

Beyond The Banana Peel

Slip and Fall & Other
Premises Liability Cases



Steve Grover

Beyond The Banana Peel



Slip and Fall & Other Premises Liability Cases

Steve Grover

Beyond The Banana Peel

Slip and Fall & Other Premises Liability Cases

Copyright © 2023 Steve Grover

All rights reserved.

ISBN: 978-1-956220-35-3

Disclaimer

This publication is designed to provide accurate and authoritative information regarding the subject matter contained within. It should be understood that the author and publisher are not engaged in rendering legal, accounting or other financial service through this medium. The author and publisher shall not be liable for your misuse of this material and shall have neither liability nor responsibility to anyone with respect to any loss or damage caused, or alleged to be caused, directly or indirectly by the information contained in this book. The author and/or publisher do not guarantee that anyone following these strategies, suggestions, tips, ideas, or techniques will become successful. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

All rights reserved. No portion of this book may be reproduced mechanically, electronically, or by any other means, including photocopying, without the written permission of the author. It is illegal to copy the book, post it to a website, or distribute it by any other means without permission from the author.



Expert Press
2 Shepard Hills Court
Little Rock, AR 72223
www.ExpertPress.net

Editing by Tamma Ford

Copyediting by Heidi Ward

Proofreading by Abby Kendall

Table of Contents

Introduction to Premises Liability	5
Chapter 1	
What Is a Premises Liability Injury?	9
Chapter 2	
What Do You Do If This Happens to You?	23
Chapter 3	
The Initial Consultation with a Lawyer	29
Chapter 4	
Standard of Care—What It Is and Why It Is Important for Your Case.....	37
Chapter 5	
Honesty Is the Best Policy	45
Chapter 6	
Credibility Is Key	53
Chapter 7	
How Your Case Is Built	61
Chapter 8	
Problems with Premises Liability Cases	73
Chapter 9	
The Kind of Damages You Can Expect.....	77
About the Author.....	87

Introduction to Premises Liability

Imagine you've just locked your car up to enter a very large retail store to do some leisurely shopping and scoop up some deals. You walk toward the store entrance, which is just across from your parking space, less than thirty feet away. The store's double doors are wide open and you can see for perhaps fifty feet into the store. As you walk toward the store, you see a female shopper walking toward the exit. She has a small shopping bag dangling from her hand. To your astonishment and before your very eyes, the woman slips on something when she is about fifteen feet from the door, goes heels over head, and falls flat on her back . . . You hear a scream . . . but she does not get up.

In the few seconds it takes you to rush into the store, you notice blood flowing slowly from the lady's head. It looks like she's passed out.

You don't touch her, but you do whip out your phone and dial 911 and ask for an ambulance.

In the process, you see another shopper and ask her to get the store manager—*immediately!* It takes the manager two or three minutes to come out as you stand there talking to the 911 dispatcher. While still on the call, you tell the thirty-something-year-old manager that you've called an ambulance but to start following "his emergency protocols—*now!*" The manager is confused for a minute—stunned—then shakes himself to make a call.



6

The ambulance arrives and things are out of your hands. But "things" are far from over, as you might guess. What you have witnessed is a premises liability injury, a slip and fall accident, a personal injury that took place on someone else's property—right inside that retail store you love to shop at.

You know you've just witnessed an injury resulting in at least a severe concussion, bleeding, and a broken hip.

Not Your Saturday Morning Cartoon

Say "slip and fall" and some people think about their childhood TV cartoon characters. There's always one cartoon character hilariously slipping

on the banana peel, doing three flips in the air, and landing on their back. We imagine Goofy from Disney cartoons or Road Runner and Wile E. Coyote and their shenanigans. What comes to mind for movie buffs are the physical comedy antics of Laurel and Hardy or the Three Stooges (and their modern-day incarnations) or physical-comedy actors like Jim Carrey. What do we do while watching their antics? We crack up with laughter.

The reality can be—and is—very different. A slip and fall accident is no laughing matter. These are serious cases. This type of personal injury can affect your health and wellness for a few weeks or your lifetime. That shopper could have broken not only her hip but her back as well. She could be paralyzed for life from that one fall in your favorite store.



7



Reality check: We humans are less resilient than cartoon characters. Slip and fall cases are also more complicated than your childhood cartoons led us to believe. I'll be explaining some of the complexities to you in an understandable way.

If you're injured in one of these accidents you might be able to get compensation for your injuries. You can get money for pain and suffering as well as the costs of your medical care and any you might need in the future.

But there is more to such a case than meets the eye. At the end of the day, these cases are first and foremost about your honesty and credibility. And secondly, they're about the accountability and responsibility of the owners of the premises.



Chapter 1

What Is a Premises Liability Injury?

Risk is all around us, really. Risk exists in our homes, on the road (I wrote several books on that!), and in the various businesses and public venues we frequent.

What is *premises liability*? Generally, this legal term refers to an injury to your person that results from an unsafe or defective condition on a property or “premises.” The category is broad, as you will see.

The term *premises* covers a broad group of structures: hole-in-the-wall convenience stores,

restaurants, hotels, big box stores, shopping malls, concert halls, sports arenas, construction sites, and more. The list is long.

The laws about premises liability hold property owners and residents accountable for accidents and injuries that occur on their property. You probably already know this because of the generalized requirement of liability insurance for residential, commercial, and industrial property owners and property occupants.

Accidents and injuries incurred by a visitor to a property are what trigger claims and disputes between the visitor and the property owner.

The laws and procedures of the location in which the injury occurred will determine whether there is liability on the part of the property owner/occupant and how it may be compensated.

Premises Liability in Alberta, where I practice, is a product of both the Law of Negligence as well as a statute in the form of the Occupiers' Liability Act (OLA). Section 5 of the OLA places a duty of care on "occupiers," which requires them to take reasonable care toward "visitors" to their property. British Columbia, Alberta, Manitoba, Ontario, PEI, and Nova Scotia all



rely on their specific Occupiers' Liability legislation. Saskatchewan, Quebec, New Brunswick, and Newfoundland do not have formalized legislation.

Such laws—and lawsuits when necessary—are tools used to keep property owners accountable for their actions. Lawsuits keep them accountable and require them to make changes for increased and sustained safety. The goal of these laws is to keep everyone safe on their property through maintenance and other actions the property owner takes.

The type of accidents we are discussing tend to simply be dubbed “slip and fall” cases. The tendency is to put them all in one basket. However, you will see that not all accidents involve slipping.



Beyond the Banana Peel

To understand where lawyers, the courts, and insurance companies are coming from when you make a premises liability claim, and especially in any type of slip and fall case, let me introduce the concept called *friction*. We all understand the basics of friction—a material catches on your hand when you rub it or it slides over your skin. If it catches a lot, it has a lot of friction.

If it slides almost by itself, there is only a little friction.

Now put the concept of friction in the context of walking. You have the soles of your footwear and the surface you are walking on. For example, compare walking on a clean floor inside a store to walking on a store floor covered with soda pop. What about walking on an icy sidewalk on a frigid winter day as opposed to strolling along the same sidewalk on a hot, dry, summer day? I think you will agree that the degree of friction against the sole of your shoe is going to be different in each case.



12

Friction is what keeps your shoe from sliding on a given surface. With lots of friction, we say your shoes grip well. There might just be an infinite combination of surfaces that can slide on each other. There might be infinite types of materials that can interact with each other and cause a surface to be more or less dangerous.

