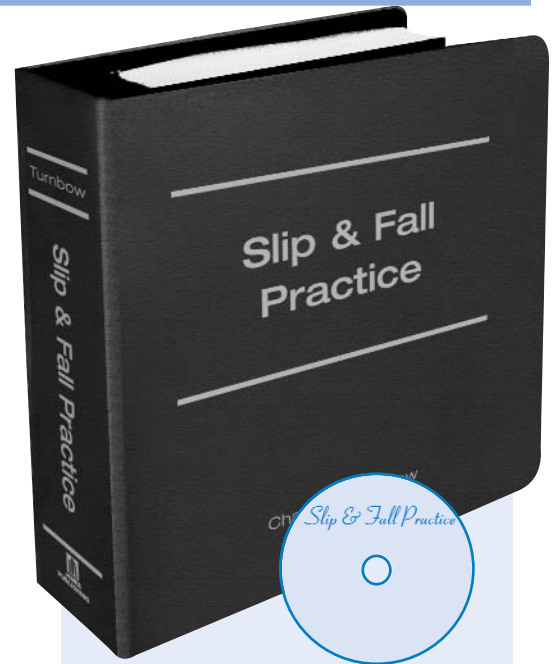


An Insider's Guide to Maximizing Slip & Fall Settlements

Of all personal injury actions, slip and fall cases are the most difficult to win. As a result, they are often shunned by plaintiffs' counsel and undervalued by defendants and insurance carriers. They need not be.

Slip & Fall Practice, written by an attorney-engineer who has consulted on over 9,500 fall cases (including 1,000 that went to trial), provides an organization system and the tools to efficiently develop persuasive slip and fall claims:

- **How to pick winning cases**, including statistics behind defense wins, the ten most common mistakes made by plaintiffs' attorneys, and case evaluation checklists. *Chapter 1*
- **Strategies for overcoming the common obstacles of notice, duty and comparative fault.** *Chapter 2*
- The science—in plain English—necessary to re-create the **mechanics of the fall.** *Chapter 3*
- **Tests, measurements, standards, and checklists** for evaluating hazards—from slipperiness of floors and safe light levels to width of handrails and depth of stair treads. *Chapters 4 and 5*
- The **special problems and requirements** in commonly encountered falls, complete with representative fact patterns, sources of evidence, and discovery checklists. *Chapter 6*
- Interrogatories, deposition outlines and other discovery tools to **document the hazard**, even when you don't have a witness. *Chapters 8 and 9*
- **Pattern questions for depositions and cross-examination of opposing experts.** *Chapter 10*
- Techniques and outlines for **proving and maximizing damages.** *Chapter 11*
- Common **defense views and tactics**, including evaluation, affirmative defenses, and pretrial preparation. *Chapter 12*
- **Sample openings and closings, jury instructions, checklists for trial preparation and organizing trial notebooks, and other trial aids.** *Chapters 14 and 15*
- Tactics for specific fact patterns, including falls in the workplace, on public property, in markets, in residences, on construction sites, on playgrounds, on ice or snow, and by the elderly or disabled. *Chapters 16-24*



58 forms, including checklists for:

- Case evaluation
- Building code violations
- Evaluating a walkway
- Field testing
- Issue spotting
- Expert selection
- Damage evaluation
- Settlement package
- Building a trial notebook
- 30-day trial preparation
- Liability and damages
- Supermarket and retail falls
- Stairway falls
- Playground safety

Plus...

- Complaint and answer
- 10 deposition checklists
- Pattern interrogatories
- Demand for entry
- Protective order
- Demand for production
- Request for admissions

Tips for solving proof problems inside ...

\$1230.3 Unique Properties

Some properties have unique designs or location features that can create a potentially dangerous condition. These properties require special sweep logs and procedures to prevent accidents. For example, weekend "do-it-yourselfers" and junk collectors frequently visit public hostilities. These facilities are full of potential tripping hazards including broken glass, sharp metal objects, unsupervised backing vehicles and loose wires. Slipping can occur on mud and discarded foodstuffs. Because it is foreseeable that someone will fall victim to any of the above hazards, special precautions should be established by the defendant. Common precautions include warnings, "no trespassing" signs and fences. Depending upon the potential hazards present, additional efforts may be required by the defendant property owner.

