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Trial Lawyers Section Digest

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Message from the Chair

It's hard to believe that I'm halfway through my term as Chair of the Trial Lawyers Section. It's been a wonderful opportunity working with so many great trial lawyers from across the State. I continue to be impressed with the level of talent and dedication of so many TLS members in working hard to continue the success of our Section.

This talent and dedication to the Section was on full display at our recent Summer Meeting, which took place at the end of July in Newport, Rhode Island. Newport is always a wonderful place to be in the summer. And as all who attended will attest, it didn't fail us.

Typical of past summer meetings, we had a great lineup of CLEs and other programs. Joining us once again was Professor Patrick Connors, Albany Law School, who lectured on CPLR updates and ethics. His lectures are always interesting and insightful.

Also joining us was the Honorable Victoria Graffeo, former Associate Judge of the New York State Court of Appeals. Judge Graffeo spoke on the differences in motion practice, brief writing, and oral arguments in the Court of Appeals and other appellate courts of New York. Having recently served on the Court of Appeals, there's probably no one better to speak on this topic. The Honorable Michelle Weston, Supreme Court, Kings County, also joined us and spoke on a topic beneficial to all, courtroom etiquette and common courtroom mistakes. We look forward to inviting both former Judge Graffeo and Justice Weston back to speak at future events.

We were also fortunate to have some of New York's best trial attorneys presenting this year. Irv Hirsch, Wilson Elser Moskowitz Edelman & Dicker LLP, presented the defendant's proof in a wrongful death lawsuit, while Steve Schwarz, Faraci Lange LLP, spoke on plaintiff's proof in a wrongful death action. This CLE proved informative for trial lawyers of all experience levels.

In addition to great CLEs, we managed to fit in a lot of fun, including sightseeing, a sailing cruise, a lobster-clambake, cocktail receptions and a well-run golf tournament overseen by our Golf Chair, Daniel Ecker. I was particularly pleased with the number of younger attorneys in attendance, who took full advantage of the many networking opportunities to meet many of New York's best trial lawyers and judges.

I want to thank our co-chairs Peter Kopff and Violet Samuels for putting together such an outstanding Summer Meeting. I also want to thank Cathy Teeter,

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NYSBA staff who always does a great job with planning and organizing our meetings. We also appreciate our meeting sponsors, AppealTech and Reporter's Ink Corp., for their support.

Attending the Summer Meeting proved to be another great way of getting more involved in the Section. Those more involved not only add to better the Section, but also find greater overall satisfaction as practicing attorneys. Each of us should also encourage others to get more involved. Our last three summer meetings, in Ireland, the Napa Valley and Newport, were well attended and enjoyed by all. We hope to have you join us next year.

Be on the lookout for the announcement of our fall CLE and networking event. Like last year, which proved a huge success, this year's fall program will be nothing less. I look forward to seeing you all there!

T. Andrew Brown

Proving a Negative—How Does a Defendant Establish Its Lack of Constructive Notice?

By John Sandercock

"A defendant moving for summary judgment in a slip-and-fall case has the initial burden of making a *prima facie* showing that it neither created the alleged hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it."[1]

How exactly does a defendant establish that it did not have constructive notice of a dangerous condition?

Recent case law makes clear that, in most instances, in order to establish that a defendant's employees did not have sufficient time to discover and remedy an allegedly dangerous condition, a defendant must submit competent evidence demonstrating that the last time the area was inspected before the accident, the dangerous condition was non-existent. Further, a defendant must also demonstrate, in addition to establishing that its maintenance schedule was reasonable, that it did not receive any complaints between the time of the last inspection and the accident.

Transient Conditions

Stairways in the First and Second Department

Falls on staircases, especially in public housing and the transit system, have generated a great deal of litigation in the First and Second Departments.[2]

The surest way to establish lack of constructive notice is through the testimony of a witness with personal knowledge of when the area was last inspected. For example, in *Rodriguez v. New York City Transit Authority*,[3] the defendant submitted the affidavit of an employee who stated that one hour before plaintiff's accident, she cleaned and inspected the stairs where plaintiff fell and "left the…staircase clean, dry, well lit and free of foreign substances."

