Proving Fault in Slip and Fall Accidents

Many times it can be difficult in proving who is at fault for slip and fall accidents. Thousands of people each year are injured, many seriously, from slipping and falling on a floor, stairs or other surface that has become slick or dangerous. Indeed, even ground that has become uneven to a dangerous degree can lead to severe injuries. However, sometimes it may be difficult, if not impossible, to prove that the owner of the property is responsible for any slip and fall accidents.

If you or a loved one has been injured in a slip and fall accident, it may be tempting to seek out justice in the form of a lawsuit as soon as possible. However, you should always consider whether or not the accident was just a simple fact of life, something that, no matter how careful the property owner was, could not have been avoided. Even if a leaking roof leads to a slippery condition that you slip and fall on, the property owner may not be responsible for your injuries if there was a drainage grate in the floor designed to limit slippery conditions. In addition, property owners will not always be responsible for things that a reasonable person would have avoided, such as tripping over something that would normally be found in that location (like a leaf rake on a lawn in the fall). Every person has a responsibility to be aware of their surroundings and make efforts to avoid dangerous conditions.

However, this is not to say that property owners are never held responsible for the injuries of others that slipped and fell on their property. Indeed, although there is not a cut and dry rule, property owners still must take reasonable steps to ensure that their property is free from dangerous conditions that would cause a person to slip and fall. However, this reasonableness is often balanced against the care that the person that slipped and fell should have used. What follows are some guidelines that courts and insurance companies use when determining fault in slip and fall accidents.

Liability for Slip and Fall Accidents

If you have been injured in a slip and fall accident on someone else's property because of a dangerous condition, you will need to be able to show one of the following in order to have any chance of winning a case for your injuries:

- Either the owner of the premises or an employee of the owner should have known of the dangerous condition because another, "reasonable" person in his or her position would have known about the dangerous condition and fixed it.
- Either the owner of the premises or an employee of the owner actually did know about the dangerous condition but did not repair or fix it.
- Either the owner of the premises or an employee of the owner caused the dangerous condition (spill, worn spot, broken flooring…etc).

Because property owners are, in general, pretty good about the upkeep on their premises, the first situation is most often the one that is litigated in slip and fall accidents. However, the first situation is also the most tricky to prove because of the words "should have known." This can have different meanings to different people, even those hearing the same case. After presenting your evidence and arguments, it will be up to the judge or jury to decide whether the property owner should have known about the slippery step that caused you to fall.

Reasonableness

When you set about to show that a property owner is liable for the injuries you sustained in you slip and fall accident, you will most likely have to show, at some point, the reasonableness of the property owner's actions. In order to help you with this situation, here are some questions that you should be able to answer before starting a case:

- How long had the defect been present before your accident? In other words, if the leaking roof over the stairwell had been leaking for the past three months, then it was less reasonable for the owner to allow the leak to continue than if the leak had just started the night before and the landlord was only waiting for the rain to stop in order to fix it.

- What kinds of daily cleaning activities does the property owner engage in? If the property owner claims that he or she inspects the property daily, what kind of proof can he or she show to support this claim?
- If your slip and fall accident involved tripping over something that was left on the floor or in another place where you tripped on it, was there a legitimate reason for that object to be there?
- If your slip and fall accident involved tripping over something that was left on the floor that once had a legitimate reason for being there, did the legitimate reason still exist at the time of your accident? For example, tripping over a can of paint in a living room is probably not reasonable if the last time the room had been painted was over 2 years ago and the owner had no immediate plans to repaint the room.
- If your slip and fall accident involved tripping over something that was left on the floor has a legitimate reason for being there, could the object have been stored or placed in a way that would lessen the likelihood of someone tripping over it?
- What kinds of precautions could a property owner have taken to lessen the likelihood of someone being involved in a trip and fall accident on his or her property? The less burdensome the precaution (say, a simple plastic fence), the less reasonable it was to not take the precaution.
- Was there a problem with any of the surroundings (surroundings also under the control of the property owner) that contributed to the accident? For example, you tripped on a slippery staircase that had no working light bulbs illuminating the staircase.

If you can answer any of the questions above in a way that favors your slip and fall claim, you may have a chance of succeeding in your lawsuit. However, you still must take into account whether any of your own clumsiness/carelessness contributed to your accident.

Carelessness/Clumsiness

Most states follow the rule of comparative negligence when it comes to slip and fall accidents. This means that if you, in some way, contributed to your own accident (for example, you were talking on your cell phone and not paying attention to a warning sign), your award for your injuries and other damages may be lessened by the amount that you were comparatively at fault (this percentage is determined by a judge or jury). Like finding out the liability of the property owner, there are some questions that you can ask of yourself to estimate how likely it is that you will be found to be comparatively negligent:

- Did you have a good and legitimate reason for being on the property owner's premises when the accident happened? Should the owner have anticipated you, or someone in a similar situation to you, being there?
- Would person of reasonable caution in the same situation have noticed and avoided the dangerous condition, or handled the condition in a way that would have lessened the chances of slipping and falling (for example, holding onto the handrail while going down icy stairs)?
- Did the property owner erect a barrier or give warning of the dangerous condition that led to your slip and fall accident?
- Were you engaging in any activities that contributed to your slip and fall accident? Examples include: running around the edges of pools, texting while walking, jumping or skipping, attempting to ice skate while in your business shoes, etc.

If you have been talking with the insurance company about a possible settlement for your injuries, you will probably be asked many questions that are similar to these. Although you will not have to prove to the insurance company that you were extremely careful, you will probably have to show enough so that the insurance company can conclude that you were not acting negligently.

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