\$1240 Review Maintenance and Inspection Procedures

The burden of establishing actual or constructive notice is probably the hardest part of the plaintiff's case. One way to prove constructive notice is to show that the defendant did not comply with the custom and practice for routine inspections and maintenance procedures.

\$1241 Determine Frequency of Inspection

Most retail stores and restaurants have established routines for regularly inspecting the premises for physical defects and dangerous hazards. The routine for supermarkets, for example, is to inspect and/or sweep every 20 to 40 minutes to record such sweeping or inspection on a log or written record. Similar logs or sweep sheets are kept for large drug stores, restaurants, and related operations.

When the defendant's routine varies substantially from the expected custom, the plaintiff can argue that the defendant did not comply with the industry standards. While the plaintiff may have difficulty proving that a foreign matter was on the floor for a specific length of time, the defendant will not be able to establish the actual length of time without proof of reasonable inspection.

When there are no sweep sheets to prove the inspection frequency, the defendant must rely on the testimony of the store manager and employees. Problems can develop around the way the maintenance procedures are described. Statements such as "we constantly" or "all personnel are" in inspection times are not only misleading, untrue. Store and restaurant employees have other duties besides inspecting.

The exact inspection and maintenance duties must be detailed to show inspected or cleaned within a 24-hour period. A log or sweep sheet of floor clean and safe; the sweep on a piece of paper. However, management tool to assure that practices have been followed not kept and the store persons recollection of the cleaning or duties conducted immediately after the incident, the plaintiff will likely prevail.

Practice Tip

The actual inspection and maintenance duties should be substantially the policy of the store. The defendant should interview key employees possible, securing their best understanding of the defense practical matter, it is necessary management personnel of departments that might be in defense of the case. Interview that actually performed the work, including the porter, a courtesy clerk, bagger, and so on.

\$1242 Determine Frequency of Maintenance

Maintenance refers to the routine or buffering of floors and repainting of broken or damaged premises. For the purpose of maintenance is distinguished from the latter is proper maintenance program.

■ PRODUCTION OF DOCUMENTS

Several private consultation organizations will prepare safety manuals for institutions or companies. These manuals are designed to comply with Federal OSHA standards, which mandate a written safety policy and program. The manuals primarily address employee safety rules and procedures, with little or no discussion of public safety. All relevant policy manuals should be produced along with any documentation addressing customer safety. The lack of specific procedures for inspection or maintenance training may be an important issue in proving that the defendant did not have a suitable safety program. On the other hand, a well-documented safety program emphasizing customer and public safety can show that the defendant followed reasonable and practical procedures, which may well defeat a claim of constructive notice or breach of duty.

Practice Tip

Videotapes and other materials used to train store employees in safety and maintenance techniques can be used to demonstrate the defendant's recognition of the nature and extent of the hazard. Most retail store and institutional training tapes are very effective in the instruction of hazard recognition and the means by which the risk of injury may be reduced. The tapes can be used to refute the defendant's contention that the condition alleged to have caused the fall was not a hazard, or the tapes can be used by the defendant to show the level and depth of training of its employees.

\$915 Maintenance Records

Maintenance documents may have a number of different titles including safety manual, management training manual, employees' manual, maintenance manual, etc. Most businesses keep records of the maintenance procedures. These records include the type of wax or floor polish used, the type of stripper or cleaning compound, the date the floor was last stripped, waxed or coated and other relevant data. This maintenance information gives the expert a basis to recreate conditions existing at the time of the accident.

outline important maintenance records also be demanded.

