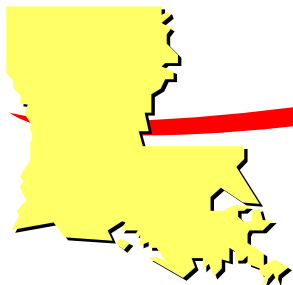


LOUISIANA PREMISES LIABILITY UPDATE

TAYLOR, WELLONS,
POLITZ & DUHE, APLC



NEW ORLEANS ♦ BATON ROUGE

JUNE 2007

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.

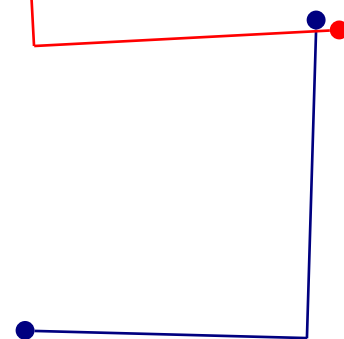
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SLIP AND FALL-INSIDE

Courville v. The Target Corporation of Minnesota, 2007 WL 1170859 (5th Cir. (La.) 04/17/07)

After paying for her purchases with a credit card, plaintiff was walking toward the exit in a high traffic area between the snack bar and the checkout lines when she slipped and fell in a puddle of clear liquid. The trial court granted the store's motion for summary judgment, but the Fifth Circuit reversed, finding that the plaintiff had raised material issues of fact. Plaintiff submitted the deposition testimony of a cashier who testified that, although she did not witness the accident, a cashier in that area should have been able to see the spill when a customer used a credit card to pay. Additionally, both the plaintiff and her daughter testified that the manager who assisted her after the spill admitted that store employees should have seen the spill and cleaned it up, although the manager denied making such a statement. The court found, however, that such an admission from a supervisor supported a finding of constructive notice on the part of the store. Finally, plaintiff testified that she purchased numerous items, but did not see the spill occur while she was standing in the checkout lane, which the court concluded was circumstantial evidence that the spill had existed prior to her approach to the checkout lane and since the spill occurred in a high traffic area, only a very short period of time would be necessary to discover it. (Please note that this case was not selected for publication).



SLIP AND FALL-INSIDE (continued)

Boyd v. Wal-Mart Stores, Inc., 2007 WL 1428688 (E.D. La. 05/10/07)

As plaintiff was leaving the defendant's store, she slipped and fell in a clear puddle of liquid. In opposition to the defendant's motion for summary judgment, the plaintiff argued that there were cashiers in the vicinity, but the court, quoting the statute, held that the mere presence of an employee was not sufficient. The plaintiff acknowledged that the puddle was about the size of a saucer, was difficult to see because it was clear and blended with the floor, and had no track marks in it when she fell. The manager who came to assist her acknowledged that there was liquid on the floor, but the court found that the presence of the liquid after the fall was not sufficient to establish the element of constructive notice, and the plaintiff had not set forth any circumstantial evidence that would allow the court to infer that the spill was present for some period of time before the plaintiff fell. Plaintiff argued that the issue was one for a jury, but the court disagreed, finding that plaintiff had not satisfied her burden of proof on the issue of constructive notice and that it was up to her to make a positive showing of the existence of the hazardous condition prior to her fall. Since plaintiff had not met that burden, the court granted summary judgment.

Pardue v. Shoney's, 2007 WL 1702786 (W.D. La. 06/11/07)

While dining at the defendant's restaurant, the plaintiff slipped and fell as she stepped from carpet onto a tiled area of the floor. After the fall, plaintiff had a two-and-a-half inch wet circle on her right knee. An employee witnessed the fall, placed a "wet floor" sign in the area, and helped the plaintiff to stand. Based on information obtained from the employee, the manager filled out an accident report indicating that the plaintiff caught her shoe in her pants leg, causing her to fall. The plaintiff argued there were genuine issues of material fact, citing the spot on her pants. Plaintiff also argued that employees were constantly in the area and should have seen the condition and cleaned it; the spill could have come from condensation from the nearby salad bar; or that something could have leaked from the salad bar. The court found that simply because there was an unidentified substance that caused a spot on her pants was not sufficient to prove that the restaurant created the condition that caused the fall or to establish either actual or constructive notice. The remainder of plaintiff's opposition was speculation, conjecture and theories, but no evidence. Plaintiff also claimed that the accident report deliberately misrepresented the circumstances of her fall. The manager acknowledged that she did not witness the fall and completed the report based on the statements of the employee, who no longer worked at the restaurant, and there was no affidavit or deposition testimony from that employee. Since the court did not rely on the accident report, the fact that the plaintiff disputed its contents was not sufficient to raise an issue of material fact, and the court granted the defendant's motion for summary judgment.

