E25 Effective Use of an Expert in a Premises Liability Case

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After attending this presentation, attendees will: (1) learn the elements involved in a premises liability case; (2) understand how a forensic engineering science expert can help evaluate the merits of a slip/trip/miss and fall incident; and, (3) be able to participate in preparing the case.

This presentation will impact the forensic science community by informing those involved in civil litigation related to slip/trip/miss and fall incidents, discussing the strengths and pitfalls of actual cases.

When pedestrians unexpectedly encounter a sudden change in a walkway surface, they might not adjust their gait sufficiently to prevent loss of balance and avoid a fall. The sudden stop of their body at the end of the fall may result in injuries severe enough to merit a claim for damages. Slip/trip/miss and fall accidents as premises liability cases are usually subjects of civil litigation.

Slip and fall cases usually involve a sudden decrease in available friction between the walkway and footwear contact surfaces. The unsuspecting pedestrian typically loses traction on the bottom of the leading foot when it meets the slipperier surface. The leading foot slides forward out from under his/her body and he/she falls onto or toward the side of the leading foot. Injuries to the trailing leg and/or knee are also possible. Less common is slippage of the trailing foot typically resulting in a fall onto the knee or leg of the trailing foot.

Trip and fall cases usually involve a sudden increase in elevation along the walkway. The unsuspecting pedestrian typically fails to lift the leading foot high enough to clear the transition to the elevated surface and instead catches it on the rise or edge of the transition. The leading foot does not support the pedestrian and he/she falls forward onto or toward the side of the leading foot. Less common is tripping when encountering a sudden increase in surface friction resulting in the leading foot not sliding as in preceding paces.

Miss and fall cases usually involve a sudden decrease in elevation along the walkway. The unsuspecting pedestrian typically fails to extend the leading foot downward far enough to meet the lower surface, stumbles, and falls forward onto or toward the side of the leading foot.

The forensic engineering science expert investigation typically begins with evaluating a description of how and where the pedestrian fall occurred. Appropriate hypotheses and alternatives for the slip/trip/miss and fall incident are developed. The incident site is evaluated for surface variations or irregularities that are consistent with the hypotheses and may have contributed to the incident. Determinations are made as to whether sudden changes in walkway surface existed at the time of the incident. If so, then evaluations are made to establish whether they are related to design, construction, or maintenance. Reviews of codes, standards, and statutes are made for applicability and for possible violations relative to the incident. Design and construction defects probably have statutory time limits for recovery of damages. (e.g., Minnesota has a limit of 10 years for design and construction defect claims.)

Indoor incident sites are usually subject to building codes and standards. Interior walkway features addressed by them include, but are not necessarily limited to, stairways, landings, ramps, handrails, guard rails, doors, dimensions, and illumination. Occasionally, design and construction features will be encountered that are not explicitly addressed in the written codes and standards and broad interpretations are evaluated for applicability.

Most exterior incident sites are not directly covered by building codes. The codes might be used as a guide for good practice but not be legally enforceable.

Exterior walkways are usually exposed to conditions of rain water and winter snow and ice. Thus, weather data for the hours and days immediately preceding the incident are often significant when evaluating causation. Drainage from overhead roof structures and along walkway surfaces can be a significant factor. Surface debris, color pattern, and illumination can also be significant factors.

A slip/trip/miss and fall incident involves contact or lack thereof between the walkway surface and the footwear contact surface. Thus, the footwear should be evaluated for possible contribution to causation.

Pedestrian conduct might be a contributing factor. If so, then the question of whether or not that conduct is reasonably foreseeable to an alleged negligent party must be addressed.

Pedestrian, Falls, Walkways

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