In *Love v. New York City Housing Authority*,[4] the caretaker testified that she followed the janitorial schedule according to which she would have swept all the staircases in the morning, mopped the stairs any time she encountered a wet condition and informed the supervisor of any complaints she would receive.

In *Gautier v. 941 Intervale Realty LLC*,[5] a 3-2 decision, the panel majority insisted that the defendant had to submit competent evidence of when the stairway was last inspected in order to establish its entitlement to judgment:

> In support of the motion, defendant submitted the deposition testimony of its superintendent about the building's regular janitorial schedule. However, it offered no evidence that the schedule was followed on the day of the accident (citation omitted). Moreover, constructive notice remains an issue in this case because defendant made no showing as to when the stairway was last inspected before plaintiff's accident (*citation omitted*).

Other recent cases in which the defendants failed to establish lack of constructive notice include *Nelson v. Metropolitan Transit Authority*,[6] and *Williams v. New York City Housing Authority*.[7] In both cases, the court held that evidence of general cleaning and inspection procedures was not probative evidence of the procedures actually followed on the day of the accident. In *Seleznyov v. New York City Transit Authority*,[8] the defendant did not submit any evidence showing when the stairway was last cleaned or inspected before the accident, and the court did not accept its argument that its evidence established that the cleaning schedule was reasonable.

Before *Gautier*, as the dissenting opinion points out, the First Department had on occasion granted summary judgment based on the defendant's general cleaning and inspection procedures, even though the witness did not necessarily have personal knowledge that the schedule had been followed on the day of the accident. For example, in *Pfeuffer v. New York City Housing Authority*,[9] the defendant submitted evidence of its general cleaning and inspection procedures (a caretaker's affidavit and the superintendent's testimony), as opposed to actual recollection of the day of the accident, but the court nevertheless found that the defendant had established that the stairs were cleaned at approximately the same time every day, within one to three hours of plaintiff's fall. In *Torres v. New York City Housing Authority*,[10] the supervisor of caretakers stated that the janitorial schedule for the building required that the subject stairs be cleaned in the hour before plaintiff fell.

As indicated by more recent decisions, including *Gautier*, and *Tucker v. New York City Housing Authority*,[11] the evidence submitted in *Pfeuffer* and *Torres* is probably no longer sufficient to establish the defendant's entitlement to judgment in the First Department.

The Second Department has not been as explicit as the First Department about what a defendant needs to prove to establish a lack of constructive notice in slip-and-fall cases, but it appears that the requirements are similar.

For example, in *Derise v. Jaak 773, Inc.*,[12] in which the plaintiff allegedly slipped and fell on a puddle in a bar, the defendant was denied summary judgment because it did not establish when the bar floor area was last inspected before the accident.

In *Wachovsky v. City of New York*,[13] the plaintiff slipped and fell on a staircase at a public high school in Brooklyn. The defendants established their entitlement to judgment with the deposition testimony of the school's custodian engineer that no member of his staff was ever made aware of any slippery condition in the stairwell before the accident, as well as the testimony of a health aide that there was no slippery substance on the stairwell when he used it about three hours before the accident.

In *Hernandez v. New York City Housing Authority*,[14] the plaintiff was descending a staircase in one of the defendant's buildings around 12:45 p.m., when she allegedly slipped and fell on water emanating from a flooded apartment. Testimony from the caretaker assigned to clean the subject building established that on the morning of the accident he inspected the subject building, including the stairwell, and did not observe any puddles or water. The defendant also submitted evidence showing that no one had complained about the condition of the staircase between the time of the inspection and the time of the accident.

In *Gadzhiyeva v. Smith*,[15] the defendants submitted the deposition testimony and the affidavit of the building porter concerning when he last inspected the hallway. The opinion does not say how much time elapsed between the last inspection and the accident, but evidently it was not an unreasonable amount of time.