Sample Document List for Production by Retailer

The following is a suggested list of documents and materials to be obtained from the retailer:

1. Inspection and sweep logs for the area where the accident occurred for the day of the accident and for one week before and after the accident.
2. All documents which contain the retailer's written policy on the frequency of inspection or sweeping for department of the store including the area where the accident occurred.
3. Time cards for the date of loss for all employees the retailer claims inspected or swept he accident site within 24 hours of the loss.
4. All analysis, grading and/or evaluations of the completion of the inspection or sweep logs conducted for purpose of determining whether inspection and sweeping the store conformed with the retailer's policy.
5. The retail store incident report of the subject accident, including any form, report or notation compiled by the plaintiff.
6. Any instruction and/or operation manual procedure which describe the purpose or routing of the store's incident report.
7. The retailer's document retention policy with refer to the retail store's incident report for the time per the subject accident.
8. A blank copy of the store incident report form utilized at the time of the subject accident as well as other forms transmission level.
9. The relevant photographs
10. Any photos of the accident
11. Any photos that depict that which a reported time

■ FALLS IN MARKETS

Practice Tip

A large, legible copy of the sweep and inspection records will be helpful in presenting testimony regarding safety inspections. Poster size prints will allow the jury to see the times, initials, and comments of the maintenance personnel.

Case 2: Special Maintenance Problems—24-Hour Market

Special maintenance problems arise in supermarkets that are open all night, since mopping and floor waxing must be done during business hours. To minimize patrons' exposure to slippery floors, sections are blocked off during waxing. The entire procedure can be done during late night hours with minimal risk. In this case, the merchandise aisles were physically blocked with tapes and shopping carts during waxing, and tape was used to prevent pedestrian traffic in the lobby and check-out areas. As the plaintiff entered the supermarket around midnight, he saw a sign notifying that waxing was in progress. After making his selections, the plaintiff approached the check-out and noticed a portion of the front lobby marked off by masking tape. The rest of the area appeared to be clear. The plaintiff walked through the clear area to the exit doors and slipped and fell on wet wax, injuring his leg and hip. The entire area in front of the check-out was wet and slippery. The plaintiff showed that the defendant created the dangerous condition and failed to properly mark and delineate the area of hazard. Although the plaintiff knew of the waxing process, he was unaware that the exit passageway was being treated at that time.

Case 3: Gratuitous Use of Premises

The plaintiff, a thoracic cardiac surgeon, was walking towards his parked car in a busy parking lot of a warehouse-type club store. Carrying a large package of paper towels, the doctor failed to see the tongue of a large barbecue trailer extending into the pedestrian walkway. The surgeon tripped and fell onto the asphalt concrete surface. His injuries were extensive forcing retirement from his successful practice at age 54. The barbecue was owned by an independent contractor who placed the unit on the store's parking lot with the permission of store management. The owner paid no consideration for the placement of the unit, but operated under the understanding that he would purchase his supplies at the club store. During the trial of this case, the plaintiff was able to establish that the store had no regular inspection procedures for the parking lot area, contrary to

■ MEASUREMENTS AND TESTING

Covered Handrail

This stairway serving the rear entrance of a medical care facility had a tendency to be slippery when wet. It also had only one handrail in violation of local building codes requiring handrails on each side of the stairway. When one of the professional staff slipped, he was unable to maintain or regain his balance because the handrail had become overgrown, as pictured above. This photograph was taken two days after the accident. Photographs taken two years after the accident by a defense expert showed access to the handrails to be unobstructed.

indications are not in compliance with the building code, and other stairways may present significant safety defects.

\$1840

Industry practice and that if a practice had been in effect, it would have been discovered that the unit had been left unattended for several days. There was no effective markings on the club biker trailer which would have acted as a visual flag to warn the pedestrian of the potential tripping hazard. The store had a policy to eliminate such hazards within the store but not in the parking area. Defense of the store included the theory that they did not have a duty to control hazards caused by third parties, that there was no consideration passed between the owner of the barbecue and the store, they had no notice of the defect and that the doctor was negligent by not waxing where he was going.

Plaintiff argued that the intent of purchasing supplies for the barbecue and the promotional benefits enjoyed by the store by having the barbecue on the premises for the enjoyment of its customers was sufficient consideration to establish a duty of the proper owner to inspect and evaluate the safety of the installation. The plaintiff's theory included the fact that regardless of consideration, the barbecue was in the parking lot with the express permission of the defendant store. Store management also approved the specific placement of the unit in the parking lot. The plaintiff also established that a patron carrying a large package across the parking lot was foreseeable because of the nature of the retail operation and that such a package could create the pedestrian's duty to see obstructions of the way found here.

