



What Happens if Someone is Hurt in Your Facility

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Topics Overview

- Common situations
- Overview of Georgia law
- Practical considerations
- Litigation: What is it and how will it affect your organization?

Common Scenario: Falls

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"Poor guy. Right before Easter too."

Common Hazard: Floor Mats



Common Hazard: Falling Objects



Common Hazard: Foreign Substance



Common Hazard: Natural Substance



Common Hazard: Static Condition



Equipment Hazards



Status of Injured Person

- Invitee: Person there for benefit of business (customers).
 - ✓ Example: Customer (most common for YOU)
 - ✓ Duty to keep premises safe
- Licensee: Person allowed to be there for their own benefit
 - ✓ Example: Social guest
 - ✓ Duty to not willfully injure them
- Trespasser: Not authorized
 - ✓ Duty to not willfully injure them

General Rule

O.C.G.A. § 51-3-1: An owner or occupier of land is liable for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.

Premises owner is not an insurer of an invitee's safety and a mere occurrence of an injury on the premises does not mandate a finding of negligence. *Lee v. Food Lion*, 243 Ga. App. 819 (2000).

Plaintiff has the Burden of Proof

- Owner/occupier possessed superior knowledge of “hazard”
 - ✓ Actual knowledge
 - ✓ Constructive (should have known)
 - Owner should have or could have known of the hazard with reasonable inspection
- Plaintiff lacked knowledge
 - ✓ ***Owner/occupier would then have to prove plaintiff failed to exercise ordinary care***

Proving Owner/Occupier Knowledge

➤ Actual

- ✓ Difficult to prove
- ✓ Rare

➤ Constructive

- ✓ Should they have discovered the hazard with reasonable inspection procedures in place?
- ✓ Employee in immediate vicinity?
- ✓ Similar prior incidents?

Constructive Knowledge

- Plaintiffs usually focus on constructive knowledge, i.e. **“should have known”**
- Prove reasonable inspection procedures were in place AND were executed at time of accident

Constructive Knowledge

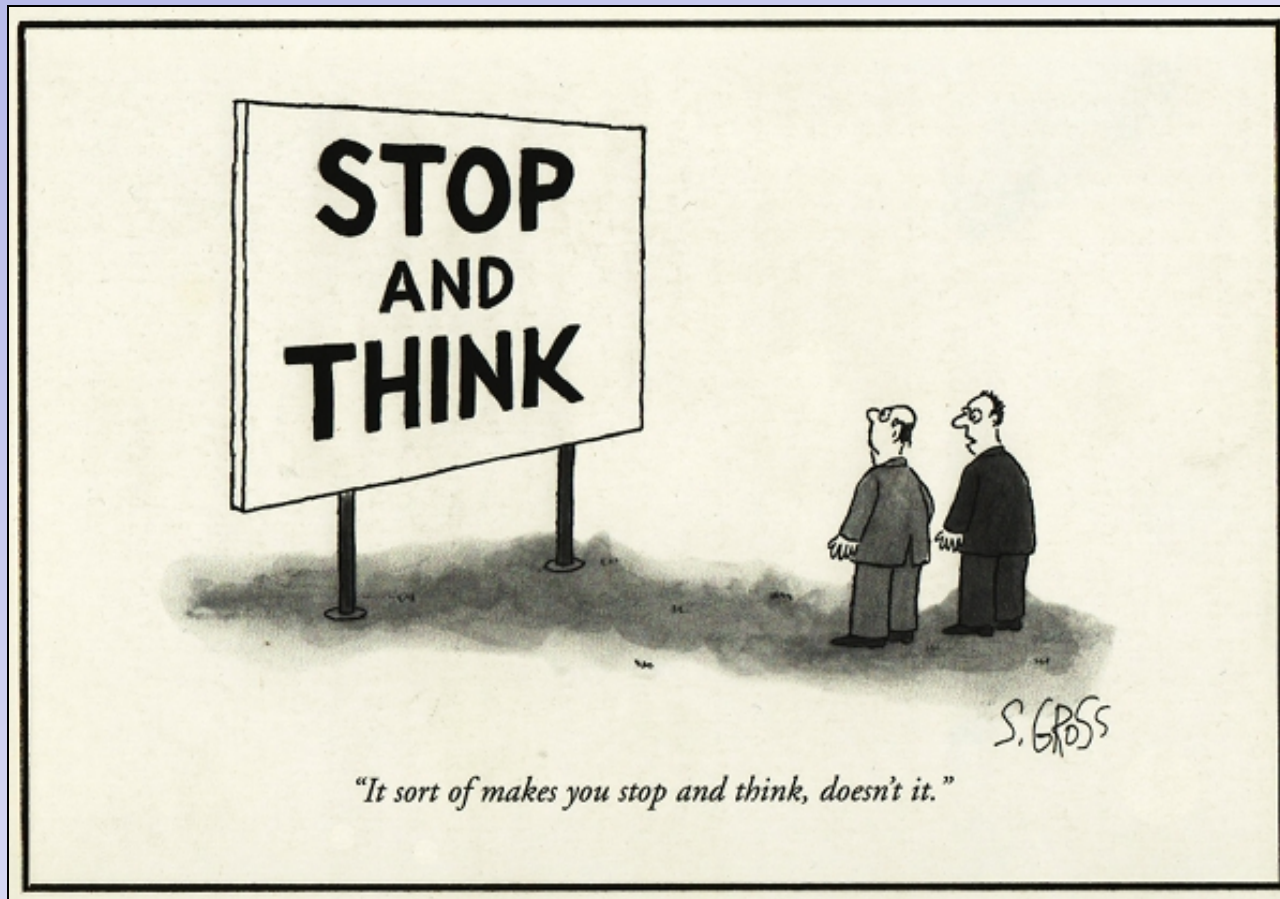
What is “reasonable inspection”?

