Video Course Evaluation Form

Attorney Name__________________________________________________________
Atty ID number for Pennsylvania:__________________________________________
Name of Course You Just Watched__________________________________________

Please Circle the Appropriate Answer

Instructors:  Poor   Satisfactory       Good      Excellent
Materials:    Poor   Satisfactory    Good      Excellent
CLE Rating:  Poor                  Satisfactory     Good      Excellent

Required: When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: _______________  Word #2 was: ____________________________
Word #3 was: _______________  Word #4 was: ____________________________

What did you like most about the seminar?
________________________________________________________
________________________________________________________
________________________________________________________

What criticisms, if any, do you have?
________________________________________________________
________________________________________________________

I Certify that I watched, in its entirety, the above-listed CLE Course
Signature ___________________________________ Date __________
WATCH OUT: REPRESENTING A SLIP AND FALL CLIENT

Featuring

Robert Ramsey
Garden State CLE Senior Instructor

And

Robert W. Rubinstein
Certified Civil Trial Attorney

Program description

With all those slick surfaces out there it is only a matter of time before a client comes into your office and says, “I slipped and fell. Now I’m hurt.” This 1 credit CLE will teach you what to expect when representing a slip and fall client.
I. Introduction
   o Robert W. Rubinstein, Certified Civil Trial Attorney
   o Author of 1 published book – New Jersey Practice Series Automobile Law and Practice Forms; 1 book in the works - New Jersey Personal Injury Law
   o Slip and fall issues

II. Basic Negligence Law and What You Need to Prove at Trial
   A. Duty of Care
      o Duty of care depends on the circumstances of why the person is where they are – as in why the person is injured
      o “slip and fall” – someone who slips on an icy sidewalk or on the boardwalk in Atlantic City or in a hotel or other public accommodation; premises liability is not just slipping and falling
      o Duty of care based on circumstances
         o Different settings where someone can slip and fall, i.e. trespasser where duty of care is reduced, or business invitee where there is a greater burden because of nature of relationship
         o Greater duty of care to insure that the premises are safe to an invitee
         o In NJ – the court has hit a point where the circumstances have been grouped together, an invitee or business invitee or trespasser are all “invitees”
            ▪ Trespasser is always going to be different
            ▪ There used to be a lot of effort characterizing the plaintiff to determine duty of care – but lately the trend is toward treating them all similarly
      o Duty of reasonable care, duty to maintain premises, duty to warn of defects
      o Business invitee gets the greatest duty of care because the premises owner is getting a benefit from the person being there v. social invitee v. trespasser
      o Hypothetical
Air conditioning man comes to home to fix AC before a party and slips
He is a business invitee
A guest comes to the party and the guest slips and falls – same duty to this person as the AC repair man
Uninvited child comes and slips by the pool – this person is a trespasser but “attractive nuisance” of the pool
Business premises – everyone who comes into a business establishment is considered a business invitee and therefore highest standard of care owed to plaintiff coming in
People outside the business – on sidewalks – not a “business invitee” if not getting the benefit of being in the premises but still considered an “invitee”

B. Breach of Duty of Care
Breach of duty is based on what negligent act is
In a home the condition may be different than in a business premise
The hardest part of a premises liability case is that the simple act of falling does not mean you win – you must show actual or constructive notice by the supermarket or the premises owner of the defect
Does the premises owner have notice of the defect to make them liable?
In NJ – mode of operation – comes into play to help plaintiff prove notice issues
How reasonable is it for business to have someone checking the floors to make sure they are safe
Should have someone at regular intervals checking to insure there are no hazards
Have a log that keeps track of employee looking for hazards
Have something on the ground where there are known issues to protect against someone slipping – some safety precaution
If business owner knows or should have known that there was a hazard – that is notice
C. Res Ipsa Loquitor
- A way to establish an inference of negligence
- NJ case (Jerista v. Murray, 185 NJ 175 (2005)) –
  electronic doors shut on a person and you must show that
  the defendant had exclusive control of the item, that the
  actions that happened could only have happened through
  negligence, and the plaintiff did not contribute to the
  event itself
- Escalator cases – must be able to demonstrate that the
  escalator stopped suddenly without any cause for it to
  stop suddenly and your client was on the escalator, and
  that it was in the exclusive control of the defendants and
  that your client did not do anything wrong
  - Defense argued that plaintiff caused injury because
    client was smoking a cigarette and not holding the
    railing while holding a suitcase
  - Lost case because a video showed that another
    patron walked onto escalator with a suitcase and hit
    the stop button – therefore no longer res ipsa case
    because no negligence on behalf of premises owner –
    is it straight negligence? Is it product liability case?

