Latest Slip and Fall New York Injury Cases - 2 out of 3 Dismissed Before Trial

Posted on May 12, 2009 by John Hochfelder

Slip and fall injury cases in New York are quite common. They are also among the most difficult to win for the injured party. All three cases in the **latest round of slip and fall trial court decisions released in New York** are from accidents in the winter of 2006-2007. Two were dismissed on motions for summary judgment by the defense and only one is being permitted to proceed to trial.

In **Officer v. 450 Park LLC**, a woman arrived at work just before 9 a.m. on February 14, 2007, took a few steps into the lobby of her building and promptly slipped and fell on the marble floor **severely injuring her shoulder**.

Building lobbies, with marble floors, are the subject of two new cases:

In her ensuing lawsuit against the building owner and manager, she claimed that on this wet, snowy, rainy day there should have been a safety mat by the entry door to prevent her fall.

In dismissing Ms. Officer's case (after depositions were held but before trial), the judge noted:

- video and still film supported the security guard's statement that mats were placed at the two entrance doors
- plaintiff did not know where she fell: whether on a mat or the marble
- defendant had mopped the floor 20 minutes before plaintiff fell

There is no legal requirement that property owners provide a constant remedy to the problem of water being tracked into a building in rainy weather; nor is there an obligation to continually mop up all tracked in water. And in general there's no obligation to put down floor mats when it rains.

To win a case like this, a plaintiff must show:

1. the defendant caused or created the dangerous condition or

2. had actual (someone told him) notice of the dangerous condition (the wet floor) or
3. had constructive notice - i.e., the condition was present for a long enough time that the defendant should have known about it and had time to correct it.

It's extremely rare that plaintiffs ever prove a defendant caused or created a dangerous condition in a slip and fall case and it's nonexistent in tracked-in rainwater cases. Actual notice is also rare - only a few times in many years of practice have I had a case in which evidence was uncovered of someone actually telling the premises owner of a dangerous condition before my client fell. So, **we are almost always left trying to win slip and fall cases using constructive notice as a basis for liability.**

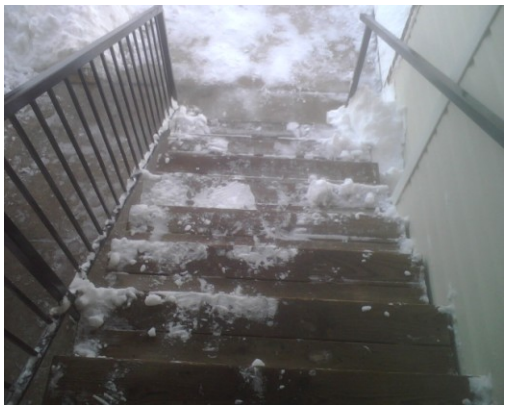
In the Officer case, the judge held that the defendant knew of the dangerous condition before plaintiff fell but no liability was possible because the judge said that the defendant took reasonable steps for the safety of its customers - it placed mats down and mopped the floor.

In a similar case, **Brenowitz v. Commerce Bancorp**, a woman slipped and fell on a wet marble floor at the defendant bank at 2 Wall Street in Manhattan on a rainy day - December 1, 2006. She **fractured her wrist** and sued the bank claiming that liability should be imposed because the bank's marble floor was unusually slippery and dangerous when wet. In dismissing her case, the judge noted that the bank neither created the wet condition, nor did it have actual or even constructive notice of it. In any event, the decision notes, the bank had umbrella stands available, a porter who would mop when the floor was wet (and he was not advised to do so that day) and the entrance area was carpeted.

Umbrella stands can help property owners win in slip and fall cases:

The one new case that's being permitted to go to trial is **Stellman v. New York City Transit Authority**. In that case, on February 15, 2007 (the day after Ms. Officer fell - see above case), a man slipped and fell on ice that had formed on the steps of a city subway station at West 86th Street.

Here's what the **icy steps** may have looked like for Mr. Stellman:



His claim against the city was that its employees knew or should have known of the ice formation because snow and freezing rain from the day before ended 15 hours before Mr. Stellman's fall. Since there was no new snow or ice after that and since the temperature did not rise above 30 degrees once the snow and rain stopped, plaintiff (through an expert in meteorology) showed to the court's satisfaction that the city's employees had enough time to clear up the ice so as to prevent plaintiff's fall. The plaintiff did not thereby win his case. He simply survived the defendant's motion for a dismissal at this early stage and he's now allowed to proceed to trial. There, the jury will hear testimony, see exhibits and determine for itself whether or not to impose liability against the city.

Slip and fall cases - especially those arising from wet floor or stair surfaces - often result in very serious injuries such as hip fractures, wrist fractures and shoulder injuries. **Injured parties often think that simply because they fell on someone else's property which was dangerously wet there must be liability against the property owner. Not so. Not even close.**

The law is very much in favor of the property owner in these cases and there are several hurdles (such as the **"notice" requirements**) that a plaintiff must jump merely to be allowed to present his case to a jury. Even then, of course, the verdict may be in favor of the defense.

The three recent cases discussed herein are well in line with the **trend in New York favoring the defense in slip and fall cases.** Both injured parties and their lawyers should be guided accordingly and approach these cases with caution and a realistic view of their chances of success.