CARLTON FIELDS

The Third District Reaffirms the General Admissibility of "No Accident" Evidence

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Florida's Third District Court of Appeal recently decided *Lewis v. Sun Time Corp.*, No. 3D09-746, --- So. 3d ----, 2010 WL 4103173 (Fla. 3d DCA Oct. 20, 2010), in which it addressed the admissibility of "no accident" evidence in a premises-liability action. Specifically, the case involved a plaintiff who slipped on a set of wet terrazzo stairs at the entrance of a Miami Beach hotel/restaurant. These same stairs had been in place for more than 70 years. The trial court admitted evidence that no prior slip-and-fall accidents had occurred at this location during that time frame. On appeal, the Third District affirmed by relying on the general rule that "a no-accident history of the location of a premises liability case may be admitted into evidence for a variety of purposes including the central one of showing that the area was not in fact dangerous or defective." Slip op. at 2. The court also collected many Florida and foreign cases supporting a potentially broader "no accident" rule: The "lack of other accidents may be admissible to show (1) an absence of the defect or condition alleged, (2) the lack of a causal relationship between the injury and the defect or condition charged, (3) the nonexistence of an unduly dangerous situation, or (4) want of knowledge (or of grounds to realize) the danger." Slip op. at 3 & n.1. In sum, *Lewis* is a useful decision to cite when offering evidence that a certain location (or, perhaps, a particular product) has not previously experienced the type of accident now at issue. However, counsel should also be aware that the substantial-similarity doctrine generally applies to this type of evidence and should, therefore, be prepared to offer the court specific evidence as to how the premises or product has remained in a substantially similar condition during the relevant time frame. *See* Slip op. at 5-6 & n.2.

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