

# Parking Lot and Garage Trip and Fall Liability



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**M**ost community associations have parking lots or garages with wheel stops. What happens if an owner or guest trips and falls over a wheel stop? Wheel stop is the architect's name for the stone or concrete barrier to keep a car from moving forward beyond a parking space. Knowing the definition of wheel stop, would an association be liable for damages? Maybe not, if the wheel stop is in compliance with the applicable codes.

A Florida appellate court recently ruled in a negligence lawsuit that the visitor who tripped failed to establish that the property owner had a duty to warn of the presence of a wheel stop that was located in an open and obvious



place. In *Ramsey v. Home Depot*, 38 Fla. L. Weekly D2245 (Fla. 1st DCA, October 25, 2013), a customer at Home Depot parked her car in a designed handicapped-accessible parking space. After shopping in the store, the customer returned to her car and tripped over a wheel stop.

The customer claimed she did not see the wheel stop because the wheel stop was the same color as the parking lot. The customer filed a lawsuit against Home Depot alleging that the wheel stop was a dangerous and hazardous condition and that Home Depot had a duty to better warn her. The trial court granted summary judgment for Home Depot.

The Florida appellate court agreed with the decision of the trial court. The appellate court pointed out that the Plaintiff was required to show that Home Depot either: Failed to warn the customer of a concealed danger, which was or should have been known to Home Depot and which was unknown to the customer and could not be discovered through the exercise of due care; or failed to use ordinary care to maintain its premises in a reasonably safe condition.

First, the appellate court concluded that the claim that Home Depot failed to warn of a concealed condition was barred because the wheel stop was an open and obvious condition. "Although a property owner has a duty to maintain its premises in a reasonably safe manner for its invitees, there is no duty to warn against an open and obvious condition, which is

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not inherently dangerous,” the court stated. “The fact that Mrs. Ramsey did not see the wheel stop does not render the wheel stop a dangerous condition, let alone one that was not open and obvious.”

Second, the court concluded that the customer did not provide any evidence that Home Depot failed to use ordinary care to maintain the

accessible parking area in a reasonably safe condition. The court noted that Home Depot offered testimony to establish that the wheel stops were in compliance with the Americans with Disabilities Act as well as state and local building codes.

For those associations that have parking facilities with wheel stops, it may be a good idea to check with an engineer to confirm that your wheel stops are in compliance with the relevant codes. Ask about whether the color of the wheel stops are appropriate for the location.

### **NO GOOD DEED GOES UNPUNISHED (DOG WALKING)**

Walking a dog for a friend may seem to be a good deed. Unfortunately, there may be complications. This is especially so if there is an injury.

In *Alfa Mutual Insurance Company v. Thornton*, 38 Fla. L. Weekly D2221 (Fla. 3rd DCA), a woman was walking a neighbor’s dog on a retractable leash on a side road in Key West.



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When the woman stopped to talk to a friend, a person on a motor scooter ran into the leash, fell from the scooter, and sustained injuries. When the injured party sued the dog walker for her damages, the dog walker filed a claim with her insurance company.

The insurer then sued the dog walker to establish that the accident was not covered under the dog walker's insurance policy. One exclusion of the insurance policy applied to "bodily injury or property damage arising out of the care or custody of animals not owned by an insured." The trial court concluded that the accident did not involve injury "arising out of" the insured's care of an animal and granted summary judgment for the insured.

The Florida appellate court, applying Alabama law, because the insured lived in Alabama, reversed the decision of the trial court. The court concluded that the term "arising out of" was not ambiguous. "The dog extended the leash. No dog, no accident." Although the insured was doing a good deed in taking her neighbor's dog for a walk, the insurance policy excluded animals not owned by the insured.

This case provides a warning for condominiums where staff walks dogs for unit owners. Check with your insurance policy to see if there is a similar exclusion as in this case.

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