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AN OVERVIEW OF PREMISES LIABILITY CLAIMS

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If a client trips on your torn carpet and breaks his arm, he will sue your company. If a repairman suffers electrical burns from your frayed wiring, he will sue your company. If a customer is mugged in your unlit parking lot, he will sue your company. Those and other situations like them are why risk managers need to understand the area of law known as premises liability, especially how broad it is. At its most basic form, premises liability centers on the concept that owners of property — from storefronts to swimming pools, from office buildings to parking lots — are legally responsible when their negligence injures visitors to their property. However, while the concept is simple, application in the real world often isn't, sparking litigation out of a wide assortment of circumstances.

Basic Legal Concepts

Generally, a person injured in an accident can obtain damages from someone else if: a) that someone had a duty to the injured person, b) the duty was breached, c) the breach caused the injury and d) the injury actually damaged the injured person.

In a premises-liability case, the law declares that a property owner or an occupant, such as a tenant, has a special relationship with other people who come onto the premises. As a result, he has a duty of care to maintain the property — including land, buildings and common areas — in a safe condition. That duty requires the owner or occupant to repair or warn against any dangerous conditions that aren't "open and obvious." Failure to repair or warn could be seen as negligence if someone is injured.

When an occupant or tenant is in charge of the property, the owner still has related responsibilities. For example, the owner must warn about unreasonably dangerous conditions the owner knows about so that the occupant can repair them or warn others. And if the landlord is forced to take over the property from an evicted tenant, then the landlord must inspect and repair.

To prove negligence and recover damages for premises liability, an injured visitor or customer must prove that: a) the dangerous condition existed; b) the owner or occupant knew or should have known about it; c) the owner or occupant had a reasonable opportunity to correct or warn of the condition but did not; and d) the dangerous condition caused the person's injury.

Slip and Fall

The classic, and most common, premises liability situation is a slip-and-fall or trip-and-fall case. A customer or client slides on a wet spot on the floor, catches her heel on torn carpet or stumbles on a bulging crack in the sidewalk. Similar are situations when objects fall onto visitors, such as unbalanced displays or loose shelves. The cases aren't all comic pratfalls causing simple bruises and sprains. Injuries can include concussions, broken bones and even paralysis or death. Property owners of all types should be aware of the potential for injuries and claims. Homeowners can be liable not only to guests but also pedestrians on adjacent sidewalks. Business owners can be liable to visitors during non-business hours. Governmental entities can be liable to picnickers, drivers, pedestrians and customers.

The cause behind a slip-and-fall often is an unnoticed defect, such as poor lighting or a missing handrail, or a hard-to-spot hazard, like a water spill or icy sidewalk. That means that those in charge of a premises must be vigilant in hunting down and fixing dangerous conditions.

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Just a few years ago, the California Supreme Court ruled Kmart could be sued for failing to notice some spilled milk that caused a customer to slip and fall. The only evidence was that the milk might have been on the floor for two hours because the store never scheduled regular aisle checks. That evidence was "indicative of defendant's negligence," the court ruled, and created "a reasonable inference" the spill could have been found and mopped up. But the same year, a California appellate court held that a landowner might be liable for not mopping up a water spill that was obvious and should have been seen by the customer. And last year, a court allowed a diner to sue after he fell from a broken stool at an IHOP, even though the restaurant regularly inspected its stools.

Construction-Site Injuries

Construction, repair and maintenance activities going on in areas near customers or injuries. Construction workers sometimes become engrossed in their work and do scaffolding. A California court not long ago held a shopper who tripped on some ob retailer because she was distracted by store displays.

The dangers extend outside to wherever construction is taking place. If pedestr construction sites, the property owners must ensure the contractors warn them away and unobservant heavy-equipment operators. Many construction accidents end up generally cannot sue the property owner or occupier. Instead, many courts have rule ers' compensation system. But if the owner or occupier has retained some real cor safety, that rule may not be enough. The Supreme Court let an injured sound system installer keep his large verdict against Wal-Mart because it insisted he use a defective forklift the store had supplied. A property owner who "affirmatively contributes" to a construction worker's injury, the court ruled, should be liable for its own negligence.

Violent Crimes

Perhaps the most confusing and challenging area of premises liability law involves crimes committed by outsiders against customers or visitors at a business. For nearly 18 years, California courts have struggled to balance an owner's duty to keep his property safe for others against a strong reluctance to force businesses to act as police. After a store employee was raped in a shopping center's dark parking structure, the Supreme Court held in 1994 that a premises owner has a "duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures." But the court also held that the duty did not require the center to hire roving security guards to prowl the parking area at night. That 1994 decision held property owners or occupants only have a duty to protect against "foreseeable" crimes — ones similar to crimes committed nearby in the recent past. And the owners only need to take security steps that are not too burdensome. Security measures that typically would not be burdensome could include sturdy locks and alarms on doors and windows, good lighting, maintenance on shrubbery and trees and, in some cases, security cameras. Since that initial decision, courts have said landlords aren't responsible for renting apartments to gang members or for letting muggers onto the housing complex's grounds.

San Diego was held not negligent over an incident of fatal street racing. A party host wasn't at fault for an assault committed by thugs who responded to his Internet-wide party invitation. But restaurants and bars have been held negligent when patrons were shot because employees didn't act upon hearing threats against the victims or when they saw an attack take place. A court recently said the Navy could be responsible for not preventing a drive-by shooting at a fast-food restaurant outside a Marine base.

Conclusion

The cases described above give a glimpse into the wide range of scenarios in which property owners can be left open to premises-liability claims. The bottom line is two-fold: In situations where an injury is caused by a criminal act, remember that the courts chiefly look at foreseeability when deciding liability; in situations involving a purported defect on the premises, prevention is the key. Those risk managers who have policies in place to require regular inspections are the ones least likely to be drawn into a costly lawsuit.