The *Kleinman, Metzger* jury found in favor of the plaintiff, but attributed 50% comparative fault to him thereby reducing his total award to 3.0 million dollars.

A similar problem was encountered by the plaintiff in *\$1830 Case 1: Failure to Warn*. There the court ruled that even though the defendant took some precautionary measures, it would not be absolved from liability. The precautionary measures must be both reasonable and effective. *Williams v. Carl Karcher Ent., Inc.*, 182 Cal. App. 3d 478, 227 Cal. Rptr. 405 (1988).

In another case, the plaintiff was able to prove to a Tennessee jury that the supermarket failed to respect property to actual notice of spilled liquid on the floor and failed to initiate procedures that would have protected the plaintiff from exposure to the hazard. In that case, market employees left the floor wet and slippery after wiping up spilled orange juice. Not only did they fail to place warnings on the wet floor, they directed the plaintiff to merchandise in that area, where she walked over the still wet floor. The jury found for the plaintiff and awarded substantial damages.

Defense viewpoint.

Review Mr. Turnbow's advice for defense counsel to spot and shore up weaknesses in your case.

Discovery tactics.

More sources of proof are available than you might think. Author Charles Turnbow is familiar with them all, and tells you what to obtain and what to look for once you have it.

Discovery forms.

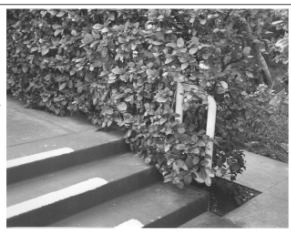
Discovery checklists, pattern interrogatories, deposition questions, notices to produce and more are included on *Slip & Fall Practice's* forms-heavy and free CD.

Building standards.

Building code provisions are explained in plain English, cited, and illustrated with photos of violations.

Specific by fact pattern.

From market falls to playground accidents, *Slip & Fall Practice* provides detailed information by scenario: negligence standards, case strengths and weaknesses, discovery checklists and forms, and questions for experts.



Handrails are not in compliance with the building code, and other stairways may present significant safety defects.

specificly limited whether of the 1997 in a portion of elevation also by sections 1003.3.3.3, single step later than 7 all accommodation.

small and why. These must cause accessibility of existing provisions, increasing step of only stipulated by in sufficient hours when is the elevation use of con-

The problem presented by single-riser steps is addressed in ASTM/ANSI Standard F 1037-95, Section 6.2.2 states: "In situations where a short flight stair or single step transition exists or cannot be avoided, obvious visual cues shall be provided to facilitate improved step identification. Handrails, delineated nosing edges, tactile cues, nosing signs, contrast in surface colors and accent lighting are example of appropriate warning cues." The standard at Section 10.1 further states: "The use of visual cues such as warnings, accent lighting, handrails, contrast painting, and other cues to improve the safety of walkway transitions are recognized as effective controls in some applications. However, such cues or warnings do not necessarily negate the need for safe design construction."

\$422 Ramp Measurement

Ramps and inclined walkways are a popular means of traversing elevation changes. Changes in elevation of less than 12 inches along an exit corridor must be accomplished by ramps. Ramps are often used for handicapped access to public and commercial buildings. While the dimensions

BOOK REVIEW EXCERPT

“Turnbow pays special attention to the issue of notice, which is often the most critical and most contested issue in slip and fall cases. The defendant’s actual notice of a hazard may be evidenced by the knowledge of employees or agents, or by incomplete or inadequate repairs.

“Constructive notice is more difficult to prove, as it depends on the foreseeability of the hazard, and the reasonableness of defendant’s safety procedures. The book provides helpful tips for both sides on developing the notice issue through defendant’s inspection and maintenance records and safety practices.

“Turnbow also cites several useful cases on the foreseeability of spilled food, broken glass, or other “transitory hazardous conditions” in self-service retail stores. The frequency of these mishaps may alone be enough to establish constructive notice of the hazard, and the duty to take reasonable precautions.

