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Slip and Fall Claims in Georgia

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Research Guides

Slip and Fall Claims in Georgia

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Introduction & Scope

Scope of the Research Guide

Slip and fall claims are becoming a common occurrence in courtrooms across America. A recent study by the National Floor Safety Institute found that over 25,000 have slip and fall accidents each day and each accident costs the insurer an average of $12,000. The cost to defend a slip and fall lawsuit is, on average, over $50,000. In 2009, a Georgia woman brought suit against AMC Theaters because she tripped and fell on a wet floor sign (of all things!). In Sue Brown v. American Multi-Cinema, 679 S.E.2d 25 (Ga. 2009), the Georgia Supreme Court found it to be a jury issue as to whether the wet floor sign was like any other potentially hazardous object on the floor in a commercial establishment. Slip and fall claims are becoming a large section of work for premises liability attorneys.

This research guide explores various sources of information relevant to slip and fall claims in Georgia. Both residential and commercial landowners are addressed by the cases and sources in this research guide. Under the Primary Sources tab, the reader will find the main sources of statutory guidance in Georgia. The guide also lists cases and each case's holding organized by status of the Plaintiff (licensee, invitee or trespasser). The Secondary Sources page includes treatises specific to Georgia law and treatises that cover all jurisdictions of slip and fall cases. Also listed under this tab are law journal articles, Restatements. annotations from the American Law Reports and legal encyclopedia entries. Finally, the Interest Groups, Blogs, etc. tab includes two groups in Georgia that strive to advance plaintiffs and defense interests. Each group provides its members with information in various areas of the law, including premises liability. This tab also includes other sources of internet research, including blogs by various Georgia attorneys.

Slip and Falls in Georgia

About the Author

Elizabeth Bentley is a part-time student enrolled in Georgia State University College of Law. Prior to attending law school, she obtained a political science degree, cum laude, from Georgia State University. She has also been Office Coordinator of Henning Mediation & Arbitration since 2006. Henning Mediation &

Arbitration pioneered the art of dispute resolution in the southeast and settles billions of dollars in claims each year. One of the most common types of claims in Henning's office is slip and fall claims. Also, over the summer, Mrs. Bentley clerked with an insurance defense firm handling a large amount of premises liability claims.

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Legislation & Case Law

Legislation

Ga. Code Ann. §51-3-1 (2011) - Owner or Occupier Bound to Keep Premises Safe for Invitees

Where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.

Ga. Code Ann. §51-3-2 - Licensees and an Owner's Liability to a Licensee

(a) A licensee is a person who:

(1) Is neither a customer, a servant, nor a trespasser;

(2) Does not stand in any contractual relation with the owner of the premises; and

(3) Is permitted, expressly or impliedly, to go on the premises merely for his own interests, convenience, or gratification.

(b) The owner of the premises is liable to a licensee only for willful or wanton injury.

Case Law: When Plaintiff has Invitee Status

Alterman Foods, Inc. v. Ligon, 272 S.E.2d 327 (Ga. Ct. App. 1980)

This case established the plaintiff's burden in a premises liability case. It held that a plaintiff must satisfy a two-pronged test to prevail:

1) The Landowner/Occupier failed to exercise ordinary care for the safety of its Invitees/Customers by knowingly allowing a dangerous condition to exist on its premises; and

2)The Invitee/Customer did not have equal or superior knowledge of the dangerous condition; or, the Landowner/Occupier was prevented from discovering it.

Robinson v. Kroger, 493 S.E.2d 403 (Ga. 1997)

This case reestablished the burden and order of proof in slip and fall cases where the Plaintiff is an invitee on the premises. Plaintiff must first prove that the Defendant had actual or constructive knowledge of the hazard upon which Plaintiff fell. The burden then shifts to the Defendant to prove that Plaintiff caused her own injury, either by a) voluntary exposure to a hazard within Plaintiff's knowledge or b) failure to exercise ordinary care. If Defendant proves this, plaintiff can then offer rebuttal evidence showing that her failure to ascertain existence of the hazard was due to actions of the Defendant or conditions within control of the Defendant of which Defendant knew or should have known would divert Plaintiff's attention away from where she was going. This is known as the Distraction Doctrine.

Also, correcting precedent established by the Court of Appeals, the Georgia Supreme Court held that an invitee is not required to continuously watch the floor where she is walking because she is entitled to presume that the owner of the premises exercised reasonable care in ensuring Plaintiff's safety while she is on the property. The correct issue is whether, " . . . taking into account all the circumstances existing at the time and place of the fall, the invitee exercised the prudence the ordinarily careful person would use in a like situation."