In *Berardi v. Incorporated Village of Garden City*,[16] the plaintiff fell on wet, slippery interior steps in a fieldhouse around 9:30 p.m. The defendant submitted the deposition testimony and affidavit of its senior maintainer, who was responsible for cleaning the premises. When he last inspected the premises, between 3:00 and 4:00 p.m., he did not notice any hazardous condition at the top of the staircase. There was also evidence showing that the defendant did not receive any complaints about the condition of the staircase between the time it was last inspected and the time of the accident.

In *Farren v. Bd. of Educ. of City of New York*,[17] the defendant submitted testimony from the custodian engineer assigned to clean the school who testified that he inspected the school, including the bathrooms, every morning to make sure that it is safe and clean. He further testified that he had last inspected the subject bathroom approximately two to two and one-half hours before the infant plaintiff allegedly was injured, and that there was no liquid on the floor at that time. The defendant also submitted the affidavit of a school administrator who averred that the school had not received any complaints regarding water on the floor of the subject bathroom between the time of the inspection and the time of the alleged accident.

Different Rules Apply After Hours and on the Weekends

Evidence of general cleaning and inspection procedures may be sufficient to establish a lack of constructive notice when the accident occurred after hours or on the weekend. In such cases, it may not always be necessary to establish exactly when the last inspection occurred or that the cleaning schedule was actually followed that day because the time of the accident may be the principal factor in determining whether the defendant's employees had an opportunity to discover and remedy the allegedly dangerous condition before the accident.

In *Rivera v. 2160 Realty Co.*,[18] the plaintiff claimed that he tripped over a beer bottle while descending the steps at 5:00 a.m., and acknowledged that the bottle was not on the steps at 8:30 p.m. the night before. The Court of Appeals held that the plaintiff failed to raise an issue of fact whether the landlord had constructive notice of a dangerous condition in the stairwell because he offered no evidence indicating that the landlord was notified of the debris that night or that the defendant's employees had sufficient opportunity to discover and remedy the problem.

In *Rodriguez v. New York City Housing Authority*,[19] the caretaker who cleaned the building on the day before the early morning accident testified that she inspected the subject stairs twice every morning and once every afternoon, and promptly mopped any urine or other spills she found during her inspections. This testimony was corroborated by her supervisor's testimony and the janitorial schedule. The court held that this evidence established the defendant's lack of constructive notice of urine or other spills on the stairs.

In *Morales v. New York City Housing Authority*,[20] the plaintiff claimed he slipped and fell on urine and waste while descending a staircase around 4:25 a.m. Plaintiff argued that the defendant was not entitled to summary judgment because it failed to submit caretaker checklists from the date of the accident or the preceding two days. The Appellate Division, however, evidently considered that the caretaker's testimony regarding his daily inspection and cleaning, and other evidence that the Emergency Services Department received no complaints of a liquid or a slippery condition in the stairwell before the accident, were sufficient to establish that the defendant lacked constructive notice of the condition.[21] The Appellate Division also noted that plaintiff did not submit evidence of actual notice of a recurrent hazardous condition that could charge the defendant with constructive notice.

In *Nesterenko v. Starrett City Associates,*[22] the plaintiff alleged that about 8:00 one morning, she slipped and fell on a banana peel in a hallway near a garbage chute. She

claimed that several small garbage bags had been near the chute for a few days, and that the area had not been cleaned. The defendants successfully moved for summary judgment with evidence from a building porter who stated that his hours were from 8:00 a.m. until 4:00 p.m. and that he inspected the area on the day before the plaintiff's accident, just before the end of his shift, and did not observe any garbage or debris on the floor. In addition to the porter's evidence, security personnel who assisted the plaintiff after her fall averred that they did not see the banana peel that allegedly caused her to fall. The Second Department affirmed while her appeal was pending; plaintiff moved, to no avail, for reargument on the strength of two additional affidavits. Her motion was denied.[23]

In *Perez v. New York City Housing Authority*,[24] plaintiff allegedly slipped on a puddle of urine on an interior staircase shortly after midnight. The defendant established its entitlement to judgment with deposition testimony and an affidavit from the person assigned to clean the building, who stated she had last inspected the stairwell around 3:00 p.m. the previous day. Defendant also submitted evidence that no one had complained about the condition of the stairwell between the time of the last inspection and the alleged accident.

