

Retail Law Update

February 19, 2013

Roetzel Attorneys Achieve Favorable Decisions on Behalf of Retail Clients in 2012

At Roetzel, exceptional service to our clients is of the utmost importance. In 2012, Roetzel attorneys continued this practice by working side-by-side with our retail clients to achieve positive results. The following is a summary of some of the favorable decisions achieved on behalf of our clients.

- **Result: Defense Verdict**

The plaintiff brought a lawsuit against a regional gasoline and convenience store chain. The plaintiff alleged that she suffered a knee injury after stumbling, but not falling, on the edge of a partially filled trash bag left by a store employee. The plaintiff admitted that her view of the trash bag was not obstructed nor blocked in any way before she stepped on it. We argued that the trash bag was an open and obvious hazard. The jury agreed and returned a unanimous defense verdict, finding the trash bag open and obvious.

- **Result: Motion for Summary Judgment Granted & Affirmed on Appeal**

The plaintiff in a premises liability case alleged that a multinational discount retail corporation was negligent after she slipped and fell on a clear liquid inside the store. The plaintiff had pre-existing bilateral hip conditions and had undergone four hip surgeries before the incident. The plaintiff claimed that her injuries from the fall aggravated her pre-existing bilateral hip condition and caused her to undergo two additional hip surgeries. Plaintiff claimed medical bills in excess of \$100,000.

A complicating factor was testimony of the store's assistant manager who testified in his deposition that there was a similar spill in an adjacent aisle that occurred within minutes before the plaintiff's fall. Plaintiff used this testimony to argue that:

- (1) the store was negligent for not investigating the source and extent of the prior spill;
- (2) the prior spill was related to the spill that caused the plaintiff's fall; and
- (3) the existence of the prior spill constituted constructive notice of the spill that caused plaintiff's injury.

The court granted our motion for summary judgment finding that plaintiff failed to establish any issue of material fact that there was actual or constructive notice of the spill. Plaintiff pursued an appeal and the Court of Appeals unanimously affirmed the trial court's decision.

- **Result: Motion for Summary Judgment Granted & Affirmed on Appeal**

In a premises liability case, the plaintiff alleged that a regional gasoline and convenience store chain was negligent after slipping and falling on a wet floor mat in front of the cashier's counter. The plaintiff alleged various injuries including neck and back injuries that required surgery. In a motion for summary judgment, we successfully argued that there was no evidence that the store caused the injury or had notice of the wet floor mats. Plaintiff testified in her deposition that the wet condition of the mats was caused by outside forces. Further, plaintiff could not point to any evidence that store employees had notice of the condition. The court granted our motion for summary judgment. The decision was upheld on appeal.

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- **Result: Motion for Summary Judgment Granted**

The plaintiff, an elderly customer, brought a lawsuit against a North American discount retail chain after slipping and falling on a clear liquid in the store. Plaintiff suffered a severe injury requiring surgery. We were able to locate and obtain favorable testimony from another store customer who witnessed a young boy create the spill in question five to ten minutes before the plaintiff's fall. Although, numerous store employees were working in the vicinity of the spill at the time of the plaintiff's fall, we moved for summary judgment and argued that the existence of the liquid on the floor for five to ten minutes before the time of the plaintiff's fall was not sufficient as a matter of law to constitute constructive notice. The court agreed and granted the motion for summary judgment.

- **Result: Favorable Settlement at Mediation**

A premises liability case arose out of an incident where the plaintiff was backing away from the check-out counter at an international video game retailer and slipped on a piece of paper on the carpeted floor. The fall caused a very significant knee injury, which resulted in two reconstructive knee surgeries and the need for future knee replacement surgery. Plaintiff's medical bills were in excess of \$150,000 with claims for future medical expenses associated with knee replacement surgery. We moved for summary judgment. Although the court failed to rule on the motion for summary judgment, we received a very favorable settlement pursuant to the mediation.

Roetzel remains ready and able to assist you with all of your legal needs. For additional information or questions, please contact one of the attorneys listed below.

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