

PREPARING FOR YOUR DEPOSITION IN A PREMISES LIABILITY CASE

INTRODUCTION

In a premises liability case, the plaintiff claims injury from a dangerous condition on the defendant's property that the defendant was responsible for keeping safe. The extent of the defendant's liability will vary depending on the law of the particular jurisdiction where the plaintiff's injury took place.

Some jurisdictions focus on the status of the injured visitor at the time of the harm (i.e. social guest, business invitee, licensee, trespasser, etc.), while other jurisdictions focus on the condition of the property and the activities that the defendant was engaging in at the time of the incident.

Whatever the theory of liability, the plaintiff will be foreclosed from recovering money damage in a premises liability case unless she proves the following four elements: (1) that the defendant owned/occupied/leased the property, (2) that the defendant was negligent in keeping the property safe for others, (3) that the plaintiff suffered bodily injuries, and (4) that it was the defendant's negligence that specifically caused such bodily injuries to occur.

The deposition of the plaintiff will play a key role in determining whether these four elements have been proven. As the defendant's attorney questions the plaintiff, he or she will usually be seeking to establish either that the defendant was non-negligent in maintaining the safety of the premises, that

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the defendant's negligent maintenance did not bring about the incident in question, or that the plaintiff suffered no significant bodily injuries as a result of the dangerous condition created by the defendant's negligent conduct.

GENERAL FORMAT OF THE PLAINTIFF'S DEPOSITION IN A PREMISES LIABILITY CASE

As with any other deposition, defense counsel will usually begin the deposition with a series of questions about the plaintiff's background. This typically includes the plaintiff's employment history, the names of family members, residential address history, medical history, and more.

The "background information" phase of the plaintiff's deposition often lasts several minutes, regardless of what type of case it is.

Once defense counsel finishes questioning you about your background, counsel will move on to the details of the accident itself. With premises liability cases, this part of the plaintiff's deposition sometimes begins with the defense lawyer asking the plaintiff to summarize what happened in his own words. Counsel will then proceed to ask a series of detailed questions. Here are some of the most common questions you can expect to be asked:

- Where did the accident take place?
- When (i.e. date and approximate time) did the accident take place?
- What type of walking surface were you situated on when the accident happened (i.e. concrete sidewalk, wooden walkway, floor tile, gravel, dirt path, etc.)?
- What were the weather conditions at the time of the accident?
- What were the road/street/sidewalk conditions at the time of the accident (i.e. wet, dry, unshoveled snow or ice on ground, etc.)?
- On the date and time in question, what were the lighting conditions at the specific location on the premises where your accident happened?
- What was the dangerous condition that allegedly caused your injury?
- Did you physically observe the dangerous condition before your accident?
 - If so, how much time elapsed between the time you first observed the condition at the time your accident occurred?
 - Did you have enough time to avoid the dangerous condition completely?
- Were there any dangerous, concealed, artificial substances/conditions, etc., in the area where you were injured (i.e. water/melting ice cubes on floor next to ice machine, shattered drink bottle on grocery store aisle, grease/motor oil on floor of vehicle repair shop, etc.)?
- What were you doing immediately before the accident took place?
- Were you walking, jogging, running, or something else?
- Where were you looking immediately before the accident took place?
- Why were you at the premises at the particular date and time in question?
 - To your knowledge, did you have permission to be on the premises on the date and time in question?
 - Were there posted signs in the area warning against trespassing or directing you to take a particular route or path, etc.?

- What type of footwear (if any) were you wearing at the time of the subject accident?
 - What was the style of footwear (sneaker, loafer, stiletto high heels, etc.)?
 - What was the condition of the footwear (new, used, worn, etc.)?
 - How many times had you worn the footwear in the past?
 - What size was the footwear? What is your size?
 - Were you the owner of the footwear or did the footwear belong to someone else?
 - Are you still in possession of the footwear?