That concept of friction is why you should keep your shoes and your clothing (also creators of friction) as part of your evidence. And you should keep them in the exact state they ended up in after your fall (more on that in a few pages). The way experts measure this is by using

a calculation of the “coefficient of friction,” and they have tools to take that measurement.

Premises Negligence and Injury Types

Slips and falls. These are the type of injuries best known by that banana-peel moniker in the bigger category of injuries and claims. A slip and fall injury can occur in a store where they have neglected to clean up liquids or other slippery substances on the floor. That can create a lack of traction (too little friction) to give the walker a sure foothold.

Slip and fall accidents can be caused by liquid spills on a smooth surface but also by ice or snow; uneven traction or friction on the surface; or by a surface that is shiny, glossy, or waxed. If you slip on soda pop in the grocery store because the premises owners didn't clean the floor and you break a bone in the fall, that is a slip and fall, a premises negligence claim.



13

This lack of traction causes feet to slide on the surface you are walking on. When you slip, your feet generally go out in front of you and your body falls in a backward direction, so we call these types of injuries slip and fall.



14

Trip and fall accidents. These are different because the foot does not slide but collides. Your foot or the toe of your shoe gets caught on or hits an object on an uneven surface. It may be that an object is sticking out of the ground if you are outdoors. This accident can occur if the premises owner has left a lot of clutter for a walker to navigate. Wrinkled carpets or rugs can cause your feet to catch.

When you trip, your body generally falls in a forward direction. We call this type of injury a trip and fall.

Tripping or slipping, although made famous by the cartoon comedic use of the banana peel, are not the only types of accidents. Premises liability refers equally to any injury that results from an unsafe or defective condition on a

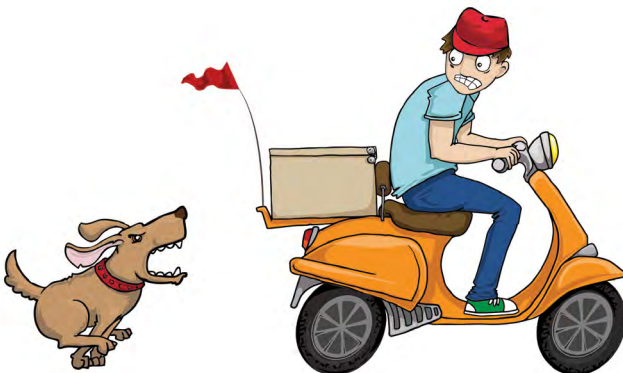
property. Injuries can occur from the following types of events as well:

Inadequate/negligent security. This includes premises with a lack of supervision. For example, the premises you are visiting might lack security guards, or have none at all when it should. Perhaps there are poor safety measures for visitors' safety. It could be that there are security employees but not in the right places, and you get attacked and beaten up in their parking lot. Safety measures that do exist could be defective, such as the parking lot light bulbs being out, leaving guests vulnerable to injuries or attacks.

Dog bites. This can range from a dog running wild and mauling someone to a patron's dog biting another customer in a store.



15



Construction-site accidents. This is a large category of injuries. Here are a couple to consider. An active construction area is not properly guarded, lit, fenced, or otherwise marked. When the area is not properly guarded or marked, you fall in a hole or trip on materials lying about. You might break a bone, get deep gashes, or get knocked out. Or, you are walking past a skyscraper or even a two-story building that is under construction, when a pane of glass or other object falling from an upper level of the building lands on or near you and causes injuries.



16

Related to those falling objects from an active construction area, you might be innocently walking on the sidewalk passing an apartment complex and a resident tosses a glass liquor bottle out of his seventh-floor window. It is falling because it was thrown!

Amusement park accidents. We don't like to think about these. When we are at the amusement park we want to be . . . amused. We want to have a good time and enjoy ourselves. But say the roller coaster is poorly maintained and not properly inspected. If one car goes off the rails, the other cars will follow in a cascade. Life-altering injury and even death can be the

result. And any type of injury can be incurred elsewhere on the park grounds. The bathrooms can be flooded and the floors might be slippery. Outdoor paths could be obstructed in subtle ways that cause patrons to trip. The stairways could be in poor repair and someone could fall through a step.



17

Swimming pool security claims. In public pools, whether indoor or outdoor, accidents and injuries can and do occur due to not having enough lifeguards on duty. Even at pools without lifeguards or good maintenance and markings, there are cases where people drown or get injured while diving into the pool because of poor depth markings.

Elevators, escalators, automatic door accidents. Operating failures or poor maintenance

might cause accidents and injuries. The elevator door closes too quickly and snaps on you, breaking your arm. The escalator suddenly halts and you lose your balance and fall forward down the remaining steps, hitting your head and getting a serious concussion.

Back to Owner Accountability

An owner who is solely profit-focused could save money by not hiring a person to sweep the floors. Accidents are bound to occur. Some corporations with stores from coast to coast keep accident or incident reports, while others don't even write them up.



18

When you break your hip and go through three hip surgeries but still have mobility and pain problems, your life is changed forever. You can't go to the beach. You can't have sex with your spouse. You can't play soccer with your kids. I don't care what people say: Between being paralyzed or having a hundred million dollars, I would rather just have my health and mobility back. But life isn't like that.

People in my profession don't want to sue these big companies (or any premises owners, big or small). But with laws and procedures

in place, we can go after those who overwork their employees to the point that they fail to do the safety and maintenance tasks or those who won't hire enough staff to keep their property safe. The goal of a lawsuit is to keep people safe and to remind property owners of their legal responsibility to uphold that goal. Lawsuits keep property owners accountable for their legal obligations.

Just to help you understand what I mean by keeping them accountable, here are two examples.

There's a case I know of in Los Angeles, California, in which a customer walked into a Vietnamese sandwich shop. At the counter, the customer placed an order for several menu items. Then he asked the clerk where the washroom was. The clerk told him it was around the back. The customer followed the hallway to the back and saw two doors. He didn't know which one to use because neither was labeled. So he just picked one. But behind the door that he opened, it was dark. That can happen when the lights are on an automatic switch or a previous patron simply switches it off. He opened the door; he stepped in. To his shock, there was no washroom—but also no floor! He abruptly fell



down a hole to a lower level. He became a quadriplegic in the blink of an eye.

The property owners should have locked that door. They should have also clearly labeled the washroom door. This is a clear lack of accountability under the laws for safety. The owner breached his responsibility.

Another case was in Las Vegas, Nevada—the casino capital. It is a famous case that settled for millions of dollars and made all owners tremble (and rightly so, as you’ll see). There are a lot of strip clubs in Vegas, and in these clubs, men come in and women come over to them saying, “Buy us champagne, handsome!” The club gave this poor guy a bill of ten thousand dollars for two bottles of champagne. He said he would not pay, that the girls just hustled him for drinks (and unfortunately in some bars that happens).

It didn’t end there. The bouncers came in. One bouncer grabbed him by the throat, took him out to the back of the club, and beat the living crap out of him. I don’t say that lightly. He could have died. As it was, they left him a quadriplegic. There was a big lawsuit that settled for millions of dollars just before a jury trial.