- *Wallace v. Wal-Mart Stores, Inc.* (Ga. App. 2005)
 - ✓ Employees clean and check floors every hour
 - ✓ “Zone defense” analogy — adequate as a matter of law
- *Adamchick v. Cracker Barrel Old Country Store, Inc.* (Ga. App. 2006)
 - ✓ Policy: Inspect every 30 minutes
- *Quarles v. Georgia Service Systems, LLC* (Ga. App. 2003)
 - ✓ One hour, 15 minutes before incident reasonable
- *Patrick v. Macon Housing Authority*, (Ga. App. 2001)
 - ✓ Every two hours was reasonable

Defenses

- Reasonable inspection procedures followed
- Plaintiff failed to exercise ordinary care
- “Equal Knowledge”: Liable only if defendant owner has “superior knowledge”
- “Open and Obvious”: No duty to warn of the obvious
- “Prior successful negotiation” of the “hazard” by a plaintiff.
 - ✓ “You walked over the hazard once before and did not fall!”
 - ✓ *Delk v. Quiktrip*, 273 Ga. App. 884, 616 S.E.2d 123 (2005)

Practical Considerations



Assess Your Hazards

- Time of fall/note weather
- Type of substance/condition
- Previous similar incidents



When An Accident Happens

- Investigate:
 - ✓ The accident
 - ✓ The people
 - ✓ The hazard
- Retention:
 - ✓ Photographs
 - ✓ Video footage
 - ✓ Witnesses (interviews and statements)
 - ✓ Information
- Preserve all evidence!
- Notify your insurance company

Spoliation

Spoliation is the destruction of or failure to preserve or significant alteration of evidence that is necessary or material to contemplated or pending litigation.

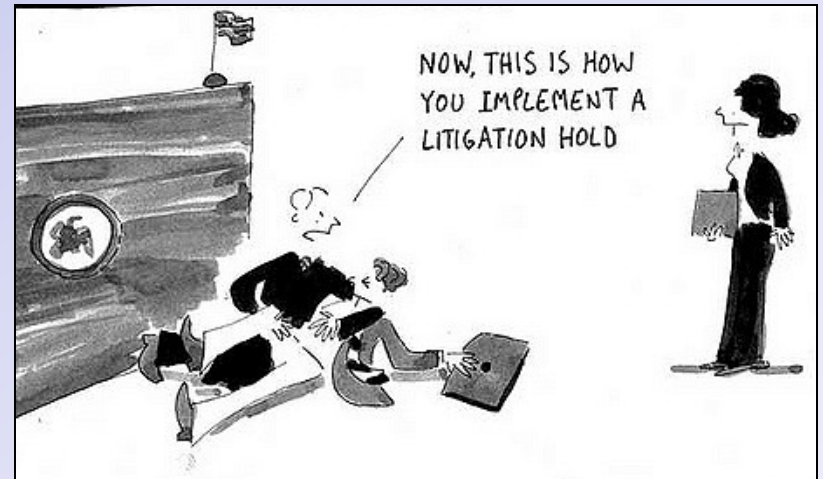


Duty to preserve evidence where claimed

Spoliation

- Primary goal: Preservation of evidence
- Secondary goal: Impose sanctions

- ✓ Dismissal
- ✓ Exclusion of expert
- ✓ Exclusion of evidence
- ✓ Dismissal of claim(s)
- ✓ Adverse inference charge to jury



Spoliation

- *Wal-Mart v. Lee* (Ga. App. 2008)
 - ✓ Harsh sanctions for failure to preserve surveillance tape
- *Baxley v. Hakiel* (Ga. 2007)
 - ✓ Failure to preserve surveillance tape resulted in reversal of summary judgment
- *Flury v. DaimlerChrysler* (11th Cir. 2005)
 - ✓ Failure to preserve after notice by defendant of intent to inspect **REQUIRES** dismissal
- Intent not necessary to warrant dismissal

