

Liability of Public Entities

La. Rev. Stat. § 9:2800
Notice Requirements

Patricia S. LeBlanc

© MAPS, Inc 2009



La. Rev. Stat. § 9:2800

- B. [N]o person shall have a cause of action based solely upon liability imposed under Civil Code Article 2317 against a public entity for damages caused by the condition of things within its care and custody unless the public entity had actual or constructive notice of the particular vice or defect which caused the damages prior to the occurrence, and that the public entity has had a reasonable opportunity to remedy the defect and has failed to do so.
- Enacted in 1985, this statute eviscerated the distinction between negligence and strict liability theories of recovery. *Campbell v. Dept. of Transp. and Dev.*, 94-1052, p.1 (La. 1/17/95), 648 So. 2d 898.



Plaintiff's Burden of Proof

Standard: Preponderance of the Evidence

- The thing was in the public entity's custody.
- The thing was defective.
 - condition which created an unreasonable risk of harm
- The public entity had notice of the defect.
 - actual or
 - constructive notice
- The public entity had reasonable opportunity but failed to take corrective measures.
- The defect was the cause of Plaintiff's injuries.

Note temporal and spatial considerations



Actual Notice

- The public entity discovers the defect.
- “Provided by reporting the defect to a governmental employee who has a duty ‘either to keep the property involved in good repair or to report dangerous conditions to the proper authorities.’” *Hanson v. Benelli*, 1997-1467 (La. App. 4 Cir. 9/30/1998); 719 So. 2d 629, 636, citing *Fragala v. City of Rayville*, 557 So. 2d 1118 (La. Ct. App. 1990).



Actual Notice Found

- Motor vehicle accident caused by road collapse when sewer line beneath it failed.
- Sewerage & Water Board employees testified to receiving complaints prior to accident.
 - Leak reported 7 mos. prior; no repairs made
 - Subsidence reported within 300 feet 4 mos. prior
- Judgment in favor of motorist affirmed. *Craft v. Sewerage & Water Board of N.O.*, 2003-1886 (La. App. 4 Cir. 4/28/04); 874 So. 2d 908.



Actual Notice Found

- Motor vehicle accident occurred at intersection where DOTD replaced fixed stop lights with flashing red and yellow lights.
- DOTD had actual notice of danger because it designed the intersection at a skewed angle and modified lights.
- Passenger's motion for JNOV granted and affirmed. *Rogers v. State of La.*, 2002-809 (La. App. 3 Cir. 2/5/03); 838 So. 2d 849.



No Actual Notice

- Same stop sign downed 3 times in 3 months prior to accident. Each time, a temporary sign was erected the same day until a permanent sign was installed the next day.
- No notice of defect because no evidence of when or how sign was downed in the 2 days between the last replacement and the accident.
- Judgment in favor of the City of Kenner affirmed. *Pierce v. Faucett*, 2001-36 (La. App. 5 Cir. 5/30/2001); 798 So. 2d 155, 158.

Mediation Arbitration
maps ...th. leader
in resolution
Professional Systems, Inc.

No Actual Notice

- Pedestrian fell over metal hook used to support torn down balcony.
- No complaints found in Dept. of Public Works' records; Plaintiff failed to bring forth evidence to dispute City's denial of notice.
- Summary judgment in favor of City affirmed. *Beteta v. City of New Orleans*, 2008-0542 (La. App. 4 Cir. 1/28/09); 4 So. 3d 908.

Mediation Arbitration
maps ...th. leader
in resolution
Professional Systems, Inc.

Constructive Notice

- "Existence of facts which infer actual knowledge" La. Rev. Stat. Ann. § 9:2800.
- "Can be found if the conditions which caused the injury existed for such a period of time that those responsible, by the exercise of ordinary care and diligence, must have known of their existence in general and could have guarded the public from injury." *Warden v. Richoux*, 2006-702 (La. App. 5 Cir. 2/27/07); 952 So. 2d 828, 832.

Mediation Arbitration
maps ...th. leader
in resolution
Professional Systems, Inc.

Constructive Notice Found

- Pedestrian fell over uneven sidewalk that created a step-up over 3 inches.
- Expert testified that condition existed for 5-10 years prior due to weathered condition of crack.
- Judgment in favor of pedestrian affirmed. *Joseph v. City of N.O.*, 2002-1996 (La. App. 4 Cir. 3/5/03); 842 So. 2d 420.



Constructive Notice Found

- Constructive knowledge found where bi-weekly inspections of subject curb were performed by state.
- Subject hole in curb was 4-5 inches deep; policy was to repair holes 2-3 inches deep.
- State found 100% liable after trial on the merits. *Bessard v. State of La.*, 94-0589 (La. 11/30/94); 645 So. 2d 1134.



No Constructive Notice

- Fact that tree, re-planted after being knocked down by drunk driver, fell on vehicle passing through intersection the following day is not constructive notice.
- Record disclosed that 200-300 trees had been planted in a 3-year period with only a dozen complaints re: leaning or fallen trees.
- Judgment in favor of the City of Kenner affirmed. *Sampedro v. City of Kenner*, 08-24 (La. App. 5 Cir. 6/19/08); 989 So. 2d 111.



No Constructive Notice

- Pedestrian fell over broken curb.
- Work orders showed numerous repairs and 40 complaints within 6-year period in general area of the accident.
- No repairs or complaints in the specific area of the accident within the prior months.
- Judgment in favor of the City affirmed. *Ambrose v. City of New Iberia*, 08-1197 (La. App. 3 Cir. 4/1/09); 2009 WL 838151.

Mediation Arbitration
maps ...th. leader
in resolution
Pro Resolution Systems, Inc.

Opportunity to Repair

- Motor vehicle accident occurred at site of malfunctioning traffic lights.
- Police officer reported malfunction 1 hour and 36 minutes prior; City had reasonable time to take corrective measures.
- Judgment in favor of motorist affirmed. *Maddox v. City of Oakdale*, 1999-726 (La. App. 3 Cir. 11/3/99); 746 So. 2d 764.

Mediation Arbitration
maps ...th. leader
in resolution
Pro Resolution Systems, Inc.

No Opportunity to Repair

- Motorist injured when she backed car into hole covered with water.
- Homeowner notified S & WB 30 min. prior; S & WB did not have reasonable opportunity to repair broken pipe.
- Judgment against S & WB reversed. *Carr v. Boh Bros. Const. Co., Inc.*, 557 So. 2d 356 (La. Ct. App. 1990).

Mediation Arbitration
maps ...th. leader
in resolution
Pro Resolution Systems, Inc.

Evidence Excluded

- Evidence of nine prior accidents at railroad crossing was excluded under Fed. R. Evid. 403 due to dissimilarity and temporal remoteness.
 - Vehicles turned from opposite direction
 - Accident occurred 25 years prior
- Summary judgment in favor of DOTD affirmed. *Harrower v. State of La.*, 2009 WL 1370908 (5th Cir. 2009).


