

December 2002

www.atla.org

TRIAL

Journal of the Association of Trial Lawyers of America

Premises liability



**The 'Eureka!' moment:
Five lawyers tell how they won**

Annual index

APARTMENT

15
SOUTH THIRD
STREET



Experts put your slip-and-fall case on solid ground

The right witnesses can explain why the owner was at fault when your client fell.

Robert T. Karns

Proving liability in slip-and-fall cases can be difficult. A case often comes down to the plaintiff's credibility—why did he or she fall when no one else did? The right experts and other witnesses can help you find the evidence you need.

Just as you rely on your office team of secretaries, paralegals, and associates, you must also have a team of experts you can rely on. It may be too expensive to employ these experts full-time, but you should have a network of professionals who can help you screen your cases and develop those you think are viable. The experts you use might include an investigator, a structural engineer, trade experts, and a weather-reporting company. Setting up a long-term, volume-based arrangement with an investigator and an engineer can help keep costs reasonable.

Robert T. Karns practices law in Middletown, Rhode Island.

In addition to professional experts, lay witnesses can provide valuable evidence to help prove a case.

Start your investigation by visiting the place where the potential client fell. If you get the case early enough, before the premises owner has taken corrective action, go to the scene—with the plaintiff, if possible—to see what happened, and start to decide whether you have a viable case.

For example, in a recent case, a young woman fell on a carpeted, common stairway in her apartment house and fractured her wrist. She thought she had caught her heel on a tear in the carpet.

When we went to the scene, we saw that the carpet was split over the top of many of the treads. Although the carpet was new, it was not designed to be stretched and bent over the stair treads and risers. This created a hazardous condition in the building and probably caused her fall.

Seeing in person how outrageous the situation was helped establish notice. I also documented that the stairway was the only way out of the building.

Bring in your team

After visiting the scene, start using your group of experts to continue the investigation and develop the case.

The investigator. This will be your most important source. A professional investigator is more adept at talking with people and getting information from them. He or she can often gather critical information that you would not be able to get. Always have the investigator try to talk to people who were at the scene of the incident to see if they will help.

In one case, a woman fell when she stepped in a pool of water near a store's cash register, fracturing her ankle. My investigator went to the scene and interviewed the cashier. Store employees are fre-

quently reluctant to cooperate, but the cashier in this case was willing to describe the puddle and its source. She also said that she had been too busy at the register to clean it up, and she asked her manager for help but did not receive it.

In another case, my investigator interviewed a witness who was with the plaintiff when she fell in a pool of water outside a store bathroom. The witness identified each employee who came to help, especially a young woman who had not been identified in discovery and who wiped the area with many paper towels. The investigator learned from her that she had used two rolls of paper towels to clean the area, showing how much water had accumulated on the floor.

In another case involving a fall in a restroom, the investigator found that poor design created the hazardous area: The sink was across the room from the hand dryer, and there were no paper towels. This meant that after patrons washed their hands, they had to cross the room to the dryer, dripping water on the floor.

The structural engineer. A structural engineer who is an expert in local and state building codes can often spot violations that indicate property-owner negligence.

For example, common areas, hallways, and stairways must have an accessible light switch convenient for all to use. If the building has more than a certain number of units, then the lights in these common areas must be on 24 hours a day. If someone falls because of darkness, the engineer can go to the site, establish the applicable building-code violation, and help prove the plaintiff's case.

The engineer can also find countless other types of building-code violations to establish negligence, including missing railings, disproportionate stairway-riser height or tread width, lack of gutters or downspouts, structural defects or weak stairways, and holes or protrusions. The engineer can document all these problems with photographs and references to the code violations in his or her report.

A recent case involved several problems. The plaintiff slipped and fell on ice in a dark stairway outside her father's apartment house and broke her leg. The engineer discovered that the three-unit building had no

You can use weather reports to show wind speed in a case involving flying debris or the amount of rain in a case involving a slip in a puddle caused by a leaky roof.

gutters or downspouts, which caused water to collect on the external stairway and freeze. He also determined that the external stairway was the only way in and out of the third-story apartment; that the stairwell light was off when the incident occurred; and that the only light switch was in the landlord's first-floor apartment. Also, the stairway had a railing on only one side, and it was blocked by a mailbox; the stairway's risers were too high; and its treads were too wide. Every one of these problems violated local and state building codes and contributed to the fall.

The engineer's photos, measurements, and diagrams transformed a slip-and-fall on ice into a more definitive case.

Trade experts. Often local tradespeople, such as plumbers or masons, can help you with expert reports and testimony.

For example, a mason provided pivotal information in a case involving a woman who fell on the sidewalk outside her apartment house and broke her leg. She tripped on a rise in the sidewalk where it met the bottom step of the building. The temperature was 20 degrees when she fell—the cold temperature made the cement expand and buckle, creating the rise that the plaintiff tripped over. When I visited the scene a few weeks later, the temperature was 45 degrees—not cold enough to buckle the sidewalk—so I did not see the problem.

I contacted a local mason, who investigated the scene, took pictures, and wrote a report. He indicated that the sidewalk did

not meet the local building code, which required a layer of gravel and then several inches of cement. This sidewalk was only a one-inch skim coat of cement over a solid brick walkway. This flaw contributed to the buckling when the temperature dropped below freezing. When the weather was warmer, the sidewalk would smooth back down, as it had when I saw it.

The mason also found the landlord's name carved in the sidewalk, with the date he had poured the cement over the bricks, proving that he knew how the walk was constructed.