Letters of Representation

- Notice that claimant has an attorney
- Usually include two things:
 1. Request for insurance information
 2. Request for preservation of evidence
- Forward to your insurance company and/or attorney

Litigation: A Lawsuit is Filed



Statute of Limitations

- Two year statute of limitation for personal injury in GA
- O.C.G.A. § 9-3-33:

Except as otherwise provided in this article, **actions for injuries to the person shall be brought within two years after the right of action accrues . . .**

Lawsuit Initiation

- Initiated through “pleadings”
 - Summons + Complaint
- Must be personally served on each defendant



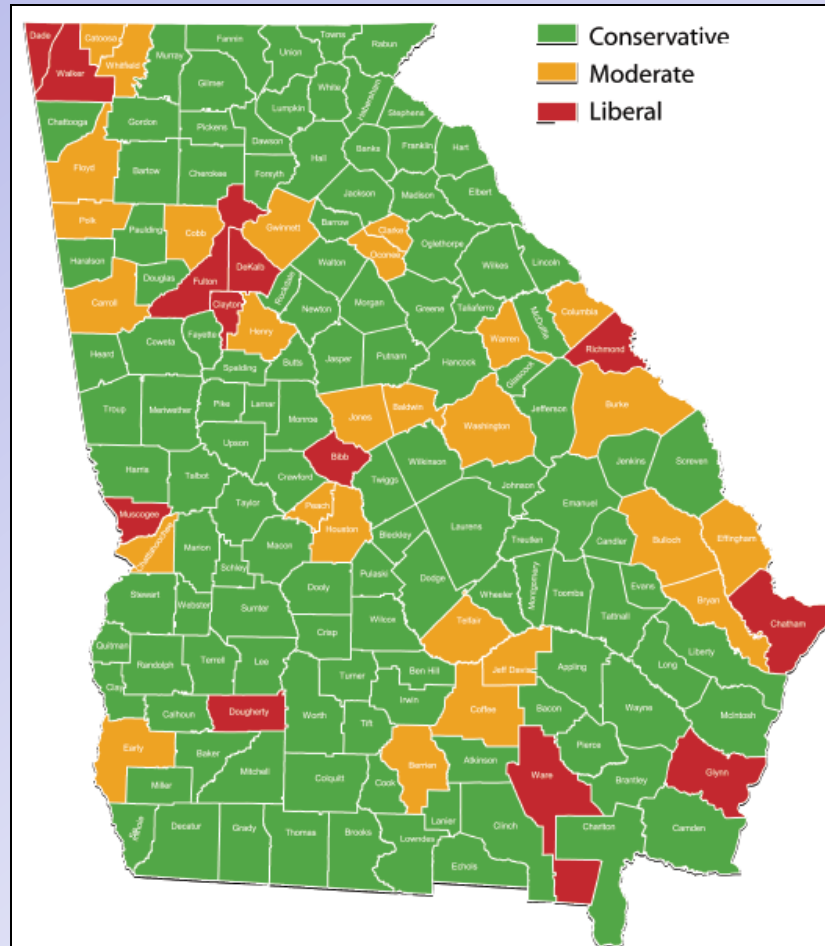
Lawsuit Initiation

- Once served, defendant has 30 days to file defensive pleadings (i.e. Answer or Motion to Dismiss)
- Written discovery is usually served with the Summons + Complaint
 - Due date for responses to discovery: 45 days from service
 - Be careful of Requests for Admissions!
 - If not answered timely, deemed admitted

Venue

- Lawsuit must be brought in proper “Venue”
- Governed by GA Constitution and statutes
- Individuals (GA Const., Art. VI, Sec. 11, Para. IV): Where defendant resides
- Nonprofit Corporations (O.C.G.A. § 14-3-510):
 - Where nonprofit maintains its registered office
 - Where accident happened if corporation has an office and transacts business in county where accident occurred

Venue



Negligence Standard

Liability = Duty + Breach of Duty + Causation + Damages

Plaintiff must establish all four elements by a
“preponderance of the evidence” to recover any damages



Types of Damages

- O.C.G.A. § 51-12-2(a) General damages are those which the law presumes to flow from any tortious act; they may be recovered without proof of any amount.
- O.C.G.A. § 51-12-2(b) Special damages are those which actually flow from a tortious act; they must be proved in order to be recovered.
 - ✓ Medical damages
 - ✓ Lost wages
 - ✓ Property damage

Discovery



Discovery

- Written discovery:
 - Interrogatories
 - Requests for Documents
 - Requests for Admissions
- Non-parties
- Depositions
- Expert discovery



Trial

- Right to jury trial
- Twelve jurors selected through process called “voir dire”
- Decision must be unanimous



Questions?



Thank You!



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For More Information:

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