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JUNE / JULY 2011 ISSUE

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# insurance

## Avoiding slip and fall claims

Doing things to prevent successful third party insurance claims, makes good business sense and helps to keep liability insurance costs down.

In order for a business to protect itself from frivolous third party claims, it must take precautions to avoid negligence and ensure its customers' safety.

Civil law is very clear on negligence. For someone to be negligent three things must be evident: (1) a duty of care must exist between the person injured and the person responsible for that injury; (2) the conduct of the responsible person fell short of that duty of care; and (3) there was injury or damage.

Duty of care is a legal term that considers the degree of caution or concern for the safety of others that an ordinary prudent and rational person would use in the circumstance. Of the three part test to determine negligence, a business owner has the greatest control over item number two.

### Some of the things a business owner can do to respond to this duty of care, are:

- Look at the physical premise and maintenance of the business to see where risks may be.
- Flooring inside the business should be clean and dry, especially during rain and snowfalls.
- Stairs and railings should be sturdy and offer support.
- Sufficient lighting should be installed to ensure public safety.
- Parking lots should be cleared of snow and ice.
- Appropriate signage should be posted to alert clients of any dangers that may not be obvious.

Our courts are very busy dealing with cases of negligence. Business owners must prove that they took reasonable precautions to prevent a person when entering their premises or using their services, from being injured. It is the business owner's documentation and evidence that is used to defend against injury losses. If there is no documentation and evidence,

the person claiming to have slipped and fallen on the property will likely win the case. Alternatively, if there is documentation and evidence to prove reasonable care was taken, then the courts may not award compensation.

Evidence is the proof of a fact. If a business owner keeps their floors clean and dry, maintains railings and steps, changes the light bulbs, etc., but cannot prove it or provide evidence that the maintenance was done; then there is a greater chance that they will be found negligent.

How does a business owner prove that they have taken into consideration the degree of caution or concern for the safety of others that a prudent and rational person would use in the circumstance?

Every business, regardless of size, should have a maintenance protocol document. This document is the evidence the court looks for to prove that the business owner took all reasonable precautions in ensuring the safety of their customers.

Business owners do not have to make special concessions for every possible safety possibility – that list is endless. However, they are required to think about the product or service they offer and anticipate the potential danger posed to their customer when they are on their premises.

A maintenance protocol document with up-to-date records can be simple or complex, but it must be in place.

Regardless of the size of the business, the rule is always the same. The best way to protect a business against someone claiming negligence is to have appropriate documentation of protocols and proof that the protocols are exercised. E.&O.E.

To avoid unpleasant surprises, it is important to work with a professional in this area.

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