But this isn't all about premises owners in the United States. I know a man who a couple of years ago was riding his motorcycle in Calgary. He wiped out because he hit a bunch of sand on the roadway. He broke his neck and died. There was a big lawsuit and it ended up settling before trial. But money? This was a forty-two-year-old husband and father of two young kids. He was just riding his motorcycle, yet now, the entire family dynamic has changed forever. His kids are being raised without a dad now. His wife is without her spouse.

Owners—of stores, of municipal or privately owned land and properties—just can't act that way and not be held accountable for their actions. But accountability and paying up, so to speak, did not give the sandwich shop patron nor the Vegas club patron their health and mobility back. It did not give the Calgary family their dad and husband back. Owners must be responsible for safety. If they are not, the courts are there to hold them accountable for their failure.

The purpose of laws and lawsuits is to make the world safer. It is never about suing someone or a corporation for a big payout. At the end of the day, big companies are putting profits over people. If they can get away with a smaller



payroll by not hiring maintenance or janitorial or security staff in sufficient numbers, they just might do that. That is why laws, and lawsuits when needed, remind them of their responsibilities as property owners. It is the lawsuits that help keep owners accountable and responsible for keeping their property safe for all visitors.



Chapter 2

What Do You Do If This Happens to You?

What are your best first steps to take in case of a slip and fall or any premises injury such as I've named?

While still on the site of the accident, check yourself (or whoever you are with) from head to toe for injuries. Cuts, scrapes, bruises, breaks—the works.

Look around for witnesses and keep them with you as you take video or photos of the scene, yourself, and them. Get their contact information—full name, email, phone, address.

If they work for the business where the accident occurred, be sure to make a note of that as well.

Don't let witnesses or employees make corrections to the space you are in until it is documented. No cleaning up, no removing things. Take photos first.

Look around as you take photographs; take shots of the entire area. Photograph the thing that made you fall or trip, the thing that fell on you, or whatever caused your injury.

Keep your video and photographic evidence safe by emailing it all to yourself or uploading it to your cloud storage. Almost everyone has a smartphone camera these days, so use it. Take and save the photos you take—even the blurry ones.

Collect and keep physical evidence. This may seem difficult, but in all cases, at least take a picture of it. A picture is worth a thousand words.

We lawyers call this “preserving the evidence,” and this means you should keep your clothes, shoes, and accessories you were wearing as they were when you had the accident.

The first key word to that advice is *keep*. Do not discard anything you were wearing nor any



item that landed with you or caused your injury. The second key is keeping these items just *as they were* at the time of the injury. For instance, were you wearing eyeglasses and they got smashed in the accident? Keep them, just as they are. Were you wearing jeans and one leg got sliced through to the skin? Keep them, just as they are. Were you wearing sandals and you slipped in some gross-looking gooey stuff that stuck to the sandals? Keep the sandals, just as they are.

In other words: Do not change, clean up, repair—or throw out!—any of your clothing or accessories. Do not clean off that gooey slime, or whatever substance made you slide or fall, from your shoes. Do not toss those jeans in the trash. Put your smashed glasses and all the shards in a zip-top baggie and keep them. If your skin got cut, smashed, or scraped, take a photo of the cut right away as well as the amount of bleeding and, if possible, the object or area that caused the skin injury.

If you knocked your head against anything on your fall or if anything landed on your head or body to make you tumble, make a note of that. Shoot a photo of the object that fell on you.



Incident Reports and Other Documentation

Premises incident report. Your next task is to locate the premises manager or employee in charge. File an incident or accident report with the store or venue manager and get a copy of those records from the manager. If the employee in charge has no idea what to do, have them make a call to the owner or their boss. Whatever the size of the premises (huge concert/sports arena to tiny shop on the street), ask for the manager. Get whoever is in charge to initiate an incident report. Take a photo or screenshot of the printed report so that you have it in digital format along with your photos.



26

Doctor or hospital records. If you're injured—and especially if objects fell on you or you cracked your head in any way—contact your physician. Better yet, take yourself to the hospital or clinic emergency room. Call for an ambulance if you need one to get there. Do that right away, even if you believe the diagnosis will be “nothing but bruises.” When you consult a doctor or go to the hospital, reports are drawn up, and those reports are useful to prove your case. If the emergency room staff send you for X-rays or MRIs, or cart you off to surgery, get a copy of all those pictures, records, and reports

for yourself. This is all part of your collection of evidence.

Insurance. Contact your medical and disability insurance carrier as soon as you can, and I mean within hours, not days or weeks.

Why collect all this physical evidence, reports and records, and photographic documentation? Because insurance companies for the defendants don't just write checks on your say-so. Insurance companies are very likely to be the payer of any settlement you are awarded, not the owners themselves (unless they have no insurance or are insufficiently covered). Insurance companies do not pay based on "he said/she said" arguments. You have to prove your injuries and your losses to the insurance company, to the court . . . and to your own lawyer.

And speaking of lawyers, you need to identify and contact a lawyer to represent you.



Chapter 3

The Initial Consultation with a Lawyer

“I’m not sure if I should sue. I don’t have any money to pay a lawyer. The emergency room doctor said I didn’t really get hurt too badly.”

These first two thoughts will probably go through your head in the aftermath of an injury on someone else’s property. The last thought will occur to you if you were injured but it is not life altering. There will be some hours or even days of mental and emotional confusion.

It is certainly not advisable to make major decisions during such confusing times. What are your legal rights? You don't know. What's the next best step to take? You probably don't know that either. And that is fine, because that is what lawyers know and can tell you.

In the best of worlds, any premises owner or management team keeps their property in pristinely safe and secure condition. But let me ask you this: Do we live in the best of worlds? Of course not! Premises owners are delinquent in the care of their property. Owners and managers are honest—or not—when it comes to dealing with visitors to their property who are injured. And you, the innocent visitor to those premises, are not particularly schooled (that is my guess and probably why you are reading this) in what to do if such an injury happens to you. How do you take care of yourself when you don't know what to do or what your legal rights are? It is really hard, and I'll be the first one to say so.

In some accident and injury cases on some premises (and I know that sounds vague, but bear with me), a lot of money can be on the line to settle such matters. The reputation of a business or an owner or a manager can be on the line. Premises owners might go into “protective



mode” right away. That is not in your favor in many cases.

Talk with a Lawyer

You should consult a lawyer. You have legal rights, and a lawyer’s job is to represent them for you. But first, you need to identify one who is trained in the type of law you need. It is important to understand that lawyers specialize.

Go online and look for a “slip and fall,” “premises liability,” “unsafe premises,” or “personal injury” lawyer—that is who you need. And don’t worry about the legal fees. Lawyers don’t work for free—that is true—but in premises liability and personal injury cases, we don’t charge retainers or hourly fees. You don’t pay us anything up front to represent you. You also don’t pay for that initial consultation with me. In other words, there is no up front money out of your pocket to pay for legal services.

How are lawyers paid if it doesn’t cost you anything to hire us? We are only paid if we win your case! Lawyers pay themselves with a percentage of your settlement amount. Lawyers call this “working on a contingency fee.” To be paid, we must bring your matter to a resolution



and a settlement. That means we wait as long as you do for that settlement to be awarded.

You won't really know what your legal rights are in a personal injury case until you consult a lawyer. I suggest that you do some online research or ask people you trust for recommendations. If you're in my area, you'll find my firm—Grover Law Firm, Personal Injury Lawyers. You can read about my reputation with my clients and some of the results I have won for them (go here for those: www.groverlawfirm.com/case-results/). You'll learn why I can do the best work for you. I deal with these types of cases all the time. I know what it takes to get you the compensation you deserve. If you have any questions, feel free to contact me, so we can start helping you today.



