

DISCOVERY IN THE OUTDOOR SLIP AND FALL CASE

By Stephen C. Kaufman

Interrogatories, Requests for Production of Documents and depositions are important tools to use in putting together the outdoor slip and fall case. When representing the injured victim in these cases, the following areas require exploration:

1. The identity of the defendant parties. Typically there are four defendants to consider: the owner of the premises, the management company, the tenant and the snow removal company. Through discovery you can determine the identity of defendants you may not know at the time of filing the complaint.

2. Who was at fault. There may be an issue as to whose responsibility it was to make sure that ice or snow was removed from the area in which your client fell. If your client fell on the sidewalk, rather than the parking lot the snow removal company may contend that this was the management company's responsibility, while the management company may argue that it was the responsibility of either the tenant or the snow removal company. Also, remember that more than one of the defendants may have had a role in causing your client's injury, such that fault may be proportional amongst the defendants. For example, although the premises may have been plowed, the snow and ice were inadequately cleared such that the plow company was at fault for not doing a good job, and the management company was also responsible for not inspecting the premises and calling the plow company back to correct the hazardous situation. Accordingly, you will want to ask the defendants to describe their relationship with one another, to produce contracts and leases, and to set forth what actions were taken during the period in question and prior and subsequent thereto to remove snow and ice, the identities of the persons ordering the removal, the names of those persons actually involved with the removal, and the names of persons supervising the removal. Requesting logs, billings, and invoices may also be helpful.

3. Establishing liability. More often than not there will be a dispute over what

the condition of the premises was at the time of the fall, with the defendants denying that there was snow and ice present at all, or maintaining that the area was safe and had been cleared as well as it could have been cleared or contending there was insufficient time to remove the snow. Inasmuch as no photographs were probably taken on the day of the fall or soon thereafter due to the fact that your client was too hurt to consider taking such action, it will be necessary to establish the condition of the premises and liability in other ways. In addition to climatological data indicating snowfall and temperature on the day of the fall and the days prior thereto which you can obtain on your own, you will want to request from the defendants incident reports, witness statements, investigative reports, insurance files, prior and subsequent complaints and information as to other falls which occurred both before and after the fall in question. Recall that even subsequent complaints and falls are relevant and admissible on the issue of causation and to rebut allegations of comparative negligence. For this same reason you will want to find out what subsequent remedial measures were taken. You will also want to find out when the area of the fall was last cleared, salted or sanded and who was involved in ordering, supervising and performing the removal. Finally, although your client may not have been in a position to take photographs, one of the defendants or one of their insurance companies may have and you should make a request for them.

Your client's actual slip and fall may have been a simple, straight forward occurrence, taking but a split second to complete. Unfortunately, determining the party at fault and establishing its liability is not so clear and can take a year or more to litigate. Hopefully, this article will be of some help to the practitioner in assisting the injured victim in his or her quest for deserved compensation.

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