

Premises Liability - Connecticut

In order for a business invitee to recover based upon a theory of premises liability, under Connecticut law, it must be proven that the proprietor had **actual or constructive knowledge** of the “**specific unsafe condition.**” Meek, et al. v. Wal-Mart Stores, Inc., et al., 72 Conn. App. 467, 474, 806 A.2d 546 (2002)(emphasis added); Fuller v. First National Supermarkets, Inc., 38 Conn. App. 299, 301, 661 A.2d 110 (1995). To that end,

[i]f the proprietor does not know the condition of his premises, it is his duty to exercise reasonable care to discover their condition and he will be liable for such defects as a reasonable inspection would have disclosed.

Hendsey v. Southern New England Telephone Company, 128 Conn. 132, 20 A.2d 722 (1941).

Further, the plaintiff must prove notice of the “very defect which occasioned the injury and not merely of conditions naturally productive of that defect . . .” Meek, et al. v. Wal-Mart Stores, Inc., et al. at 474. However, proof of notice is not required when the proprietor’s own conduct created the unsafe condition as it is then inferred that the proprietor had knowledge thereof when it created the hazardous condition. Id. For instance, when the defective condition results from the stacking of merchandise and the plaintiff proves the proprietor stacked the goods negligently, then proof that the proprietor also had notice of the dangerous condition such stacking presented is not required. Id.

Relative to the issue of stacking, the courts have taken notice of the fact that “‘high stacking’ of merchandise has become a trademark of retail superstores . . .” Id. at 475 citing Ciminski v. Finn Corp., 13 Wn. App. 815, 819, 537 P.2d 850, review denied, 86 Wn. 2d 1002 (1975). As such, the merchant must use “reasonable care in placing goods on the store shelves.” Meek, et al. v. Wal-Mart Stores, Inc., et al. at 476. “Merchandise must not be stacked

or placed at such heights, widths, depths, or in such locations which would make it susceptible to falling.” Id. Additional factors include “the method of stacking, the presence or absence of lateral support, and the stacked item’s dimensions and center of gravity.” Id. Injuries may also result “indirectly” from the proprietor’s “defective or negligent display” that is expected due to the store’s “mode of operation.” Id. For instance, the proprietor who stacks merchandise must necessarily expect that the goods will be inspected by other customers. Id. As such, the proprietor must take into account that shoppers may “dissarrange” merchandise and possibly leave it in a “dangerous condition.” Id. at 477-78.

The “negligent activity theory” generally requires the proprietor to create the defective condition that results in injury. However, no distinction should be drawn between the situation in which the proprietor actually creates the condition or defect and the one in which the store’s mode of operation “creates a situation where it is reasonably foreseeable that the expectable acts of third parties will create a dangerous condition or defect.” Id. at 478. The “large, self-service retail merchandising establishments” must take measures, commensurate with the risks inherent with the store’s operation, to protect invitees and any economic loss from doing so should be borne by those proprietors. Id. at 481.

It is important to keep in mind that the business invitee can prove the premises liability case by presenting evidence that shows a store owner knew or should have known of the defective condition. In the alternative, notice is not required when the defective condition is traced to the conduct of the proprietor. Further, due to the nature of the “self-service” establishment, the proprietor will also be liable for conditions it creates and result in third parties leaving merchandise in a dangerous condition. However, a proprietor is not an insurer of a customer’s safety and it will not be liable to invitees for independent acts of negligence which the

proprietor “cannot reasonably foresee or guard against.” Id. at 479.