Recent Trends in Retail Premises Liability

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An ever-evolving area of litigation, retail premises liability has seen ongoing developments towards liberal jury verdicts and adaptation of tools by defense counsel and claims handlers in response. Following is a discussion of trends and recent case law in Tennessee and nationwide.

In 2025, we have seen landmark rulings clarifying retailer and premises owners' responsibilities in Tennessee, and on a national scale, social inflation continues to present challenges for insurers, attorneys and retailers. In January of this year, the Tennessee Supreme Court upheld a $2,000,000.00 award to an injured tenant for a slip and fall related to microbial growth on a pedestrian bridge at a Nashville-area apartment complex. Reaffirming the constructive notice standard of *Blair v. West Town Mal (130 S.W.3d 761, 2004),* the Court confirmed that property owners are liable for a hazard which constitutes a "general or continuing condition." Here, the landlord's practice of annual pressure washing to address a hazard of this type sufficed to establish they were on constructive notice of the hazard and that they breached the duty owed to their invitees, including Plaintiff. The importance of regular and documented maintenance is highlighted by this ruling, and is consistent with Tennessee law. For further, please see *Trentham v. Mid-America Apartments, LP* (Tenn. Jan. 8, 2025).

Conversely, absence of notice of prior incidents will insulate a retailer where, for example, the hazard or risk is unknown, even where a plaintiff attempts to prove negligence of a potentially safer modification for a subject condition. In *Ellis v. Snookums Steakhouse, LLC* (Tenn. Ct. App., Mar. 11, 2025). A restaurant guest sued after an outdoor bench she sat on "flipped or tilted from end to end." Plaintiff argued that the bench was defective because it lacked a back panel, despite having bolts on which such a panel would fasten. The Court upheld summary judgment and noted that the Plaintiff essentially argued that negligence be inferred simply because the fact that the bench "did not operate as the plaintiff anticipated when she sat on it." The fact that the Plaintiff was injured was not enough to show that a hazard existed, and the absence of any such prior incidents supported the retailer's notice defenses.

Tennessee courts affirm that a retailer can be liable for injuries that occur in a parking area adjacent to its premises where the retailer has sufficient control of the parking area, even where the parking lot is owned by another party or parties. In *Jones v. Earth Fare, Inc. (*Tenn. Ct. App. Apr. 15, 2020), even though a grocery store's lease assigned maintenance of the parking lot to the landlord, the Court found that the store repeatedly intervened to clean up spills, without notifying the landlord, and thereby, had "assumed a duty to maintain the parking lot in the area where the incident occurred."

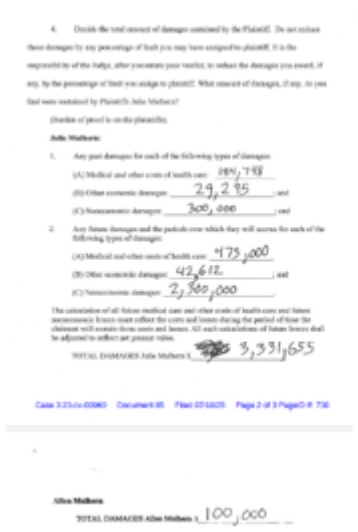
To minimize liability in Tennessee, retailers should:

1. **Document Maintenance Meticulously:** date stamped cleaning logs,

pressure-washing records, spill response times, etc. will better equip defending against negligence claims and will help balance an ever-growing liberal landscape.

2. **Monitor Recurring Conditions:** slip zones (entrances during rain), walking structures, aisles near refrigerators.
3. **Utilize Clear Signage:** warning customers of hazards like wet floors, etc. to support open-and-obviousness in defense strategy and to reduce or insulate from fault by shifting fault to the plaintiff (Tennessee is a modified comparative fault jurisdiction with a 49% rule).
4. **Control vs. Ownership**: where a retailer wishes to avoid liability for incidents occurring in adjacent areas (i.e. parking) they should require the owner of the adjacent area to maintain their control, rather than undertaking maintenance etc. themselves.'

As recently as July 18, 2025, a Nashville federal court jury awarded a Plaintiff over $3,000,000.00, finding Walmart liable for an injury caused by a store pickup cart pushed by a store associate, relating a labral tear and ultimately, a CRPS diagnosis. Tennessee's statutory damages caps ($750,000.00 for non-economics) serve to insulate from the full exposure here, but the volatility of juries in cases of this type is consistent with national trends.



Julie Walkers:

1. Any past damages for each of the following types of damages:

(A) Medical and other costs of health care: 184,798

(B) Other economic damages: 29,295 ; and

(C) Noneconomic damages: 300,000 ; and

2. Any future damages and the periods over which they will accrue for each of the following types of damages:

(A) Medical and other costs of health care: 475,000

(B) Other economic damages: 42,612 ; and

(C) Noneconomic damages: 2,500,000

The calculation of all future medical care and other costs of health care and future noneconomic losses must reflect the costs and losses during the period of time the claimant will sustain those costs and losses. All such calculations of future losses shall be adjusted to reflect net present value.

TOTAL DAMAGES Julie Walkers $ 3,331,655

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Alice Walkers

TOTAL DAMAGES Alice Walkers $ 100,000

On a wider view, retail injury claims management nationwide is seeing the following trends: the persistence of social inflation and nuclear verdicts, tighter underwriting, sublimits and exposures/exclusions, as well as the increased use of AI for efficiency.

Industry publications confirm that an approximately 7% rate of social inflation significantly outpaces economic inflation in a post-pandemic judicial environment, with large jury awards i.e. over $10mm "nuclear" verdicts, and even "thermonuclear" verdicts over $100mm, increasing regularly. With these trends, annually rising premises claims are, unsurprisingly, disquieting to most business owners and policyholders.

As discussed above with a focus on Tennessee trends, we recommend that retailers and property owners across the country adopt and strictly enforce their documentation rules, increase training on these policies, and strengthen their incident responses. These efforts will support more effective handling of unavoidable claims and limit the accumulation of costs associated with defense.

Questions? Click here to contact an MGC attorney.
