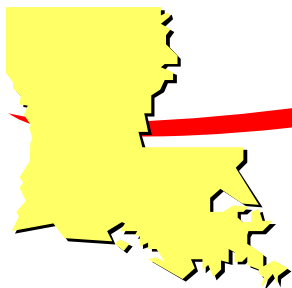


LOUISIANA PREMISES LIABILITY UPDATE

TAYLOR, WELLONS,
POLITZ & DUHE,
APLC



NEW ORLEANS ♦ BATON ROUGE

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INTRODUCTION

This newsletter, which is published quarterly, is designed to provide you with a brief synopsis of recent cases that analyze issues of interest to our clients with potential premises liability concerns. For your convenience, we have organized the cases based on the type of claim. If you need more information, please contact us.

SLIP AND FALL - OUTSIDE

Ellis v. Louisiana-I Gaming, 2006 WL 1071954, 05-0993 (La. App 5 Cir. 04/25/06)

While exiting the defendant casino's courtesy shuttle bus on a dark rainy night, the plaintiff slipped and fell in the casino's parking lot. While the steps were wet from the rain, there was no debris or obstruction, and two other passengers exited without incident in front of her and one behind. The plaintiff acknowledged that her shoes were wet. She argued that the casino owed her the highest duty of care since she was a passenger on a common carrier. The appellate court examined the statutory definition of a common carrier and determined that since the casino did not offer transportation for hire available to the public generally, the bus did not meet that requirement, and therefore, the defendant owed its passengers only an ordinary duty of care. In her deposition, plaintiff admitted that she did not know what caused her to fall, but in her opposition to the defendant's motion for summary judgment she raised a number of questions about the conditions - whether the steps were slip or skid resistant and whether the lighting was adequate. The court found that it was not sufficient for the plaintiff to simply raise questions; she had to provide factual support sufficient to sustain her burden of proof at trial. The fact that she slipped because her shoes were wet on a rainy night did not make the casino liable. Accordingly, the appellate court affirmed the granting of the summary judgment.

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SLIP AND FALL - INSIDE

Roberts V. Hartford Fire Insurance Co., 926 So.2d 121, 05-1178 (La. App 3 Cir. 04/05/06), writ denied, 2006 WL 1736355, 06-1056 (La. 06/23/06)

The plaintiff slipped and fell in a puddle of water in the store's bakery department. She testified that prior to her fall she did not see any wet floor signs in the area. A nearby shopper saw the puddle after the fall and stated that it was clear and clean with no foot prints or cart tracks. The plaintiff's husband agreed and further acknowledged that he did not know how long the puddle had been there. An employee working in the department testified that due to a recent hurricane, the roof leaked, and there were wet floor signs throughout the department. She had not seen the puddle prior the plaintiff's accident and estimated that it was approximately 12 x 16 inches. When the assistant manager on duty investigated, he discovered a clogged drain had caused the problem. He also testified that the puddle was undisturbed, and in his fifteen years with the company this was the first drain problem in the store. The trial court held that the merchant liability statute was inapplicable since the fall resulted from a defect "in the premises," not "on the premises," and therefore the store's liability was governed by 2317.1. The appellate court reversed, finding that to be legal error and holding that the store's liability should be analyzed only under 9:2800.6 since it was the more specific of the two statutes. Moreover, the court specifically held that "the application of any other law was a reversible error of law." After reviewing the evidence, the court found there was no allegation that the store created the puddle or had actual notice of it and could be held liable only if it had constructive notice. There was no evidence as to how long the puddle had existed, and based on its size, and the fact that it was "clear and clean," it had not been there for such a period of time that the defendant should have discovered it in the exercise of ordinary care and rendered judgment in favor of the store.

Hernandez v. Wall-Mart Stores, Inc., 2006 WL 1071876, 05-0921 (La. App 5 Cir. 04/25/06)

After shopping in the plaintiff's produce section for approximately fifteen minutes, the plaintiff slipped and fell allegedly due to a saturated rug in the area. She did not notice any debris or water on the floor before she fell. There were two employees working in the area, but neither warned her of any hazardous conditions. The plaintiff introduced notes from the store's loss prevention meetings, which acknowledged that customer accidents were "out of control." A friend shopping with her also testified that there was water all over the floor, which she believed was from the store's misting system. The store's manager testified that the mister sprayed only the produce, and there were rubber mats over a non-slip tile surface in the produce area. He acknowledged, however, that customers sometimes dripped water on the floor when obtaining the produce. The court held that the testimony of the manager and the safety reports did not satisfy the plaintiff's burden of constructive notice at the time of her accident. There was no evidence as to how long any water on the floor had been there, and the court noted the plaintiff's failure to call as witnesses the two employees and affirmed the trial judge's decision to grant an involuntary dismissal.

