

# I'VE FALLEN AND I CAN'T GET UP! WHAT YOU NEED TO KNOW WHEN YOU FALL

By David L. Hirsch

One of the greatest concerns for you when you are leading an elderly lifestyle is “falling”. When every new day is considered precious, independence, mobility, self reliance, and good health are the barometers by which the quality of life is measured.

Obviously falls for the elderly are generally more severe due to Osteoporosis and the effects of aging on the bones, spine and circulatory system.

When a serious fall occurs, the first concern one need have is for the injured party's care and for not complicating the injuries by moving the individual before the extent of the injury is clear. Emergency or speedy medical attention is a must.

Of less concern, but nevertheless important, is why the injured fell. If the injury is insignificant you will want to know how to avoid it reoccurring and creating a more serious problem.

If the injury is serious however, knowing why the individual fell is critical to the recovery for the unnecessary reduction in the quality of life for which the injured has a right to seek compensation.

Generally it is anticipated by the premises owner that such recovery rights will be exercised and for that reason they generally have safeguards in place, policies and safety training for employees as well as casualty insurance to address these problems.

A common misconception is that a premises owner is the insurer of the safety of the persons who visit their stores as customers. This is not the law in Florida nor has it ever been the law in most states.

A premises or store owner's obligation to the individual shopper is only to warn of hazards and dangers they are, or should be, aware of which may cause a shopper to fall. As they can only warn of the dangers of which they are aware, they are obligated to keep a close eye out for such conditions.

Perhaps you have heard periodically the chimed reminder for floor managers to “check their areas”. The reason for this periodic inspection goes to the legal concept that for there to be store liability for not warning, the hazard or dangerous condition must have existed long enough for the store owner to have known about them and put up his warning ie: the cones or ropes or signs.

If the reason the elderly shopper fell or was injured was due to the failure of the store owners to warn of a danger which they could see but the elderly shopper could not reasonably discover, then the store can be held liable for medical bills and for monetary funds to compensate or make the elderly shopper “whole again”, such as for the experience of the fall, the pain and suffering and the resulting mental anguish.

The elderly parent as a shopper, however, is not without obligations for their own safety. It is incumbent upon them to make a reasonable inspection and look at of the areas in which they walk.

However, what is a “reasonable inspection” for an elderly shopper is different than what is a “reasonable inspection” for an employee whose job description should include instructions to keep a vigilant eye out for such conditions.

Creating a written report, including a description of the substance or hazard causing the fall, is essential. It also is imperative that the names and contact information of all eye witnesses and employees who were at the scene are obtained. Precise words any employee may have said should be jotted down as such statements can be critical to a recovery.

Examining and keeping the clothing and particularly the shoes worn in the fall is also important.

So if the individual falls in a puddle of water from a drink spilled by a small child deep in the store aisle within moments following the spill there may be no liability. If the fall occurs within moments of the youngster’s spill upfront near the check out lane where the cashier had time to see and warn, there likely would be liability.

If the individual readily saw the danger which became the cause of the fall but chose to ignore the danger, knowledge of the danger would affect the liability of the store. But remember the law does not impose upon any shopper the obligation to inspect with a magnifying glass and the briefest scan of the area ahead may be more than reasonable under the circumstances.

Falls for elderly parents can be wicked things. They are not anticipated and no one prepares for them and the landings are so unexpected that the injuries can tremendously affect the future quality of life for an elderly person. As the parachutists jokingly remark “its not the fall that gets you, it’s the sudden stop!”.

No amount of recovery can replace good health, mobility or an active, independent style of life which can quickly disappear for an elderly fall victim. Therefore, though the idea of seeking a monetary recovery is abhorrent for many elderly individuals, it certainly is the most civilized approach to redress life altering injuries any society has yet to devise.

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For additional questions concerning injuries such as these contact Brawer Hirsch & Associates PA, 7771 W Oakland Pk Blvd The Atrium West Bldg Sunrise FL 33351 954.749.0066 dlhirschpc@aol.com

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