Safety Standards

“Turnbow’s technical chapters are an excellent, accessible introduction to the arcane science of human bipedal locomotion. Relatively subtle hazards may make the difference between remaining vertical and becoming horizontal, Turnbow notes.

“For example, a 3/8-inch sidewalk obstruction, such

as a branch, creates a definite tripping pattern since the average person’s stride leaves only 1/4-inch of clearance between the shoe and the ground. A slight variation in a stairway’s risers is also enough to send someone flying, as pedestrians rely on “muscle memory” to gauge the height of the next step.

Litigating the Slip and Fall

“The second part of the book focuses on the litigation of a slip and fall case, and includes a wealth of sample pleadings, interrogatories, deposition questions of experts and fact witnesses, and other trial preparation materials.

“*Slip and Fall Practice* concludes with a ‘30-day Trial Preparation Checklist.’ This is a sensible and well paced schedule for the month before trial, starting with review of discovery material and preparation of trial exhibits; moving through preparation of testimony, jury instructions, and opening and closing statements; and culminating on the day before trial, with a recommendation that lawyers do a final review of all materials and ‘play a round of golf.’ In all but the last task, lawyers will find invaluable assistance in this useful, well-written and informative text.”

Lawyers Weekly USA

THE AUTHOR

Charles E. Turnbow is a professional safety engineer and practicing attorney. Since he first testified as an expert in 1959, he has been retained on over 9,500 slip and fall cases along with over 2,500 cases involving product defects and general safety engineering principles. In his role as an expert witness and consultant, he evenly divides his practice between plaintiffs and defendants. He is a board certified forensic engineer, and a member of the California State Bar, the American Bar Association, International Conference of Building Officials, American Society of Testing and Materials, and other construction, engineering and scientific societies and associations.

Mr. Turnbow can be reached at 21812 Highway 18, Suite A, Apple Valley, California 92307, (760) 247-1050, or at turnbow@turnbow.com. If you simply wish to order his book, please contact James Publishing.

THE BOOK

Slip & Fall Practice contains more than 600 loose-leaf pages in a linen-covered 3-ring binder for easy updating. The book’s 58 forms are also provided on a free CD. The book costs \$99 and updates are issued annually at a cost of \$69.99 plus shipping.

Available on 30-day trial (800) 440-4780 or www.JamesPublishing.com

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INSIDER Tips & Techniques

Charles Turnbow's dual career as both engineer and attorney enables him to bring you dozens of insider tips that are pertinent from a legal standpoint. Even veteran personal injury specialists will benefit from his easily understandable technical evaluations and practice pointers, such as:

- Why building plans seldom reflect the **"as built" condition** of the stairway. *Section 820.5*
- Why many of the building code requirements are not subject to **field inspection** during construction. *Section 850*
- A great questioning technique that helps you establish **duty and causation** through the opposition's expert. *Section 450*
- The not-so-obvious qualifications the **defense expert** should have, and how to highlight their absence. *Section 543.3*
- Eight items to check for in every inspection of the **accident site**. *Section 770*
- Why you should never have the plaintiff present during your **site inspection**. If the plaintiff has to be present, here's what to do. *Section 522.1*
- How **safety features and warning devices** can actually increase the risk of an accident. *Section 632*
- The methods for measuring the **coefficient of friction**. *Section 710*
- How to construct a comprehensive **settlement package** that presents your case in its best light and provides a strong foundation for the demand. *Section 1080*
- Why **special jury instructions** can give you an advantage in the courtroom and how to get yours admitted. Examples help you draft them with minimal time and effort. *Section 1141*
- A simple three-question method that lets you take full advantage of your **expert witness' knowledge**. *Section 1250*
- Why **demonstrative evidence** often backfires in the courtroom. If using visuals, here's how to safeguard yourself. *Section 1160*

Solving Proof Problems

Each slip and fall case has its own set of hurdles you must overcome: obtaining evidence at the scene, finding independent witnesses, establishing how long the slipped-upon substance was on the floor, what to do when evidence disappears, and more.

Slip & Fall Practice by Charles E. Turnbow—a consulting safety engineer and attorney—can help you over these hurdles. In the case of an apartment fall, Turnbow offers you this advice:

Establishing Liability.