In *Muniz v. New York City Housing Authority*,[25] the plaintiff allegedly slipped and fell on urine or beer on the vestibule floor of the defendant's premises early on a Sunday morning. The defendant established its entitlement to judgment with an affidavit from its caretaker stating that when he inspected the area the previous day, right before the end of his shift, he did not observe any liquid on the floor of the vestibule.

The absence of a reasonable cleaning schedule on weekends may be sufficient to defeat a defendant's *prima facie* showing of lack of constructive notice. In *Chestnut v. Aramark Facility Services, LLC*,[26] the court held that triable issues were raised "whether alleged inadequate weekend staffing of the maintenance crew constituted a proximate cause of plaintiff's slip and fall on a slippery substance."

In *Tavis v. 885 Third Avenue Corporation*,[27] the court held that the owner of the staircase leading down to the subway station owed a duty of care to keep the staircase safe. Defendant hired a maintenance company which cleaned and maintained the staircase but only during the week and on Sunday evenings. Plaintiff fell Saturday and testified that both sets of stairs were littered with debris and trash. The Supreme Court granted defendant summary judgment. On appeal, the First Department reversed, stating that there was a question of reasonableness of defendant's practice of leaving the staircases "located in a heavily-traveled area uninspected and unattended between Friday evening and Sunday evening."

Plaintiff's Own Testimony Is Often Helpful

The plaintiff's testimony is often useful in demonstrating that the defendant's employees had even less time to discover and remedy the problem than the cleaning schedule would otherwise indicate.

In *Rivera v. 2160 Realty Co.*,[28] the plaintiff claimed that he tripped over a beer bottle while descending the steps at 5:00 a.m., and acknowledged that the bottle was not on the steps at 8:30 p.m. the night before.

In *Pagan v. New York City Housing Authority*,[29] evidence from the caretaker, her supervisor, and the plaintiff established that the wet liquid was deposited on the stairs only after the plaintiff returned home at 9:00 p.m., and before the caretaker came to work the next morning at 8:00 a.m. The court held that the defendant was entitled to summary judgment because this time frame would not have provided the caretaker with a sufficient period of time to discover and remedy the problem.

In *Williams v. County of Erie*,[30] defendant met its initial burden of establishing that it did not have constructive notice of the condition by submitting, among other evidence, plaintiff's testimony from her section 50–h hearing that she did not see any water on the floor when she walked through the dietary corridor of the hospital a few minutes before she fell.

Distinction Between Public and Private Entities

Despite the holding in *Miller v. State*,[31] that "when the State acts in a proprietary capacity as a landlord, it is subject to the same principles of tort law as is a private landlord," the courts at times find reasons not to hold public authorities to the same standard as private property owners with respect to constructive notice of dangerous conditions. The observation that "[t]he court cannot impose a duty upon a municipal authority to alter its cleaning schedule or hire additional cleaners without a showing that the established schedule is manifestly unreasonable," has turned up in a couple of cases. In *Beras v. New York City Housing Authority*,[32] the court held that the defendant could not be charged with constructive notice of an oily condition on a stairwell even though the stairwell was last inspected at approximately 1:00 p.m. on a Sunday and plaintiff fell at 7:00 p.m. that evening. In *Harrison v. New York City Tr. Authority*,[33] the court declined to impose liability on the Transit Authority because it had a recurring problem with patrons dropping Metrocards near turnstiles. *Harrison* cites other cases in which the court may have felt similarly constrained by a sense that a public authority can only do so much.[34] The First Department has also noted that the Housing Authority is not "required to patrol its staircases 24 hours a day."[35] However, in *Seleznyov v. New York City Transit Authority*,[36] in which plaintiff allegedly fell because of debris on the stairs, the court rejected the defendant's argument, based on *Harrison*, that it had established a reasonable cleaning

schedule, finding that its affidavit raised questions as to the adequacy and reasonableness of that schedule.

Retail Stores

Evidence establishing the last time the accident site was inspected is crucial to prove lack of constructive notice in other contexts as well, such as retail stores.

