

# Appellate Review of Slip and Fall Injuries: Injured Plaintiff Should be Specific as to Cause of the Fall and Demonstrate Defendant's Awareness of Substance or Condition on the Floor

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April 14, 2021 | by Thomas F. Dorn, Jr

Two recent Appellate Division cases involved plaintiffs who suffered serious injuries resulting from [slip and fall accidents](#). These cases show that in instances where the defendant's store/business did not create the negligent condition, an injured plaintiff must be very specific about what substance or condition caused them to fall. A plaintiff must be able to demonstrate that the defendant was aware or should have been aware that the substance or condition had been on the floor for a period of time such that the defendant should have discovered the substance or condition.

This blog examines the facts of the slip and fall cases and the Court's rulings. In the first matter, Plaintiff Quejada fell on water in Shoprite and injured her spine; her case was dismissed by the Law Division. In the second matter, Plaintiff Seeley fell inside a restroom and injured his lower back; his case was also dismissed by the Law Division.

## The Facts ([Sara Quejada v. Shoprite \(A-0923-19T3\)](#)):

While shopping with her daughter, plaintiff Quejada slipped and fell near the area where the checkout lanes were located. After she fell, she noticed that her clothing was wet. At her deposition she did not know what the substance was on the floor and could not say whether it was the cause of her fall. She did produce a photograph of the shopping cart behind her that contained a case of water. Following a motion for summary judgment, the motion judge noted that in order to be liable for the plaintiff's injuries, Shoprite had to have actual or constructive notice of the condition that caused the plaintiff to fall. Because she could not demonstrate that Shoprite had actual or constructive notice of the liquid in the aisle, the motion judge granted defendant's motion for summary judgment.

## The Facts (Thomas Seeley v. Caesars Entertainment Corporation d/b/a Bally's Casino (A-2125-19)):

Plaintiff Seeley, an attorney who attended a deposition at Bally's Casino, went into a restroom and fell on moisture inside a bathroom stall. Seeley's co-counsel noticed a pattern of moisture on his back and testified that it appeared as if someone had cleaned the floor recently with a mop or rag. The motion judge dismissed the case because he concluded that co-counsel's testimony was speculative and any inference that the moisture on the floor was created by the defendant was not appropriate.

### New Jersey Appellate Division Decisions

The Appellate Division in Quejada held that there was no evidence that Shoprite sold liquid products in open containers such as soda, coffee or other beverages including water. Also, although the plaintiff produced a photograph of a case of water in the cart of a customer, there was no evidence supporting an inference that the bottles were leaking. Unlike mode of operation cases (loose grapes that can come out of open-topped bags, for example), it is not foreseeable that cases of bottled water will leak. The dismissal of plaintiff's case was upheld.

The Appellate Division in Seeley disagreed with the motion judge. The appeals court noted that if a defendant creates the condition that caused a plaintiff to fall then the plaintiff does not have to prove that the defendant had actual or constructive notice. Given the testimony of the co-counsel witness, an inference could be drawn that the defendant's employee created the slippery condition on the bathroom floor by cleaning the floor with a mop or rag and leaving the moisture condition. The case was reversed and remanded to the Law Division.

If you have been injured in a slip and fall accident, contact an attorney before assuming you have an airtight case.