

Know Your Rights

The Law of Premises Liability (Slip and Fall)



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I. Questions About Premises Liability Cases

1. What facts must I have to win a premises liability case?

In order to win such a case, an injured person must prove that the person or company owning the property where the fall occurred owed a duty to the injured person. People who are on the premises of a business, such as customers in a store, are owed the highest duty of care by the business owner. Next in line are licensees. The final type of injured person is a trespasser who is owed the lowest duty by the landowner.

Another issue is how obvious the defect is that caused the injury. If clear liquid is spilled on a highly polished floor, and the injured person did not see the liquid which caused him to slip and fall, there is a good chance of recovery for the injured person. On the other hand, if the defect is open and obvious such as ice, and the injured party had an alternative course, there is a good chance there will be reduced recovery in the case.

2. What types of cases are recoverable?

The following types of cases have resulted in recovery for the injured persons:

A. Slipping on water tracked in by customers at a mall.

B. Tripping on a crack in a sidewalk.

C. Slipping on produce in a supermarket.

D. Slipping on hills and ridges of accumulated snow or ice on a sidewalk.

3. Am I entitled to recover damages for my injuries, and if so, what are they?

A. Damages in General

Once the liability of the property owner has been established, it is necessary to prove what monetary award to the injured person is appropriate to place him or her back in the position he or she was in prior to the injury. The amount of damages to be awarded depends upon what is claimed by the injured person and what is introduced at trial. Generally, the injured person is entitled to past and future loss of earnings, medical expenses in the past and future, and pain and suffering.

B. Past And Future Medical Expenses

The property owner must pay for reasonable and necessary medical care the injured person had. The injured person may introduce medical bills at trial even if they have been paid for or forgiven by the provider. Unfortunately, where a spouse provides services to the injured person, such services are not compensable unless a specific contract is created between husband

and wife. In order to collect for future medical expenses it is necessary for a medical expert to state such care is required. The amount of proof required at trial is dependent on the type of care and the condition of the injured person at the time of the testimony. For instance, in the case of institutional care, the plaintiff's life expectancy must be introduced at trial. Future medical expenses need not be reduced to present value.

C. Loss of Earning Capacity, Past And Future Earnings

An injured person can recover for loss of past earnings as well as lost earning capacity. Lost earnings are actual monies which the injured person would have earned but for the accident. Loss of earning capacity is a reduction of the injured person's ability to earn money irrespective of the specific job he or she held. It also recognizes that what someone is earning at any given time is not always reflective of what they could earn in the future. This is especially critical in the case of a young person who is just entering the workforce. Because of the collateral source rule, an injured person can recover for wages since the accident even though he or she had been paid the wages. An injured person must prove his or her disability will continue into the future in order to recover for future lost wages. This disability in the future must be quantified by a medical expert. This would include any permanent disability claimed by

the person, taking into account not just the person's life expectancy but the working life expectancy as well.

D. Pain and Suffering

In addition to recovery for medical expenses, wage loss and impairment of earning capacity, an injured person can recover monetary damages for pain and suffering. Pain and suffering, both past and future, includes physical pain, mental anguish from an injury, humiliation, disfigurement and loss of life's pleasures.

The amount of money awarded for pain and suffering varies with each person. The amount to be awarded is not what an average person would be awarded, but rather what this individual should receive. It is a subjective standard.

Merely because a person has resumed his work or daily activities does not mean a claim for pain and suffering can be made. The injured worker may also recover for pain and suffering if his condition worsens. Fright or mental suffering directly related to the accident may also be awarded even though no significant physical injury occurred. Even pre-impact fright is compensable, as in an injured worker witnessing a fellow person being injured may be sufficient to receive monetary damages.

Disfigurement such as a scar from an injury is compensable. Merely because plastic surgery is

available does not prevent such a recovery, because the award is made at the time of trial.

Loss of life's pleasure is also compensable. It includes being able to carry on a normal life, reducing one's social activities, not being able anymore to marry and have children, and losing a feeling of well-being.

E. Loss of Consortium

The spouse of an injured worker, whether husband or wife, may recover a monetary amount for loss of the injured spouse's conjugal affection, comfort and assistance, protection, guidance, companionship, and the ability to perform sexual relations. Live-in companions are not covered by this loss, although there is some case law which states a common law spouse would be covered. A claim for the loss of consortium only derives from that of the injured spouse. If the injured spouse does not recover on the liability issue, there can be no recovery for the spouse claiming loss of consortium.

II. FREQUENTLY ASKED QUESTIONS

1. Do I have a case?

The answer to this question can only be given after a thorough analysis of the facts and law has been done. For any type of personal injury case, a client can recover monetary damages if the following questions are answerable in the affirmative: (1) Does the potential wrongdoer owe a duty to the injured person?; (2) Is the injured person's status appropriate for recovery under the law?; (3) Has the duty owed the injured person by the wrongdoer been breached; (4) Was it reasonably foreseeable that harm would be suffered by the injured person if this breach occurred?; (5) Did the injured person suffer damages?

2. How will my attorney be paid?

The attorney is paid only if monetary damages are recovered for the client. This is called a contingency fee agreement.

3. Who bears the costs of litigation?

Usually, the attorney representing the injured person pays the costs during the course of litigation. The attorney is reimbursed at the end of litigation if there is any monetary recovery for the injured person.

4. What are the different parts of litigation and what can the client expect will happen during the course of the case?

The litigation is started by filing a complaint. The defendant then answers the complaint, and sometimes files preliminary objections. Then discovery begins during which interrogatories or written questions are asked under oath of various parties and witnesses. Depositions, or verbal questions under oath, are also asked of the parties and witnesses. Often consultation with the Court through various status and settlement conferences then ensues. Trial then occurs at the end of this process.

III. LAWYER BIOGRAPHY

Jules Zacher has practiced law since 1974 in state and federal court in Pennsylvania. He has represented plaintiffs in personal injury lawsuits which have included damages because of children being poisoned by lead paint, workers being injured on construction sites, persons injured in motor vehicle accidents, people falling or being injured on someone's premises, and medical providers not being paid by insurance companies.

Mr. Zacher received his law degree at Temple University in 1974, as well as a masters degree in economics from Temple in 1970. Mr. Zacher has taken non-degree course work at Princeton University, Woodrow Wilson School of Public and International Affairs. He received his undergraduate degree from the University of Pittsburgh in 1964.

Mr. Zacher's legal career has included working as a trial lawyer in one of the premier personal injury law firms in the nation prior to starting his own firm in 1982. He has litigated automobile accident cases since 1974. He has been active in community affairs in the Grays Ferry area of Philadelphia. Many of the cases he has tried have involved numerous defendants and complex issues of facts and law.

Mr. Zacher is a member of the Philadelphia Bar Association, and the Philadelphia Trial Lawyers Association. He is admitted to practice law in Pennsylvania and the United States District Court for the Eastern District of Pennsylvania.

IV. HOW TO CONTACT THE FIRM

Jules Zacher, P.C. is a law firm incorporated as a professional corporation with offices located at Suite 707, Medical Arts Building, 1601 Walnut Street, Philadelphia, PA, 19102. Its phone number is 215-988-0160; its fax number is 215- 988-0169; and its e-mail address is Zacherlaw@aol.com. Its website is www.juleszacher.com.

V. CASE QUESTIONNAIRE

Do I Have A Case?

Provide the details and we will make a free, preliminary determination.

Your Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

E- Mail: _____

Phone Number: _____

Enter your question or case details here: _____

I understand that my request and my response thereto does not form an attorney-client relationship