Whether it's me or someone else, first you will schedule an initial meeting with your chosen lawyer. The meeting often happens these days by video call, phone, or in person. Let the lawyer ask you some questions and answer them truthfully. The lawyer you consult will know what questions to ask to determine if you have a case. The lawyer's job is to decide—based on experience in such matters and a judgment about your chances of success in court—if he or she will represent you.

You can ask all the questions you have. Only after this information-gathering interview can you and the lawyer decide if you have a case for suing the premises owner.

A Little Terminology

Suing someone means going to court to make a claim against them. The act of suing someone creates a *lawsuit*. Your lawyer of record (the one you sign a contingency fee agreement with) will file a lawsuit at the courthouse on your behalf. This filing and service of the lawsuit notifies the premises owner and their own lawyers (their insurance company's lawyers) that they are being sued for *damages*—monetary compensation to you for your injuries, pain and suffering, and losses.



33

If you sue another party, you are the *plaintiff* and your legal team will *prosecute* the case on your behalf. When my firm takes on your case to sue the owner of the premises where you had an accident, we are practicing *plaintiff personal injury* law and we *prosecute* your case. The people or businesses you sue are the *defendants* and their lawyers (their insurance company's lawyers) *defend* the case.

Insurance company lawyers, you ask? Yes. Just as in auto accidents it is not the insured driver who pays the injured parties but his insurance company, and so it is with premises liability claims. We sue the premises owner, but they are not the ones paying your settlement. The owners have insurance policies, so the insurance company will step in as the entity paying your claim; it will bring in its own lawyers to defend the claim. If the owner of the premises is uninsured (rare) or doesn't have enough coverage (a bit more common), we go after the owner personally.



34

Those are some basic terms and are how your case begins. I'll reveal more in later chapters so that you understand what the lawyer you consult is talking about. The lawyer and his team continue to build your case, as I'll explain more in Chapter 7.

Please don't try to go to court and deal with the claim yourself. It rarely if ever works.

Instead, present your accident and all the details you possess to a lawyer. You'll be stating where, when, and how it happened, and whether you have any photographic or other information to demonstrate what happened. You'll turn over your collected evidence to your lawyer. From

there, let the legal team you have retained do the rest.

Evidence Does Disappear

Keep in mind my warnings about collecting evidence: Keep it and keep it in the state it was in during the accident.

Because evidence does disappear.

This doesn't mean there is bad intent involved. Janitorial employees in stores come along and mop up—that's their job after all—and then they could leave their employer. Weather changes—ice melts, and how can you prove it was there and that that is where you slipped and fell? Torrential rains fall and erase traces on the ground. The mud that clearly showed where you skidded after slipping has been deformed by more rain, then it all dried up.



35

That is why I said your best first steps include documenting the area with photographs (and even video clips) and preserving the evidence as soon as you can. Then hand it all over to your legal team.

Chapter 4

Standard of Care—What It Is and Why It Is Important for Your Case

What do the lawyers on both sides and the judge look for once you go to court? There are a number of aspects that they will consider, but two big ones are *standard of care* and *duty of care*.

Just because a shopkeeper or a venue manager and their staff are obligated to maintain a safe environment for visitors—and you saw that by law, they are—does not mean that they do so.

In Alberta (where I practice) and other Canadian provinces, we have the Occupiers

Liability Act, or OLA. This is the law that establishes the duty of care of those who occupy the premises and their liability for injuries or damages that occur on that property.

The *duty of care* obligation is a standard in the law of negligence. *Care* is the opposite of *negligence* for our purposes. It is about good repair, timely maintenance, and regular upkeep. Owners must take care that their premises are safe from dangerous conditions. This obligation of care requires property owners to protect the members of the public (any visitors) who could be walking through the various areas of their property.



38

How does that look? If you enter a cinema, you expect the lobby floors and the aisles in the theater to be free of debris like trash, slick candies, or foodstuffs. You expect stairwells to be free of obstacles, and the banisters and stairs to be in safe repair. You expect the seats to be in good repair so that you don't plop down in one and fall straight to the floor. In other words, you as a visitor have an expectation of safety when entering and navigating someone's property so that you don't trip, slip, fall, or get injured.

A client of ours went into a dark theater and took the stairs. He stepped on a broken step

(which he could not see), fell, and broke his leg and his arm. The cinema “breached” or violated its duty of care.

And don’t believe this is only about “public” premises. If I come to your house for coffee and I fall because your front step is broken, you, the homeowner, have breached your duty of care.

Sometimes property owners are indeed careless—or worse. Employees slack off, preferring a break to doing the safety or cleanup work. Management is negligent of its obligation and doesn’t keep after staff whose job it is to keep the premises safe.

Other times, events just get ahead of them. For instance, a concert arena is a huge structure. Amusement parks cover a lot of land and have many individual structures on them. Grocery stores and big box stores are huge. It takes time for any staffer to be hailed down and notified of a wet spot in the aisle, more time for a janitorial staffer to get to the right aisle for a mop-up, and additional time for the cleanup to dry.

Even if the premises owner is not aware of the dangerous condition in the property (it is true that owners are not always on their property on a daily basis but employ others to be there)



and fails to fix it, that owner can still be held liable for any injuries resulting from that unsafe condition.

And now you know why my recommendation of photographic evidence and witnesses and accident reports was so important! It is always good, in support of your case, to be able to clearly show a breach of duty of care. Will this always be possible? No, but any single piece of evidence can be a game changer. Keep it all!

About Joe and the Standard of Care

The duties of the property owners and managers were to keep the trail our client Joe was cycling on in a safe condition for users—all walkers and cyclists. Their duty was to ensure that all hazards were appropriately marked.

We claimed that was not the case. Why?



40



Joe was bicycling southbound on the trail when he struck a large bump on the trail and did an endo from his bike and landed hard on his body. Since he was cycling, he was traveling faster than he would if he'd been walking. We all understand that. Due to the speed at which he was projected over his handlebars, he landed hard. Really, really hard.

We claimed that the bump was a breach of maintenance, a breach of standard of care, which is to keep the trail free of hazards. In our statement of claim, the document that provides the details of the case, we said that this accident Joe suffered was caused solely by the negligence and breach of statutory duty on the part of the defendants.

The reason we were able to make such a claim is because the defendants knew of the bump and did nothing to repair it properly. At a condo board meeting one month before Joe's accident, members were saying, Oh, we know about this bump, and we need to repair it. And they did absolutely nothing for another thirty days. No signage. No closing of the path. No effort to be accountable and responsible owners.





Now, you remember that the trail owners are called *defendants*. I will paraphrase here some of the defendants' failures that we listed in Joe's claim:



42

- ~ Failure to maintain the trail, ensure the reasonable safety of users of the trail, and remove the bump despite the hazard it posed to users of the trail
- ~ Failure to properly warn users of the trail about the bump by (for instance) installing proper signage warning of the hazard
- ~ Failure to barricade or close off the trail to ensure that invitees and the public would avoid walking and bicycling in the hazardous area

- ~ Failure to ensure the area was kept in a safe state of repair when they knew or ought to have known that it was a high-traffic area
- ~ Failure to properly supervise, train, and instruct workers, employees, or contractors on the appropriate safety maintenance of the trail, or at all

The whole point of a lawsuit is to hold these companies accountable and responsible for their actions.



