 (Mo. App. E.D. 1991)
Licensee A licensee "is a person who is privileged to enter or remain on land only by virtue of the possessor's consent." "All persons who enter a premises with permission are licensees . . . " Carter v. Kinney, 896 S.W.2d at 928; Scholdberg v. Scholdberg, 578 S.W.3d 831 (Mo. Ct. App. 2019). A licensee is one who enters onto the property of another for his own purposes and with the permission, express or implied, of the possessor. Boyette v. Trans World Airlines, Inc., 954 S.W.2d 350, 355 (Mo. App. E.D. 1997)	A landowner owes a licensee a duty to make safe dangers of which the possessor is aware. Carter v. Kinney, 896 S.W.2d at 928. Evidence tending to show that a landowner ***should*** have known of a danger and ***should*** have realized the risk does not establish the existence of a duty to a licensee. Kasal v. Freihaut, 860 S.W.2d 24, 25 (Mo. App. E.D. 1993); Gould v. United States, 994 F. Supp. 1177 (W.D. Mo. 1998)
Trespasser "All entrants to land are trespassers until the possessor of land gives them permission to enter." Ryan v. Rademacher, 142 S.W.3d 846, 849 (Mo. Ct. App. 2004).	A landowner owes no warning to a trespasser. Ryan v. Rademacher, 142 S.W.3d 846, 849 (Mo. Ct. App. 2004).

Defenses To Premises Liability

COMPARATIVE FAULT

Missouri is a pure comparative fault state which means that even if the Plaintiff has 99% liability assessed against it, the Defendant is still liable for 1% of the damages. While this system of allocation for fault may seem fair since it attributes fault in the degree to which each party is responsible, it can lead to some unreasonable results with higher damages. For example, a jury may find that a defendant is only 1% liable but may also find that the Plaintiff's damages are $25 million. Therefore, the defendant would still owe $250,000.00 in damages, even though the defendant was only found to be 1% liable for the injuries.

For this reason, it is important to evaluate whether there will be any liability if the case proceeds to trial, and if so, what the anticipated damages will be because even a 1% portion of a high damage value, could result in an unreasonable payout. It is also one of the reasons that we advocate retaining experts to mitigate Plaintiff's anticipated damages such as medical bill recovery, lost wages, and future medical or wage damages as well as loss of consortium damages.

MEDICAL BILL RECOVERY

Missouri restricts the recovery of medical bills to the amount paid rather than the amount charged. Section § 490.715.5(2) creates a rebuttable presumption that the amount actually paid to the medical provider represents the value of a plaintiff's medical treatment. This presumption can be rebutted by substantial evidence establishing a different value. Wheeler ex rel. Wheeler v. Phenix, 335 S.W.3d 504, 517 (Mo. Ct. App. 2011).

- The additional evidence a court may hear includes, but is not limited to the following factors:
  - The medical bills incurred by a party;
  - The amount actually paid for medical treatment rendered to a party;
  - The amount or estimate of the amount of medical bills not paid which such party is obligated to pay to any entity in the event of a recovery.
- No evidence of collateral sources shall be made known to the jury in presenting the evidence of the value of the medical treatment rendered. Mo.Rev.Stat. § 490.715.5.

SUBSEQUENT REMEDIAL MEASURES

Generally, evidence of subsequent remedial measures is inadmissible in negligence actions. Pollard v. Ashby, 793 S.W.2d 394, 401 (Mo.App.1990). However, evidence of subsequent remedial measures can be used for other purposes. Among the exceptions are:

(1) evidence offered to prove ownership or control; Gomez v. Constr. Design, Inc., 126 S.W.3d 366, 374 (Mo. 2004); Danbury v. Jackson County, 990 S.W.2d 160, 166 (Mo. App. W.D. 1999),

(2) evidence offered when the feasibility of precautionary measures is in dispute; Cupp v. Nat'l R.R. Passenger Corp., 138 S.W.3d 766, 776 (Mo. Ct. App. 2004); Boggs ex rel. Boggs v. Lay, 164 S.W.3d 4, 22 (Mo. Ct. App. 2005), and

(3) evidence used as impeachment or rebuttal. Rust v. Hammons, 929 S.W.2d 834, 837 (Mo. Ct. App. 1996).

STATUTES OF LIMITATIONS

Missouri generally has a five-year statute of limitations for personal injury resulting from a premise liability claim.

