



The Standard of Care in Floor Care

By Russell Kendzior

Slip, trip, and fall lawsuits are at an all-time high. Much of the increase is being attributed to the explosive growth in the number of seniors. Data from the National Floor Safety Institute (NFSI) reveals that the most likely victims of a slip and fall are elderly persons, mainly women. And with the baby-boomer generation retiring at a rate of 10,000 per day, the rate of slip and fall claims and lawsuits will continue to rise. What is also interesting is that unlike their parents' generation, which had a more sedentary lifestyle, Baby Boomers are much more active. The baby-boomer generation has a higher discretionary income, which they put to use by traveling, shopping, and eating out. For example, estimates show that one out of every four shoppers will soon be a senior. Seniors are also working longer and therefore are more likely to become injured as a result of a workplace injury, the most common of which is a same-level fall. Then consider that when you are 16 and fall, you bounce; when you are 60-plus and fall, you break—and the cost to repair such injuries is expensive and often results in litigation.

As an expert witness, I have represented both plaintiffs and defendants in slip, trip, and fall cases and have seen first-hand just how big a problem these type, of accidents are. In slip and fall lawsuits, the plaintiffs have the burden of proof whereby they have to prove that the defendant did not meet the “standard of care” by not providing a “reasonably safe” walkway and therefore, were negligent.

So what exactly is the standard of care in a slip and fall case? To answer this, one must first ask what are the standards that both defendants and plaintiffs must meet to prove whether or not a violation occurred. Historically such a burden was pretty difficult to prove since very few walkway safety standards existed. However, before we can define the standard of care, we must first be sure we understand what a standard is. According to Black's

Law Dictionary, a standard is defined as (1.) “A model accepted as correct by custom, consent, or authority. (2.) A criterion for measuring acceptability, quality, or accuracy.” So how does a defendant or plaintiff establish acceptability or measure quality as it relates to walkway safety? Obviously by testing the walkway's slip resistance...right?

Standards, What Standards?

Prior to 2009, there were no nationally recognized industry consensus standards defining what a safe walkway was, and this made it very difficult for defendants (business owners) to prove that their floors were reasonably safe. It was equally difficult for plaintiffs to prove that a defendant failed to meet the standard of care. If you ask any business owners if their floors are safe, they will tell you yes. However, if you ask them how they know this is true, they often will respond that based on their history, they have had very few, if any, slip and fall claims. Whether you believe them or not, the fact is it's hard to prove otherwise.

Numerous test methods have been published by leading standards developing organizations like the American Society of Testing and Materials (ASTM) and the American National Standards Institute (ANSI). Most of the ASTM standards have been withdrawn in recent years, leaving only the ASTM D-2047 standard for floor polishes and finishes remaining. However as the ASTM standards were withdrawn, a new wave of ANSI walkway safety standards has been established.

The ANSI/NFSI B101.1-2009 “Test Method for Measuring Wet SCOF [Static Coefficient of Friction] of Common Hard-Surface Floor Materials” was published in 2009, and in 2012, came the publication of the ANSI/NFSI B101.3-2012 “Test Method for Measuring Wet DCOF [Dynamic Coefficient of Friction] of Common Hard-Surface Floor Materials.” With the introduction of these

two nationally recognized consensus standards, the world of slip and fall litigation has changed whereby both plaintiffs and defendants can compete on a level playing field. Although this evolution brings clarity to litigants in a slip and fall lawsuit, it can also greatly benefit insurers and their policyholders.

Insurance premiums are based in great part on assumed and predictable risk. Homeowner's policies are based in part on the type of roof you have, the type of dog you own, and whether or not you live near a flood plain. Health and life insurance premiums are calculated in the same way. If you smoke or drive a motorcycle you pay more. Why? Because of the measurable and predictable risk you present to the insurer. Property owners are now going to be held to the same standard. If a business' floors test poorly (Low-Traction), the insurance industry will charge than a higher premium if the building's walkways are in the High-Traction range as defined in ANSI/NFSI B101.1 or B101.3.

Walk This Way


Walkway testing is here to stay and is evolving into a new profession: walkway auditing. Walkway audits bring science to what were previously only visual inspections. A profession driven by need, these audits now serve as the basis for the standard of care, benefitting both plaintiffs and defendants. An independent walkway audit has become the standard of care, supported by the 2012 release of the ANSI/NFSI B101.0 Walkway Auditing Standard. For businesses, independent test data from a certified walkway auditor using this Walkway Auditing Standard can strengthen their case that their floors meet the standard of care. However, if they have not had their floors audited, a skillful plaintiff attorney can hire an auditor and use the results to not only prove that the walkway in question was slippery, but the defendant, in failing to conduct its own audit, was negligent.

So is it reasonable that defendants should test their walkways? Absolutely—just as reasonable as a mechanic needing to test the torque on the lug bolts holding your wheels on your car. Restaurants can't endanger the public by serving spoiled food, so why should property owners be allowed to endanger their invited guests by having slippery floors? The independent walkway audit is reasonable, and the coefficient of friction test results will quantify the slip risk and, in turn, will serve to define whether or not the walkway was unreasonably dangerous. In the end, this can make or break your case.

Are Your Products in Compliance?

One way you can help your customers protect themselves against injury claims and lawsuits is to have your products certified. Since 2002, the NFSI has been testing and certifying products such as floor cleaners, finishes, auto-scrubbers, and entrance mats per the NFSI/ANSI standards. Today, more than 400 products have been tested and certified; that number is expected to double by the year 2020. Products that bear the NFSI Certified label are

rated as "High-Traction." Independent research has shown that high-traction surfaces can prevent up to 90 percent of slip and fall claims. In 2015, CNA Insurance released a study that showed that most slip and fall claims occurred on low- to moderate- traction walkways and that only 13 percent of claims occurred on floors tested and ranked as high-traction.

Slip, trip, and fall prevention is good for business. Simply put, no injury claim, no lawsuit! Although some floor care manufacturers oppose the adoption of the NFSI/ANSI walkway safety standards, most are in support and understand that the world has changed. Slips, trips, and falls are a growing problem that demands a new approach. Floor safety is a defining characteristic of floor care and will only continue to gain importance. The use of high-traction floor care products provides your customers with a stronger defense in the event of a lawsuit. Are you prepared? 



Russell Kendzior is president of NFSI, a 501(c)-3 non-for-profit floor safety certifying organization. He can be reached at russk@nfsi.org; phone, 817-749-1705.



New Foundation Scholarship

Scott Jarden and The Bullen Companies are pleased to announce the establishment of the **Richards H. Jarden Scholarship** through the ISSA Foundation.

Eligible candidates include ISSA member company employees and family members who are majoring in chemistry or chemical engineering.

Award issued is in the amount of **US\$3,000**.

ISSA would like to thank Bullen for giving back to the industry that was so good to Richards.