Chapter 5

Honesty Is the Best Policy

Even if your lawyer has relative confidence that your legal team can secure a settlement for you (and that is why the lawyer has taken on your case in the first place), you won't always be awarded a settlement by the courts. Or if you are awarded a settlement, it is quite possible that it won't be the one you hoped for.

But there is another type of outcome and it is called a *summary dismissal*. A summary dismissal is an application brought before the court, and it is based on the fact that the defendant thinks that there's no merit to your case. The judge then rules on whether to dismiss your claim. In

other words, if the application is successful, the judge rules that you have not made your case or that you have no case.



46

What could lead to this decision? Perhaps you said, “I don’t know what made me fall.” Or you had no physical evidence. Or there was no evidence presented to show the store (or whomever you are claiming against) was at fault.

Thus, when your lawyers open the case initially, they have to think about what the defense will argue and anticipate that. Your lawyer thinks hard about what the arguments and evidence could be to make a good case. You must have solid evidence and witnesses who agree with how the accident occurred. Otherwise, the court may say, “No merit to your case.” Your

case will be dismissed, and you will be liable for costs payable to the defendant.

How do you and your lawyer know if you have a good case even before getting started? We already discussed some of the ways in Chapter 2: You know because of the evidence you collected.

I cannot emphasize this enough: *Evidence disappears quickly*. Collect photo evidence, write down witness names and contact information, notify the store or venue manager to create an accident report, and get your printed copy of it. Know what your injuries are. Keep written records of all your costs and expenses due to the accident. Be honest even about your past medical history when asked.



47

Credibility

I talked at length about the premises owner's responsibility. You as claimant also have an obligation to be credible.

Presenting a good case is, in very real terms, about establishing your credibility. Are you believable? Are you being honest in your evidence, your statements, and your claims? You need to be seen as credible.

Be knowledgeable about the event. This comes from documenting what was involved in your injury. Tell the truth about all things. If you don't have evidence, say so. Don't lie about it like that Wendy's fast food case in 2005, where a lady claimed, "Oh, there was a severed finger in my chili, but it was so gross, I just threw it out."

What was that case?

The Infamous Finger Case

The notorious Wendy's case occurred in 2005 in San Jose, California.¹ A lady entered a Wendy's restaurant. She bought a bowl of chili. She claimed there was a finger in her chili. Asked later by her lawyer if she had the finger, she said that she was so grossed out by it that she threw the chili and the finger in the garbage right away.

Her lawyer decided to sue Wendy's and put out press releases for nationwide media attention.



48

¹ <https://www.cbc.ca/news/world/couple-sentenced-in-wendy-s-chili-finger-scam-1.604362>. Accessed 01 Feb 2023.

Part of the outcome of that media coverage was that Wendy's felt so abashed by the allegation that all of its restaurants had a "Free Frosty Weekend" promotion.

A month later, it came out that the claimant was a professional litigator. She finally publicly admitted it was all made up. Her lawyer had not felt at ease about her claim (and for good reason) and ultimately did a courthouse search on her and found out she had dozens of frivolous cases filed and dismissed in the past.



49

In that case, there was no evidence for one simple reason: There had never been a finger in her chili.

In my profession, we are very careful for many reasons. When you first meet with a lawyer, the first thing the lawyer carefully tries to establish is your credibility. "Does this person have a real case? Do I believe the client's story? Is this a winnable case?" If the answers are yes, the lawyer will probably take you as a client.

The Most Important Argument: Truth

Credibility is so vital. The most important aspect of your case—any case you bring to the courts—is your credibility. In fact, I could say it is all about credibility.

The defendant’s lawyer is going to look at your credibility and test it. The judge is also going to look at your credibility at trial. They will all be asking themselves, “Is the claimant being honest and truthful?”

How do you go about demonstrating your honesty?



50

First, collect and keep your proof—the photos and the physical evidence you collected on the site of your accident. Even though the last thing you would probably think of when you break your tailbone or smash your arm is finding the manager or taking photos with your phone, the best advice I can give is to do it! Or have it done on your behalf.

Many companies have incident reports they fill out—get a copy and keep it. If an ambulance comes, there will be an emergency transport record; hospitals keep records of check-ins, and there will be doctor exam reports and potentially tests such as X-rays.

Second, and always, tell the truth. Be honest. Make sure you know your injuries. Be clear in your own mind about how the accident occurred. Be up front about your past medical history. Be honest and be truthful, even if it's a bad truth.

Make sure you have a genuine interest in why you're suing. What do I mean by that? Don't be that lady from 2005 who sued Wendy's. Don't be that person who litigates for revenge or just to "beat the system." Sue only because you have suffered a real injury, real pain and suffering, and real losses—and seek compensation for it.

Honesty is the best policy. Leave building your case to your lawyer.



Chapter 6

Credibility Is Key

As I suggested in the previous chapter, the defense lawyers (the lawyers for the party you are suing) and their experts and witnesses have a job. They are going to attempt to disprove everything you say and negate every piece of evidence you bring to support your claim. That's their job.

This is nothing to cry about. It is a fact of litigation and taking another party to court. Everything that can be known about you will be dug up and used if it contradicts your claim.

In Canada (probably in all countries), there are professional litigators. These are people suing

everyone and anyone for anything and everything—just to make “easy” money. To avoid cases like the Wendy’s one I mentioned, your life and activities are subject to examination by investigators.

I think the lesson to reiterate from the Wendy’s case mentioned in the previous chapter is twofold:

First lesson: In all cases, honesty is the best policy. That woman was not honest. She was a professional litigator looking for quick money. Dishonesty ruins reputations. Preserve yours. Be honest.

Second lesson: Don’t throw out physical evidence (that “finger” she allegedly found in her food) just because it “looks gross” to you, or ugly or uncomfortable to deal with. If it, in fact, caused or was part of the cause of your accident, you must document it so that it supports your claim.

Did Wendy’s end up turning around and countersuing this woman? I don’t know the answer. However, I do know this: Your own lawyers will be the first to be very wary of your honesty and the honesty of your claim. Evidence



and honesty, along with the real potential of getting you a good settlement, are keys for a lawyer to take on your case. When they have proof of your credibility, they can present you in the best light at either mediation or trial.

You are an injured party, the plaintiff. If you broke your leg at a grocery store, you want that store to be held accountable. That is our focus.

Credibility Is Key

Your own lawyer's evidence-gathering team will collect even more evidence and talk to witnesses on your behalf. But don't forget that the defense lawyer's evidence-gathering team is out there, too, collecting evidence to disprove your claim and defend against your case.



55

Both sides, in other words, are going to look at you, your life, your behavior, your prior state of health, disability, or illness, and everything applicable from your past with a fine-toothed comb.

The defense lawyer does a courthouse search to determine if you have a history of suing. Insurance companies will hire private investigators to find out more about you. They will look at everything including your social media presence.

Please, please understand the real risks to your credibility that can arise from your social media posting habits. If you have been in the habit of posting each and every one of your activities to the world (and that is what it is—the world) every fifteen minutes since Facebook was invented, private investigators and defense lawyers’ researchers will find it all—good and bad. They won’t be looking only at your accounts but also at anyone else’s social media where you are named. The defense (but also your own legal team) will be looking through your social media and anywhere else you appear online. They’ll be downloading and reading it all.



