**BUSINESSES ARE NOT GUARANTORS AGAINST INJURY**

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

Today’s column addresses an old friend of personal injury lawyers: slip and fall in a business. Personal injury lawyers really like these cases for a number of reasons.

One reason is the duty a business owes to customers. A business invites customers to its business which makes those visitors invitees. A business owes invitees a duty to keep the premises in a reasonably safe condition. A business must also warn invitees of any dangerous condition that is not open and obvious. These duties combine to require businesses monitor their premises, especially when there is potential for something slippery to end up on the floor (i.e. a supermarket, restaurant or ice cream shop).

A second reason personal injury lawyers like these cases is because almost all businesses have insurance. That means there is a fund for recovery even if the business does not have much.

A third reason these cases are liked is injured people want to blame someone else for their injuries. Many also think their slip and fall opens the door to riches. That means they will pursue their case and contact a lawyer for help. They do not even have to research, as many personal injury lawyers have a large advertising budget for radio, internet and television ads encouraging the injured to contact them.

Many of the injured find out attorneys do not want their case. Their injuries are minor and recovery from the business would be too small for an attorney working on a percentage fee to be interested. Others find out the business may not even be liable or that the carelessness or negligence of the injured person was such a big part of causation that the business liability is too small.

A business is not liable at all in some cases. Sometimes the lawyer explains to the injured person that the business does not appear to have been negligent and is therefore not liable for the injury. A business is not liable for all injuries to people on its premises, but only those injured within a zone of foreseeability. The recent case of Morris (no relation to me) v. Capital City Bank is a good example.

In the Capital City case, Nicole Morris walked up to the bank’s 24-hour drive through ATM. The ATM had no sidewalk or pedestrian access and was designed for access by driving through. Nicole was walking to the ATM when she slipped and fell on an oil slick. She sued the bank.

The parties focused on Section (1) of 768.0755 (1) Fla. Stat. which provides if a person slips and falls on a transitory foreign substance in a business establishment, the person must prove that the business had actual or constructive knowledge and should have taken action to remedy it. Constructive knowledge may be proven by circumstantial evidence showing that the dangerous condition existed long enough that the business should have known of it or the condition occurred regularly and was therefore foreseeable.

The bank argued Nicole was not an invitee because the ATM was for use by cars and not pedestrians. The bank argued it had no duty to make the drive through safe for her and the trial judge agreed.

The appellate court ruled the trial judge got the right result but for the wrong reason. Section 2 of the statute provides the statute does not affect any common law duty of a business and it was that section that made the bank a winner on appeal.

The court explained that at common law, a property owner’s duty to those on their land varies depending on the person’s status while there. A person falls into one of 3 classifications: trespassers, licensees or invitees. The duty to a trespasser or licensee is to not willfully or wantonly injure or expose them to danger. For an invitee, the property owner must keep the property reasonably safe and protect the visitor from danger of which the property owner is or should be aware.

Florida’s business invitee test is the mutual benefit test or the economic benefit test. That means the injured person had a present business relation with the property owner which would make the person’s presence beneficial to both. The court explained that Nicole met the test for status as an invitee and moved on to analyze whether the bank breached its duty to keep the property reasonably safe and protect Nicole from danger of which the bank was or should have been aware.

The court continued explanation that the extent of the business owner’s duty to an invitee depends on the nature of the business to be conducted on the premises. There is a greater duty owed to customers when activity on premises is dangerous (i.e. amusement park) as opposed to more traditional businesses. But even operators of more dangerous businesses are not insurers that visitors will not be injured.

The record established the intended use of the place where Nicole was injured was a roadway for vehicles leading to the ATM. There was no pedestrian walkway. There was no invitation to access the ATM other than by vehicle. That meant the bank’s duty was to keep access safe for motor vehicle operation and not for pedestrian access.

The bank was entitled to believe a pedestrian would understand the obvious danger of walking in a roadway and would not have to give notice of the obvious danger. The bank also did not have a duty to make the area safe for pedestrians because the area was not intended to be used by pedestrians. Nicole lost at trial and on appeal.

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