FLANAGAN & BODENHEIMER

INJURY AND WRONGFUL DEATH LAW FIRM

PRACTICE SERIES

PRACTICE SERIES #1

ESTABLISHING CONSTRUCTIVE NOTICE IN SLIP AND FALL CASES

I remember attending a seminar for trial lawyers as a young attorney and leaving discouraged. The speakers were great, and I learned a lot, but there was a problem. Almost every person that presented talked about their cases that were high seven or eight figure damages cases. One speaker presented on a case involving a gas leak in a home that unfortunately resulted in a tragic explosion. I remember thinking to myself, “I’m glad the speaker got a big result on that case, but I don’t have any cases like that.” At that point in my career, I was handling what most attorneys would consider garden-variety premises liability and automobile crash cases.

When I got home from the seminar, I decided that instead of being discouraged, I would figure out how to maximize the value on the cases that I had. I wanted to make sure that every case I was handling was worked up the right way so that I could either try the case and get a victory or obtain a settlement that fairly compensated my client.

I will be the first to admit that I don't know it all. There are other attorneys out there that have practiced longer, tried more cases, and gotten bigger results. But I do believe that at our firm, we have done a very good job of figuring out how to maximize the value on the types of cases that every plaintiff's personal injury attorney has in their office. For example, in the last month, we resolved a slip and fall with a fractured arm for $600,000.00. There were no medical bills or liens to be repaid in that case. In the same month, we settled another slip and fall for $650,000.00. That case also involved a broken arm and there were less than $10,000.00 of medical bills or liens in that case. One case had a zero offer before filing a lawsuit and the other case had a pre-suit offer that was less than 5% of what we obtained at the end of the case.

The purpose of this newsletter series is to share some tips on how we litigate the cases that every attorney has in their inventory. Not everyone may have catastrophic injury cases in their office, but that doesn't mean you can't get big results on the cases you do have. We plan on keeping the newsletter short and sweet so that it can be read in less than ten minutes.

The first topic we want to discuss is how to establish constructive notice in slip and fall cases. If you are like me, when a potential new client calls or comes to the office to discuss a slip and fall case, one of the first things that pops into my mind is how am I going to prove notice. You have to be thinking about this from the outset of the case, because it is a dispositive issue that can kill your case at the summary judgment stage.

I'm sure most of you know that you can prove notice through the testimony of your client or another witness describing the characteristics of the spill or transitory foreign substance. A good recent case that gives a short summary of the law on this topic is *Norman v. DCI Biologicals Dunedin, LLC*, 301 So.3d 425 (Fla. 2d DCA 2020).

But what if your client's testimony about the characteristics of the spill doesn't establish constructive notice? Is the case still viable? In some circumstances, yes, it is.

The trick is to focus on the floor, and not the spill. In Florida, floors where customers walk need to be reasonably slip resistant, even when wet. If not, the floor violates building code and industry standards. There is a case called *Dudowicz v. Pearl on 63 Main, Ltd.*, 326 So.3d 715 (Fla. 1st DCA 2021) that every plaintiff's personal injury attorney needs to read. Essentially, the case states that if you prove that a flooring surface or a condition on the property where your client fell violated a building code, you have evidence of negligence.

So how do you prove that the floor violated code and constitutes a dangerous condition? You hire an expert that can test the floor with a tribometer, which is an instrument that measures slip resistance. If the floor is not reasonably slip resistant under wet conditions, it is dangerous.

Now you just need to show how long the floor existed at the property to establish notice. I would venture to say that in almost every case, the floor will have been present long enough to establish constructive notice.

When the defense moves for summary judgment claiming that your client can't establish how long the spill was on the floor before the fall, you make clear that the dangerous condition is the flooring surface, not the actual spill. You want to make sure you plead this in your complaint as well, so the defense won't claim surprise when you raise this argument.

You may also want to establish that the defendant knew that there would be spills at the property. Normally this can be done during the deposition of the defendant's fact witnesses or corporate representative. This is important because the dangerous condition is the floor when wet. Proving that the defendant knew the floor would get wet helps you prove that defendant had notice of the dangerous condition.

This is just one creative way to establish notice in a slip and fall case when the spill itself doesn't have the characteristics to establish notice. Our next newsletter will focus on another way the law allows plaintiffs to prove notice in these types of cases even when you can't prove how long the spill had been on the ground.

We hope this newsletter helps you in your practice. If you want to discuss any of the topics raised in the newsletter, or any other issues that you encounter in your practice, we would love to hear from you. You can email me at ZDB@Florida-Justice.com or call us at (305) 638-4143.