

Premises Liability

The Expert Approach

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PREMISES LIABILITY

INTRODUCTION

This document is intended to aid the attorney in evaluating, planning, initiating, and monitoring premises liability evaluations and investigations. Today, certain attorneys are experiencing a more restrictive business climate. An early liability assessment helps the attorney determine the business risk or benefits when undertaking a new matter. Depending upon the circumstances of the case, certain items listed may not be applicable or justifiable.

PREMISES ACCIDENT TYPES

As reported by the National Safety Council, the hazard of falling remains the leading cause of accidental death and injury after automobile accidents.

The name tags “slip” and “trip” are often interchanged in fall down accidents. “Slip” and “trip” have distinct forensic meanings concerning accident dynamics and premises conditions. Slip refers to the loss of traction of a foot or footwear on a walking surface. Trip refers to the unexpected interruption of movement of a foot or footwear on a walking surface. Walking surfaces include floors, walkways, stairways, land, ramps, etc.

In addition to falls, certain premises liability accidents may result from impact of objects, cuts from sharp objects, electrocutions, fires, and drowning. These incidents may be caused by improper design, construction or maintenance, and a failure to comply with relevant codes, standards or practices.

PREMISES ACCIDENT COMPONENTS

The conditions of a premises may be factors of an accident. Some of the details in the following should be considered when evaluating a premises condition. An investigation, with experts when warranted, should help determine the nature and cause of an accident to formulate reasonable theories. Details considered relevant when preliminary case theories are postulated may require expansion, as information becomes available.

- Access roads
- Bathrooms
- Bathtubs
- Cave-ins or collapses
- Chairs
- Change in elevation
- Curb ramps
- Curbs
- Debris
- Décor
- Deterioration
- Dips
- Displays
- Distractions
- Doors & exits
- Handicap ramps
- Hay rides
- Holes
- Ice
- Instructions
- Intersections
- Joints in pavements
- Ladders
- Landings
- Laundry equipment
- Leakage
- Lighting
- Loading docks
- Means of egress
- Merchandise, storage & stacking
- Sewers
- Sidewalks
- Sight distance
- Signs
- Single steps
- Slopes & grades
- Snow
- Soil conditions
- Spillage
- Sport courts and fields
- Stages
- Stairs: risers & treads
- Stones
- Storm drains
- Storm water & drainage

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- Door hardware
- Drainage
- Driveways
- Electrocutions
- Excavations
- Explosions
- Fasteners, nails & screws
- Fences & gates
- Flooding
- Floor coatings & polishes
- Floor openings
- Floors
- Footwear
- Fork lifts
- Glass in windows & doors
- Guards
- Obstructions
- Openings
- Pads
- Parking stall & aisle layout
- Pavement markings
- Pavements
- Pebbles
- Personal protective equipment
- Platforms
- Playground equipment
- Protrusions
- Railings
- Ramps
- Recreational rides
- Roof areas
- Scaffolds
- Subsidence
- Surface conditions
- Trees
- Trenches & shoring
- Underground utilities
- Walkways
- Walls
- Warnings
- Water lines
- Wheelchairs
- Wind
- Window screens
- Windows
- Workplace safety

ACCIDENT INVESTIGATION

An accident site is subject to change due to environmental/natural conditions, new construction or unauthorized alteration. Site conditions can change moments after an accident, or years later, or they can remain the same. A site investigation documents conditions that will be used to assist in determining the nature, cause and responsibility for an accident. A prompt, thorough investigation defines the accident site conditions, reduces assumptions and minimizes speculation.

When the attorney needs to appraise the nature and cause of an accident, often limited knowledge of the incident circumstances exists. Witnesses are sometimes confused and provide conflicting or erroneous information. Documenting the accident scene by measuring, mapping and photographing will help to assess the accident. Pertinent information must be carefully gathered and preserved for subsequent study, evaluation and evidence. When additional testing and analysis are warranted, the extent of an evaluation is often dependent upon securing evidence, before the evidence is altered, lost or destroyed.

