**SLIP AND FALL CASES CAN BE SLIPPERY**

**BY: WILLIAM G. MORRIS, ESQ.**

Virtually everyone believes that a business must keep its premises safe for visitors. That is the general rule, as with so many things, the devil is in the details. A business is not a guarantor of safety.

In the mid-20th century, Florida courts required a business have actual or constructive knowledge that something slippery was on the floor before the business would have liability for slip and fall injury. Florida’s Supreme Court changed that rule in 2001 in the case of Owens v. Publix Super Markets, Inc. The Court ruled that when someone was injured by a slip and fall on a “transitory foreign substance” on the floor in a business, a rebuttable presumption is created that the premises owner did not properly maintain and inspect floors. A rebuttable presumption means the business was presumed negligent to begin with and had to introduce evidence to prove it was not negligent.

The business community was aghast and convinced the Legislature that change was needed. In 2002, the Legislature adopted Section 768.07101 Florida Statue which provided actual or constructive notice of a transitory foreign object was not required for the plaintiff to prevail, but that evidence of notice or lack of notice, could be considered together with all the evidence. That statute wasn’t enough for the business community and was abolished in 2010 when the Legislature adopted Section 768.0755 which now mandates a person suing for slip and fall on a transitory foreign substance in a business must prove the business had actual or constructive knowledge and should have taken action to remedy the dangerous condition.

The new statute goes on to provide that constructive knowledge may be proven by circumstantial evidence showing that (A) the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business should have known of it or (B) the condition occurred with regularity and was therefore foreseeable. The statute has been much appreciated by business defendants since its adoption.

Length of time something slippery has been on the floor is the focus of many. If the plaintiff can show the substance was on the floor long enough that the business should have discovered it, the door is open to a successful lawsuit. Let’s take a look at a few cases.

In Torres v. Wal-Mart Stores East, the court summarized Florida cases about how long the substance had been on the floor in other cases. Courts look to several factors, including evidence of footprints, prior track marks, changes in consistency or drying of the liquid. Courts also ask whether the offending liquid was dirty or scuffed.

Publix Super Markets, Inc. v. Safonte explained there is no bright line rule for how much time must elapse before constructive knowledge can be imputed to a business defendant. Courts apply a reasonableness test which can vary from case to case. It is likely a grocery store has greater duty to control and monitor its aisles than does a carpet store because of the greater opportunity for slippery substances to end up on the grocery store floor.

In one Publix case, the court ruled that a yogurt spill on the floor for 2 minutes had not been on the floor so long that the store should have discovered it. In Hussein v. Winn-Dixie, the evidence established Winn-Dixie mopped the floor 15 to 20 minutes before the plaintiff slipped on the yogurt. The court ruled 15 to 20 minutes was not enough time to put Winn-Dixie on notice.

In the Espinoza case, plaintiff slipped on milk. The plaintiff testified the milk was warm and not cold. The court ruled that was not enough to establish the milk had been on the floor long enough to provide the store with constructive knowledge.

Cases do not always favor the store. In one case, the plaintiff was injured by slipping and falling in water surrounding peas in the frozen food section of a Winn-Dixie. Winn-Dixie won at trial by getting the judge to direct the jury to find that the plaintiff could not win. The appellate court reversed explaining that the jury could have found the peas had been on the floor long enough to thaw or alternatively that some ice crystals on the outside of the container had melted quickly. If the peas had been on the floor long enough to thaw, Winn-Dixie could be liable. The case was sent back to the trial court for a new trial.

Investigation and development of evidence is important for both sides in a slip and fall case. In Publix v. Bellaiche, plaintiff slipped on some moisture and claimed Publix had actual knowledge because a Publix employee created the condition by wet mopping the floor and was standing nearby with a wet mop. Videotape showed the only janitor on duty was using a broom to clean and the Publix manager testified the store used dry mops for spot cleaning. The plaintiff’s $1.5 million trial verdict was reversed.

Plaintiffs focus on actual business or constructive knowledge of a foreign substance making the floor slippery. Businesses fight that but also attempt to prove the plaintiff should have been aware of whatever the plaintiff slipped on and therefore the plaintiff’s negligence was a big part of the plaintiff’s fall. If the jury agrees, plaintiff’s damages are reduced by the percentage the jury assigns as plaintiff’s comparative negligence. Under a law adopted in 2023, if the plaintiff’s negligence was more than 50% of all negligence causing injury, the plaintiff gets nothing.

Slip and fall cases are not automatic victories for plaintiffs. A plaintiff must prove injury. A plaintiff must also prove knowledge by the business of the slippery substance. Proving knowledge is often the Achilles heel of a plaintiff’s slip and fall case.

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