SLIP AND FALL-INSIDE (continued)

Lee v. Ryan's Family Steakhouses, Inc., 2007 WL 1299663, 06-1400 (La. App. 1 Cir. 05/04/07)

The plaintiff was involved in a slip-and-fall accident at the defendant's restaurant, which was recorded on videotape. The video showed an employee mopping a spill close to the food bars and a yellow cone being placed in the area. The employee bumped the cone while doing so, however, moving it one to two feet from its original position. The video then showed the plaintiff entering the area, but looking at the floor as she approached the bar, turning, looking down at the floor again, then falling. At trial she testified that as she approached the food bar she noticed the floor was somewhat slippery, and there was water on the floor. At trial, the judge determined that the restaurant did not exercise reasonable care because the cone was not specific enough. The court opined that the cone should have directional symbols indicating which area should not be traversed or that the restaurant should have "fenced" off that area, but the First Circuit reversed. The trial judge stated that he engaged in a "territorial" type of analysis with respect to the placement of the cone, but the appellate court cited the plaintiff's own testimony that she saw the water on the floor before she began walking through the wet area, making the placement and design of the cone irrelevant. The court specifically determined that the trial judge's requirement of directional symbols was unreasonable and that while it might have been prudent to place more than one cone in the area, it was unreasonable to require a merchant to have a supply of cones to explain the circumstances of every possible hazardous condition.

TRIP AND FALL-OUTSIDE

Benson v. Regional Transit Authority, 2007 WL 1063333 (E.D. La. 04/03/07)

While walking on Canal Street in New Orleans, the plaintiff stepped into an uncovered traffic light junction box hole owned by the City, injuring her foot. The hole was 13.5 by 13.5 inches and 11.5 inches deep, although there were plants growing inside it. The City filed a motion for summary judgment supported by its records of complaints about defective conditions, arguing that there were no such complaints in one year preceding the accident. The court denied the motion, finding that constructive notice was a contested issue of material fact and that based on the plant growth in the hole, as well as its location in a prominent public area, that the hole had been there for such a period of time that the City should have discovered its existence. The City also argued that the hole was open and obvious and therefore did not present an unreasonable risk of harm. The court disagreed and found that whether a defect was open and obvious was a factor to be weighed in the risk-utility balancing test, which was a matter for the trier of fact, as was the issue of the plaintiff's comparative fault.

TRIP AND FALL-OUTSIDE (continued)

Morgan v. City of Baton Rouge, 2007 WL 987395, 06-0158 (La. App. 1 Cir. 04/04/07)

As the plaintiff exited from her father's car, which he had pulled into a handicapped parking space, she tripped over a piece of wood serving as the expansion joint between the sidewalk and the curb causing her to fall and sustain injuries. The defendants acknowledged that the area was within their custody and control, but denied any actual or constructive knowledge of the alleged defect, and stipulated that they had not done any maintenance work at that site for two years and no redesign work in the five years preceding the fall. Plaintiff argued that since the accident occurred in a high-traffic area and in a handicapped zone, the defendants had constructive knowledge of the defect. The trial judge took judicial notice of the high volume of pedestrian traffic in the area and rendered judgment in favor of the plaintiff. On appeal, however, First Circuit reversed, finding that the defendants did not have constructive notice of the condition. The court cited the plaintiff's own testimony that her father had parked in the same parking space every week for the last two months, and she never saw any problem with the sidewalk, curb, or expansion joint. Photographs revealed a large paved sidewalk area in front of City Court with similar expansions joints, which appeared weathered, but not broken or likely to break. Moreover, despite the fact that hundreds of pedestrians used the area on a daily basis, there had been no other falls or repairs, and therefore there was no reasonable factual basis for the lower court's decision.