When possible, attempt to SECURE evidence immediately following an incident and PRESERVE the evidence for future evaluation.

Information that can be determined from a site investigation may include the following:

- Broken components
- Clothing
- Contaminants
- Contradictory conditions
- Debris
- Footwear
- Lighting conditions
- Locations
- Measurements
- Newspaper photographs
- Photographs
- Shoe Marks on floors
- Witness statements

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Compare the secured or preserved information with the information collected from an accident site examination.

Environmental Conditions

- Day lighting
- Drainage
- Night lighting
- Weather records

Site Characteristics

- Contaminants
- Glass type
- Guardrail stability and location
- Holes
- Ice
- Joints in pavements
- Material types
- Means of egress
- Name plates
- Obstructions
- Signs
- Soil type
- Stormwater & drainage
- Subsidence
- Surface treatments
- Surface type
- Warnings
- Water sources

Measurements & Locations

- Change in elevations
- Curb heights
- Debris location
- Décor distractions
- Deteriorated areas
- Dips
- Drainage locations
- Fixed object locations
- Guard anchorage
- Guard height
- Handrail anchorage
- Handrail diameter
- Handrail heights
- Landing geometry
- Landing locations
- Layout of area
- Markings
- Overhead clearances
- Ramp slopes
- Riser heights
- Riser variations
- Sight distance
- Signage
- Slip resistance
- Slopes & grades
- Surface texture
- Surface unevenness
- Tread: effective depth
- Tread: full depths

For certain investigations testing and analysis of materials or conditions may be warranted. Testing and analysis may include:

- Air quality
- Chemical analysis
- Concrete testing
- Electrical grounding
- Electrical systems
- Failure analysis of materials
- Hydraulics
- Metal detection
- Slip resistance
- Soils testing
- Stability
- Steel strength
- Structural analysis
- X-Rays

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AMERICANS WITH DISABILITIES ACT (ADA) Public Law 101-336

The legislation to extend civil rights protection to people with disabilities, the Americans with Disabilities Act of 1990, prohibits discrimination on the basis of disability. The Act established civil rights protection in the areas including employment, state and local government services, public transportation, public accommodations, commercial facilities and telecommunications. The Act considers new construction, alterations to existing construction and historic preservation. The Act also considers the removal of existing physical barriers that are readily achievable or alternative steps that must be taken to make goods and services accessible. The following areas should be reviewed against the requirements of the Act to determine technical compliance. Particular attention should be given to accessibility including clearance (vertical and horizontal), slope, ground condition (stable, firm and slip-resistant) and signage.

- Alarms
- Assembly areas
- Automated teller machines
- Bathrooms
- Bathtubs
- Clearance
- Corridors
- Curb ramps
- Detectable warnings
- Doors & door hardware
- Door openings force
- Dressing & fitting rooms
- Drinking fountains
- Elevators
- Entrances
- Exits
- Exterior accessible routes
- Gates
- Grab bars
- Ground condition
- Guardrails
- Handrails
- Lobbies
- Parking
- Passenger loading zone
- Platform lifts
- Ramps
- Rooms
- Shower stalls
- Signage
- Slip resistance of surface
- Slope of surface
- Stability of surface
- Stairs
- Telephones
- Toilets & facilities

DISCOVERY REQUESTS

A history of the component(s) believed to be a factor related to an accident may be relevant to developing certain cases. From the inception of a construction project parties including architects, engineers, contractors, owners, and building code enforcement officers may have information relevant to the matter.

