

A Reprint from *Tierra Grande*


# *New Twist on Slip-and-Fall Cases*

By Judon Fambrough

A majority of cases involving landowner liability to customers (legally referred to as invitees) occur because of a slip and fall. An owner-operator owes a duty to customers to exercise reasonable care to protect them from known or discoverable dangerous conditions on the premises. The courts impute "constructive knowledge" of the dangerous condition to the landowner when it is discoverable. For a customer to recover damages, he or she must prove several elements.

- The owner-operator had actual or constructive knowledge of the dangerous condition. Sometimes the courts simply say the owner-operator knew or should have known of the dangerous condition.
- The condition posed an unreasonable risk or harm to the customer.
- The owner-operator did not exercise reasonable care to reduce or eliminate the risk.
- The owner-operator's failure to use such care was the proximate cause of the customer's injury.

A slip-and-fall case in Grayson County set precedents in Texas after a customer slipped and fell on Wal-Mart's ice-covered parking lot.

The incident occurred on Dec. 23, 1998, following an arctic cold front that dumped freezing rain, sleet and snow in the area. The plaintiff drove to Wal-Mart in her four-wheel drive vehicle and parked 30 feet from the entrance. She made two trips into the store. She slipped and fell on the ice while returning to her vehicle the second time.

Wal-Mart took no measures to remove the frozen precipitation or lessen the risk it posed. Wal-Mart contended, as a matter of law, the natural accumulation of frozen precipitation did not constitute a condition that posed an unreasonable risk of harm in this situation.

The court noted that the premises owner-operator's duty to protect customers (invitees) from the natural accumulation of frozen precipitation has been litigated extensively in colder climates. Two conflicting rules emerged. The "Massachusetts" or "natural accumulation" rule releases the premises owner-operator from any liability under such circumstances. The "Connecticut" rule requires the premises owner-operator to remove or eliminate all dangerous conditions irrespective of their source.

Four Texas appellate cases dealt with slip-and-fall injuries caused by frozen precipitation. None discussed the application of either the Massachusetts or the Connecticut rules. In this case, the court applied the Massachusetts rule removing liability for natural accumulations.

The Texas court was reluctant to require a premises owner-operator to expend a great deal of physical and financial effort to protect its invitees from a naturally occurring condition that usually dissipates in a short time. While the premises owner-operator may avoid this burden by closing the business during times of bad weather, the public is better served if businesses remain open to supply needed goods and services during harsh weather conditions.

The court limited its decision to parking lots only. "The question of the duty owed with respect to natural accumulations of frozen precipitation occurring on sidewalks, entryways, and other areas intended

for pedestrian traffic is not before us."

This decision was rendered by the Eastland Court of Appeals on April 10, 2003. Two months later, the Amarillo Court of Appeals decided another case involving an ice-covered sidewalk at an apartment complex. Because of the timing of the two cases, the first case had no bearing on the second.

*Wal-Mart contended that the natural accumulation of frozen precipitation did not pose an unreasonable risk of harm.*

The Amarillo Court of Appeals did not focus on the premises' or operator's liability for the natural accumulation of frozen precipitation. Instead, the key question was whether the person injured while delivering the morning paper was an invitee or a licensee.

An invitee is someone on the premises for the economic benefit of the owner-operator. A licensee is there with permission but for no economic benefit (for example, a guest at a social gathering).

**T**he owner-operator has a duty to exercise reasonable care to protect invitees from unreasonably dangerous conditions the owner-operator knows about or should have known about. However, the duty to protect licensees extends only to unreasonably dangerous conditions of which the owner-operator has actual knowledge; constructive knowledge is not imputed.

The owner-operator of the apartment complex had no knowledge that ice was on the sidewalks when the papers were delivered. Attorneys for the apartment complex argued that without actual knowledge of the presence of ice, it owed no duty to protect the delivery person, who was a licensee.

The plaintiff countered that the delivery person was an invitee, not a licensee. As such, the apartment complex owner-operator had a duty to protect that person from the presence of ice, which the owner-operator should have known about.

The court reversed a summary judgment in favor of the apartment complex and remanded the case for trial. Sufficient evidence existed for a jury to decide whether the delivery person was an invitee or licensee. The first case ruling would have had no bearing on this case because it was restricted to natural accumulation of frozen precipitation on parking lots. Here, the injury occurred on a sidewalk.

In another slip-and-fall case, Wal-Mart persuaded the Fort Worth Court of Appeals to reverse itself regarding the standard of care owed to invitees when customers are allowed to bring food and drinks into the store. Knowledge of the unreasonably dangerous condition again played a critical role.

Lorene Rangel slipped and fell on a mixture of water and ice cubes spilled on the floor by a customer. Wal-Mart's employees did

not prevent customers from carrying food and drinks throughout the store. The store had a written safety manual emphasizing that employees were to keep the floors safe.

Wal-Mart contended that, without more evidence, Rangel did not prove Wal-Mart knew or should have known that the water had spilled on the floor. Wal-Mart argued that the substance had not been on the floor sufficient time to discover and remove it.

The assistant manager testified that he knew customers carried food and drinks throughout the store and spills could occur. Thus, it was foreseeable customers might slip and fall on the spilled substances.

The trial court concluded Wal-Mart's policy, which allows customers to carry food and drink into the store, created a foreseeable danger and risk of harm and that Wal-Mart failed to prevent this danger by exercising ordinary care. The mere fact Wal-Mart allowed its customers to carry drinks posed an unreasonable risk of harm, according to the court. The customer did not have to prove that Wal-Mart had actual or constructive notice of the spill.

**F**ive years later, an identical situation occurred. Again, Wal-Mart was sued. However, this time the Fort Worth Court of Appeals reversed the standard it set in *Rangel*. To prove Wal-Mart had actual or constructive knowledge of the conditions, the court said, the customer must show Wal-Mart:

- placed the foreign substance on the floor,
- knew it was on the floor and negligently failed to remove it or
- should have removed the substance from the floor after it had been there a sufficient length of time to be discovered.

Under the *Rangel* approach, the owner-operator became liable for allowing a foreseeable potential dangerous condition to occur. This extended the scope of responsibility too far and led to a reversal of *Rangel*. 📌

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