Alternatively, the landowner is required to exercise ordinary care to protect invitees from unreasonable risks of harm known to the landowner. The landowner must have the premises in a reasonably safe condition, but is not required to warrant the safety of all persons from all things. He must, however, exercise diligence in making the premises safe.

Freyer v. Silver, 507 S.E. 2d 7 (Ga. Ct. App. 1998)

The landowner's duty to exercise ordinary care includes inspecting the premises to discover possible dangerous conditions of which the landowner does not have actual knowledge, and taking reasonable precautions to protect invitees from foreseeable dangers.

Lee v. Food Lion, 534 S.E.2d 507 (Ga. Ct. App. 2000)

An owner or occupier of land is not an insurer of the safety of its invitees, and likewise, the mere occurrence of an injury does not create a presumption of negligence.

Lowery's Tavern v. Dudukovich, 507 S.E.2d (Ga. Ct. App. 1998)

An invitee is required to exercise ordinary care for his own safety and to avoid negligence of the landowner once it becomes apparent to him, or once he should have known (if, in the exercise of ordinary care, the negligence could have been discovered by the invitee). He must make use of all his senses in a reasonable measure amounting to ordinary care in discovering and avoiding those things that may cause injury.

Anderson, et al v. Service Merchandise Company, 496 S.E.2d 743 (Ga. Ct. App. 1998)

Invitee who responds to owner or occupier's invitation and enters premises does so pursuant to implied representation or assurance that premises have been made ready and safe for invitee's reception, and entering invitee is entitled to expect that the owner or occupier has exercised and will continue to exercise reasonable care to make premises safe.

Doe v. HGI Realty, Inc., 561 S.E.2d 450 (Ga. Ct. App. 2004)

If a landowner undertakes to do more for the benefit of invitees than the law requires, he or she may be held liable if he or she acts unreasonably or makes the situation worse by increasing the danger, or by misleading the invitee into belief that it has been removed, or by depriving invitee of the possibility of help from other sources. However, the mere undertaking of measures to protect patrons does not heighten the landowner's standard of care. Neither does taking measures to protect patrons constitute evidence that further measures might be required.

Langston v. Home Depot U.S.A., 554 S.E.2d 223 (Ga. Ct. App. 2001)

When a portion of a landowner's property is put to use not intended by the landowner, the owner is not liable for the resulting injuries unless he knew or should have known that it would be diverted to such use and knew or should have known of the hazard from such use. Furthermore, the duty to keep the premises safe only extends to such portions of the premises that the owner includes within the invitation to the invitee.

Case Law: When Plaintiff has Licensee Status

Muller v. English, 472 S.E.2d 448 (Ga. Ct. App. 1996)

Willful conduct is that which is based on an actual intention to do harm or cause injury. Wanton conduct is that which is so reckless or charged with indifference that it is essentially the same in spirit as actual intent. This type of conduct is more than negligence or gross negligence and involves conduct of a criminal or quasi-criminal nature.

Jones v. Barrow, **696 S.E.2d 363 (Ga. Ct. App. 2010)**

To the licensee . . . no duty arises of keeping the usual condition of the premises up to any given standard of safety, except that they must not contain pit-falls, man-traps, and things of that character.

Handiboe v. McCarthy, 151 S.E.2d 905 (Ga. Ct. App. 1966)

A landowner owes licensee a duty of ordinary care to protect anticipated licensees from dangerous activities being conducted on the premises and from hidden perils. But where the injury occurred because of a static condition on the premises, the landowner's only duty is not to injure the licensee willfully or wantonly. This duty applies even if the licensee is a child and may not be able to appreciate the danger of a particular situation as well as an adult.

Hicks v. Walker, 585 S.E.2d 83 (Ga. Ct. App. 2003)

A landowner is liable if 1) he knows or has reason to know of the dangerous condition and realizes or should realize that it involves an unreasonable risk of harm to licensees, and 2) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved.

In cases where a licensee Plaintiff is injured by a construction defect, the landowner is presumed to have notice of the danger. Violation of a building code is negligence per se and can be used as proof of a landowner's superior knowlege of a defect.