- What clothing were you wearing at the time of the accident?
- Were you familiar with the premises prior to your accident?
 - If so, how many times had you been there in the past?
 - Were the conditions of the premises the same on the date of the accident as they had been during your prior visits?
 - To your knowledge, was the allegedly dangerous condition for which you are now suing in existence during prior visits (in other words had you noticed the dangerous condition during prior visits)?
 - On the date of the accident, did you take the same route or follow the same path as on prior visits?
 - If a different route or path was used, what was the reason?
 - Were there other routes or paths available to you? If so, why did you elect not to use them?

- What had you been doing immediately prior to entering the premises?
 - Were you in the process of leaving another location?

- Were you with anyone at the time of the accident?
- Besides yourself (and anyone else that was with you), did you observe any other individuals near the dangerous condition?
 - Did any of those individuals encounter the dangerous condition?
 - Did you observe anyone intentionally avoid the dangerous condition?
 - Did you hear anyone talking about the dangerous condition or pointing it out for others to avoid?

- Do you know of any eyewitnesses to the accident?
 - If so, did you have any conversations with them about the accident?
 - Do you have the name and/or contact information for those witnesses?

- Were you carrying anything in your hands or on your person at the time of your accident?
 - If so, what were you carrying?
 - What was the approximate total weight of the item(s) you were carrying?
 - Did the item(s) block or impair your vision in any way, even if it was briefly?

- Did your body make impact with something as a result of the accident, and if so, what body part(s) were they (i.e. body fell forward onto sidewalk causing face-first impact with concrete, fell backward while descending staircase causing tailbone to hit wooden step, etc.)?
 - Which body part made contact first?
 - In what position was your body situated when it came to rest (seated, laying horizontally face-down or face-up on floor, standing up vertically, etc.)

- Did police and/or medical personnel respond to the accident scene?

- Were you under the influence of alcohol or drugs during or immediately prior to the accident?
- At the time of the accident, were you wearing any eyewear such as sunglasses, reading glasses, contacts, goggles, etc.?
- At the time of the accident, were you taking any prescription medication or other medication?
 - Did you take your prescribed dosage as scheduled that day?
- Around the general time period when the accident happened, did you use a walking aid device (i.e. cane, walking stick, etc.)?

Once defense counsel finishes asking you about the circumstances of the accident itself, counsel will move into the final phase of the deposition - your injuries/medical treatment and damages (i.e. pain and suffering, consequential or economic damages resulting from lost wages and out-of-pocket expenses prompted by the accident, property damage, any other special damages that may apply).

This part of the deposition will be the same as it would be in any other personal injury case, such as a motor vehicle accident or medical malpractice case.

HELPFUL PREPARATION TIPS FOR YOUR PREMISES LIABILITY CASE DEPOSITION

Prep with Attorney in Advance—It's crucial to meet with your lawyer before the actual deposition so you can go over the kinds of questions you will encounter. This prep session should take place at least one or two days in advance if possible. Some clients underestimate the importance of reviewing the relevant documents, facts, and other details of their accident just prior to their deposition. In many premises liability cases, it's common for the plaintiff's deposition to take place several weeks or months after the subject incident. It can end up being very helpful to "study" your case file right before the deposition so as to jog your memory with respect to things like dates, times, and names.

Review Layout of Premises—If you are not prohibited from doing so, considering making a quick visit to the general area in which your accident occurred. This will give you a fresh "mental picture" of the scene that you'll have available in your head while you're being asked to describe its layout. Keep in mind, however, that the premises may not be in the exact same condition or be a perfect replica of what it was when your accident occurred.

Go Over Medical Records—Besides going over details of the incident itself, it's critical that you and your attorney spend time reviewing all of your medical records as it relates to the injury or injuries in question. This includes names and addresses of medical providers, approximate dates of treatment, medical examinations/scans (MRI, CT scan, X-rays, etc.), physical therapy, and anything else. Discuss with your attorney all pre-existing or subsequent injuries so that you will be prepared to answer questions about them from opposing counsel should they come up at the deposition table.