Weather service. Although some states do not allow recovery for injuries from the natural accumulation of ice and snow, others, such as Rhode Island, do allow it if the landlord is given a reasonable amount of time to clear the area. In these cases, you must produce a weather report from a court-accepted service, such as the Northeast Regional Climate Center, describing the hourly precipitation, temperature, and other weather factors on the day of the incident. This will help show the amount of time the landlord had to clear the area after the snow or ice accumulated. You can also use weather reports to show wind speed in a case involving flying debris or the amount of rain in a case involving a slip in a puddle caused by a leaky roof.

Government agencies or military installations are reliable sources that are usually accepted by courts. A private weather-reporting company will need to be qualified as an expert before the court.

In addition to the scientific report, you may need a narrative description of the weather situation at the time of the incident. I often ask a local TV meteorologist to prepare the report and testify.

Find other sources

Locate and interview witnesses who saw the fall as soon as possible. They can often provide valuable information to help you develop your case.

Lay witnesses. This point is worth repeating: You must find all the witnesses who would have knowledge of the situation and interview them fully to develop the evidence.

In a recent case involving a woman who

went with her friends from the assisted-living home where she lived to a musical show and lunch at a local restaurant, lay witnesses were important. Interviews of the plaintiff's friends revealed that the restaurant staff had moved tables onto the wooden dance floor beyond the carpeted dining area. After lunch, the servers hurried to clear the plates and serve dessert so the show could start on time. Many witnesses said that some servers dropped plates in their hurry and spilled food on the floor. The plaintiff slipped on a pile of mashed potatoes and injured her hip. Witnesses' accounts provided the key to showing the restaurant's negligence.

In another case, an employee fell in an office building. By interviewing the janitor on duty at the time of the fall, I found that no one had switched the timer on the stairway light to account for daylight saving time. When the plaintiff left his office, the stairway light went out as he was halfway down the stairs, causing him to fall and suffer a serious head injury. The janitor's testimony was imperative, because the plaintiff was in a coma for a time and later had no memory of the incident.

Medical witnesses. Some of the best witnesses are the paramedics who treated the plaintiff on the scene. They may remember details that can help prove your case.

For instance, I represented a non-English-speaking Haitian woman who fell in a convenience store on what she described to an interpreter as a "slippery substance." She sustained a fractured femur that protruded from her thigh. The injury was especially difficult because she was six months pregnant. She spent the night in traction and could have no pain medication until she was anesthetized for surgery the next day. She then had to spend the rest of her pregnancy in bed to stabilize the fractured femur, so she could not take care of her other child.

I received the case two years after the accident. The store manager denied that any slippery substance had been on the floor. Employees who had witnessed the fall no longer worked at the store. My client was my only witness.

The ambulance report simply indicated the injury and transport to the hospital. However, during interviews and later depo-

sitions, the paramedics clearly remembered seeing a pallet of cooking oil cans and said that the pressure from the top row of cans had caused the bottom row to split and leak cooking oil on the floor.

Paramedics might also testify that the plaintiff's clothing was wet, indicating that the floor was wet, or that they saw a puddle of water on the floor. These are very important fact witnesses, besides being pain-and-suffering witnesses.

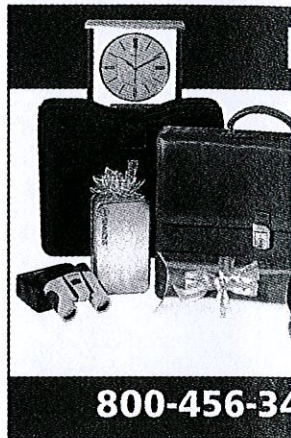
Inside sources. When a slip-and-fall happens on commercial premises, you may be able to obtain inside information to help your case.

For example, your client may be a worker who fell as a result of third-party negligence. Managers, fellow employees, and the workers' compensation carrier that wants its lien reimbursed will usually cooperate in your claim against the third party to help the injured worker. Your investigator should have no problem interviewing people who work for the same company as the injured worker.

I represented a waitress who fell in a hotel's stairway and had to have cervical surgery. The third-party cleaning company had mopped the greasy kitchen floor, and when my client walked down cement stairs to leave, she slipped and fell. Her coworkers and manager testified that the cleaning company had neglected to prevent greasy water from falling over the edge of the floor onto the stairs below, creating a hazard.

Occasionally, when a nonemployee falls in a store, he or she may know employees, whom your investigator can interview. Or the investigator may find other witnesses through conversations with store employees who were aware of the condition.

Slip-and-fall cases can cause serious injuries. Your main hurdle may be proving liability. Start at the scene to piece together what happened. Then call on your team of experts, including an engineer to look for code violations and an investigator to find and interview witnesses. In some cases, you will also need to add more specialized experts to your team, such as a weather-reporting service or building tradespeople. Build a Rolodex of experts you can rely on to evaluate your cases. □



800-456-34

Do Client

We provide 1
to plaintiffs ag
their personal i

• Lowest r

Note: Consider

• No monthl

• No paymen

• You and you

**We help clients
low settlement c**

Litigation Capi



taining

out

work
participation.



C.

vice

nel"
& Jenner

'740-4608

IS
TING



the book
Evidence
Jipson, Esq.
A.

and
edits!

180 ext 101
0-246-9900
.....\$99
.....\$99
.....\$99
.....\$99
.....\$49
.....only \$300
or more info.
per order.

Hills, CA 90210

on.com

IS

The Lawyers' Computer Games