Hannah v. Hampton Auto Parts, 506 S.E.2d 910 (Ga. Ct. App. 1998)

After a licensee's presence is known to the landowner or should be reasonably anticipated, exactly the same acts of caution may be required of the landowner as if the guest were an invitee. Thus, a landowner must use ordinary care and diligence to protect a licensee from injury after his presence is known.

Trulove v. Jones, 610 S.E.2d 649 (Ga. Ct. App. 2005)

The distraction doctrine announced in Robinson v. Kroger does not apply when the Plaintiff is a mere licensee on the premises. However, a distraction caused by the Defendant when the Plaintiff is a licensee may rise to the level of a willful or wanton injury under some circumstances (e.g., if Defendant initiated a game that involved running around a deck with no railing on it, or if Defendant was pushing those on a deck with no railing on it).

Caselaw: When Plaintiff is a Trespasser

Crosby v. Savannah Elec. & Power Co., 150 S.E.2d 563 (Ga. Ct. App. 1966)

A trespasser is one who, though peaceably, wrongfully enters upon the property of another.

Harrison v. Plant Imp. Co., 616 S.E.2d 123 (Ga. Ct. App. 2005)

Generally, a person who owns or controls property owes no duty to a trespasser upon it, except not to willfully or recklessly injure him or set a mantrap.

Trammell v. Baird, 413 S.E.2d 445 (Ga. Ct. App. 1992)

Implied consent to travel on the property of another does not exist even if the landowner has knowlege that others, on occasion, trespass on it. However, if trespassers are anticipated on a property, it is willful or wanton not to exercise ordinary care to protect them from dangerous activities or hidden perils on the premises. But, if the condition which injures a trespasser is static or passive, the landowner only owes the anticipated trespasser a duty not to willfully or wantonly injure him.

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Secondary Resources

American Law Reports

Vitaus Gulbis, Annotation, *Modern status of rules conditioning landowner's liability upon status of injured party as invitee, licensee, or trespasser*, 22 A.L.R.4th 294 (1983)

This annotation includes a compilation of state cases that hold that a plaintiff's status as invitee, licensee or trespasser is determinative of the standard of care required of a landowner. It also includes a number of cases that come to the opposite conclusion.

Sonja A. Soehnel, Annotation, *Liability of operator of grocery store to invitee slipping on spilled liquid or semiliquid substance*, 24 A.L.R. 4th 696 (1983).

This annotation compiles cases that decide and discuss whether, and under what circumstances, a grocery store operator is liable for an invitee's injuries caused by slipping on a substance.

Sonja A. Soehnel, Annotation, *Liability of operator of store, office or similar place of business to invitee slipping on spilled liquid or semiliquid substance*, 26 A.L.R. 4th 481 (1983).

Here, the author organizes the annotation into types of businesses, including restaurants, department stores, and other types of businesses including beauty parlors, drugstores and laundromats. In each section, cases are divided by the type of substance on the floor and various theories of liability or nonliability from the courts.

Ernest H. Schopler, Annotation, *Modern status of the rule absolving a possessor of land of liability to those coming thereon for harm caused by dangerous physical conditions of which the injured party knew and realized the risk*, 35 A.L.R. 3d 230 (1971)

The author includes cases that discuss the doctrine of assumption of risk, contributory negligence and other theories supporting the landowner's nonliability. The annotation also includes practice pointers and cases on the landowner's duty of care.

W.E. Shipley, Annotation, *Liability for injury to guest in home or similar premises,* 25 A.L.R.2d 598 (1952)

The author of this annotation divides his compilation of cases into two parts: host liability and a landlord's liability to social guests of his tenant. Both sections cover defects to the interior and exterior of the home, including rugs, stairs, ice, and holes in the yard.

R.L.M., Annotation, *Liability for injury to child guest on one's premises,* 60 A.L.R. 108 (1929)

This annotation covers the landowner's duty to a child guest on his premises, as well as defenses to a claim of injury when a child is the plaintiff.

Georgia Treatises

Michael J. Gorby, Premises Liability in Georgia with Forms §1:2, §2 (The Harrison Company, 2nd ed., 2011) (1998). Call number KFG196.3.L3.

This book covers an extensive array of premises liability issues, including landlord tenant relations and toxic tort litigation. The sections cited are relevant to slip and fall claims. §1:2 covers licensee, invitee and trespasser statuses and the corresponding standards governing the landowner in each case. §2 discusses static conditions, foreign substances, ramps, elements of a cause of action, defenses and the use of experts in slip and fall cases.