56

If you file a claim with insurance companies, know that all of them pay to have someone looking at your social media and online presence. Whatever they dig up is sent to their claims manager and to the defense lawyer to attack your credibility.

Your actions will be under scrutiny as well, so do the right thing. If your doctor prescribes treatments or medications, your job is to follow your doctor’s recommendations. You want to be seen or known to follow that plan—not as someone who will be out golfing instead of at the physical therapist’s office for your “bad back

issue.” If you’ve been told to be off work, be sure to really be “off work” (i.e., at home, in the hospital, or at the doctor’s office—not skydiving). Just do the right thing.

Joe and His Documented Injuries

As a result of the bicycling accident, our client Joe suffered severe and serious personal injuries. As his lawyer, I listed those injuries in our court-filed statement of claim:

- ~ A fractured left humerus (the long bone of the upper arm)
- ~ Left ulnar nerve neuropathy (pain, numbness or tingling on the outside of the left hand)
- ~ Surgical scarring on his left arm
- ~ Injury to his left shoulder
- ~ Injury to his left elbow
- ~ Contusions (also called bruises) to his left arm
- ~ Tingling and numbness in his left arm



- ~ Muscle atrophy (shrinking of the muscle tissue, potentially due to a lack of use or the inability to use the muscles) in his left hand
- ~ Contusions to the back and inside of his right thigh
- ~ General shock and nervous upset

Having filed this lawsuit, Joe, as you now know, had all his evidence looked at by the defendants. I will not let the defendants examine my client's entire life and entire medical history. I won't allow them unnecessary information. I control that on behalf of my client. I only provide "relevant and material" information to them.



How do I do that? I get authorization for my client's records for the three years prior to the accident. I will not allow the defense to go fishing back to someone's youth and dredge up something that happened when they were twelve years old. It won't be relevant.

You can bet that the defense lawyers tried to debunk our claims of Joe's injuries. Our job for Joe was to make sure we collected all of the

medical evidence and other supporting documents proving his injuries and his other losses so that opposing counsel would not have a leg to stand on when alleging his injuries were not real. We made sure Joe could prove that he was prescribed therapy, he went to therapy, and so on.



Chapter 7

How Your Case Is Built

You have had an accident on someone's property. You have collected evidence in the best way you could at that time, perhaps even extensive medical evidence from the hospital. You have hired a lawyer. But now what? How does your lawyer proceed? How does a lawyer approach your case?

Your lawyer begins by drafting a statement of claim. In Alberta courts, a statement of claim is a legal document drafted by lawyers for their clients to start a lawsuit. It sets forth the facts of the matter in dispute, states who is suing whom, and explains what damages are being sought

to remedy the dispute. The statement of claim is then filed with the courts and becomes the foundation document for the lawsuit.

The lawyer then proceeds to build your case in a series of steps. They are, briefly stated:

- ~ We file the statement of claim.
- ~ The statement of claim is served to the defendant.
- ~ The defendant files a reply called a statement of defense.
- ~ We exchange documents.
- ~ We go to questioning of all parties.
- ~ We get extra documents after questioning is complete that are called *undertakings*.
- ~ We get our expert reports lined up.
- ~ We agree to mediate the case before we go to trial. Mediation is mandatory in Alberta.
- ~ If mediation does not resolve the case, it is at this point that we ask the court for a trial date.
- ~ We go to trial.



What about Mediation?

I've perhaps introduced you to some new legal terms in this book. Here is one more term for you: *mediation*.

Your lawyer brings your case to mediation. This is a form of settlement meeting that takes place outside the courts of law before your trial is scheduled to start. The Court of King's Bench will not give me a trial date unless I and the lawyer(s) for the insurance company sign off affirming that we completed mediation and that it was not successful as we couldn't resolve the matter.

Mediation is like a free mini-trial where we can put on the case. I present a brief; the defendants present a brief. Both sides meet with the presence of a mediator to discuss the case with their clients present. A mediator facilitates the process. About 80 to 90 percent of disputes will come to a resolution at mediation. This saves the court a tremendous amount of time and resources.

Mediation is a joint meeting—both sides attend. Each party is represented by its lawyer, and the meeting is facilitated by a mediator, a neutral third party. The mediator's job is to help



you and the other party reach an out-of-court (but binding) settlement agreement.

It is a well-organized but more informal settlement meeting than occurs in the court trial. The point of mediation is to try to resolve the case before going to trial—including damages or compensation—to the satisfaction of all parties. If mediation fails, you go to court. When you go to court, you are stuck in a very strict process. There is a lot more leeway in a mediation setting.

We can often read in the media about how a sticky kind of legal matter was “settled for an undisclosed amount *out of court*.” That means mediation took place, and the parties came to an agreement about a resolution and/or a settlement amount. While the media focuses on celebrities and public figures who settle out of court (there is an air of mystery about it all too, and that makes for good press), anyone can settle through mediation or an out-of-court process. All it requires is that both parties wish to do so.

When both parties agree to mediation (and remember that in Alberta, we must), it can shorten the settlement process. It is still a process that takes time.



Reasons to Settle Out of Court

Why does a premises owner prefer to settle out of court? Or contrarily, demand to go to trial? The entire objective of mediation is to reach a settlement amount or other resolution to the matter at hand. Most look at mediation as a faster, less expensive alternative to going to trial. Although not always true, that is the perception.

Many corporations may want to settle out of court. For them, the reason might be reputation management. By settling out of court, there is less media ink spilled around the case, and the corporation can more easily manage what information gets shared about them and the case.

Sometimes it's just pure math. There is no doubt that many corporations facing numerous premises liability accidents prefer to settle out of court purely because of the high cost of *litigation* (the act of prosecuting and defending a case in court). Paying legal fees and court costs seem prohibitive to them. If legal fees, time, and trouble on the corporation's side are likely to be more costly than the final monetary settlement, they will lean toward settling through mediation.



Of course, not all premises owners are major corporations. They could be very busy small-business owners who just prefer the expediency of mediation because the matter is settled much more quickly than it might be by taking the case to court.

The Lawyer's Team

When a lawyer agrees to represent you, the lawyer does not do all these steps alone to build your case. They have people on their team to perform some of the steps I have listed in order to build your case.



66

The Evidence Response Team

I've already talked about your lawyer's team of investigators: the evidence response team. This team is often composed of ex-cops who are now private investigators. When you and your lawyer have signed a contingency agreement, the lawyer opens a file for your case. The lawyer will then assign or hire the evidence response team (my firm's term for these professionals) to examine the data and the scene. Remember, evidence is a very key part of building your case.



Pictures are worth a thousand words. The evidence response team will perhaps record their video footage of where you fell or where the injury occurred. The evidence response team will also identify and get copies of any CCTV (closed-circuit television) videos from all around the public areas of your accident and get security videos from the premises where you incurred your injury.

Identifying people and evidence and unraveling the significance of all the materials the evidence response team has gathered can be time consuming. Who is the premises' responsible party? Look at the number of potential people to find and interview: the store tenant; the store/mall/building management company; the owner of the building/mall; the janitorial or cleaning-service company; the store employees; your list of eyewitnesses. They must identify



who has responsibility for the premises, who witnessed the accident or came in contact with you to report it, and so on. It takes a little ingenuity and often lots of time.

