

ClubPac News

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Slip & Fall Liability

There is a generally held belief, especially among plaintiffs and their lawyers, that when somebody slips, falls and injures themselves on your premises, you are automatically liable for their injuries and expenses.

This belief stems from the Provincial Occupier's Liability Acts which require a business to provide a "safe facility". Each province differs slightly, but the overall intent is the same. For this article, we will refer to Ontario's.

The Act provides that:

- An occupier of premises owes a duty to take such care ... to see that persons entering on the premises..... are reasonably safe....
- The duty of care ...applies whether the danger is caused by the condition of the premises or by an activity carried on on the premises.
- The duty of care....applies except in so far as the occupier....is free to and does restrict, modify or exclude the occupier's duty. (You can limit the exposure)

These three parts are the essence (some good, some bad) of the occupier's responsibility, but they also include the limitations of the Act and provide the prudent occupier with a significant amount of relief.

- The Act specifies that the occupier of the premises has a definite duty of care to ensure the safety of guests and patrons and even to a lesser extent trespassers. However the Act says **REASONABLY** not **ABSOLUTELY**.
- It is important to note that the Act extends the duty of care to not only the **CONDITION** of the premises, but also to the **ACTIVITIES** carried on on the premises. Note too that the activities are not limited to just the occupier's activities. There is an implied duty to monitor, supervise and control ALL activities.
- The Act also allows the occupier (within limits) to **RESTRICT, MODIFY** or **EXCLUDE** the duty of care. Again not an absolute guarantee but it certainly allows for the use of waivers, disclaimer signs, warning signs, and contractual limitation clauses.

A recent case in Ontario (Superior Court ruling Apr. 2006 and Appeal Court ruling May 2007) involving a grocery store chain and the almost legendary "slip and fall on a grape" on the floor of the produce department, found in favour of the grocer, and the judges' reasoning reinforces a Supreme Court of Canada 1991 ruling and highlights the need for good **Loss Control Practices**.

The store did not dispute that the customer slipped on a loose grape and fell. Nor did the store dispute that the customer was injured as a result of the fall. In fact the Superior Court set the value of the injuries at \$58,000.

The store's defense rested on the basis that it: **"...had taken such care as was reasonable under the circumstances to see that its customer was reasonably safe while on the store premises"**. The trial jury agreed and the appeal judges unanimously confirmed the finding.

As proof that it had taken reasonable care the store offered the following:

- It produced proof that it had a "Floor Care Policy Manual"
- It produced testimony that all employees were advised to read and follow the published procedures (even though not all had done so.)
- It required the use of a "sweep log" to monitor and note the regular floor checks, sweeping, and conditions.
- Through the use of the log and testimony it produced proof that employees did in fact sweep and check the floor a number of times on the morning of the incident.
- It proved that it had a formal "Incident Reporting Procedure" and used these reports, supported by testimony" to prove that fallen grapes were not a recurring issue.
- The store was also able to produce testimony, statements from witnesses, employee incident reports and photos take immediately after the incident occurred.

Occupiers are not guarantors of people's safety. Their obligation is to take reasonable steps to make sure that people are reasonably safe.

- Could your club meet the standard of reasonable care required to defend a lawsuit ?
- Do you have adequate supervision, rules and regulations in place to ensure safety in all the activities at your club ?
- Do you have processes and practices in place that ensure customer safety in your dining room, bar, locker room, showers, cart paths, patios etc.?
- Do you have the documentation and procedures in place that would allow you to prove it in court ?
- Have you taken steps to restrict or reduce your responsibility such as; waivers, banquet contracts, and warning signs ?

The Law does not allow you to simply ignore your customers' safety but it does allow you protect and defend yourself with simple and inexpensive Loss Control practices and procedures.

Nobody wants an injury, a lawsuit or an insurance claim. Make smart Loss Control practices the way you do business.

CLUBPAC NEWS is provided at no charge to participants of the CLUBPAC program. It is intended to assist clubs in implementing good loss control practices and to keep them informed of trends and issues in the area of golf industry insurance. Clubs should refer to local "experts and authorities" for specific information about any "technical" or "legislative" issues mentioned.