Charles R. Adams, III, Georgia Law of Torts §4 (The Harrison Company, 3rd ed., 2011) (1989). Call number KFG195.A93.

This title is a comprehensive guide to the general law of torts in Georgia. However, sections 4 through 6 cover premises liability and section 4 covers slip and falls. This section contains relevant case law and statutory authority, as well as detailing the major theories of slip and fall cases in Georgia.

Richard C. Ruskell, Davis & Shulman's Georgia Practice and Procedure §23:15 (The Harrison Company, 2011-2012 ed., 2011). Call number KFG530.S54.

This book is an civil procedure encyclopedia specific to various areas of Georgia law. The section cited covers relevant Georgia case law and statutes for slip and fall claims.

General Treatises & Other Print Materials

***Please note: These books are not specific to Georgia law. However, each work touches on points that are relevant to slip and fall claims in Georgia.**

Gary M. Bakken, et al, Slips, Falls and Related Injuries: Trips, Missteps and their Consequences (Lawyers and Judges Publishing Company, 2nd ed., 2007) (2002). Call number KF1290.S55.

This title provides the reader with an extensive overview of how, why and when people fall, which body parts will most likely be injured in the fall, and how such injuries come about. Also includes case studies, examples and a study of biomedical factors (such as osteoporosis) which can provide an alternative basis for injury during a fall.

Russell J. Kendzior, Falls Aren't Funny: America's Multi-Billion Dollar Slip-and-Fall Crisis (2010). Call number RD93.K46 2010.

This book examines the growing problem of slip and fall accidents in America and how the epidemic is harming our industries. The work includes three sections: a detailed look at slip and fall accidents, what causes them and how to prevent them.

William Ricigliano, Premises Liability Claims: A Guide to Defending Owners (2003). Call number KF1287 .R53 2003.

With an emphasis on practical advice for the practitioner, this book guides the reader through the elements of a cause of action for slip and falls and possible defenses. Also covers preventative maintenance for property owners and includes a case study that is detailed from inception to trial.

Louis A. Lehr, Jr., Premises Liability (West Publishing Co., 3d ed., 2011) (2002).Can be accessed with a Westlaw ID and password.

This title includes a practice guide with forms to assist with all stages of a premises liability case. It covers classifications of invitees, licensees and trespassers and the standard owed to each type of guest. Also includes information on other research sources for premises liability claims.

Douglas Danner, et al, Pattern Discovery: Premises Liability (West Publishing Co., 3d ed., 2008) (1986). Call number KF1287.S36.

This book contains practice pointers to guide attorneys through all stages of a premises liability case. It includes tips for investigative techniques, suggested questions for interrogatories and depositions, a complete listing of legal doctrines applicable in premises liability cases, and tips for negotiations and settlements.

David Estes, Premises Liability for Owners and Occupiers of Real Property: A Legal Research Guide (2000). Call number KF1287.E85.

This author provides readers with an overview of legal research for premises liability claims.

Restatements

Restatements (Second) of Torts, §343 (2011)

This section discusses dangerous conditions on property that are either known to the landowner or possessor, or discoverable by the landowner or possessor.

Law Review Articles

Morgan W. Shelton, *Robinson v. Kroger: A Leveling of the Field of Fatal Fall for Summary Judgment?*, 50 Mercer L. Rev. 655 (1999)

This article explores the factual and legal history of the Robinson case, as well as the trends of the Georgia Court of Appeals leading up to Robinson. It also discusses the rationale of the Court in deciding the case and implications for future slip and fall cases in Georgia.

Deron Hicks, *Torts*, 57 Mercer L. Rev. 363 (2005)

Each year, the Mercer University Law review organizes recent changes in Georgia law as announced by the courts. This survey includes relevant cases from June 2004 to May 2005. Slip and fall cases are addressed in section II, and discuss pertinent cases such as Trulove v. Jones and areas such as constructive knowlege.

Neil T. Shane, Linda A. Klein, *Jury Selection and Opening Statements in Slip and Fall Cases*, 23-SUM Brief 47 (1994)

This informative article offers practice tips and pointers specific to the the first trial phase of slip and fall cases. Strengths and weaknesses of both plaintiff and defense attorneys are addressed.

Legal Encyclopedias

15 Ga. Jur. *Personal Injury and Torts* §37 (2011)

This chapter of Georgia Jurisprudence addresses actual and constructive knowlege, rainy day slip and falls, a plaintiff's duty of care and contributory negligence in premises liability cases.