They try to capture additional evidence and collect answers to many, many questions such as: Was there water or spilled liquid on that floor? Was there ice there at the time? What is the premises owner's good reputation as regards standard of care? What is the level of good repair and maintenance of the site? These are just samples of the dozens of questions they seek answers to. The answers are nonetheless important. These statements further build your case. They are the all-important facts that support your claim!



**A lawyer's performance in the courtroom
is responsible for about 25 percent
of the outcome; the remaining 75
percent depends on the facts.**

—Melvin Belli

Your lawyer will file your lawsuit for your claim against the premises owner at the courthouse. They also serve that claim to the

defendants—the owners of the premises where your accident and injury occurred. The exchange of documents between the lawyers will begin.

The lawyer takes witness statements. This means they collect written, sworn testimony of witnesses as part of the process of building your case.

You are typically not involved in any of those activities. The lawyer will manage his team to prosecute your case on your behalf. However, you are involved in other areas of case-building. Any medical reports you already have are examined, but your lawyer might also request an independent medical examination (IME), medical reports from your treatment providers if you were injured, and your past medical history. These are factual documents that can bolster the reports you already have, but good or bad, the information is informative to your lawyer as they build a case.



Contingency Fee

Remember that lawyers don't charge you up front nor as the case moves along to a conclusion—they work on a contingency fee. The lawyers are only paid when you win your case and get a settlement or court judgment. From

that amount, the lawyer's firm is paid a percentage of the settlement according to the agreement you signed.

My firm, for example, will get a fixed percentage of your settlement amount in payment for our work and representation of your case. So one of your lawyer's additional responsibilities is managing the team's expenses and out-of-pocket costs in building your case.

Patience

The process of going to court for a settlement does require patience. The wheels of justice, so to speak, will seem to you to move slowly. It is very, very rare to file a lawsuit and get a settlement within six months. So please don't expect that. When you go to court, the whole process could last several years. In fact, the story I've been telling about Joe, the bicyclist, took several years to come to a settlement.



70

Building Joe's Case

Remember that I stated that a "premises" can be a property or a structure? In that multiyear case that my firm litigated for Joe, it was a question of an outdoor trail that the owners of the premises were responsible for maintaining.

In 2015, our client, Joe, was cycling. He was on his bicycle on a well-known open-air walking and hiking trail running along a creek. He was injured, as I explained, and we filed a claim on his behalf. He was the sole plaintiff, and our firm was his lawyer of record. However, my firm's research discovered four defendants that we listed in our statement of claim.

We set our evidence response team to work, as I've described, and their due diligence is what uncovered the fact that the condo board members knew of this obstruction on the path a full month before Joe's accident there. We set out to build a strong compensation case.



Chapter 8

Problems with Premises Liability Cases

Are these premise liability cases more complex than, say, car accident cases? YES! Car accidents are better documented. There are very often multiple witnesses. In today's world, on highways and in cities, there are very often security cameras showing what happened. Police are almost always called, and police reports are written up and filed.



So how are any premises liability cases more complex than car accident cases?

If you hit someone at a red light, it is open and shut since cameras capture the accident, witnesses step forward, and hospital and auto mechanic records tell their stories. It is relatively straightforward in the majority of cases.

If you slip on a spilled soda in a grocery store, however, they clean it up right away, and your evidence is gone. The grocery store folks have a picture of where you fell, and there is nothing in the picture but the clean floor. Additionally, your lawyers will have to interview a lot of people, and that takes time, as I previously stated. They will need to identify and track down those individuals. Your lawyer must acquire written records, and that takes time.



On top of that, to defend their case, the defendant's insurance companies take a harder look at slip and fall and premises liability cases than they do for most car accidents. Remember what I told you about the insurance company's research into your online life and habits and your history of claiming? They take the time they need in order to build and defend their own case against you.

It Comes Back to You

Here is the biggest difference between that auto accident and your slip and fall accident: your credibility. A big part of your claim is your believability. If you walked into a grocery store and fell—but didn't mention it to the manager, had no photographic evidence or witness statements, and then tossed out the shoes and clothes you were wearing at the time? Then it's your word against theirs.

Are you a credible person? A he said/she said argument before a judge in the courtroom is unlikely to work. A lawyer may not take your case at all if you give your lawyer nothing to build on. As I keep repeating, facts—evidence—go a long way to making a good case with a good outcome.



Of course, whether the owner of the premises has a good or bad reputation comes into the equation, too. But in the end, you began the claim and, above all, it is your credibility, your reputation, and your honesty that are under the microscope.

As for Joe, It Ain't Over Till . . .

Joe's claim demonstrates the complexities of premises liability cases and the time they can take to resolve. Joe's case took several years to resolve, but as I have mentioned, this is not at all unusual.



76

Riding a bike on a trail, Joe hit a bump, flipped, and injured himself badly. Initially, the defendants denied liability. My evidence response team debunked that claim by discovering the owners knew—for a full month before Joe biked on that trail—that there was an issue. They learned about it at the condo board meeting one month before Joe's accident. When the board did absolutely nothing for another thirty days that was a breach of their duty of care. We held them accountable for their duty to make the area safe.

Chapter 9

The Kind of Damages You Can Expect

What are you here for? In Canada, you have a legal right to sue somebody if you've been wronged and injured. Lawyers like me don't want to sue big corporations just for the fun of it. We have plenty of other work to do! We do want to hold premises owners accountable to their duty of care, though. Their obligation to keep their property safe for visitors cannot be ignored. But when it is, you have a right to sue them for compensation for your pain and suffering, and other losses.

If you win your case in court or settle at mediation, you are entitled to compensation. I think most people understand that as the end goal of such a claim.

When you receive compensation, so does your legal team. Your legal team's percentage, along with its costs and disbursements, are part of those damages and settlement monies.

The courts obviously cannot give you back your health or restore the physical mobility you have lost. They cannot take away your pain and suffering. You are here, filing a claim in court, for a settlement. Damages. Money paid to you as a claimant for injuries, pain and suffering, and losses. Money does not solve all problems. However, this is the only recourse our system has for you—money. Even though it never replaces what you lost, it is the solution we have.

It's important to point out here, however, that how much compensation can be awarded depends on which province or American state the accident occurred in. For the purposes of this chapter, I will focus generally on Alberta, where my practice is located.



Types of Damages

What people may not understand about the compensation they can be awarded is that there are a number of different types of damages. If you sue premises owners, it's important to know what types of damages you can get for your injuries.

I must forewarn you: The damages you are awarded will always be dependent on the circumstances. Have no doubt that your opponents—the defendants' legal team—will try to minimize anything your lawyer asks for. But the following types of compensation are what your legal team can and will consider when building and presenting your case:



79

Pain and suffering. This is money awarded for the pain and suffering and injuries you suffered in the accident. In Canada, there is a cap on how much can be awarded for this particular type of damage, which currently is \$440,500.

Past loss of income. There will be some research into your earnings, as the defendants won't accept an "I have lost" argument without documentation. If you could not and did not work at all while recovering, this is a sum that helps cover that lost income.

If you're off work, you're entitled to get your lost income back. Past loss of income awards a person for the income that he or she has lost from the date of the accident to the date of settlement or judgment of the trial of the case. In Alberta, your loss of income will be awarded to you based on your gross income.