The defendant will likely deny actual notice of the condition, so you must establish constructive notice by showing:

- The defect would have been discovered by the defendant using ordinary care. *Section 121.2*
- The landlord's failure to inspect or take reasonable precautions. *Section 942.3*
- Depositions pertaining to the condition of the premises immediately prior to and subsequent to the accident. *Section 543*

Disappearing Evidence.

If conditions of the accident site have changed, you must:

- Determine the mechanics of the fall. A complete description of what happened will give a clear indication of the type of hazard, the activities of the pedestrian immediately prior to the accident, and the manner in which the plaintiff fell victim to the hazard. *Section 411*
- Discover if the changes to the premises were made specifically to correct a dangerous condition. *Section 423*
- Get the testimony from paramedics who maintain reports on the accident's location and premise's condition. *Section 141.1*
- Rule out the plaintiff's shoes as a cause of the accident by measuring the tractive properties of the soles and heels. *Section 143.1*

Negligent Defendant.

The following will prove the landlord breached his duty of ordinary or reasonable care:

- Prior incidents or complaints about the stairway. *Section 426*
- Photographs. The handrails may have been replaced, but can rusting and staining of the stucco around the bolt holes be seen in the photographs? *Section 144*
- Statistics. Approximately 68% of accidents are caused by a defect in the stairway. Shouldn't the landlord have inspected this area more often? *Section 820.5*

Structural Defects.

A violation of the Uniform Building Code may grant a negligence per se jury instruction. Be sure to answer these questions:

- Was there a variation in the height of risers between any two steps larger than the allowable 3/8"? *Section 622.2*
- Were the bricks of the steps aligned in neat rows? This makes the edges of individual steps hard to see and can cause a misstep. *Section 632.2*
- Most accidents occur at the top or bottom two or three stairs; were the handrails maintained in a secure manner at these areas? *Section 850.5.2*
- Were the rise and run of each step measured and checked by the building inspector? They're usually not. *Section 1292.3*

PROVE NEGLIGENCE

Yes, send me one copy of Charles Turnbow's *Slip & Fall Practice* and its CD with an invoice for \$99 plus shipping. If not satisfied, I may return the book within 30 days. Send the annual supplements on the same 30-day review basis. I may cancel the supplements at any time.

Do not send annual supplements

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Four Easy Ways to Order...

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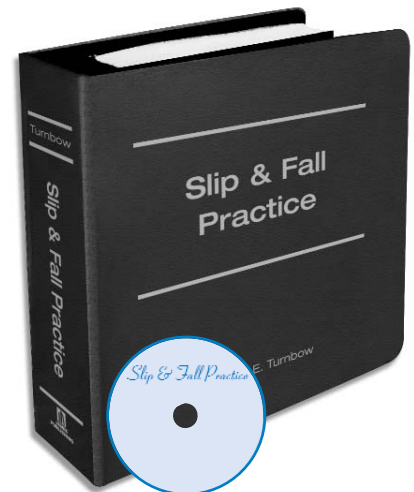
How to Establish Liability in Slip & Fall Cases

Plaintiffs' attorneys lose 40% of their slip and fall cases. Failure to prove a causative link between the hazard and a negligent act of the defendant is the number one reason for these high losses.

Charles Turnbow, attorney-engineering consultant on over 9,500 slip and fall cases, shows you how to prove causation (and how to efficiently screen out cases lacking it) in his highly-respected toolbox, *Slip & Fall Practice*:

- Analyzing the mechanics of the fall to identify the cause.
- The most common cases and what they must have to win.
- Documenting the dangerous condition and the negligence that caused it.
- Establishing the duty of care.
- Proving control of the premises.
- Establishing actual or constructive notice.
- Showing that the hazard caused the injury.

Slip & Fall Practice is loaded with case evaluation strategies, illustrative fact patterns (with photos), discovery forms, expert witness checklists, case authorities, building code citations, model pleadings, trial preparation aids, and most important, time-saving and case-winning practice tips.



It has given me some new approaches and means of presentation to maximize recovery. The book has paid for itself many times over.

Marv Tyler
Rock Springs, WY

See inside for free tips, sample pages and contents...