

Beating Slip and Falls by Summary Judgment

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Common “slip and fall” or “trip and fall” claims may have heightened jury appeal. This is because of the seeming innocence of the plaintiff who seemingly lacks comparative fault for an “accidental” fall and resulting injuries. Additionally, the defendant is often a “bad guy” corporation, store owner or other business owner. As such, these claims often become lawsuits and often involve a component of “he said, she said” regarding the injured party’s description of the dangerous condition and the defendant’s lack of knowledge of the condition, its cause or that it was dangerous. Even with this circumstance, it is possible to defeat the claim by way of motion for summary judgment. Although there is cost involved in filing such motions, if done properly, a judge can be convinced that the case is not worthy to take before a jury and judgment will be for defendant.

When investigating the claim, it is critical to learn every aspect of the fall, both from the plaintiff’s and defendant’s perspective. Next, have counsel review reported Oregon cases for similar fact patterns to your claim. There are many cases already decided involving trips and slips on a large variety of substances or conditions in a large variety of locations. Finding a reported case with facts similar to yours can assist the summary judgment analysis.

In making the motion, first consider plaintiff’s status as a trespasser, invitee or licensee. This status will determine the defendant’s specific duty of care. Remember that the plaintiff’s status is considered at the time of the incident, not before or after. The status can change over time, while at the same location.

Oregon law allows liability for slips or falls only when there is an “unreasonable” risk of harm, the defendant knew or should have known of the unreasonable risk, and failed to warn of it or remove it. Simply because a fall occurred, does not render a condition “unreasonably dangerous.” Oregon law requires all persons to reasonably protect themselves from harm by taking care of where they walk and otherwise refrain from taking risks. If a condition is open and obvious, even if dangerous, it is not likely “unreasonably dangerous.” This is a legal issue that plaintiff may assert is a “disputed fact” so to defeat summary judgment. However, ORCP 47c, setting forth the analysis required for granting a motion, requires a finding that the “material facts” involved are such that no “reasonably objective juror” could render a verdict for plaintiff.

Clarify “material facts” from “other” facts. These are the facts needed to prove a claim or defense. Often the “he said, she said” dispute may involve facts not “material” to the legal elements at issue. Only material facts are the focus of the motion analysis.

Finally, remember also that ORCP 47 shifts the burden of proof back to plaintiff once the motion calls into question, with supporting evidence, any material element plaintiff must prove at trial. This procedural effect alone can result in a granted motion. Otherwise, it allows for further discovery of plaintiff’s theory and evidence which can be beneficial for trial preparation in the event the motion is lost. ❖