

# Premises Liability - New York

Under general principles of premises liability in New York, the “mere existence of a foreign substance, without more, is insufficient to support a claim of negligence. Segretti v. Shorenstein Company East, L.P., 256 A.D.2d 234, 682 N.Y.S.2d 176 (1998). Rather, a plaintiff must show that the proprietor “either created a dangerous condition or had actual or constructive knowledge of the condition.” Id. at 235. In order to prove constructive notice, the defect must be “visible and apparent” and exist for a “sufficient length of time prior to the accident to permit [the proprietor’s] employees to discover and remedy it.” Id. at 235 citing O’Connor -Miele v. Barhite & Holzinger, 234 A.D.2d 106, 650 N.Y.S.2d 717 (1996) quoting Gordon v. American Museum of Natural History, 49 N.E.2d 774, 67 N.Y.2d 836, 837 (1986); Monte v. Maxx, 293 A.D.2d 722, 723, 741 N.Y.S.2d 117 (2002). Constructive notice cannot, however, be established by merely showing that the proprietor has a “general awareness” of “some” dangerous condition. Segretti v. Shorenstein Company East, L.P. at 235.

Where the proprietor has satisfied its burden of showing a lack of actual or constructive notice of the defective condition, the plaintiff’s burden may also be satisfied by proving that an “**ongoing and recurring** dangerous condition existed in the area of the accident which was **routinely** left unaddressed by the landlord.” Id. at 235 (emphasis added). To that end the plaintiff must show, by “specific factual references,” that the proprietor had knowledge of the recurring condition. Manziona v. Wal-Mart Stores, Inc., 295 A.D.2d 484, 485, 744 N.Y.S.2d 466 (2002). When a proprietor has actual knowledge of a recurring condition, the plaintiff is not required to prove that the proprietor had actual knowledge of the **exact item** of debris. Rivera v. 2160 Realty Co., L.L.C., 781 N.Y.S.2d 645, 646, 2004 N.Y. App. Div. LEXIS 10591 (2004).

New York case law has noted specific instances, by both plaintiffs and defendants, of evidence used to prove their respective cases. An affidavit, on behalf of the plaintiff, that fails to indicate the length of time the defect existed or that it was in the same area where the plaintiff fell or to whom notice of the condition was given or when and how notice was given, is not sufficient to sustain plaintiff's burden of proof. Monte v. Maxx, at 723; Carlos v. New Rochelle Municipal Housing Authority, 262 A.D.2d 515, 692 N.Y.S.2d 428, 429 (1999). However, an affidavit by the proprietor noting that no previous complaints had been received with respect to the particular defect at the particular location can be a prima facie showing of the absence of actual or constructive notice. Id. at 428.

**Under New York law, a proprietor can be liable when it has actual or constructive notice of the harmful condition and fails to act upon that knowledge. However, notice is not required when the defective condition is traced to an ongoing or recurring condition of which the proprietor has knowledge, but routinely does nothing to prevent. The proprietor is then responsible for the resulting harm.**