In *Siero v. Western Beef Properties Inc.*,[37] the plaintiff claimed that she slipped and fell on liquid spilling from a bottle of Pine–Sol that had been knocked over on the bottom shelf of a rack at defendants' supermarket. The court, citing *Gautier*, held that the defendants made a *prima facie* showing that they lacked actual or constructive notice of the hazardous condition with an affidavit of the assistant manager on duty stating that he routinely inspects the store, "had just passed" the area five to ten minutes before the accident, and did not observe a spill or liquid of any type on the floor.

In *Smith v. Costco Wholesale Corp.*,[38] the defendants established their lack of constructive notice with deposition testimony from a senior administrative manager and documentary evidence, which showed that the bathrooms were cleaned and monitored regularly by defendant's personnel and that no problems were noted during the inspection before plaintiff's fall. Inspections conducted after the incident found no foreign substance or liquid on the bathroom floor, no bucket and mop in the bathroom, and no plumbing problems. Evidently, the documents made up for the absence of testimony concerning when the area was last inspected.

In *Rodriguez v. Shoprite Supermarkets, Inc.*,[39] the plaintiff allegedly slipped and fell on a squashed piece of fruit on the floor of the produce aisle of the defendant's store. The defendant's motion failed to demonstrate that it lacked constructive notice of the condition because the testimony and an affidavit of an assistant manager, who worked on the night of the accident, merely referred to general cleaning practices of the defendant and provided no evidence regarding any specific cleaning or inspection of the area in question on the day of the accident.

In *Black v. Kohl's Dep't Stores, Inc.*,[40] the plaintiff tripped and fell in defendant's store around 3:30 p.m., and claimed that she caught her foot on a purse that was lying on an aisle floor. In addition to other evidence, the defendant submitted an affidavit from an employee who worked in the accessories department where plaintiff fell, averring that she inspected the floor at 3:00 p.m. and that there was no merchandise on the floor at that time. Nevertheless, the majority found there was an issue of fact because plaintiff submitted affidavits from two customers who stated that the accessories department was always in disarray with purses on the floor. Justice Mercure wrote a dissenting opinion, arguing that a plaintiff "may not overcome a showing of *prima facie* entitlement to summary judgment merely by providing evidence that a recurring hazardous condition existed."[41]

When security camera footage is available, it can be valuable evidence whether or not the defendant had constructive notice. In *Seung Chul Na v. JP Morgan Chase & Co.*,[42] the defendants submitted evidence that their employees were instructed to mop water on the floor as soon as they saw it. The defendants also submitted a surveillance video and deposition testimony demonstrating that the area of the floor where the plaintiff fell was mopped with a dry mop less than 30 minutes before the accident, and that other customers walked through the same area without incident in that time.

Durable Conditions

In cases involving dangerous conditions that must be repaired, as opposed to cleaned or swept, courts have generally not focused on the time of the last inspection, as they have in the transient condition cases.

Whether testimony concerning regular inspections in such cases is sufficient to establish lack of constructive notice is often a moot point, because photographs of the allegedly defective condition taken close in time to the accident, if properly authenticated, generally raise issues of fact concerning constructive notice.[43]

Defendants should bear in mind that turnabout is fair play. Photographs taken a reasonable time before the accident, if available, could be used to establish lack of constructive notice, as the court suggested in *Fuentes v. New York City Transit Authority*.[44] Taking photographs to document property inspections is no longer the burden it once was, given the popularity of cellphone cameras and the ease with which digital photographs can be transferred to long-term electronic storage.

Cracked Steps

In *Rios v. New York City Housing Authority*,[45] the defendant demonstrated its lack of actual or constructive notice of the cracked step with the testimony of its supervisor of janitorial caretakers and the janitorial caretaker working on the date of the accident, as well as an affidavit of the assistant building superintendent, all of whom denied observing a chipped or broken step despite numerous inspections of the stairwell prior to the plaintiff's accident. In addition, the plaintiff admitted at his deposition that the first time that he noticed a defect in the step was after he fell, even though he traversed the stairwell "more than once or twice" in the month preceding his accident, as well as once or twice each week for nearly five years before.

