

# Avoiding Extraordinary Verdicts

**In an Era of Escalating Litigation**

**STEWART HARMAN**

# Jury Verdicts

## ▶ Jolley v. Lehi City - 2021

- Premises liability
- Result: \$130,000 by settlement
- Summary: Plaintiff was playing basketball game at city's athletic center fell through glass window when player on opposing team body-blocked him. Plaintiff suffered deep lacerations requiring surgical repair. Plaintiff sued city for installing glass which was inappropriate for the activities that would be conducted on the premises. City offered settlement, expressly denying liability.

# Jury Verdicts

- ▶ Govan v. Salt Lake City Corp. - 2019
  - Law Enforcement; Excessive Force; False Arrest
  - Result: \$38,021 - Settlement Breakdown: \$14,001 for damages, \$23,480 for interest, and \$539.70 for costs
  - Summary: Plaintiff was African-American adult male who parked near his grandmother's home. When police officer informed him he was parked illegally, the officer demanded to see his driver license. Plaintiff expressed concern that he was only being stopped because he was African-American. Officer later opened the car door and pulled Plaintiff from the vehicle placing him under arrest. Plaintiff sued for various reasons, including excessive force, unlawful arrest, and condoning the escalation of a traffic stop into a forceful arrest.

# Lessons Learned from Recent Cases

## ▶ McEwen v. Clearfield City - 2021

- Personal Injury
- Result: \$8,000 by Settlement
- Summary: The City streetsweeper kicked up a cloud of dust one summer morning. Plaintiff, a 16-year old girl, saw the dust cloud from some distance away. As she approached the dust cloud, it was too thick to see through it and too big to see around it. Thus, she drove straight through it and rear-ended the sweeper.

## ▶ McEwen v. Clearfield City

- ▶ 1000 West is straight
- ▶ The Sweeper lifted his brooms for approximately 100 yards during section with no curb
- ▶ Once he got to the curb again, he put the brooms back down and engaged the water. 100 feet later the accident happened.



Google

Google

## ▶ McEwen v. Clearfield City

- ▶ No pictures of the street.
  - ▶ No inspection of the sw
  - ▶ No statements or inspe
  - ▶ No indications of inspec
- the water tank or broom  
the roadway that had b  
swept.



# Lessons Learned from Recent Cases

## ▶ Jane v. X City - 2021

- Breach of contract, whistleblower, FMLA violation, deprivation of due process
- Award: Resolved by Confidential Settlement
- Summary: Employee of police department was fired after lying in a Garrity interview. EE was on probation at the time of the incident for other issues. Contract claims dismissed by motion, however, Court also overturned her probationary status as it violated her due process rights.

# Lessons Learned from Recent Cases

- ▶ Utah Code Ann. 78B-4-509 - Inherent Risks in Recreational Activities
  - Means any danger, condition and potential for personal injury or property damage that is an integral and natural part of participating in a recreational activity
  - Recreational Activity includes a rodeo, equestrian activity, skateboarding, skydiving, para gliding, hang gliding, roller skating, ice skating, fishing, hiking, walking, running, jogging, bike riding, scooter riding, or in-line skating on property:
    - Owned, leased or rented by or otherwise made available to - the County or City, and
    - Intended for the specific use in question.



## ▶ Utah Code Ann. 41-6a-1115.1 - Scooter Share Programs

- (2) A local authority may regulate the operation of a motor assisted scooter within its jurisdiction.
- (3) A local authority may authorize the operation of a motor assisted scooter on sidewalks and regulate the operation, including the maximum speed on the sidewalks.
- (4) A regulation adopted by a local authority pursuant to this section regarding the operation of a motor assisted scooter shall be consistent with the regulation of bicycles and this title.
- (5) (a) A local authority may regulate the operation of a scooter-share program within its jurisdiction. Regulation of scooter-share programs shall be consistent with this Subsection (5).

## ▶ Scooters in City Limits or on Sidewalks

- ▶ City Ordinance 12.08.070 expressly states that it is unlawful for any person to drive a self-propelled vehicle upon any sidewalk.
- ▶ Does immunity apply?
- ▶ Why or Why not?

# Lessons Learned from Recent Cases

- ▶ Admissions of Liability
  - ▶ Prevent or avoid depositions?
  - ▶ Focus on damages
  - ▶ Precludes comparative fault arguments

# Lessons Learned from Recent Cases

- ▶ Depositions
  - ▶ Witness selection
  - ▶ Witness preparation
  - ▶ Non-retained experts and 30(b)(6) witnesses

# Lessons Learned from Recent Cases

- ▶ Early Rule 68 Offers of Settlement
  - ▶ When and how are they effective?
    - ▶ 1983 Actions
    - ▶ Contract Actions
    - ▶ Any action that will trigger fees
  - ▶ *Peterson v. WJPD.*

# Questions?

**Stewart Harman**

Municipal Litigation Division  
Plant, Christensen & Kanell

[www.pckutah.com](http://www.pckutah.com)

[sharman@pckutah.com](mailto:sharman@pckutah.com)

Direct Line - 801-990-0809