TRIP AND FALL - INSIDE

Attaway v. Albertsons Inc., 2006 WL 905933 (5th Cir. (La.) 04/06/06)

Plaintiff alleged that she tripped and fell on a wrinkle or fold in a floor mat in the defendant's store and sustained significant injuries. She alleged that the store was negligent by using an old and worn mat that would not lay flat. The district court granted the defendant's motion for summary judgment, and the U.S. Fifth Circuit affirmed. Plaintiff admitted that she never saw a wrinkle or fold in the mat either before or after she fell and presented no evidence that anyone saw such a condition in the mat before her accident. The court found that a mat by the door of a retail establishment was not an inherently dangerous condition, and that a store's failure to place mats near an exit could subject the store to liability when it was raining. Because the plaintiff presented no evidence that the store had actual or constructive notice of the alleged condition, plaintiff had not met her burden of proof, and her evidence consisted only of speculation and conclusory statements. (Please note that the Fifth Circuit did not select this case for publication.)

Taylor v. Wal-Mart Stores, Inc., 2006 WL 1476031 (W.D. La. 05/23/06)

While shopping in the defendant's store, the plaintiff tripped and fell over a pallet full of merchandise located in the middle of a shopping aisle. The plaintiff claimed the pallet created an unreasonable risk of harm and that the store had failed to warn its customers of the danger. Citing only the merchant liability statute, the court found that a potentially dangerous condition that was open and obvious was not unreasonably dangerous, and a merchant had no duty to protect against it. Moreover, a pallet did not pose an inherent risk of harm. Furthermore, a pallet filled with merchandise was a condition a customer would reasonably expect to find, and there was no dispute that the pallet and its merchandise were plainly visible. Based on the plaintiff's own deposition testimony, the court granted the defendant's motion for summary judgment, concluding that her fall was the result of her failure to look while she was walking, and the pallet did not present an unreasonable risk of harm.

TRIP AND FALL - OUTSIDE

Leonard v. Ryan's Family Steak Houses, Inc., 2006 WL 1687515, 05-0775 (La. App 1 Cir. 06/21/06)

The seventy-five year old plaintiff left the defendant's restaurant and went to her car, which was parked in the handicapped area of the parking lot. She stepped onto the tire stop, which was not anchored. It moved, and she fell, sustaining multiple injuries. The trial court found for plaintiff and found her free of fault. Although it was disputed as to which parking space her car occupied, it was clear that two of the tire stops had been replaced and were misaligned. The plaintiff testified that the tire stop was so close to the sidewalk that she could not step between the curb and the tire stop and stepped on top of it rather than go around. The parking lot was cleared daily for debris, and the employee responsible would push any out of place car stop back into position, but he did not secure it, and the store did not have any specific policies with regards to the tire stops. The court determined that the utility of unanchored tire stop was minimal when compared to one that was anchored, while the likelihood and magnitude of harm for an unanchored tire stop was potentially great. The court further concluded that the unanchored tire stop was not an open and obvious hazard, but presented an unreasonable risk of harm, and the restaurant created the defect making the notice requirement inapplicable. In addition to finding the restaurant liable under the merchant liability statute, the trial court also found the restaurant liable pursuant to articles 2315, 2317 and 2317.1, which the appellate court held was a correct decision. Finally, the appellate court assessed the plaintiff with ten percent of the fault, finding that she was not in a hurry, she realized the tire stop was out of place and that given her age and physical condition, it was reasonable for her to take a few extra steps rather than stepping on the tire stop.

Barney v. Exxon Mobil Oil Corp., 2006 WL 1004979 (E.D. La. 04/17/06)

Plaintiff and her husband went to a gas station/convenient store to buy gas. While her husband pumped the gas, she went into the store to pay. When she returned, she stepped up onto the gas pump island, which was raised about six inches, then tripped on a one-quarter inch gap between the concrete and the metal edge of the island. The district court analyzed the defendant's liability under both 9:2800.6 and 2317.1, finding that under either, the plaintiff had the burden of proof to establish that the crack was unreasonably dangerous. The plaintiff acknowledged that the crack was "small" and "narrow" and that there was no elevation change between the edge of the concrete and the metal edge or lip. Plaintiff argued that simply because a one-quarter inch gap in a parking lot was not unreasonably dangerous, that conclusion did not apply to the island, which was more analogous to a step. She also stated she did not see the gap because she was watching for cars. The court agreed that the gasoline pump island was not the same as a parking lot, but that customers were far less likely to step on it since it was not necessary to do so to get gas. Therefore, the gravity and risk of harm was relatively low. The court also found that since the top of the island was a flat surface, an owner did not have a duty to repair every minor defect, such as the one at issue, and granted the defendant's summary judgment.