65A C.J.S. *Negligence* §7 (2011)

The cited chapter of this encylopedia generally address premises liability issues and touch on most of the ideas relevant to Georgia slip and fall claims. It addresses knowlege of the landowner, causation, and a plaintiff's burden of proof in a slip and fall case.

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62 Am. Jur. 2d *Premises Liability* §1 - 8 (2011)

This article also discusses premises liability issues and standards on national scale. Relevant Georgia concepts, such as willful or wanton conduct, constructive knowlege and ordinary duty of care, are discussed.

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Interest Groups, Blogs and Computerized Research

Computerized Research

Slip and fall cases can be researched using the internet and other search databases. Of course, the most detailed and comprehensive search databases will require a username and password and will not likely be free. The databases below are notated if they require payment.

Westlaw*

Westlaw is a comprehensive legal research site that includes caselaw, statutes, legislative history, verdict research, law review and journal articles, restatements, legal encyclopedias, and treatise access. Access to these resources depends on the researcher's chosen subscription.

*Requires payment, and the creation of a username and password.

LexisNexis*

LexisNexis is a comprehensive legal research site that includes caselaw, statutes, legislative history, verdict research, law review and journal articles, restatements, legal encyclopedias, and treatise access. Access to these resources depends on the researcher's chosen subscription.

*Requires payment, and the creation of a username and password.

LexisONE

LexisONE is a site powered by LexisNexis that includes cases, forms, blogs and news. It is free upon registration. Although it is not as comprehensive as a search on Westlaw or LexisNexis, LexisONE can provide a cost-free alternative to legal research on slip and falls.

Justia

Free to the public, Justia provides access to statutes, constitutions, cases, blogs, and law review articles. Each category of resources is divided into practice area and all content can be searched for slip and fall information by using the search bar at the top of the page.

Google Scholar

Google scholar, powered by google, is a nearly complete search engine that will provide access to law review journals and articles and case law. It is free to the public and does not require registration.

Interest Groups

Georgia Trial Lawyers Association (GTLA)

GTLA is a group of attorneys and students who are dedicated to "protecting the Constitutional promise of justice for all by guaranteeing the right to trial by jury, preserving an independent judiciary, and providing access to the courts for all Georgians." Interested parties must apply for membership and certify that more of their practice is devoted to plaintiffs work than defense work. The organization also accepts law students as members.

GTLA holds numerous CLEs for members (at an additional cost) which address plaintiffs issues, including those affecting slip and fall claims. Members also receive a copy of GTLA's monthly magazine, The Verdict, containing useful information affecting the plaintiffs' side.

Georgia Defense Lawyers Association (GDLA)

The Georgia Defense Lawyers Association is a group devoted to advancing the civil defense bar. Again, interested parties must apply for membership and certify that their practice is more dedicated to defense work than it is plaintiff's work. This group does not offer law student memberships, but law students are able to attend GDLA's programs.

Membership in GDLA grants access to various events throughout the year, including CLEs, webinars, ski trips, and trial bootcamps.

Georgia Slip and Fall Attorneys' Blogs

The firms listed below keep blogs with information on recent developments in Georgia personal injury law. Although the blogs contain information regarding all types of personal injury cases, many of the blogs routinely post information regarding slip and falls. Also, most of the blogs listed are maintained by Plaintiffs firms, so the information may lack relevance to the defense side. Levy & Pruett, however, is a defense firm with an injury blog.

The Simon Law Firm - Atlanta, GA

Click here for access to The Simon Firm's blog.

The Law Offices of Wayne Grant - Atlanta, GA and Macon, GA

Click here for access to Wayne Grant's blog.

Katz, Stepp, Wright & Fleming, LLC - Atlanta, GA

Click here for access to the firm's blog.

Chambers, Aholt & Rickard, LLP - Atlanta, GA

Click here for access to attorney Ken Shigley's blog.

Commander & Pound - Atlanta, GA

Click here for access to Commander & Pound's blog.

The Law Offices of Ken Nugent - Albany, Atlanta, Augusta, Columbus, Duluth, Macon & Savannah, GA

Click here for access to Ken Nugent's blog.

The Murray Law Offices - Atlanta, GA

Click here for access to The Murray Law firm's blog.

Hill & Bleiberg - Atlanta, GA

Click here for access to Hill & Bleiberg's blog.

Levy & Pruett - Decatur, GA

Click here for access to Levy & Pruett's blog.

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