Exculpatory Release, Indemnification, & Tender of Defense

EXCULPATORY RELEASE

While not against public policy, Missouri permits exculpatory clauses in contracts releasing an individual from his or her own future negligence, but they are disfavored and must explicitly state liability is released. Alack v. Vic Tanny International of Missouri, Inc., 923 S.W.2d 330, 334, 336 (Mo.1996); *Compare to*, Lewis v. Snow Creek, Inc., 6 S.W.3d 388, 394 (1999). The Court required the following language to release a party from his or her own future negligence. Id. at 337, at 394.

a. clear
b. unambiguous
c. unmistakable, and
d. conspicuous language

For the release to be effective it **must** notify a party that he or she is releasing the other party from claims arising from the other party's own negligence. General language in the release is **NOT** sufficient. Furthermore, "negligence" or "fault" or their equivalents **must** be used conspicuously so that a clear and unmistakable waiver and shifting of risk occurs." Id.

Whether a contract is ambiguous is a question of law to be decided by the court. Id. "An ambiguity arises when there is duplicity, indistinctness, or uncertainty in the meaning of the words used in the contract." Id. Ambiguities are construed against the drafter who is usually the premises liability owner. Exculpatory contracts releasing a party from future acts of negligence are to be strictly construed against the party claiming the benefit of the contract, and clear and explicit language in the contract is required to enforce the release and absolve liability. Hornbeck v. All American Indoor Sports, Inc., 898 S.W.2d 717, 721 (Mo.App.1995).

Since Missouri courts do not recognize degrees of negligence at common law, even where gross negligence is alleged, Missouri courts will strictly construe a properly drafted exculpatory agreement but will enforce it where there is no ambiguity. DeCormier v. Harley-Davidson Motor Co. Group, Inc., 446 S.W.3d 668, 671 (Mo. 2014).

However, Missouri courts do not permit exculpatory releases exonerating oneself from future liability due to intentional torts, or due to ambiguity in the drafting that suggests the same. *See*, Kaufold v. Chesterfield Village, GP, LLC, 232 S.W.3d 699 (Mo. App. 2007); Milligan v. Chesterfield Village GP, LLC, 232 S.W.3d 683 (Mo. App. 2007).

INDEMNIFICATION & TENDER OF DEFENSE

Missouri also recognizes and enforces that parties may include language in contracts which indemnify another party for premises liability negligence. Often these types of contracts lead to tendering the defense of a claim to another party who has agreed to accept liability on behalf of another party through a contractual agreement. These contractual agreements can lead to disagreements about who is actually liable based on the language used in these contracts. Therefore, they can result in separate lawsuits to determine the meaning of the contracts and establish who is liable. Regardless, Missouri permits parties to enter these contracts to protects their interests. Some such cases in which one encounters these types of contracts are ice and snow removal cases where a landowner hires a company to remove the ice or snow, and also contracts who is liable if someone becomes injured for failure to properly remove the ice or snow.

Ice and Snow Accumulation Cases

GENERAL RULE

In Missouri, landowners have **no duty** to remove ice or snow on outside areas that accumulated naturally as a result of general weather conditions within a community. Willis v. Springfield General Osteopathic Hospital, 804 S.W.2d 416, 419 (Mo. App. S.D. 1991). This rule applies to:

a. landlords,
b. municipal corporations,
c. inviters, and
d. employers.

Missouri has adopted this exception of "no duty" which is commonly known as the Massachusetts Rule. O'Donnell v. PNK (River City), LLC, 619 S.W.3d 162 (Mo. Ct. App. E.D. 2021); Richey v. DP Props., LP, 252 S.W.3d 249, 251–52 (Mo. App. E.D. 2008)

Additionally, Missouri courts have held "a property owner does not have a duty to remove, from its open-air parking lot, freezing rain, sleet, or snow, as it is falling" and "[t]o hold that a duty exists to make a parking lot safe as precipitation falls from the sky would be to create a duty which would be virtually impossible to perform." Milford v. May Department Stores, 761 S.W.2d 231, 232-33 (Mo. App. E.D. 1988).