Future loss of income or loss of earning capacity. Two other options are suing for compensation for future loss of income or suing for loss of earning capacity. It is important to note that you can't recover both future loss of income and lost earning capacity. You can only receive one or the other.



80

Your injuries might be of a nature that prevents you from working for any foreseeable future. If you can't work at all, you can make a claim for *future lost income*.

Alternatively, if you can work but only at a diminished level, you can claim for *lost earning capacity*. For instance, if you used to work in a high-paying construction job but now can't do heavy lifting like before the accident, the type of work you can do has changed. However, you can still work and make a living. You are just

confined to sedentary, light-duty jobs. In that case, you can make a claim for loss of earning capacity.

Past and future loss of housekeeping.

When your injuries reduce your ability to do your usual household tasks such as cooking, cleaning, household maintenance, shoveling snow, or yard work, you can claim compensation for *past and future loss of housekeeping*. Perhaps you had to hire someone to do it or someone else in your household had to divert from their usual routine to take over those housekeeping tasks.

If your ability to complete housekeeping chores was forever affected by your accident and you need to hire outside help, you can be compensated for *future loss of housekeeping*.



Future cost of care. This compensation is meant to cover injury-related medical, home care, or related care requirements in the future. Unfortunately, some injuries don't ever completely heal. If, for instance, your accident leaves you with a brain injury, psychological issues that require ongoing treatment, or chronic pain that requires treatment by a physiotherapist, massage

therapist, or chiropractor, you can receive compensation to cover those expenses.

Special damages. This is compensation to cover your out-of-pocket expenses incurred due to the accident. After an accident, you have to go to the doctor. You have to visit your lawyers. You have parking and travel expenses. You might need to buy painkillers, heating pads, and ice packs. You could buy yourself a special ergonomic chair. If your doctor recommends a purchase, keep the receipts. If your insurance companies don't cover it, you can recover those expenses through a special damages claim.



Loss of consortium. Your relationship with your spouse in its various aspects can be adversely affected by an injury. This might include caregiving needs, loss of companionship, and loss of sexual intimacy.

Care services claims. If you have costs associated with your care and personal services, this claim can help cover those costs. For example, you may need someone else to drive you around and you need to pay them for this service or for their gas. You may need in-home healthcare support. If someone in your household takes on any of this care for you, they might be absent from work and have associated loss of income.

Punitive damages. This comes into play if you, the premises owners, or the insurance company have acted in a malicious, oppressive, or high-handed fashion that offends the court's sense of decency. Unfortunately, in Canada, unlike America, it's a relatively high bar to meet, but it is becoming more common.

Subrogated claims. Say the doctor at the hospital treats you and the government pays for surgeries, overnight observation or recovery stays, medications, or other treatment.

If the hospital is Alberta Health Care, which is a Crown Corporation owned by the government, it will want to be repaid for all of that in your settlement. Your lawyer will notify the organization that you were injured in this accident, to find out about any money that the government or your private insurance, like Great-West Lifeco, paid out of pocket, so it can refund them. This type of requested refund is called a *subrogated claim*. Whatever amount Alberta Health Care or others provided for your care will be added to your claim.



What about Joe?

As Joe's lawyer, all those injuries I spoke about in Chapter 6 were listed in the statement of claim we filed on his behalf. We added this statement:

... all of which injuries have caused and continue to cause the Plaintiff severe and serious pain and suffering, loss of amenities of life, destruction of his earning and housekeeping capacity, both past and prospective, all of which said severe and serious injuries and losses were caused solely by the combined negligence of the Defendants.



84

You can understand by now the specific sort of compensation we were prepared to and did claim for Joe.

Remember that in the process of building your case, our law firm's evidence response team will discover evidence you did not or are not trained to identify. Not all evidence is brought to a lawyer by the client, as I believe you now understand. In the course of the evidence response team's fact-gathering and case-building, it is quite possible to discover more physical evidence that supports the plaintiff's claims.

If the statement of claim is filed before the discovery of that evidence, can your lawyer reserve the right to present it during the trial? Yes. It is done by a final statement added to the statement of claim that reads something like this: “Further particulars of negligence to be proven at the trial of this action.”

Such a statement allows your legal team to present additional proof of other negligence and the results of that negligence at trial.

At the End of the Day

As lawyers dealing with personal injury cases, we see a lot of heartache. If your spouse or child or sibling died as a result of an injury on another’s premises, no amount of money can replace that life. That is clear. If you lost the use of a limb due to an accident on someone else’s property, no amount of money can give that limb back to you. This is also clear. If you are injured and will recover but after long months of therapy and care, the monetary settlement you receive won’t give you your health back any quicker.

We live in a culture where money is everything. Until it isn’t. But monetary settlements are what we have to compensate you for your



pain and suffering and losses. That is what settlements are—money.

Money can help you rebuild your life. Money can compensate for the real costs you have run up recovering from injuries.

As lawyers, we know damages can go beyond the medical bills you incurred. The settlement you receive can help you get back to your life and move on.

Like Joe, your case will require you to be patient. As you have read, such accidents go way beyond the banana-peel hilarity of our favorite cartoons. The reality is that humans are more fragile than any of those animated characters.



86

Your credibility and honesty are key, right along with evidence. Remember why you are doing this and stay the course. Hire an experienced lawyer to represent your best interests. You can get justice and compensation—and be able to rebuild your life.

About the Author



Steve Grover was born and raised in Calgary, Canada. He has practiced exclusively in personal injury law for over 20 years. His focus has been on cases involving injuries from Slip and Falls, Trip and Falls, Dog Bites, Amusement Park accidents and other premise liability cases.

He is passionate about his work, and cares about doing well for his clients.

He is a member of the National Association of Premises Liability Attorneys (NAPLA). In 2022 he gave a presentation about Premises Liability cases at the American Association for Justice Annual Convention in Seattle, Washington.



87

Copies of his book are available for free in his office, online or at public events.



www.ExpertPress.net

SLIPPING ON A BANANA PEEL IS NO LAUGHING MATTER

Neither is slipping on spilled soda pop, sliding on icy pavement, or tripping on a sidewalk crack. These dangers (and many more) can lead to serious injuries, thousands of dollars in medical bills, lengthy recovery periods, and even permanent disability.



What should you do when you slip and fall? Read *Beyond The Banana Peel* and you will learn the answers to common questions like:

- What is a premises liability injury?
- Why does “standard of care” matter for your case?
- What should you be looking for in the initial consultation with a lawyer?
- What common problems derail premises liability cases?
- How much in damages can you expect?

If you or a loved one has been injured in a slip and fall accident, the most important thing you can do is get excellent medical attention. The second most important thing you can do just might be to read this book. Go *Beyond The Banana Peel* and gain wisdom for the journey ahead.



STEVE GROVER was born and raised in Calgary, Canada. He has practiced exclusively in personal injury law for over 20 years. His focus has been on cases involving injuries involving cases from Slip and Falls, Trip and Falls, Dog Bites, Amusement Park accidents and other premise liability cases.

He is passionate about his work, and cares about doing well for his clients.

He is a member of National Association of Premise Liability Attorneys (NAPLA). In 2022 he gave a presentation about Premises

Liability cases at the American Association for Justice Annual Convention in Seattle, Washington.

Copies of his book are available for free in his office, online or at public events.