In *Fuentes v. New York City Transit Authority*,[46] the defendant failed to establish its lack of constructive notice of a defective step on a staircase leading to a subway platform. The court noted that "the defendant failed to show when the subject staircase was last inspected prior to the

accident or what the subject step looked like within a reasonable time prior to the accident."[47]

Cracked Sidewalks

In *Aleyav v. Juster Associates, LLC*,[48] the owner of the premises abutting the allegedly dangerous sidewalk failed to establish lack of constructive notice with testimony from its managing member that she inspected the premises two or three times a year, never observed any defective condition on the sidewalk, and was unaware of any prior trip and fall accidents on the sidewalk.

In *Vaughn v. Harlem River Yard Ventures, Inc.*, the defendants established their lack of constructive notice of a broken sidewalk curb with (a) testimony from a security manager that he had not received any complaints from plaintiff regarding the condition of the sidewalk or curb at the location where she fell, and he had not received any complaints at all regarding the condition of any of the sidewalks or curbs in other areas of the facility, (b) testimony from a maintenance engineering manager, who testified that his department did not have any records of complaints about or repairs to the curb at the location where plaintiff fell, and (c) plaintiff's testimony that she did not observe the broken curb before the accident, did not know how long it was broken, and had never discussed the broken curb with any of her co-workers.[49]

In *Ortiz v. 82-90 Broadway Realty Corp.*,[50] the defendant failed to demonstrate, *prima facie*, that it lacked constructive notice of the alleged sidewalk defect. The decision does not explain why, but the court's citation to *Bolloli v. Waldbaum, Inc.*,[51] implies that testimony from a store manager that he performed inspections on a regular basis of the parking lot, including the area directly in front of the store where the plaintiff fell, is insufficient to establish that the defendant lacked constructive notice of a durable condition.

Potholes

In *Rauschenbach v. County of Nassau*,[52] the County submitted the testimony of an employee who stated that he inspected the roadway every Monday through Friday until the week before the accident, and did not observe any potholes. This was sufficient to establish, *prima facie*, that the County lacked constructive notice of the alleged defect; however, the plaintiff raised an issue of fact with expert affidavit stating that the pothole had existed for at least four months before the accident.

In *Bottieri v. Tandy, Inc.*,[53] the defendants met their burden of establishing lack of constructive notice with proof that the parking lot was regularly inspected, no defective condition had been detected and no one had previously had an accident as a result of the alleged hole or complained of its existence before plaintiff's accident.

In *Quick v. G.G.'s Pizza & Pasta, Inc.*,[54] the Appellate Division, Second Department, reversed the conclusion of the motion court, finding that the defendant did not establish its lack of constructive notice with an affidavit indicating that there were no repairs to the parking lot in the fifteen months before the accident, and testimony that its principal had not received any complaints from anyone regarding the condition of the parking lot, nor had he personally observed any defects or dangerous conditions.

Conclusion

A property owner cannot directly prove that there was no way it could have learned about the allegedly dangerous condition that caused the plaintiff to slip and fall. Generally, the best it can do is minimize the amount of time that was in theory available to discover and remedy the allegedly dangerous condition. Proof of when the accident site was last inspected has become a necessary, though not always sufficient, requirement in establishing that a defendant cannot be charged with constructive notice, especially in cases involving transient conditions. Therefore, a defendant, when moving for summary judgment in such a case, should, if possible, submit competent evidence of the procedures actually performed on the date of the accident. On the other hand, a plaintiff opposing a defendant's motion should point out, if possible, defendant's lack of proof concerning the last inspection.