EXCEPTION

In Missouri, an exception arises when a landowner attempts to remove the snow and ice, thereby assuming a duty. Willis, 804 S.W.2d at 419." If a landowner undertakes to clear or remove ice and snow, the landowner has a duty to do so in a non-negligent fashion Gorman v. Walmart Stores, Inc., 19 S.W.3d 725, 732 (Mo. App. W.D. 2000). A landowner can assume a duty to remove snow and ice by agreement or by course of conduct (i.e., by undertaking to clear the snow), but otherwise no duty exists. Otterman v. Harold's Supermarkets, Inc., 65 S.W.3d 553 (Mo. Ct. App. W.D. 2011).

The Open and Obvious Doctrine

GENERAL RULE

Missouri courts recognize the open and obvious doctrine as an exception to a landowners' liability for an injury to an entrant due to a dangerous condition on the land. "[W]hen the dangerous condition is so **open and obvious** that the **invitee** should reasonably be expected to discover it and realize the danger, a possessor of land **does not** breach the standard of care owed to invitees '**unless** the possessor should anticipate the harm despite such knowledge or obviousness.'" Harris v. Niehaus, 857 S.W.2d 222, 226 (Mo. 1993) (quoting Restatement (Second) of Torts § 343A(1) (1965)).

Harris recognized the open and obvious doctrine can be determined as a matter of law which permits the landowner to prevail on a motion for summary judgment regarding the issue. Harris, at 226. But Harris also noted, that even where the court declines to find that the condition was open and obvious as a matter of law, based on comparative fault, the openness and obviousness of the dangerous condition and its risk should be considered in evaluating the landowner's duty of care and the degree of fault by the entrant. Harris, at 227; *see also*, Ford v. Ford Motor Co., 585 S.W.3d 317 (Mo. Ct. App. 2019).

OPEN AND OBVIOUS DEFINED

So, what is an open and obvious condition?

An "obvious" danger is one in which "both the condition and the risk are apparent to and would be recognized by a reasonable man ... exercising ordinary perception, intelligence, and judgment." Smith v. The Callaway Bank, 359 S.W.3d 545, 547 (Mo. App. W.D. 2012) (quoting Restatement (Second) of Torts § 343A(1) cmt. b (1965)). Ford v. Ford Motor Co., 585 S.W.3d 317 (Mo. Ct. App. 2019). In determining whether a dangerous condition is open and obvious, courts engage in "an extremely fact intensive analysis." Randall v. Wal-Mart Stores, Inc., 1:13-CV-59 CEJ, 2014 WL 5093280 (E.D. Mo. Oct. 10, 2014); Underwood v. Target Corp., No. 1:12–CV–00035 (LMB), 2013 WL 6801260, *3 (E.D.Mo. Dec. 23, 2013) (applying Missouri law).

Since the reasonable person standard is applied to evaluate an open and obvious condition, in actual practice, the courts seldom grant a motion for summary judgment based on the open and obvious doctrine as a matter of law, unless the condition is blatantly discoverable. Instead, the courts rely on the jury to make that determination using the reasonable person standard. Scheerer v. Hardee's Food Systems, Inc., 92 F.3d 702, 708 (8th Cir.(Mo.) Aug 12, 1996. Despite the courts' hesitation to grant motions for summary judgment based on the open and obvious doctrine, we still recommend filing them because it cannot hurt

the defense of the case, since the open and obvious condition can still be argued at trial. *See*, Smoot v. Vanderford, 895 S.W.2d 233, 240 (Mo.App. S.D. Feb 22, 1995) (where Appellate Court reversed the decision of the trial court and held that entrant on land created dangerous condition himself, thus the condition was open and obvious as a matter law).

EXCEPTION TO OPEN AND OBVIOUS DOCTRINE

In Huxoll v. McAlister's Body & Frame, Inc, the court found that the open and obvious doctrine applied despite the exception to it. Landowners are entitled to expect that their invitees will exercise due care. Huxoll v. McAlister's Body & Frame, Inc., 129 S.W.3d 33, 35 (Mo. Ct. App. 2004), *see also*, Harris, 857 S.W.2d at 226. Due care mandates that invitees take available precautions to protect themselves from open and obvious dangers. Id.

