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AVOIDING THE BANANA PEEL

Effective July 1, 2010, a plaintiff seeking damages for injuries suffered in a fall caused by a "transitory foreign substance" in a place of business must both prove that the business knew about the substance and should have taken action to remedy it. F.S. § 768.0755.

The Florida Federal District courts have split on the issue of whether the statute applies retroactively. The Northern District of Florida has held that the law is procedural in nature and thus retroactive whereas the Middle District of Florida has held that the law is prospective only, reasoning that because the requirement of proving knowledge had been restored, the law was more than merely procedural. The retroactivity issue has yet to be decided by a Florida state appellate court.

Since constructive knowledge will satisfy the requirement that the business knew about the substance causing the fall, the new statute is likely to refocus attention on the transitory substance itself. In other words, was the banana peel blackened, or merely spotted? Were there heel marks in the cookie fragment?

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However, the requirement of establishing that the business should have done something about the condition will provide an extra limitation on liability in situations where the condition was so minor, or inconspicuous, or recent that the business could not reasonably have been suspected to remedy it before the fall took place.

JLH/LFL/tsr

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