



Naming rights

Finding and naming the proper entities in a premises case



Cooper

BY MILES B. COOPER

The lawyer looked at the satellite view. The client had circled where the injury occurred – in the midst of a plaza. The injury? Straightforward. Who owned the plaza? A little more complicated. He pondered how to find the culpable defendant.

He faced the issue many do in a premises case. You want to locate the responsible parties – name them all – but not shotgun file against everyone in a half-mile radius. Some cases are straightforward. Your client slips in a Safeway – probably going to be a case against Safeway. Many premises cases are more nuanced and require more investigation.

Why is it important?

Two major reasons. First is core competence. Your complaint sets the tone for the litigation. When you omit a key defendant, you just plain look bad. Can you do a Doe amendment? Probably. Is it a hassle? Yes. Do the defense lawyers, adjusters, and decision makers snicker? Sure.

The second reason is finding the right forum. You can file suit in the location where the incident occurred *or* where a defendant resides. If your client's injury occurred in We Hate Lawsuits County but one of the defendants resides in Just Compensation County, you want to know who that defendant is prior to filing. You only have one chance to select venue.

How do you do it?

The best place is to start with the owner. Running the address through a public records search (Westlaw, for example) will usually turn up the owner's name. But the information there is not infallible. If it is a business, run the name through the Secretary of State's business entities online search tool. This will determine if the entity still exists, its proper name, and the agent for service.

Don't assume that the Secretary of State's address or agent's address is the principal place of business. Look at the business's home page and look for contact information or corporate headquarters information. It frequently differs. You can rely on the business's Web site for the business location.

Special circumstances: The hidden governmental entity

Someone trips on a sidewalk – you'll worry about a governmental entity claim. If someone trips in a mall plaza, you might not think about it. You should do your entity research at the intake stage though. Some plazas are part of housing authorities or redevelopment agencies. Better to know up front rather than seek leave for a late claim.

Finding the potential owners' names remains the same. But you'll want to take a second step with any name that sounds suspiciously governmental. Again, you'll contact the Secretary

of State. But not the Web page. Oh, no. You'll need to work through the phone tree to reach a live person at the Roster of Public Agencies department. For reasons not abundantly clear (okay – abundantly clear; making it difficult to succeed in a government tort claim), there is no Web interface for this department.

Special circumstances: Hotels and large properties

Hotels hold a special place in my heart, with a family member in the business for decades. Unless you've had that experience (or a case against a hotel), you may be surprised to find the number of entities involved in some hotel operations. In many cases, there are three. There's the owner. There's the franchise, the major hotel chain whose rules govern the hotel's operation. And then there's a management company, who provides the management and employees who operate the hotel.

Large properties face similar issues. Remember our plaza example? That plaza might be jointly operated as a public space by the four surrounding buildings, each owned by a separate company, managed by different property management companies, with plaza maintenance performed by a separate janitorial company.

Having fun yet? The non-owner entities are harder to locate. Surprisingly, your best ally might be the owner or the owner's insurance adjuster. If you are direct and polite – tell them you are making a claim and want to make sure the proper entities are involved; they might help. They, too, want to make sure the proper entities are involved – particularly if it is not them.

Cleaning up the pleadings

Despite your best efforts, you may find yourself in a situation where one of the entities explains how it is not involved. They want out. You don't want an empty chair. One tool: suggest the requesting entity obtain a stipulation from the other defendants that the entity is not responsible and that the defendants will not point the finger at that entity. This narrows the defense field down (and does it in a way that does not require huge effort on your part.)

Back to our lawyer (and his plaza)

After a half hour with Westlaw and Google, followed by a phone call, the lawyer had the names of three companies responsible for the plaza. The next step: finalizing his complaint and filing it. Then the real work begins.

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