The exception to the "open and obvious danger" rule applies where a landowner **should foresee** that invitees, even if using reasonable care, **would not appreciate the danger** associated with the risk or would be unable to protect themselves from it. Id.; Hellmann v. Droege's Super Mkt., Inc., 943 S.W.2d 655, 658–59 (Mo.App.1997). In Hellmann, the court applied the exception to the open and obvious doctrine because the court held that while the invitees could clearly see the danger of an icy parking lot, they could not properly protect themselves against that danger; therefore, the store had a duty to anticipate the risk of harm caused to its customers by the icy parking lot and exercise reasonable care to protect them. Hellmann, at 659.

Missouri courts define an open and obvious condition as one that is conspicuously noticeable. Hellmann v. Droege's Super Market, Inc., 943 S.W.2d 655, 657-68 (Mo. Ct. App. E.D. 1997). The invitee does not need to actually see the condition for it to be open and obvious. Roberson v. Target Corp., 4:17 CV 2277 DDN, 2018 WL 3391575 (E.D. Mo. July 12, 2018)

OPEN AND OBVIOUS CONDITIONS

Here is a list of some cases identifying whether a condition is open and obvious which is a fact intensive inquiry:

1) Hellmann v. Droege's Super Market, Inc., 943 S.W.2d 655, 657-68 (Mo. Ct. App. E.D. 1997) (whether ice on a parking lot is open and obvious given winter storms the week before is a jury issue);
2) Harris v. Neihaus, 857 S.W.2d at 227 (Mo. banc 1993) (sloping road leading to lake is open and obvious);
3) Seymour v. Lakewood Hills Ass'n, 927 S.W.2d 405, 410 (Mo. Ct. App. 1996) (tree located in the middle of the road was "clearly visible from the end of the street" even though driver backed truck into tree);
4) Heffernan v. Reinhold, 73 S.W.3d 659, 666 (Mo. Ct. App. 2002) (twelve-foot deep and fifteen-foot wide ditch is open and obvious);
5) Crow v. Kansas City Power & Light Co., 174 S.W.3d 523, 537 (Mo. Ct. App. 2005) (overhead electric power line was open and obvious even when plaintiff didn't actually see it, because it was easily observable and would have been reasonable for him to see);
6) Peterson v. Summit Fitness, Inc., 920 S.W.2d 928, 933 (Mo. Ct. App. 1996) (pool wall that was thirty feet long and four feet above the ground was open and obvious, even when plaintiff did not see it before falling over it).

Liability for Criminal Acts of Third Parties

GENERAL RULE

In Missouri, a landowner generally has "no duty to protect business invitees from the criminal acts of unknown third persons." Madden v. C&K Barbecue Carryout, Inc., 758 S.W.2d 59, 62 (Mo. banc. 1988); Hudson v. Riverport Performance Arts Centra, 37 S.W.3d 261, 264 (Mo. App. E.D. 2000).

"To establish a business assumed a duty to protect their invitees against actions of third parties, there must be a showing that there was an express assurance of safety to the invitee and the invitee relied on those assurances." Kraus v. Hy-Vee, Inc., 147 S.W.3d 907, 922 (Mo. App. W.D. 2004); K.L.S. v. Union Pacific Railroad, 575 S.W.3d 259 (Mo. Ct. App. W.D. 2019)

Even if an entrant on land initially enters a premises as an invitee, any deviation from the scope of the invitation can reduce the status of an entrant and the duty of the possessor. Hogate v. American Golf Corp., 97 S.W.3d 44, 49 (Mo. App. E.D. 2002).

EXCEPTIONS

Despite the general rule that a business owner does not owe a duty to invitees against actions of third parties, Missouri courts have carved out three exceptions discussed below:

Missouri law recognizes a duty for business owners to protect invitees against actions of third parties may be triggered under the "special facts and circumstances" exception. L.A.C. v. Ward Parkway Shopping Ctr. Co., 75 S.W.3d 247, 257 (Mo. banc 2002).

