Premises Liability

Ropers lawyers have defended thousands of premises liability cases since the founding of the firm in 1950. Our premises liability experience includes representation of national retail and restaurant corporations, shopping centers and individual property owners. We have handled actions involving all types of liability claims, including claims of excessive force by security guards, failure to provide adequate security, wrongful employment practices, harassment, discrimination, trip/slip and fall accidents, pharmaceutical malpractice and related product liability matters.

In recent years, California courts have seen a growing number of assault and excessive force cases against security guards. We have successfully defended our corporate clients by demonstrating the lack of agency or control over the conduct of the guards involved. Where there has been a direct employment relationship with the guard and the shopping center or retailer, we have used expert testimony to establish compliance with industry standards in hiring, training, conduct and retention of security personnel.

We have also been successful in using expert testimony on a variety of other issues including accident reconstruction, medical product liability, coefficient of friction and human factors.

Premises liability litigation often involves related claims for product liability when an on-site accident involves a product display or demonstration. We have effectively tendered the defense of lawsuits to manufacturers or pursued cross-complaints to immunize the shopping center or retailer from both defense and indemnity costs.

Representative Experience

**Attorneys:** John A. Koeppel  
**Key Issues:** Premises Liability; Wrongful Eviction  
**Venue:** San Francisco County Superior Court  
**Client Type:** Defendant Landlord

**Description:** Defended a landlord in a premises liability action involving an alleged wrongful eviction that was tried in a jury trial. The plaintiff claimed wrongful eviction based on a conspiracy involving family member owners.

**Result:** This case settled favorably after three plus weeks of trial.
Attorneys: Dennis J. Ward
Key Issues: Improper Management
Venue: Santa Clara County Superior Court
Client Type: Defendant Health Organization

Description: The plaintiffs, parents of a 28 year old male, sued a federated organization made up of local and national organizations in voluntary association claiming that improper management of its premises resulted in the drowning of their son. Their son drowned in a Jacuzzi/spa, which had deficient warnings.

Result: The case was tried for 14 days, resulting in a defense verdict.

Attorneys: Todd A. Roberts
Key Issues: Sexual Harassment
Venue: San Francisco County Superior Court; Hawaii Circuit Court
Client Type: Worldwide Hotel Chain

Description: Represented an international hotel chain in connection with allegations by their client relating to alleged inappropriate touching during spa treatment.

Result: Successfully compelled dismissal of action in the San Francisco County Superior Court and awarded costs of suit.

Attorneys: Scott W. Bermack
Key Issues: pedestrian, parking lot, inadequate lighting, accident, brain injury
Venue: NYS Supreme Court, Rockland County
Client Type: Shopping Center Owner/Retailer

Description: Won a defense verdict on behalf of a Rockland County (NY) shopping center owner blamed for a pedestrian knockdown accident in the parking lot. The pedestrian, who allegedly suffered from a traumatic brain injury in addition to numerous orthopedic injuries, claimed inadequate lighting and traffic control was to blame. After establishing to the satisfaction of the jury that the accident was entirely the fault of the pedestrian, a defense verdict was returned in favor of our client and the driver of the vehicle.

Result: Defense verdict following two weeks trial.

Attorneys: Kathleen Strickland
Key Issues: Mobile Home Park; Mobilehome Residency Law; Habitability; Translation Act; Eviction
Venue: County of Los Angeles Superior Court
Client Type: Defendant Mobilehome Park Owner

Description: Represented owner of a mobilehome park in action filed by approximately 240 residents claiming dozens of violations of the Mobilehome Residency Law, and asserting claims for nuisance, breach of the warranty of habitability, and violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200, et seq.), amongst other causes of action.
Result: This matter was settled to the satisfaction of our client.

Attorneys: Tim M. Agajanian, Pascale Gagnon
Key Issues: Fire, premises, electric surge, rent control
Venue: Alameda County Superior Court
Client Type: Property Owner

Description: This case arose of a fire destroying an entire apartment building in Berkeley, California. The tenants filed a multi-plaintiffs case wherein they claimed damages, including but not limited to loss property, loss of rent control benefits, emotional distress. The fire’s origin was the control panel of the property elevator, due to a deficient design and/or manufacturing of the control box and a faulty surge in the power provided to the building. It was alleged that the property was not properly maintained and/or up-to-code, thereby leading to its destruction.