Monson v. Travelers Property & Casualty Insurance Co., 955 So.2d 758, 06-0921 (La. App. 5 Cir. 04/24/07)

After completing her purchases at the defendant's store, plaintiff moved her car to the edge of the parking lot, closer to the restaurant where she intended to meet her daughter. As she stepped over the parking lot curbing onto the grassy area between the curb and the sidewalk, she stepped into a hole and fell, injuring her leg. Although the store acknowledged that it was responsible for maintaining that grassy area, it argued that it did not breach any duty to the plaintiff because pedestrian walkways were available, and the area was never intended to be used as a walkway to a restaurant across the street. The plaintiff acknowledged that there were spaces available at the restaurant's parking lot, but she did not want to park her car there because she believed it might be hit. Plaintiff argued that the hole she stepped in had been created by the store when it moved trees and shrubs in the area, and the appellate court agreed that if the merchant had created the holes and failed to cover them that condition could rise to an unreasonable risk of harm. The plaintiff, however, failed to support that assertion with any evidence, submitting only photographs of the holes with trash in the area. Her theory that the merchant created the holes was nothing more than speculation, and the court affirmed the granting of summary judgment.

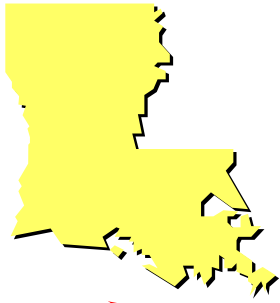
LIABILITY OF AN OWNER

Blackledge v. Font, 2007 WL 858857, 06-1092 (La. App. 1 Cir. 03/23/07)

A group of teenagers met at the defendant's home for a party to celebrate the end of exams. The defendant-parents would be working that day, but allowed their son to have a group of three or four come to their home that morning after the tests ended. More individuals arrived at the home, however, including the plaintiff who was transported by his mother. Although she was led to believe that there would be adult supervision, she made no attempt to verify that fact. During a game of two-on-two basketball, the game became physically rough with heated words and "trash talk," until without warning, a guest punched the plaintiff in the face. The plaintiff fell to the ground, hitting his head on the concrete, sustaining a serious head injury. The defendants filed a motion for summary judgment, which was granted and affirmed. The court reasoned that there was no statutory authority or jurisprudence imposing a duty on a homeowner to control a guests' unexpected criminal action toward another guest. The testimony of those at the party revealed that no one had any reason to anticipate the boy's violent behavior, and no one could have stopped the attack because it happened so fast. There was no evidence that the perpetrator had a history of violent or unruly behavior, and he acknowledged that it was simply an impulsive act. The plaintiffs argued that the defendants breached their duty to supervise their son's party, but the court noted that there was no evidence that the defendants voluntarily agreed to assume control of the plaintiff's child. Moreover, the cause-in-fact of the injury was not the absence of the parents, but the punch, which could not have been prevented even with adult supervision. Accordingly, the court determined that since the cause-in-fact element was missing, it was unnecessary to determine whether the defendants had a duty to supervise their son's party.

Ambrose v. McLaney, 2007 WL 1574974, 06-1181 (La. App. 4 Cir. 05/16/07)

Plaintiff and her family rented the upstairs unit of a duplex. The only access to the unit was an exterior flight of steps that were in a dilapidated condition, and many of them had plywood covers that were loose. The handrail for the steps was also loose, and the plaintiff did not use it for that reason. After living there approximately eleven months, the plaintiff fell while descending the steps. At trial, the court held the landlord solely responsible for the plaintiff's injuries, and the Fourth Circuit affirmed. The evidence established that the plaintiff and her family had complained several times about the condition of the steps, but the owner did not repair them until the year after the accident occurred. The landlord argued, however, that the condition of the steps was open and obvious, and the plaintiff had traversed the stairs hundreds of times in the preceding months without incident, therefore the steps did not constitute an unreasonable risk of harm. The court disagreed, finding that in order to avoid liability the condition must be open and obvious and easily avoidable. Since the stairway was the only means of access to the apartment and the owner had made no attempt to repair it, the court concluded that the steps constituted an unreasonable risk of harm. The owner cited the same reasons to support her claim that plaintiff should have been cited with some comparative fault. The plaintiff acknowledged that she knew of the condition of the steps, but the court found that since she had no way to avoid the steps, and she was not in a hurry, it was not erroneous to find the owner solely responsible.



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