AVOID PREMISES-LIABILITY SUITS WITH SIMPLE STEPS

In deciding a civil-negligence lawsuit against an unfortunate patron who had fallen in a shopkeeper's store, then sued the unfortunate shopkeeper to recover for his injuries, a North Carolina judge once wrote that falling is as commonplace as walking, a danger well known to all that is encountered, sooner or later, by all. These days, the owner of any store or office open to the public also might believe that suing is as commonplace as falling, a danger well known to all business owners that is encountered, sooner or later, by all. This, however, doesn't have to be the case. A clear understanding of premises-liability law, employee training and adhering to a few simple policies — along with exhibiting healthy doses of common sense and courtesy — will prevent many suits from being filed.

First, the law. Courts have long held that the owner or lessee of a business premises is not the insurer of his customers' or clients' safety. Rather, he must only use ordinary care to protect lawful visitors from injury or damage. Ordinary care is the degree of care that a reasonable, prudent person would use under similar circumstances. In a civil action brought by an injured patron, the law places the burden of proof upon the plaintiff to show by the greater weight of the evidence that the business owner or employees acted negligently. In practical terms, this means that the plaintiff must show that the defendant either negligently created the condition causing the injury — for example, that one of the defendant's employees spilled water on a tile floor — or negligently failed to correct the condition — for example, that none of the defendant's employees cleaned up water spilled by a customer's child even though it had been on the floor for more than an hour. When the unsafe condition, whether water, ice, an out-of-place toy or any other obstacle that could cause someone to fall, is attributable to third parties or an independent agency, the plaintiff must show that the condition existed for such a length of time that the defendant or his employees knew or should have known of its existence in time to have removed the danger or to have given proper warning of its presence. An owner must give warning to all lawful visitors of any concealed dangerous condition that the owner created or knows of or should have known of. An owner, however, does not have to give warnings about concealed conditions of which he has no knowledge and of which he could not have learned by reasonable inspection and supervision. Nor must he warn of obvious dangers — ice- or snow-covered parking lot or front steps, for instance.

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Most business owners are vigilant about their own and their employees' conduct in avoiding dangerous conditions. Anyone, it is hoped, would immediately clean up coffee they spilled on the hardwood floor in the client-waiting area or put out a sign warning of a just-mopped wet floor. Thus, most accidents giving rise to litigation involve dangerous conditions created by others, about which a business owner and employees have no knowledge.

In such cases, the most important issue is whether the owner or his employees should have known about the danger and either taken action to correct it or at least warned the plaintiff about it before the accident. This usually involves two factors: the length of time that the dangerous condition existed before the injury and the defendant's actions in inspecting and supervising the premises. Law books are full of cases involving fallen grapes that have been mashed on the floor and have turned brown, spilled soda pop that has dried and turned sticky and broken curbs or sidewalks that have been painted over — all evidence that these dangers existed for an extended length of time.

On the second factor, the court or jury scrutinizes the business owner's policy and practice in inspecting and supervising its premises to determine whether it is reasonable. Thus, if the receptionist checks the waiting area at least every hour, but she did not find the misplaced toy left in front of the doorway 55 minutes before the elderly client fell over it and fractured a hip, the business owner may be found to have acted reasonably. If, however, the receptionist never checks the waiting area, despite the fact that she has to pick up toys strewn all over it at the end of each day and that another customer tripped over a toy last week, the business owner may be found liable for the elderly client's medical expenses, pain and suffering, permanent injury and other damages. Of course, whether a given policy and practice is reasonable depends on the business. A policy that is reasonable for a professional office may not be reasonable for a big-box store.

Employee training and policies on supervising the premises, then, are important. Employees should make reasonable inspections at reasonable intervals throughout the day, more often when customer or client traffic is heavy. If a dangerous condition is found, it should be corrected as soon as possible and a prominent warning should be posted until it is. Employees may not be able to repair a broken step immediately, but a warning pylon or cone, tape and a sign with directions to another entrance can be posted until the step is repaired.

Just as important as the policies, however, employees must be trained and reminded always to follow the policies. If a retail store conducts video surveillance of its premises, but the store employees do not preserve the videotape of the plaintiff customer's fall on the produce aisle, this may be worse than never conducting the surveillance in the first place. Under the doctrine of spoliation of evidence, jurors may be instructed that they can infer that evidence in the possession or control of the defendant that the defendant failed to preserve would have been harmful if produced. Thus, a business owner should not require that employees take a written report of an incident resulting in injury unless the employees are always going to take reports and then preserve them for at least three-and-a-half years following the event (the statute of limitations for civil actions based on negligence being three years). The same rule applies for photographs or other documentation of the dangerous condition causing the incident. A failure to take photographs when they are required by policy or a failure to preserve them until they are needed in the lawsuit filed three years later may be worse than not having the policy at all.

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Finally, common sense and common courtesy can be the best preventive measure when it comes to claims based upon premises liability. Perhaps too often in today's world, people injured in accidents are quick to assign blame elsewhere and to make claims for compensation. But also too often, people who witness such accidents are quick to become defensive and even callous for fear of a claim. The elderly client who fell over the toy does not want to have the office manager make excuses or, worse, ignore the obvious or become rude or insensitive. Certainly, employees should not make statements such as “Don't worry, we'll cover all your medical bills,” or “I told the cleaning staff to take care of this spill an hour ago,” but employees should show care and compassion, do everything possible to make an injured client or customer comfortable until help arrives and be polite and apologetic that an accident has occurred. Even in cases of serious injury, taking care not to injure the person's feelings and sensibilities as well can go a long way toward keeping him away from a personal-injury lawyer.

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