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Parking Lot Pothole Trip and Fall Spells Civil Lawsuit for Georgia CVS Pharmacy

Personal injury case alleges multiple claims of negligence for failure to notice, remedy and warn of defect on business premises. by Alan Barlow, J.D.

Leandros A. Vrionedes, New York Personal Injury Attorney

NEW YORK, UNITED STATES, December 6, 2022 /EINPresswire.com/ -- A quick trip to the store to pick up a prescription led to a trip in the parking lot for a Georgia woman, and a painful and debilitating trip at that. On December 15, 2020, Lynn Miller, the mayor of Culloden, Georgia (pop. 200) stopped at the CVS pharmacy in nearby Forsyth to pick up a prescription. As she exited from the driver's side door of her 2019 Chevrolet Tahoe, Mayor Miller stepped into a large pothole in the parking lot and fell, fracturing her right ankle and foot in three places.

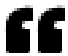
A personal injury case related to the accident has been filed in the Superior Court of Monroe County, Georgia. The case, Lynn Miller and Charles Miller vs. CVS Pharmacy, Inc., Georgia CVS Pharmacy, LLC and other defendants (2022-SU-CV-0401) was filed on October 13, 2022, two months shy of the two-year statute of limitations for personal injury cases in Georgia.

According to her civil complaint, these injuries have so far led to more than $20,000 in medical treatment and also caused lost wages and employment disability, plus physical and mental pain and suffering. Additionally, Mayor Miller has had to incur over $12,000 in caregiver expenses to help care for the six children with special needs she fosters, as her injuries have prevented her from caring for them without help. Mayor Miller's spouse Charles is also pressing a loss of consortium claim, seeking money damages for the loss of spousal services, including loss of society and companionship.

A trip and fall injury is a form of personal injury governed by premises liability law. Section 51-3-1 of the Georgia Code (O.C.G.A.) describes the duty of an owner or occupier of land to an invitee:

"Where an owner or occupier of land, by express or implied invitation, induces or leads others to

come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe."



> In a slip and fall, the hazard is often transitory, suddenly appearing and existing for only a short period of time."
> *Leandros A. Vrionedes, Personal Injury Attorney*

In their complaint, the Millers allege several claims of negligence on the part of the property owner (CVS), including negligently maintaining the parking lot, failing to discover the defect, failing to remedy the defect by repairing the pothole, and failing to warn visitors of the danger while it remained in existence. The complaint further alleges that CVS committed gross negligence by failing to exercise "even that slight degree of care which every person of common sense would exercise under the same circumstances."

Leandros A. Vrionedes is a personal injury attorney in New York City who is no stranger to trip and fall cases involving potholes and other hazards in NYC parking lots, city streets and sidewalks. Attorney Vrionedes is careful to distinguish between so-called trip and fall cases and the more commonly known slip and fall cases. Although both types of accidents involve premises liability law, the way the two kinds of cases are handled differs remarkably. "In a slip and fall, the hazard is often transitory, suddenly appearing and existing for only a short period of time," explains attorney Vrionedes, pointing to common examples such as rain, snow and ice at an entryway, or spilled liquids inside a store. To hold a property owner liable in such a situation, one would need to prove the owner knew or should have known about the hazard but failed to fix it or put up a "wet floor" warning sign in a reasonable time. These cases are challenging, says Vrionedes, because it can be difficult to establish when the slippery condition was first created. According to Mr. Vrionedes, outside of direct evidence such as eyewitness accounts or security camera footage, one might need to rely on circumstantial evidence such as floor inspection and cleaning logs to establish how long the hazard existed before the slip and fall occurred.

In a trip and fall, by contrast, the hazard is often one that has existed for a longer period of time. A pothole is a perfect example of a tripping hazard that likely has existed long enough for the property owner to be aware of it and either fix it, put up a warning, or block the area to avoid a trip and fall. Trip and fall cases present a different set of challenges to injury victims seeking to hold property owners liable. "Here, the property owner is likely to claim the condition was open and obvious," Vrionedes explains, "so that the injury victim could have avoided the hazard had they been paying better attention." In that case, the concept of comparative negligence could come into play, where a plaintiff's recovery is reduced in proportion to the percentage of fault attributed to them. In New York, a plaintiff can recover proportionately from a defendant regardless of how much blame is assigned to the plaintiff, while the law in Georgia forbids a plaintiff from making a recovery if they are 50% or more at fault.

Vrionedes also points out that pothole trip and fall cases are handled very differently depending

on whether the accident occurs on private property, such as a store parking lot, or on a city street or other public property. For example, he says that New York's Pothole Law, found in NYC Administrative Code section 7-201(c)(2), requires that the city has received prior written notice of the pothole, notice of a prior injury caused by the pothole, or has provided written acknowledgment of the hazard and failed to fix it within 15 days. These cases are clearly complicated and require representation from an experienced and knowledgeable attorney.

Mr. Vrionedes adds that trip and fall hazards can be transitory as well, such as where merchandise is dropped on the floor, product cases or store displays are blocking the aisle, or extension cords have been run along foot traffic areas. These hazards might be created by the store owner, putting them on notice, or by a customer, in which case the plaintiff would have to prove the owner knew or should have known about the situation but failed to remedy it.

In addition to seeking compensatory damages for Mayor Miller's medical expenses, lost wages, disability and pain and suffering, and her husband Charles' loss of consortium with his wife, the couple is asking the court to have CVS pay their attorney's fees and expenses pursuant to O.C.G.A. 13-6-11. This statute allows a court to order one party to cover the other party's litigation expenses if the party was acting in "bad faith," was "stubbornly litigious," or caused "unnecessary trouble and expense." The complaint alleges these factors are present due to CVS refusing to settle the case and forcing them to litigate "a case of clear liability."

Finally, the complaint is seeking punitive damages under O.C.G.A. 51-12-5.1, alleging CVS is guilty of "willful misconduct," "wantonness," and "that entire want of care which would raise the presumption of conscious indifference to consequences" of their actions. Punitive damages, also called exemplary damages, are intended to penalize, punish or deter a defendant from engaging in especially harmful or outrageous conduct. The case for punitive damages must be proven by "clear and convincing evidence," which is a tougher standard to meet than the "preponderance of the evidence" standard used to prove the case for compensatory damages.

Leandros A. Vrionedes
Leandros A. Vrionedes, P.C.
+1 212-889-9362
email us here
Visit us on social media:
Facebook
LinkedIn

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