

Trial Victory

Slip & Fall Outside of a Comedy Club

The Problem

A man was attending a comedy show at a mostly retail commercial center. After the show ended, he stepped out onto the patio and slipped on a wet metal strip, that was the transition between the wood and concrete walking surfaces of the patio, and suffered serious injuries. He alleged that several patrons had slipped and fallen on this metal strip before, also resulting in injuries, and that the Owners of the building had been made aware of this prior to his incident. He also alleged that the Owners and their Property Managers were negligent in their use and maintenance of the building, in that they knew the metal strip on the decking caused an unreasonable risk of harm and despite this knowledge, took no steps to repair, protect against harm, or give adequate warning of the condition. The injured man had also bragged that he was going to get rich on this case, and was refusing to settle for a reasonable amount.

The Solution

PFCS was hired by the Owners attorney on a tight schedule with depositions coming within two months of retention, so we put our limited time to good use. Paul Kushner was hired as the architectural expert to evaluate the design and building code related allegations, and Pete Fowler was hired as a contracting and building maintenance expert. We conducted a forensic inspection, documenting site conditions with photographs, field notes and diagrams; we analyzed the available documents including plans, leases, incident reports, and deposition testimony from various parties; we researched and analyzed applicable building codes and standards; and we collected climate data for the day of the incident. Based on the totality of our analysis, we drew our conclusions and presented them at deposition and trial:

1. The pedestrian walkway was not a dangerous condition.
2. The deck assembly complied with the applicable building code.
3. The deck assembly was constructed of quality materials, in a workman-like manner, and remained in good condition after almost a decade in service.
4. The metal transition between the wood and concrete walking surfaces was not a defective condition.
5. Light rain was recorded on the afternoon and evening of the incident. Dry concrete and dry wood would absorb the precipitation immediately, within a few minutes. There were gaps within the dissimilar material which would facilitate drainage from the flat surface of the metal channel. Capillary action will cause water to run off the edges into the gap.
6. There was no evidence that the Owners had been informed prior to this litigation that the metal transition between the wood and concrete walking surfaces was the cause of a fall leading to injury.
7. There was no evidence that the Owners were negligent in their use or maintenance of the exterior walking surfaces generally, nor specifically related to the metal transition between wood and concrete walking surfaces.
8. The exterior walkway was the location of regular public events with many people safely using the walking surface without incident, and the deck assembly was in service as is for nearly a decade without a similar incident related to the metal transition between the wood and concrete walking surfaces.
9. The Owners had standard operating procedures in place to warn users of the walking surface that it was slippery when wet.

Ultimately, the case went to trial, and based on our testimony, the property Owners received a defense verdict 100% in their favor.