Result: A settlement was reached by our client (owner of the property) wherein the claims of the residential tenant plaintiffs were fully resolved, leaving the cross-complaint by the commercial tenant as against the designer/manufacturer of the elevator control box, the elevator maintenance company and California Edison.

Attorneys: Julian Pardo de Zela
Key Issues: Premises Liability; Respondeat Superior; Vehicular Negligence
Venue: Santa Clara County Superior Court

Description: Defended a ranch owner from a multi-million dollar wrongful death action arising from an alleged employee’s collision with a motorcyclist during the purported scope of the worker’s employment.

Result: Successfully obtained summary judgment for the ranch owner. The court concluded that the worker, even if deemed an employee of the ranch owner, was not operating his vehicle within the scope of his employment, thereby precluding liability under a respondeat superior theory.

Attorneys: Scott W. Bermack
Key Issues: Negligence, snow & ice, premises, retail, slip & fall
Venue: NYS Supreme Court, Kings County
Client Type: Restaurant

Description: On November 4, 2015, New York-based partner Scott W. Bermack won a unanimous defense verdict from a Kings County (Brooklyn, NY) jury. Mr. Bermack was defending a well-established Brooklyn restaurant accused of negligence by a pedestrian who slipped on icy metal vault doors embedded in the sidewalk in front of the restaurant and fractured his ankle, resulting in the need for surgery and allegedly resulting in permanent limitations. While plaintiff’s counsel argued that our client’s snow removal efforts were inadequate and increased the natural hazard, the jury clearly credited our defense that the restaurant staff took reasonable steps to maintain the property and could not be held responsible for the accident.

Result: Obtained a defense verdict.
Attorneys: Julian Pardo de Zela  
**Key Issues:** Negligence; "completed and accepted"; construction; contractor  
**Venue:** Santa Clara County Superior Court  
**Client Type:** Defendant, Construction  

**Description:** Defended a contractor in a personal injury action involving a vehicle that collided with a guardrail improperly installed on a California State Highway, resulting in catastrophic injuries to the vehicle's passengers.  

**Result:** Successfully obtained summary judgment for one of the contractor's alleged to have improperly installed the guardrail. Under the "completed and accepted" work doctrine, a contractor is insulated from liability where its work has been performed pursuant to plans and specifications of a third party, and that work has been accepted by the owner of the project.

Attorneys: Gregory M. Gentile  
**Key Issues:** Products Liability; Automatic Doors; Retail  
**Venue:** Alameda County Superior Court  
**Client Type:** Defendant/Client Door Manufacturer  

**Description:** Plaintiff claimed to be struck by an automatic door at a grocery store in Pleasanton, California. Represented door manufacturing company that maintained and inspected the doors.  

**Result:** Favorable settlement at mediation on behalf of both Besam and Safeway, one month prior to trial.

Attorneys: John A. Koeppel  
**Key Issues:** Catastrophic Injury  
**Venue:** Santa Clara County Superior Court  
**Client Type:** Defendant Manufacturer  

**Description:** Defended a manufacturer in a suit in which the plaintiff was a business invitee who claimed total disability resulting from back, shoulder and arm injuries when he was struck by a falling pallet of empty 50 gallon drums. The plaintiff sought compensatory and punitive damages based on earlier incidents under similar circumstances. Surveillance footage of the plaintiff indicated that his injuries were considerably less serious than alleged.  

**Result:** The case settled favorably after two plus weeks of evidence were presented to a jury.

Attorneys: Tim M. Agajanian, Pascale Gagnon, Alan J. Hart  
**Key Issues:** Brain Injury, Earning Capacity, Post Concussion Syndrome, PTSD  
**Venue:** Los Angeles County, Central District  
**Client Type:** Plaster and Paint Contractor  

**Description:** Plaintiff was injured when a plank of our client scaffolding inexplicably dislodged and fell on her head while she waited for her car after exiting from the restaurant where she had just had dinner. The scaffolding had been erected to the establishment located next door to that where Plaintiff had been and had been left up at the end of the day upon the request of a representative of the owner of the restaurants, i.e., that where work was being performed and that where Plaintiff had been. Plaintiff claimed that she suffered a
traumatic brain injury with ongoing and permanent symptoms preventing her to return to her premorbid occupation -- she was a licensed attorney, albeit unemployed since passing the bar, who was studying for her real estate license and planning the opening of a juice bar. She claimed in excess of $5 million in economic damages, including loss of earnings, loss of earning capacity, past and future medical specials.

Result: Settled for $650,000 three days before trial.