



Occupier's Liability:
Handling an *OLA*
Claim from Pleadings
to Release

Stephen G. Ross
Rogers Partners LLP

Publication Note:
This presentation was done in 2009

AGENDA

- OCCUPIERS' LIABILITY ACT
 - DEFENCES
- TRANSFERRING LIABILITY
- DAMAGES
- TIMELINES

DUTY ON AN OCCUPIER

- Section 3(1) of the *Occupiers' Liability Act*
 - an occupier must take reasonable care to see that people are reasonably safe while on the premises

WHAT IS EXPECTED?

- An occupier is not expected to remove of every possibility of danger
- Reasonableness, not perfection
- An occupier must make sufficient observations and take action where necessary to prevent unsafe situations from being created or prolonged
- Constant monitoring and instant response are not required

TWO-PART TEST

The courts have developed a two-part test:

1. Was there a reasonable system of inspection in place?
 2. Was that system being followed at the time of the accident?
- If this test is satisfied, a store will not be found liable in most cases

Bjerregaard v. Westfair Foods (B.C. S.C. – 2003)

- 70 year old plaintiff slipped on a grape and fell
- Store had system of hourly floor sweeps in produce section
- System of inspection followed on date of accident
- Sweep logs were initialed, and managers reviewed sweep logs regularly
- Staff instructed to look out for spills
- Action dismissed. Store not liable.

Bjerregaard v. Westfair Foods (B.C. S.C. – 2003)

“Every misadventure in life cannot be blamed on someone else. Occasionally, we all fail to look where we are going. Sometimes we just stumble. Other times we fall.

Unfortunately, that is what happened here. The plaintiff did not take care to notice the grape on the floor when moving about the produce section.

In the circumstances, I find the defendant took all reasonable care to see that the floor area was kept clean. Therefore, any blame for the accident must unhappily rest upon the plaintiff.”

Fisker v. Westfair Foods (B.C. S.C. – 2000)

- Plaintiff slipped on unknown substance in produce department; likely a squashed grape
- Store seemed to have ideal system in place:
 - nighttime cleaning of entire floor
 - employee training on inspection and maintenance
 - specific staff for janitorial duties
 - safety sweeps in produce department every hour at a minimum; recorded in sweep logs
 - management monitoring of employees' compliance with safety sweeps and management inspection

Fisker v. Westfair Foods (B.C. S.C. – 2000)

- Store found liable. Reasonable cleaning system was in place.
- However, substance was on floor for some time and should have been detected earlier. Maintenance not properly performed.

INFORMATION HELPFUL TO REQUEST

- CCTV tape
 - if not available, find out why not
 - likely producible
- Sweep logs
 - very helpful, but not determinative if not filled out
 - likely producible
- Incident report
 - likely producible, but possible claim for privilege depending on circumstances surrounding creation of template and/or when filled out (i.e. plaintiff refers to lawsuit at time of document being completed)

INFORMATION FROM EMPLOYEES

Maintenance

- which area(s) did you work in that day?
- what hours did you work? time of breaks?
- did you complete training (CBLs)?
- who else was working in the area?
- when were inspections done?
- other monitoring of area, besides
what is in sweep log? how frequent?
- if sweep log is not completed, why not?

INFORMATION FROM EMPLOYEES (cont'd)

Accident

- did you see the accident?
- if not, how long afterwards did you arrive at the scene?
- observations of accident scene
- was any corrective action done before you arrived at scene (e.g., floor cleaned?)
- photographs taken?

INFORMATION FROM EMPLOYEES (cont'd)

- comments made by customer on accident and injuries?
- any obvious injuries?
- witnesses?
- anyone else have knowledge of accident?

OTHER DOCUMENTS TO REQUEST - CASE SPECIFIC

- Floor plan/ property plan
- Layout of area - sketches
 - special displays
- Shelving protocol
- When was floor last cleaned and waxed? Type of wax?



DEFENCES

VOLUNTARY ASSUMPTION OF RISK

- Example: Customer who ignores “wet floor” sign or other warning signs
- Complete defence under s. 4(1) of the *Occupiers’ Liability Act*
- However, very difficult to prove
- Involves not only knowledge of risk, but a consent to the legal risk
- “I am fully aware of this risk, and I agree not to sue.”

CONTRIBUTORY NEGLIGENCE

- Apportionment of liability between the occupier and the plaintiff
- Did the plaintiff fail to take appropriate precautions?

Barnfield v. Westfair Foods (Alta. Q.B. – 2000)

- Plaintiff tripped and fell on a “polished corner” in a grocery store
- Court held it was reasonably foreseeable that polished corners were dangerous/hazardous
- Plaintiff admitted she had noticed the polished corners earlier
- Plaintiff had duty to watch for objects in her path
- Plaintiff found 25% liable for her injuries

INFORMATION TO OBTAIN RE: PLAINTIFF

- Activities earlier that day
- Amount of sleep night before – tired?
- Alcohol/drugs
- Medical issues – e.g., balance problems
- Glasses; problems with eyesight
- Clothing and footwear

INFORMATION TO OBTAIN RE: PLAINTIFF

- Carrying anything?
- When first noticed the “hazard”? Describe “hazard”
- Why not notice the “hazard” earlier?
- Where looking at time of incident?
- Familiar with the store/property?
- Complaints about lighting?
- Witnesses?



TRANSFERRING LIABILITY (Contribution Claims)

EXAMPLES OF POTENTIALLY LIABLE PARTIES

- snow removal contractor
- repair contractors (e.g., repair of ceiling tiles, repair of shopping carts)
- other customers
- landlord (e.g., fall in parking lot; failure of certain equipment)
 - obtain copy of lease
- manufacturers, suppliers, and installers (e.g., defective cap on detergent bottle, defective shelving)

INDEPENDENT CONTRACTOR

- Section 6(1) of *Occupiers' Liability Act*
- If injury is caused by negligence of independent contractor, occupier is not liable if:
 - (a) occupier acted reasonably in entrusting the work to contractor.
 - (b) occupier took steps to be satisfied that contractor was competent.
 - (c) reasonable that the work performed by contractor should be undertaken.

INFORMATION TO OBTAIN RE: CONTRACTOR

- Copy of contract
 - what are the terms of the contract? (e.g., snow shoveling only required when 2" or more? If so, obtain weather reports and ask witnesses about weather conditions)
 - hold harmless and indemnity agreement in contract?
 - did contractor comply with contract?
- Contractor's insurance policy
 - is the occupier an additional named insured?
- Find out credentials of contractor