LIABILITY OF AN OWNER

Cook v. Kendrick, 2006 WL 1360157, 41,061 (La. App 2 Cir 05/19/06)

The twenty-two year old decedent spent the day before his death at the defendant's home drinking and taking narcotics. He went out for a while with another friend, returning around 2:00 a.m. when he "passed out." The friend attempted to get him to drink coffee, but he fell to the floor, where he was allowed to remain. A few hours later they called 911 when they were unable to rouse him and saw blood coming from his mouth. A subsequent autopsy showed Soma, cocaine, Valium, Xanax, methadone and Benadryl in his system. The coroner testified that it was the combination or interaction of the drugs which caused his death. His parents sued, and the jury found the homeowner to be 20% at fault, and the decedent 80%. The jury heard testimony that the defendant gave the decedent the Soma and allowed drugs and alcohol to be freely used in her home. The owner argued that she could not be liable because she had no duty to the decedent, but the appellate court noted that if the jury believed that the owner negligently contributed to his unconscious state from a drug overdose, she had placed him in peril and then would have had a duty to render assistance. Moreover, there had been a significant delay in obtaining assistance, and the court found that the jury could have concluded that her conduct was a breach of her duty. The court also affirmed the assessment of fault, finding that the decedent's actions were certainly responsible for his death, but there was no error in the jury's assessment of her conduct after she discovered him unconscious.

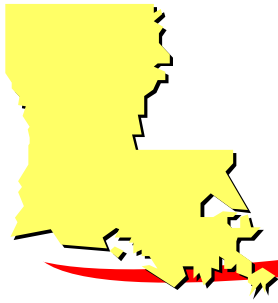
Roberson v. Lafayette Oilman's Sporting Clays Shoot, Inc., 928 So.2d 703, 05-1285 (La. App 3 Cir. 04/12/06)

The defendant, a non profit corporation, held an annual trap shooting event to raise money for scholarships at a local college. While preparing for the event, the defendant contacted the plaintiff to provide trap shooting equipment at the designated facility. In order to install the target-throwing equipment, the plaintiff had to use a wooden ladder on the trap tower. Both he and a representative for the defendant had climbed the ladder several times when the top rung dislodged, and the plaintiff fell approximately sixteen feet to the concrete surface below. The plaintiff claimed the wooden ladder presented an unreasonable risk of injury, and the defendant had a duty to inspect the ladder for defects prior to its use. The court found that the defective rung was not visibly apparent, and both men had ascended and descended the ladder several times prior to the accident. There was no indication the rung was rotten, loosely attached, or defective in any way, and the defendant did not use the property on a regular basis. The court found that the law did not impose a duty on the defendant, as a temporary lessee, to undertake any additional action and affirmed the granting of summary judgment.

LIABILITY OF AN OWNER

Evans v. City of Natchitoches, 927 So.2d. 608, 05-1278 (La. App 3 Cir. 04/05/06), writ denied, 2006 WL 1736217, 06-1039 (La. 06/23/06)

A child and her mother were walking home after school, and the two stepped onto the shoulder of the road in order to avoid traffic. The mother, who was a few feet in front of her eleven year old daughter, heard the girl scream and turned around to see her leg in a partially open manhole. The child was trapped by the heavy cover, but a neighbor came to their assistance and was able to extricate the child. The superintendent of the department testified that complaints were reported by either a secretary or the operator of the control room, and there were no reports of any problems at the manhole, no record of any work being done in that area, and no accident report. Another employee testified that secretaries did not fill out the forms, but referred them to the operator, and it was possible that if a call had been put into the wrong category, it might not be found. The neighbor testified that one or two weeks before the incident he saw two city employees working on the manhole and that employees were frequently in the area to bushhog. The court concluded that while the reporting system was well designed, it was not always implemented or followed and therefore, the fact that there was no record of any problem was not definitive. Moreover, the fact that neither the mother nor the child saw the partially open manhole before the accident did not render them at fault since they were far more concerned about oncoming traffic and should have been able to rely on the safety of the grassy shoulder. The Third Circuit affirmed the judgment against the City with no comparative fault on the part of the plaintiffs.



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