



Your Guide to Slip & Fall Claims in New York State

What the law actually says — and what insurance companies hope you never find out.

By Timothy Hiller, Esq.

PARTNER

thiller@hillercomerford.com

hillercomerford.com

CONTENTS

— A Note From Tim

01 What Makes a Fall a Legal Claim

02 Fault Isn't All-or-Nothing in New York

03 The First 72 Hours: Protecting Your Claim

04 What You're Actually Dealing With: The Insurance Company

05 What Your Claim Could Be Worth

06 Defenses You're Likely to Hear

07 Quick Answers

08 Why Most People Don't Do This Alone

— About the Firm & Free Case Review

FOREWORD

A Note From Tim

I've spent more than a decade representing people across Western New York after they've been hurt — many of them after a fall that wasn't their fault. One thing hasn't changed in all that time: the first few days after a slip and fall are confusing, and the first people you'll hear from — the property owner's insurance company — are not on your side.



TIMOTHY HILLER, PARTNER

This guide is shorter than it used to be, on purpose. You don't need thirty chapters of legal theory. You need to know what New York law actually says, what protects your claim, and what to watch out for. That's what's here.

This isn't a substitute for talking to a lawyer about your specific situation, but it should make that conversation a lot more useful.

Timothy Hiller, Esq.

01

What Makes a Fall a Legal Claim

Not every fall is someone else's fault, and that surprises people. New York law calls this area "premises liability" — property owners and businesses have a legal duty to keep their property reasonably safe for people who are lawfully there.

To have a valid claim, you generally need to show:

- **Duty** — the property owner owed you a duty of care.
- **Breach** — they failed to meet it (a hazard they knew about, or should have known about, and didn't fix or warn about).
- **Causation** — that failure is what caused your fall.
- **Damages** — you were actually injured or suffered a loss because of it.

The word courts focus on most is **notice**. Did the owner know, or should they have known, about the hazard in time to fix it?

A puddle that formed thirty seconds before you walked through it is a very different case than a crack that's been there for six months.

Duty of care looks different depending on where the fall happened:

COMMERCIAL

Stores, restaurants, offices: owners owe the highest duty of care and are expected to inspect for and correct hazards on a regular schedule.

RESIDENTIAL	Owners must keep the property safe for lawful visitors — and depending on local ordinance, that duty can extend to the sidewalk out front.
GOVERNMENT	Claims against a city, county, or state entity come with strict notice requirements and much shorter deadlines, sometimes as little as 90 days. Don't wait to get advice if your fall happened on public property.
RENTAL	Liability often follows the lease — landlords typically answer for common areas, tenants for the space they control.



02

Fault Isn't All-or-Nothing in New York

One of the most important things to understand — and one most people get wrong — is how New York handles shared fault.

New York follows what's called "pure comparative negligence." That means you can still recover compensation even if you were partly responsible for your own fall. Your award is simply reduced by your percentage of fault.

EXAMPLE

If a court finds you were 30% at fault — maybe you were looking at your phone — and your damages total \$100,000, you can still recover **\$70,000.**

This matters because insurance adjusters often use any hint of shared fault to argue you should get nothing. Under New York law, that's simply not how it works — but they're counting on you not knowing that.

Evidence disappears fast. Wet floors get mopped, ice gets salted, surveillance footage gets recorded over.

SECTION THREE · THE FIRST 72 HOURS

03

The First 72 Hours: Protecting Your Claim

Evidence disappears fast. What you do in the first few days can decide whether your claim is easy to prove or nearly impossible.

If you're able to, do this:

- i Photograph everything** — the hazard, the surrounding area, lighting, weather, and your injuries, from multiple angles, before anything changes.
- ii Report it in writing.** Notify the property owner or manager and ask for a copy of the incident report — it creates a timestamped official record.
- iii Get medical care immediately**, even if you think you're "fine." Medical records tie your injury to the date of the fall; gaps in treatment are one of the first things insurers attack.
- iv Get witness names** — anyone who saw the fall, or who regularly works or visits the area, can speak to conditions you may not be able to prove on your own.
- v Preserve your clothing and shoes.** Don't wash or discard them — they can show marks or damage relevant to how the fall happened.
- vi Don't give a recorded statement** to anyone's insurance company before you've talked to an attorney.

At our firm, we often send an investigator to the scene within days of being retained, because some of this evidence simply won't exist a week later.

04

What You're Actually Dealing With: The Insurance Company

Here's something worth saying plainly: the insurance adjuster who calls you is not there to help you. They're an employee of a company whose financial performance depends on paying out as little as possible.