Endnotes

1. *Petersel v. Good Samaritan Hosp. of Suffern*, 99 A.D.3d 880, 880, 951 N.Y.S.2d 917, 918 (2d Dept. 2012), citing *Gordon v. American Museum of Natural History,* 67 N.Y.2d 836, 837, 501 N.Y.S.2d 646, 492 N.E.2d 774 (1986).
2. The cases discussed in this article are just the tip of the iceberg.
3. 118 A.D.3d 618, 618-19, 988 N.Y.S.2d 618 (1st Dept. 2014).
4. 82 A.D.3d 588, 919 N.Y.S.2d 149 (1st Dept. 2011).
5. 108 A.D.3d 481, 970 N.Y.S.2d 191 (1st Dept. 2013).
6. 122 A.D.3d 532, 998 N.Y.S.2d 14 (1st Dept. 2014).
7. 99 A.D.3d 613 (1st Dept. 2012).
8. 113 A.D.3d 497, 498, 979 N.Y.S.2d 44 (1st Dept. 2014).
9. 93 A.D.3d 470, 472, 940 N.Y.S.2d 566 (1st Dept. 2012).
10. 85 A.D.3d 469, 469, 924 N.Y.S.2d 782 (1st Dept. 2011).
11. *See, e.g.*, *Tucker v New York City Hous. Auth.*, 127 A.D.3d 619, 8 N.Y.S.3d 141 (1st Dept. 2015) [evidence offered as to defendant's general cleaning and inspection procedures did not constitute probative evidence of the procedures actually performed on the day of the accident].
12. 127 A.D.3d 1011, 7 N.Y.S.3d 1011 (2d Dept. 2015).
13. 122 A.D.3d 724, 725, 997 N.Y.S.2d 145, 147 (2d Dept. 2014).
14. 116 A.D.3d 662, 983 N.Y.S.2d 577 (2d Dept. 2014).
15. 116 A.D.3d 1001, 983 N.Y.S.2d 881 (2d Dept. 2014).
16. 115 A.D.3d 631, 981 N.Y.S.2d 768 (2d Dept. 2014).
17. 119 A.D.3d 518, 519, 988 N.Y.S.2d 684, 685-86 (2d Dept. 2014).
18. 4 N.Y.3d 837, 838, 797 N.Y.S.2d 369 (2005).
19. 102 A.D.3d 407, 959 N.Y.S.2d 127 (1st Dept. 2013).
20. 125 A.D.3d 619, 3 N.Y.S.3d 119 (2d Dept 2015). Some details are from the motion court's decision reported at 41 Misc.3d 1218(A), 981 N.Y.S.2d 636 (Sup. Ct., Kings County 2013).

