

DOCTOR NEWSLETTER NO. 7 : SLIP & FALL ACCIDENTS

IS THERE SUCH A THING AS A “GOOD” SLIP-FALL CASE?

In this edition of our newsletter we explore issues surrounding the slip and fall injury case. We are frequently informed that doctors are having difficulty in securing representation for their patients in cases involving these types of personal injuries. Also, we are often asked, what makes these cases so undesirable, and what are the factors making some cases better than others. We have provided a basic outline of what standard these personal injury cases are held to, and have provided useful data to determine if the case is good or not. For more information on any items contained within this newsletter, please feel free to contact our office at (818) 547-6650.

DISCUSSION

One of the reasons many law offices do not accept slip and fall cases is due to the additional restrictions imposed under the California Law. For many states, as long as you can satisfy a basic negligence standard, your claim will be actionable. In California, in addition to establishing each of the elements of a negligence case, the following conditions must each be met.

DANGEROUSLY DEFECTIVE CONDITION

It is possible for a defect to exist on the premises of a land owner, which is not so defective as to be considered “dangerous”, and is referred to as a “trivial defect.” In the event the defect is trivial in nature, there will be no liability on the part of the land owner. “...it is impossible to maintain heavily traveled surfaces in a perfect condition and minor defects such as differences in elevation are bound to occur in spite of the exercise of reasonable care by the party having the duty of maintaining the area involved.” *Ursino v. Big Boy Restaurants*, 192 Cal.App.3d 394.

Examples of this might include tripping over raised tile, or root-broken sidewalk. The courts have held specifically that changes in elevation less than three-fourths of an inch are not actionable.

CONDITION MUST NOT BE “OPEN AND OBVIOUS”

Even if the condition can be categorized as “dangerously defective”, if the condition is one where the danger can or should be appreciated by the plaintiff, there will be no liability. “[The property owner] is not liable for injury to an invitee resulting from a danger which was obvious or should have been observed in the exercise of reasonable care.” *Edwards v. California Sports, Inc.* 206 Cal.App.3d 1289, *Beauchamp v. Los Gatos Golf Course* 273 Cal.App.2d 20. Examples of this might include, a plaintiff tripping over a pallet of merchandise left in the middle of a store, or tripping over a parking curb stop in a parking lot.

REQUIREMENT OF “NOTICE”

In order for a plaintiff to prevail, it must first be shown that the defendant had notice of the dangerous condition. “The owner of premises is not negligent and is not liable for any injury suffered by a person on the premises which resulted from a dangerous or defective condition of which the owner had no knowledge, unless the condition existed for such a length of time that if the owner had exercised reasonable care in inspecting the

premises the owner would have discovered the condition in time to remedy it or to give warning before the injury occurred.” BAJI 8.20, *Ortega v. Kmart Corp.* 83 Cal.App.4th 175.

For Example: The notice requirement would be met where a party was injured by slipping and falling in a supermarket spill, where sweep sheets and security camera footage show that the last inspection was made more than an hour before the spill. The notice requirement would not be met if that party slipped in the same spill, less than one-hour after its occurrence. This is due to the fact that most cases in California apply a “one-hour” standard of care to shopkeepers. In other words, if you allow something dangerous to remain on your premises for longer than an hour, you did not act as a reasonable prudent shopkeeper and thus have breached your duty of care to the injured patron.

ADDITIONAL CONSIDERATIONS ON SLIP AND FALL CASES

The pursuit of slip and fall cases can at times be very lucrative, and at others be very time consuming, with little to no return. For that reason it is important to immediately attempt to secure competent representation for all of your patients that present injuries sustained in a slip and fall incident.

EARLY REPRESENTATION ESSENTIAL

By securing early representation for your patients, you are given the best possible chance of the case being a success. Without early representation, evidence may be lost, or altered, only to be discovered after the patient has completed a lengthy course of treatment and the doctor has relied on the case coming to a successful lien resolution.

Additionally, by involving counsel early in the treatment stage of the patient, you can be informed whether or not the case is believed to be capable of a successful resolution, or whether it suffers from a fatal defect which will guarantee that your bills will not be paid. In the past, our firm has often been able to inform the treating doctor of the existence of premises “Med-Pay” coverage, even where the case itself has not been that strong.

EVIDENCE PRESERVATION

It was earlier mentioned that an incident might not result in a successful personal injury case, depending on the time elapsed between inspections or sweep sheets. There are methods to secure evidence that competent counsel might be able to use that would not be familiar to doctor or patient. One such method in a storekeeper situation might be to dispatch a representative to the premises. If acted upon quickly, photographic or other evidence of the inspections may be obtained before the record is “cleaned up” as is often times the case.

MEDICAL PAYMENTS COVERAGE

Many doctors are not aware that the vast majority of stores have insurance policies that provide Medical Payments, or “Med Pay,” for personal injuries occurring on the premises. In the event that the case may not be entirely favorable, there still may be an opportunity for the doctor to be compensated for treatment rendered to the patient.

COMPETENT TRUSTWORTHY COUNSEL

Given the fact-intensive nature of slip and fall claims and the possibility of litigation, it is important that you secure competent counsel for your lien patients, in order that they receive the best representation possible. This contributes to the ability of the patient to receive full redress for his or her injuries and promotes the overall success of the claim. In seeking to assist the patient in his or her success, this should not be done to the detriment of the treating physician. After all, what good does it do you, to initially examine the patient and refer them to competent counsel, only to have that attorney tell the patient that he needs to be treating with a medical doctor or his claim will not be taken seriously?

Our office has earned a reputation within the Chiropractic community as being hard-working, competent and trustworthy, without interfering with the doctor-patient relationship. We look forward to being able to assist your lien patients in their pursuit of personal injury recovery, as well as keep you informed with an open line of communication.

From this experience, we know how important it is for you to have access to fast and reliable information about your patients' claims, including information regarding protection of your lien rights for treatment provided.

To improve even further the level of communication with your office we have now instituted a process whereby we can conduct an "audit" of the cases referred to us by your office, and provide detailed information about status of claims and amounts of bills paid. We will issue periodic reports. We look forward to a closer and even better working relationship during the years to come!