TACTICS WORTH RECOGNIZING

- A fast, friendly settlement offer — made before you know the full extent of your injuries or costs.
- A request for a "quick recorded statement" — designed to capture comments that can be used against your claim later.
- Broad medical record requests — looking for any prior condition they can blame instead of the fall.
- Silence and delay — hoping you'll get frustrated and take a lowball number just to be done with it.

You are not required to give a recorded statement, sign a broad medical release, or accept the first number offered. In almost every case, the safest move is to let an attorney do the talking.



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SECTION FOUR • THE INSURANCE COMPANY

05

What Your Claim Could Be Worth

Compensation in a slip and fall claim generally falls into two categories:

**ECONOMIC
DAMAGES**

Costs you can point to a receipt for: medical bills, future treatment, lost wages, and lost earning capacity.

**NON-ECONOMIC
DAMAGES**

The harder-to-quantify losses: pain and suffering, loss of enjoyment of life, and the ongoing impact of an injury on your day-to-day.

A NOTE ON AI AND CASE VALUATION

By 2026, both insurance companies and plaintiffs' firms routinely run case details through AI tools that generate a "value" based on comparable settlements and verdicts. It's a useful data point — and exactly why you shouldn't let a number an algorithm spits out be the last word on your claim.

AI doesn't know what it felt like to miss your daughter's wedding because you couldn't walk down the aisle, or what six months of chronic pain actually costs you. That's a conversation, not a data query — **insist on having it.**

06

Defenses You're Likely to Hear

Property owners and their insurers work from a fairly standard playbook. Knowing it in advance takes away the element of surprise.

"You assumed the risk."

Raised when you were doing something with obvious risk attached — walking through an active construction zone, for example. It only holds up if you knowingly and voluntarily accepted that specific risk.

"It was open and obvious."

The argument that the hazard was so visible you should have simply avoided it. Poor lighting, reasonable distractions, or a hazard that only looks obvious in hindsight can all undercut this defense.

"It was too minor to count."

The trivial defect doctrine. A small crack or height difference, the argument goes, isn't legally a hazard. Context matters enormously — the same half-inch defect can be "trivial" in a bright, open hallway and dangerous on a dim, high-traffic staircase.

These defenses can work against each other in a way that isn't fair to injured people: if a defect is "too obvious," you lose; if it's "not obvious enough," they call it trivial. An attorney who knows this playbook can push back on both.

07

Quick Answers

Q. Do I actually have a case?

If a property owner's carelessness caused your fall — and you can show duty, breach, causation, and real damages — you likely have a case worth discussing with an attorney. Most consultations are free, so there's no cost to finding out.

Q. How long do I have to file?

In New York, you generally have three years from the date of the accident to file a personal injury lawsuit. Claims against government-owned property carry much shorter deadlines — sometimes 90 days — so don't sit on it if your fall happened on public property.

Q. What if I was partly at fault?

You can still recover. New York's pure comparative negligence rule (see Section 2) reduces your award by your percentage of fault — it doesn't erase your claim.

Insurance companies negotiate very differently with someone who has a lawyer than with someone who **doesn't.**

SECTION EIGHT · WHY MOST PEOPLE DON'T DO THIS ALONE

08

Why Most People Don't Do This Alone

You're allowed to handle a slip and fall claim yourself. Most people don't, for a simple reason: insurance companies negotiate very differently with someone who has a lawyer than with someone who doesn't.

Personal injury attorneys — including ours — typically work on contingency: no upfront fees, and we only get paid if you recover, usually around a third of the settlement or award. That means there's no financial downside to at least having the conversation before you sign anything or accept an offer.

ABOUT THE FIRM

Hiller Comerford Injury & Disability Law

We've represented injured and disabled Western New Yorkers since 1999 — first as the Law Offices of Kenneth Hiller, and today as Hiller Comerford Injury & Disability Law, led by partners Timothy Hiller, Esq. and Ida Comerford, Esq. Our mission hasn't changed: get seriously injured and disabled people the compensation and benefits they deserve.

PRACTICE AREAS

PERSONAL INJURY	Slip & Fall, Car & Truck Accidents, Motorcycle Accidents, Pedestrian & Bicycle Accidents, Medical Malpractice, Birth Injury, Nursing Home Abuse
SOCIAL SECURITY DISABILITY	New Applications, Reconsideration, Hearings, Appeals
VETERANS DISABILITY	Service Connection, Pension, Ratings Increase, Appeals

Get Your Free Case Review

If you've been hurt in a fall and aren't sure what to do next, talk to us before you talk to an insurance company.

Consultations are free, with no obligation.



TIMOTHY HILLER
PARTNER

IDA COMERFORD
PARTNER



Timothy Hiller, Esq.

PARTNER

6000 N. Bailey Ave, Suite 1A
Amherst, NY 14226

(716) 271-8009

thiller@hillercomerford.com
hillercomerford.com

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