

Client Advisory

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Legislative Update – Florida Changes the Burden of Proof in “Slip and Fall” Cases

To our Friends and Clients:

On March 18, 2010, the Florida House of Representatives passed House Bill 689 (“HB 689”) which, if passed by the Senate and enacted into law, will dramatically change Florida Law. The House Bill would shift the burden of proof to the plaintiff in “slip and fall” claims of negligence involving a transitory foreign substance. HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable.

If HB 689 is passed by the Senate, it will restore Florida law with respect to “slip and fall” claims as it existed prior to *Owens v. Publix Supermarkets, Inc.*, 802 So.2d 315 (Fla. 2001). In *Owens*, the Florida Supreme Court shifted the burden of proof in slip and fall cases to the defendant and dispensed with the traditional common law “notice” requirement. The Court concluded that “premises liability cases involving transitory foreign substances are appropriate cases for shifting the burden to the premises owner or operator to establish that it exercised reasonable care under the circumstances,” thus eliminating the specific burden on the plaintiff to establish that the store had constructive knowledge of its existence. *Id.* at 331. The Court in *Owens* further stated that “the existence of a foreign substance on the floor of a business premises that causes a customer to fall and be injured is not a safe condition, and the existence of that unsafe condition creates a rebuttable presumption that the premises owner did not maintain the premises in a reasonably safe condition.” *Id.*

We will continue to monitor the progress of HB 689 and will update you as events warrant.

*For additional information or to discuss any of these issues,
please contact Jim Kaplan or Michael Sastre.*

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