Based upon the case requirements, the following information may be requested as it is determined to be necessary for the development and support of the case:

Agreements, Leases & Contracts

- Approval agencies
- Architects
- Construction manager
- Developers
- Engineers
- General contractor
- Inspectors
- Joint ventures
- Landlord
- Maintenance
- Owners
- Project manager
- Realtor
- Subconsultants
- Subcontractors
- Tenant

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Building Code Enforcement File

- Approved drawings
- Code enforcement officer, identification
- Construction applications
- Construction permits
- Inspection forms
- Inspector, identification
- Notes
- Notices
- Occupancy permits
- Ordinances and statutes
- Variances
- Violations

Construction

- Accident investigations
- Accident reports
- As-built drawings
- Bid packages
- Change orders
- Codes, constructed under
- Construction manager, identification
- Construction packages
- Contractors, identification
- Daily reports
- Diaries
- Drawings
- Final construction drawings
- Foreman, identification
- Gate logs
- Inspection records
- Inspectors, identification
- Job meeting notes
- Job notes & records
- Job schedules
- Monthly reports
- OSHA file
- OSHA violations
- Person approving construction
- Person responsible for safety
- Photographs
- Project manager, identification
- Safety engineering, identification
- Safety file
- Safety manuals
- Safety meeting minutes
- Safety records
- Safety drawings
- Shop steward(s), identification
- Special reports & correspondence
- Specifications
- Subcontractors, identification
- Superintendent, identification
- Test reports
- Tool box meeting records
- Videos
- Work orders

Engineers & Architects

- As-built drawings
- Change orders
- Codes, designed under
- Construction packages
- Design criteria
- Final construction drawings
- Preliminary drawings & sketches
- Project engineer, identification
- Project manager, identification
- References, relied on
- Revised drawings
- Shop drawings
- Specifications
- Who sealed drawings

Maintenance Records

- Agreements
- Alterations after construction
- Cleaning procedures
- Contractors, identification
- Floor product test results & procedures
- Maintenance contractor
- Maintenance records
- Manuals
- Meeting notes
- Methods & techniques
- Personnel names, identification
- Policies
- Procedures
- Purchase orders for products
- Records of repairs
- Schedules
- Signs
- Warnings

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Ordinances: Design & Construction

- Building code
- Fire code
- Roadway requirements
- Sidewalks requirements
- Site development requirements
- Zoning requirements

Plaintiff

- Accident history
- Age
- Alcohol/drug use
- Attentiveness
- Climbing ability
- Clothing
- Footwear
- Health
- Medical history
- Physical ability
- Prior physical conditions
- Running ability
- Statements
- Walking ability

ENGINEERING OR ARCHITECTURAL ASSISTANCE FOR ACCIDENT INVESTIGATION

An attorney often encounters technical documents or engineering reports that provide information that is difficult to interpret. Sometimes, an attorney needs assistance interpreting technical information. The expert engineer or architect can provide technical assistance to an attorney in performing tasks including the following:

- Anticipate opposing liability arguments
- Arrange or conduct testing
- Assist attorney with technical issues
- Code enforcement file review
- Code requirements, code changes and standards
- Complaint review
- Deposition notes
- Engineering and construction general practice criteria
- Evidence storage
- Examination of accident scene
- Exhibit preparation
- Governmental department file review
- Identify useful information
- Interface and coordinate to obtain the available information
- Interview witnesses
- Local and state requirements
- Photograph evidence
- Prepare a report, if warranted
- Questions & technical wording for discovery requests
- Research publications
- Review technical documents
- Reviewing & obtaining records
- Reviewing drawings, contracts, & design documents
- Testify, if warranted
- Testing of accident conditions & evidence
- Translate engineering language into common terms
- Trial cross examination questions
- Trial monitoring
- Trial preparation

The information presented in this booklet is intended only to be used as a guide in assisting clients concerned with or involved in the legal process where litigation or potential litigation is an issue. The information is further intended to inform clients that Consulting Engineers & Scientists, Inc. has both the expertise and the capability to provide direction and guidance in the specific disciplines and areas presented in this booklet. It is important to note that the information also is general and is not intended to completely cover the specific nuances of a particular matter. If there are any questions concerning this information, please feel free to contact us.