D. Tort Claim Notice – Suing Public Entities
- Tort Claim Notice, or the like – must evaluate whether
  there is a notice requirement for filing a claim
- Under Tort Claims Act, etc. – within 90 days of incident
  the public entity or park must be put on formal notice of
  the claim, types of injuries and type of claim – if don’t do
  that then absolute bar to proceeding with your client
- For Tort Claims there is an exception for exceptional
  circumstances to file a late notice outside of the 90 days
  but must be filed within 1 year of date of incident and
  must establish exceptional circumstances – must show
  something really out of the ordinary, i.e. someone out
  of state and badly injured in NJ, hospitalized for significant
  period of time, unknown entity
- Need to immediately send notice to all known entities and
  check with tax collector, look at site and investigate to
  insure what entity you need to file against – be sure to
  name everyone and then let the entities write back that
they are not responsible – maybe get letter from city engineer about who owns

- Unless injuries are really significant, pass on those cases
- Jogging trails – no way of knowing who owns – name everyone and let them show why not them
- 531 municipalities in NJ; 600+ boards of education – many entities that may own sidewalk or other premises
- SOL on slip and fall is 2 years
- Water Park – still 2 years because an injury claim; same as hockey game, football game
- Port Authority – 1 year SOL; same notice of Tort Claim

E. Damages

- Amount of damages depends on a lot of things to determine whether it is worth taking the case – injuries, experts needed
- Walmart and Home Depot will always go to trial; same with casinos because they are self insured – must go to court for everything – try to remove to federal court
  - In federal court discovery rules are slanted toward defense – limited interrogatories, experts is more favorable to defense because cannot collaborate with your expert, costs are more; more briefing required, more conferences where you must go to court – limiting plaintiff’s ability to get information from defense – magistrate can help you to get discovery – case moves faster – jury pools differ because they are broader
  - In order to keep the case in state court – destroy diversity – find NJ defendant to keep it in state court
- So unless injuries are significant then many firms won’t take cases against Walmart, etc. because of the costs and going to federal court
  - Not soft tissue injury
  - Unless convinced that the injuries are going to pierce the threshold then not going to take it
  - Nature of cases are they are not easy to prove (slip and fall) – some level of comparative negligence, almost always going to have experts
Different assessment if homeowners policy as opposed to business premise owners and car insurance

Look at nature of the entity

Slip and fall on sidewalk in front of business establishment – may take case without significant injury because it is more likely to be a commercial policy/general liability policy – not going to federal court – more likely to get resolved in a favorable way

Pain and suffering is based on nature of injuries

Damages includes medical bills – in auto case you have no fault so auto insurance is paying medical bills, in slip and fall defendant does not pay medical bills so you either have medical insurance or you are out of luck – many insurance policies have “med pay” which is $5K that is available to pay medical bills but you don’t have to prove fault but carriers don’t tender that and many times attorneys will not ask for this – *don’t take that because you are entitled to that anyway!*

No civil obligation to clear snow from the sidewalk but may have a local ordinance that you must clear sidewalk; ordinance does not create a duty of care for negligence purposes

No obligation to clear your walkways but if you clear it and make it worse – then you have an obligation

Anything on your property is where your liability lies and you have a duty

If you are inviting someone onto your property then you have an obligation to clear your walkways leading to your house

Also consider “notice” of the hazard

III. Types of injuries

Bad knee injuries – more of these than other types of injuries

Head injuries

Back injuries

Full range of potential injuries

Need an expert to discuss injuries

Economist expert would depend on what the person does and the injuries, loss of wages, etc.
IV. Pain and suffering
   o Look at nature of injury
   o Impact of injury on that person
   o How injury has impacted daily activities
   o Talk to neighbors, friends, co-workers and how has this impacted them
   o There is not chart to assess
   o Must assess each person and their injuries and their life
   o Most important and best way to present pain and suffering is not through plaintiff but through “before and after” witnesses
   o Most compelling testimony is your neighbor who used to see you all the time but now does not – more objective and believable than plaintiff or plaintiff’s family saying it – describe before and after accident
V. **Additional insights**

- **When case first comes in** – visit the site yourself because what you are hearing from the client is different from what the facts are – conditions change
- **Take photographs of area**
- **Spoliation letter to preserve video tape, etc.** – form letter to premises owners
- **Casinos will not turn over videos pre-suit and won’t let you see it pre-suit; won’t give you the video absent a court order before plaintiff’s deposition**
- **For every personal injury case you need:**
  - Liability
  - Damages
  - Someone to recover money from
- **NJ is one of a few states that does not have a law that requires insurance companies to disclose their coverage – don’t know if insurance coverage is enough to determine if you should take the case**
- **Take as many witness statements as you can**
- **Be sure you have proper defendants – check tax rolls**
- **Do the work early to find out who all the defendants are**
- **Get experts lined up**
- **Tort claims – pull permits to see if any private contractors**
- **Snow and ice – premises owner, snow removal company (may be multiple layers)**
- **If you learn a new name, then you must amend asap**
- **Most cases settle – having reasonable attorneys and reasonable client**
- **Set client expectations early in the process and then meet or exceed expectations – that is the trick to being successful in these types of cases**