Legal Matters®

Consumer Safety
winter 2018

Notice is key in injury cases

If you're in a store, a parking lot, a bus station or any other kind of facility, the owner has an obligation to take reasonable steps to keep you safe. That means the owner is expected to regularly inspect the premises for any potentially dangerous conditions on the property that could cause someone to get hurt and to fix them in a reasonable amount of time.

But that doesn't mean the owner will be held responsible for *any* dangerous condition that caused someone's injury. There still has to be *notice*. This means that to hold the property owner accountable, you need to show that the owner knew or should have known about the condition at the time you got hurt and failed to repair it as quickly as a reasonably careful store owner, restaurant operator or any other reasonable person in the owner's shoes would have done.

©kataklinger

A few recent cases shed some light on the issue of notice and demonstrate what is required.

For example, take a case from Rhode Island. A woman who worked at a newsstand that rented space in the Providence Amtrak station had to exit the station to retrieve a bundle of papers on an icy and wet day. As she re-entered the station, she slipped and fell passing through a common area. She sought to hold Amtrak liable for her injuries.

Amtrak tried to get the case thrown out, arguing that it had no notice of the wet spot and thus hadn't had a reasonable amount of time to clean it up before the accident.

But a federal judge disagreed, finding that the plaintiff's testimony that she saw a janitor in the vicinity when she fell was enough to make the case worth bringing before a jury. Additional evidence, including video evidence of a wet mat leading into the station and the woman's testimony that the janitor mopped the floor each morning but she didn't see him mopping that day, appeared to make the judge's decision easier.

In another Rhode Island case, a tenant slipped on a patch of "black ice" in the parking area adjacent to his apartment building while walking to his truck. The fall apparently resulted in a torn rotator cuff, which required surgery. The tenant claimed he needed assistance with

continued on page 3

James J. Gorney, P.C.
ATTORNEY AT LAW
206 Washington Avenue
P.O. Box 386
LaPlata, Maryland 20646
Telephone: 301-753-1800 • Fax: 877-712-4882
jgorneyattorney@comcast.net • www.jamesgorney.com

College settles suit brought by suspended student

SchuminWeb via Wikimedia Commons

It's a terrible idea to post offensive things on social media. For one thing, it could cost you your job. That's because while First Amendment "freedom of speech" protections may shield you from being imprisoned or fined by the government, private companies are still free to decide they don't want someone like you representing them.

It could also cost you friendships, because people might see your posts and decide they want nothing to do with you. It reflects badly on your judgment, and there may come a time where you look back at the things you've posted and cringe.

But what if you're a student at a public university and your school seeks to punish you over your use of social media? That's a more complicated situation, and a recent case from Virginia indicates that you might have some recourse.

In that case, "John Doe," a freshman at Virginia Tech who lived in the dormitory where the first killings in the infamous April 2007 mass shooting took place, started a Facebook group chat discussing the shootings. Another participant changed his name and Doe's name in the group chat to those of the shooters in the 1999 Columbine High School massacre in Colorado.

Doe changed his name back, but also changed the cover photo for the group chat to an internet meme showing a "Grim Reaper" video character superimposed over an image of the Columbine cafeteria with the caption, "Die! Die! Dieee!"

University officials saw a screenshot and ordered Doe to attend a hearing for allegedly violating the school code of conduct. A panel found him responsible and suspended him for the rest of the semester, banned him from student housing for a year and ordered him to attend counseling.

Doe sued Virginia Tech in federal court, claiming the disciplinary proceeding was flawed. Specifically, he argued that he only received four days' notice of the hearing, was never told that he faced suspension and was denied a full opportunity to speak at the hearing. These amounted to violations of his rights to freedom of speech and due process, he claimed.

The case never made it to a jury because the university settled the claim. However, the fact that Virginia Tech settled suggests it believed Doe had a legitimate claim and feared the consequences of letting it go before a jury.

Despite the settlement that this student obtained, court cases can be complicated and dependent on the facts. A different student in a similar situation might not achieve the same result.

Pedestrian hit in parking-lot crosswalk can sue big-box retailer

Store parking lots can be treacherous places. Drivers looking for parking spots might not be paying attention to pedestrians right in front of them, drivers backing out of spots might not see pedestrians approaching, and cars can often back into each other. That's why a lot of us think of parking lots as creating an "open and obvious" danger of being hit.

In a lot of states, if you're hurt by an "open and obvious" danger your recovery may be limited, if you can recover at all. But a recent case from Michigan suggests that those injured in parking lots should get in touch with an attorney.

In that case, 72-year-old Virginia Rawluszki died from injuries after a truck hit her in the parking lot of Menard's, a big-box home-improvement store. Rawluszki was pushing her cart in a crosswalk when she was struck.

Her family filed a premises-liability claim against the Wisconsin-based retail chain, arguing that it should be held responsible for maintaining a dangerous condition on its property.

Menard's tried to have the case thrown out, arguing that it couldn't be held responsible for a dangerous condition that was "open and obvious" — in other words, a condition that someone of ordinary intelligence would immediately recognize as dangerous.

But the trial court refused to dismiss the case and a state court of appeals affirmed. According to the court, Rawluszki's family raised legitimate questions regarding whether Menard's should have taken additional precautions, such putting in warning signs and traffic signals to make the parking lot and its crosswalks less dangerous. The court also said that this was exactly the kind of thing that a jury should get to decide.

The law may differ from state to state, however, so talk to an attorney where you live.