Exception #1

The first exception occurs when there exists a special relationship or knowledge of the third party. This exception may apply when a third party who is known to be violent or behaves in a way indicating danger is on the business owner's premises and a sufficient time exists to prevent the injury to the invitee. A duty of care arises out of circumstances in which there is a foreseeable likelihood that particular acts or omissions will cause harm or injury." L.A.C., 75 S.W.3d at 257 (quotations omitted); *citing* Madden, 758 S.W.2d at 62. Missouri courts have consistently recognized that such a "special relationship" sometimes exists between employer and employee. *See*, Faheen by and through Hebron v. City Parking Corp., 734 S.W.2d 270, 272 (Mo. Ct. App. 1987) ("Special relationships which are recognized in Missouri include innkeeper-guest, common carrier-passenger, school-student, and sometimes employer-employee."); see also Myron Green Corp. v. Dir. of Revenue, 567 S.W.3d 161, 165 (Mo. banc 2019)

Exception #2

The second exception focuses on the business owners' knowledge of violent crimes by unknown third parties in the area to whom the business owner's invitees may be exposed due to location. Therefore, the business owner may have a duty to protect or warn its invitees where it is foreseeable that an invitee may be injured due to these violent crimes. "Violent crimes are foreseeable if the premises have been the site of other prior violent crimes, including robbery, assault, burglary, stealing, arson, abduction, murder, sexual assault and rape." L.A.C. v. Ward Parkway Shopping Ctr. Co., 75 S.W.3d 247, 257 (Mo. banc 2002); Wieland v. Owner-Operator Services, Inc., 540 S.W.3d 845 (Mo. 2018). In other words, with the second exception, the business is tasked with taking "precautionary actions to protect its business invitees against the criminal activities of unknown third parties." L.A.C., 75 S.W.3d at 258.

Exception #3

The final exception applies a totality of the circumstances approach to the violent crimes exception above. In Richardson v. QuikTrip Corp., 81 S.W.3d 54, 64-65 (Mo.App.W.D.2002) (en banc), the Missouri Supreme Court enacted a totality of the circumstances approach to criminal acts of unknown third parties using the following factors to determine if a duty applied:

1) the nature of the business location;

2) the character of the business; and

3) the past crimes in the area.

This approach was reevaluated and applied in Aziz by & through Brown v. Jack in the Box, E. Div., LP, 477 S.W.3d 98 (Mo. Ct. App. 2015). The court analyzes each of the factors and then determines whether a duty applied including evaluating what is considered to be violent. An unknown criminal actor can be considered a violent or dangerous individual when there is conduct by third persons considered to be loud talking, threatening language, or unusual physical movements. Pizzurro v. First North County Bank & Trust Co., 545 S.W.2d 348, 350 (Mo. 1976).

GENERAL RULE USUALLY APPLIES

Despite these exceptions, the courts have generally found that most business owners are not under a duty to protect invites from criminal acts of third parts. Wood v. Centermark Properties, Inc., 984 S.W.2d 517, 524 (Mo.App. E.D. 1998) (finding no duty of care to under the three elements); Macon v. Family Dollar Stores of MO, LLC, 4:16-cv-00689-NCC, 2016 WL 4917603 (E.D. Mo. Sep. 15, 2016); K.L.S. v. Union Pacific Railroad, 575 S.W.3d 259 (Mo. Ct. App. W.D. 2019)

Sidewalk Defect Cases

GENERAL RULE

In Missouri, the general common law dictates that a landowner whose property is adjacent to a public street or sidewalk generally has **NO DUTY** to maintain and/or repair the public sidewalk. However, there are three **EXCEPTIONS**:

EXCEPTIONS

1) When a landowner takes affirmative action to perform work on a public sidewalk or street, and thereby creates a dangerous condition which requires repair.

2) When a landowner uses a public sidewalk or street for a purpose other than its intended purpose. Lange v. Wehrenberg Theaters, Inc., et al. 870 S.W.2d 880 (Mo. Ct. App. 1993).

3) When a landowner attempts to make repairs to the public sidewalk or street and does so negligently, then the landowner may be liable if the defective repairs cause or contribute to cause any injury to the user of the sidewalk. Schmidt v. Keane, 810 S.W.2d 701 (Mo Ct. App. 1991).

In Missouri, cities and municipalities have a non-delegable duty to repair and maintain the public sidewalks. Each city or municipality may have different rules and regulations about the requirements for this and whether the local government attempts to shift any of the cost to the abutting landowner. Therefore, we recommend that you investigate the local ordinances and rules governing liability for both the local government and the landowner when a sidewalk is involved to clarify who might be responsible for the injury. There is a possibility it could be both parties depending on the history of the maintenance to the sidewalk.

Missouri has no bright-line rule about the uneven height of a sidewalk for which liability may attach. It is possible the unevenness could be as little as ¼" or as much as one inch. It depends on notice of the condition and how a reasonable person would have viewed whether the condition was open and obvious.