LEGAL MEMORANDUM

TO: MS. ELENA KIRKLAND
FROM: DENISE O'CONNOR, PARALEGAL
RE: SOPHIE WILLIAMS – NEGLIGENCE CASE
DATE: APRIL 10, 2016

QUESTION PRESENTED

Can a business patron establish proximate cause for injuries sustained from a fall when she does not know what caused her fall, no one saw her fall, but there is some evidence of standing water on the floor?

BRIEF ANSWER

Probably not. Yorktown Mall does have a duty of care to its patrons which would include mopping up any puddles on the floor. However there is no evidence that Yorktown Mall had constructive notice of the puddle and therefore would not be liable.

FACTS

Sophie Williams hurried to Yorktown Mall for a sale. It was snowing and the snow plows had not yet cleared the roads. After walking through snow in boots, Williams entered the mall and fell down. Williams did not know what caused her fall, but she was laying in a puddle of water and her clothes were soaking wet. An employee of the American Eagle store helped her to her feet and told Williams that there were puddles at that spot when he arrived to work earlier in the day. The witness did not see Ms. Williams fall.

DISCUSSION

In a negligence lawsuit for slip and fall injuries, plaintiffs need to establish that the defendant owed a duty of reasonable care, that duty was breached, and the injury sustained was proximately caused by the same breach. *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 795, 721 N.E.2d 614, 620 (2d Dist. 1999). Proximate cause can be determined when the evidence can "reasonably suggest that the defendant's negligence operated to produce the injury." *Id.* at 789, 721 N.E.2d at 620. Conclusive proof is not necessary to establish proximate cause, but must be based on more than "a matter of speculation, surmise and conjecture." *Id.* at 796, 721 N.E.2d at 620. Liability can be established if the defendant was directly responsible for the water. *Ishoo v. Gen. Growth Props., Inc.*, 2012 IL App (1st) 110919, ¶ 21, 966 N.E.2d 1160, 1164. Alternatively, evidence can be submitted that shows the defendant knew that the liquid was on the floor, thereby having constructive notice. *Id*. at ¶ 21, 966 N.E.2d at 1164.

In *Wiegman*, the plaintiff did not know why she fell, but was laying in a puddle of water at the bottom of a staircase of a hotel near the swimming pool. 308 Ill. App. 3d at 792, 721 N.E.2d at 618. One witness saw the puddle earlier in the day, but did not report it to the hotel. *Id.* at 793, 721 N.E.2d at 618. Another witness testified that the water and blood from the accident was not cleaned up 15-20 minutes after the accident. *Id.* at 793, 721 N.E.2d at 618. Evidence did not exist to suggest that the water was caused by the defendant, nor that the defendant was aware of the water. *Id.* at 802, 721 N.E.2d at 625. Other circumstances supported the belief that the hotel

should have known of the water's existence, specifically the missing floor mats which hotel personnel claimed were always in that area. *Id.* at 802, 721 N.E.2d at 625.

Similarly, to *Wiegman*, Williams also slipped in a puddle of water and did not know the cause of her fall. The missing floor mats and the testimony of witnesses to the puddle of water in *Wiegman* created enough proof to reasonably suggest that the hotel should have known of the standing water. This is not the case for Williams since there is little evidence to suggest that regular accumulation of water in that area required the use of floor mats or additional safety measures. Additionally, there is no evidence to suggest that Yorktown Mall was directly aware of the standing water and failed to act.

In *Ishoo*, the plaintiff slipped in a mall near the escalator while walking with a coworker. 2012 IL App (1st) 110919 at ¶ 3, 966 N.E. at 1161. After her fall, she noted that there was a substance on her hands and pants that she believed to be cleaning solution. *Id.* ¶ 7, 966 N.E. at 1162. She believed that the cleaning solution was there because maintenance staff had cleaned the escalator and had squeegeed the cleaning solution onto the floor. *Id.* ¶ 8, 966 N.E. at 1162. After the fall, she reported the accident to mall security who inspected and photographed the area and did not see any sign of a liquid or oil-like substance in the area. *Id.* ¶ 12, 966 N.E. at 1163. A supervisor for the housekeeping staff at the mall testified that the escalator is only cleaned after operating hours. *Id.* ¶ 14, 966 N.E. at 1163. The plaintiff could not produce evidence to "connect the defendants to the presence of the liquid substance on the floor." *Id.* ¶ 24, 966 N.E. at 1164. There was also no evidence to suggest that the defendants had constructive notice of the liquid on the floor. *Ishoo*, 2012 IL App (1st) 110919, ¶ 27, 966 N.E. at 1165.

Unlike *Ishoo*, we have a witness who clearly observed the puddle after Williams fell. This witness also reported that the puddle was there when he got to work. We do not have a timeline for how long it was between his first observation of the puddle and when Williams fell, or if it is even the same puddle. Since Williams stated that the roads had not yet been plowed, it is reasonable to assume that it had not been snowing for long. This makes it highly unlikely that snow was tracked into the mall that caused the puddle observed earlier in the day by the witness. Therefore, we cannot reasonably suggest how the water got on the floor, nor can we suggest that it was directly connected to the defendant. It is possible that the puddle was caused by snow melting off of Williams' boots, which would eliminate a causal connection to the defendant. Williams would be able to prove that the puddle was the proximate cause of her injuries if it could be proven that the mall had constructive notice of the puddle and failed to act. As was in the case of *Ishoo*, there is also no evidence to suggest that the mall had constructive notice of the puddle. The witness in this case did not tell Williams that he reported the puddle witnessed earlier in the day to mall personnel. Proximate cause can only be established if evidence exists to show that the liquid was directly linked to the actions of the defendant, or if the defendant had knowledge, or should have known of the puddle, and neglected to remedy the safety hazard. *Ishoo*, 2012 IL App (1st) 110919, ¶ 21, 966 N.E. at 1164.

CONCLUSION

As a patron, Yorktown Mall owed Williams a duty of care. There is no evidence to reasonably suggest the cause of the puddle of water, or directly link it to the defendant. Williams can only speculate as to the cause, which is not enough to prove proximate cause. If the plaintiff cannot

prove that the water is directly connected to the defendant, she must prove that the mall had constructive notice of the puddle. There is no proof that the mall was informed of the puddle. Therefore it is unlikely that Williams would be able to prove the proximate cause of her injuries. If she is unable to establish proximate cause, Yorktown Mall would likely not be liable for Williams' injuries.