

The Basics of a Premises Liability Case

It must be remembered that in a typical fall case, the defendant premises owner will always dispute fault. Simply consider the question, "Did you, the injured person, see what caused you to fall before you fell?" Whether the answer is yes or no, the premises owner will argue the fault is that of the injured person. If the injured person says "yes", then the insurer or defense counsel will suggest that the condition was open and obvious, and that the injured person failed to take adequate precaution. If the injured person answers "no", then defendant premises owner will suggest inattention, that the injured person was not looking where the injured person was traveling, and if the injured person did not notice the condition, neither would the premises owner.

One must also consider whether the dangerous condition is transitory or static in evaluating premises injury cases.

A *transitory condition* is one which is temporary (water, fluid, or other debris dropped on supermarket, restaurant or convenience store floors are classic examples), and therefore, a condition where the premises owner typically will claim lack of knowledge. As a result, the injured person will be compelled to develop evidence of knowledge on the part of the premises owner. It is important to learn if there is evidence that the storekeeper's employees were in the immediate area at the time to fall, or if any statements were made at the time of the incident by the storekeeper's employees indicating there was an awareness of the condition (for example, a manager's statement that a carryout was to have cleaned a spill up). The premises owner will generally acknowledge that foreign substances on the floor do constitute dangerous conditions and will promote its safety procedures, and therefore, if one proves knowledge of the condition on the part of the premises owner, one usually has a strong argument on fault as to the premises owner.

A *static* condition is one which has been present for some period of time (i.e., deviations/cracks in walkways/sidewalks; eroded/broken concrete; holes) and the premises owner typically cannot credibly deny knowledge of the condition. In most cases involving *static* conditions photographs or other documentary evidence will be available to document the condition. In these circumstances the premises owner will either suggest the condition is: (1) not dangerous; (2) open and obvious to any person including the injured party; or (3) that the premises owner acted reasonably in attempting to safeguard the condition. While the injured person avoids the problems of having to prove the premises owner's knowledge of the condition, the injured person typically will have to utilize an expert to prove the condition is dangerous and that the premises of premises owner were not reasonably safe (i.e., at what width, height is a crack dangerous; how slippery is too slippery, etc.).

A third consideration is the size of the condition. One has to beware the open and obvious argument if the condition is too big (an injured party who claims not to have seen the Grand Canyon is not likely to prevail) and the argument that the condition is not dangerous if too small (a hairline crack in a sidewalk and/or a droplet of fluid on the floor).

To successfully pursue a premises injury case the injured person should have a "hard" injury so as to make the question of whether or not there was any injury a non-issue. In other areas of tort law, one can afford to litigate questionable damage claims because of the near certainty of establishing a defendant's fault. In a premises case, however, liability will be vigorously disputed, and one wants to avoid the situation where liability is proved, but the trier of fact decides there is not a significant injury.

In making the initial decision to undertake representation in a premises case, an attorney is almost always making such decision without benefit of an investigatory report (or if there is an investigatory report, it is generally authored by the prospective premises owner for purposes of litigation defense and not shared with the injured person). As a result, when the initial decision is made to take a premises case, the liability information is quite limited, and the injured party needs to be aware that the evidence to prove their claim may not be available.