21. *Morales v New York City Hous. Auth.*, 41 Misc.3d 1218(A) (Sup. Ct. 2013), *rev'd*, 125 A.D.3d 619 (2d Dept. 2015).
22. 111 A.D.3d 806, 975 N.Y.S.2d 123 (2d Dept. 2013).
23. 123 A.D.3d 1099, 997 N.Y.S.2d 636 (2d Dept. 2014).
24. 75 A.D.3d 629, 906 N.Y.S.2d 299 (2d Dept. 2010).
25. 38 A.D.3d 628, 831 N.Y.S.2d 513 (2d Dept. 2007).
26. 111 A.D.3d 510, 975 N.Y.S.2d 340 (1st Dept. 2013).
27. 43 A.D.3d 691, 975 N.Y.S.2d 340 (1st Dept. 2007).
28. 4 N.Y.3d 837, 838, 830 N.E.2d 267, 268 (2005).
29. 121 A.D.3d 622, 623, 996 N.Y.S.2d 10 (1st Dept. 2014).
30. 119 A.D.3d 1344, 989 N.Y.S.2d 553 (4th Dept. 2014).
31. 62 N.Y.2d 506, 511, 478 N.Y.S.2d 829 (1984).
32. 118 A.D.3d 584, 987 N.Y.S.2d 162 (1st Dept. 2014).
33. 94 A.D.3d 512, 514, 941 N.Y.S.2d 622 (1st Dept. 2012).
34. *Raghu v. New York City Hous. Auth.*, 72 A.D.3d 480, 482, 897 N.Y.S.2d 436, 438 (1st Dept. 2010) (janitor's testimony that his regular routine included cleaning stairwell between 8:00 a.m. and 8:30 a.m., and that he did not observe any powder, was sufficient to shift burden to plaintiff of demonstrating existence of questions of fact); *Vilomar v. 490 E. 181st St. Hous. Dev. Fund Corp Corp.*, 50 A.D.3d 469, 470, 858 N.Y.S.2d 10, 11 (1st Dept. 2008) (building superintendent testified that he cleaned stairs twice a day, on arriving for work between 6:00 and 6:45 a.m. and after 4:00 p.m. before leaving work, that there was no garbage on the stairs when he left the building the evening before the accident).
35. *Rodriguez v. New York City Hous. Auth.*, 102 A.D.3d 407, 408, 959 N.Y.S.2d 127, 127 (1st Dept. 2013).
36. 113 A.D.3d 497, 498, 979 N.Y.S.2d 44, 45 (1st Dept. 2014).
37. 119 A.D.3d 488, 488, 989 N.Y.S.2d 290 (1st Dept. 2014).
38. 50 A.D.3d 499, 500-01, 856 N.Y.S.2d 573, 575 (2008).
39. 119 A.D.3d 923, 923, 989 N.Y.S.2d 855 (2014).
40. 80 A.D.3d 958, 914 N.Y.S.2d 469 (3d Dept. 2011).
41. *Id*. at 962, 914 N.Y.S.2d at 472.
42. 123 A.D.3d 903, 904, 1 N.Y.S.3d 125 (2d Dept. 2014).
43. *See, e.g.*, *Salvia v. Route 111 Hauppauge Assoc.*, 47 A.D.3d 791, 849 N.Y.S.2d 630 (2d Dept. 2008) and cases cited. *But see Gennaro v. Cord Meyer Development Co.*, 57 A.D.3d 725, 871 N.Y.S.2d 214 (2d Dept. 2008) (poor quality black and white photocopies of color photographs did not raise issue of fact concerning whether defendant had constructive notice).
44. 107 A.D.3d 845, 846, 968 N.Y.S.2d 536 (2d Dept. 2013).
45. 48 A.D.3d 661, 662, 852 N.Y.S.2d 283, 284 (2d Dept. 2008).
46. 107 A.D.3d 845, 968 N.Y.S.2d 536 (2d Dept. 2013).
47. *Id.* at 846, 968 N.Y.S.2d at 538.
48. 122 A.D.3d 886, 998 N.Y.S.2d 83 (2d Dept. 2014). Some information is taken from defendant Juster's brief published at 2014 WL 8392402.
49. 118 A.D.3d 604, 989 N.Y.S.2d 464 (1st Dept. 2014). Some information is taken from the motion court decision at 2013 WL 1852241 (Sup. Ct., New York County, Apr. 22, 2013).
50. 117 A.D.3d 1016, 986 N.Y.S.2d 133 (2d Dept. 2014).
51. 71 A.D.3d 618, 620, 896 N.Y.S.2d 400, 403 (2010).
52. No. 10975/10, 2015 WL 2076304, at *1 (N.Y. App. Div. May 6, 2015).
53. 117 A.D.3d 1264, 986 N.Y.S.2d 267 (4th Dept. 2014).
54. 53 A.D.3d 535, 861 N.Y.S.2d 762 (2d Dept. 2008). Some of the information comes from the motion court decision at 2007 WL 2174873 (Sup. Ct., Suffolk County, Mar. 28, 2007).

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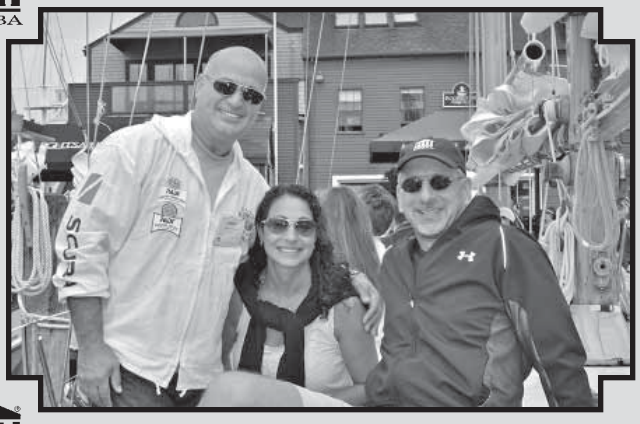

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