CONROY, SIMBERG, GANON, KREVANS, ABEL, LURVEY, MORROW & SCHEFER, P.A.

April 25, 2013

Law Bulletin—Case Law E-Alert

In an effort to bring you up to date information that affects your every day claims handling, the defense team at Conroy, Simberg is pleased to bring you electronic alerts regarding the latest legal opinions from the Third District Court of Appeal. This update will provide you with the latest rulings, legal implications and practice tips. In addition to this electronic update, the attorneys at Conroy, Simberg are ready to answer any questions you may have regarding the contents contained herein, as well as discuss the role that these opinions may have on existing claims. Please feel free to contact any of our attorneys, at any of our several locations throughout the State of Florida. You can also visit our website at www.conroysimberg.com.

KENZ V. MIAMI-DADE COUNTY AND UNICCO SERVICE CO.
Third DCA Case No. 3D12-571
Opinion Issued Wednesday, April 24, 2013

Yesterday, the Third District Court of Appeal issued its long-awaited opinion in Kenz v. Miami-Dade County and Unicco Service Co., Case No. 3D12-571 (Fla. 3d DCA, April, 24, 2012), in which the appellate court addressed the issue of whether Florida Statute 768.0755 is retroactive. Section 768.0755 addresses the burden of proof in slip and fall cases and specifically provides that the plaintiff has the burden of proof to demonstrate that the defendant premises owner or possessor was negligent in failing to exercise reasonable care in the maintenance of its premises. Prior to the enactment of this statute in 2010, Florida Statute 768.0710 provided that the defendant had the burden of proof to demonstrate that its mode of operation of the premises was **not** negligent. That statute was entirely repealed in 2010, when Florida Statute 768.0755 was enacted.

At issue in Kenz was which of the two statutes governed the case where Florida Statute 768.0710 was the law at the time of plaintiff's accident but thereafter, while the case was pending trial, Florida Statute 768.0755 became effective and Florida Statute 768.0710 was repealed. The Court analyzed both statutes to determine whether they were substantive, and therefore not retroactive, or whether they were procedural, in which case the statute in effect at the time the case went to trial would govern the burdens of proof. The Court concluded that Florida Statute 768.0755, the most recent statute is procedural in nature and, like any rule change, it would apply at trial to any case currently pending, whether or not that cause of action accrued before the repeal of Florida Statute 768.0710 and the enactment of Florida Statute 768.0755.

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Law Bulletin—Case Law E-Alert Continued

Therefore, in any slip and fall case that is pending after Florida Statute 768.0755 became effective, where the plaintiff alleges that a defendant was negligent in its maintenance or repair of business premises, the plaintiff has the burden of proof to show that the defendant "had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it." The statute further provides that the requisite notice may be proven by circumstantial evidence showing that the condition existed for such a length of time that, in the exercise of ordinary care, the defendant should have known about the condition or that the condition occurred with regularity such that it was foreseeable to the defendant.

The statute does not affect the common law on premises liability, which remains applicable in cases involving private, non-business property. Nor does the statute apply in cases involving business premises where the allegedly dangerous condition involves something other than a transitory foreign substance.

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