

CAUTION



WET  
FLOOR

BY JAMES SWAIM  
SECRET WARDLE

# Avoiding lawsuits

## Attorney offers business owners six ways to guard against legal trouble

**A** customer walks up to an employee and states that she just slipped and fell on water in the restroom. What you do next may very well determine whether a lawsuit is filed and, if so, whether you will be armed with information that could assist in successfully defending against the lawsuit. The following are reasonable steps that can be taken to avoid being drawn into a costly and time-consuming legal battle:

### Tip 1: The Customer Comes First

Initially after any reported accident, the focus should be on the customer. Be attentive. Try to determine the extent of the customer's injuries and offer to call an ambulance. If appropriate, pay for the meal, offer a gift certificate, or make a follow-up call. Some people are litigious by nature. There are many, however, who will not pursue a lawsuit unless they feel they were ignored or treated inappropriately on the date of the accident.

### Tip 2: Prepare an Incident Report

After the customer has been sufficiently tended to, take reasonable steps to document what transpired. Among other things, a good incident report should contain a description of the alleged accident, the names, addresses and telephone numbers of any eyewitnesses, the identities of any employees involved, any statements or comments made by the customer, what injuries were claimed, and whether the customer declined an ambulance. Incident reports should be kept in a specific, pre-designated location that all managers are aware of, so they may be easily located years later.

### Tip 3: Photograph the Scene

Michigan law supports that restaurant owners, like other possessors of property, are not required to protect their customers from conditions that are readily visible on casual inspection. This typically includes such conditions as steps, floor mats, parking blocks, and even potholes. In an attempt to overcome this legal hurdle, a person bringing a lawsuit will normally claim there were "special aspects" of a condition that made it unreasonably dangerous. For example, the person might claim the lighting was poor, the condition was obstructed in some way, or the condition was so extreme as to be dangerous even if it was readily visible.

Accordingly, it can be helpful in the defense of a lawsuit to have photographs of a condition the customer claims caused the accident. Good photographs may even serve to discourage an attorney from pursuing a lawsuit. Keep a reliable camera handy. Equally important, if photographs are taken, keep them with the incident report or in a location where they will not be discarded.

### Tip 4: Maintain the Evidence

Never destroy or lose evidence. In cases involving lost or destroyed evidence, the

judge may elect to read an instruction to the jury providing that the jury may infer the evidence was harmful to the party that lost it. Accordingly, if a customer claims he found a screw in a hamburger, keep the screw in a safe, clean location. It would also be wise to take a couple of photographs.

### Tip 5: An Ounce of Prevention

Prevent accidents by implementing regular procedures for maintaining public areas at your restaurant. If something breaks or cracks to the point where it could cause an accident, fix it.

### Tip 6: Make Necessary Changes

If an accident reveals there to be a condition that you believe could result in future accidents, take steps to correct the condition. Even if you believe the condition is readily visible on casual inspection, it is obviously preferable to have no lawsuit at all than a lawsuit you believe should be dismissed. Moreover, under current Michigan law, these "subsequent remedial measures" are generally not admissible to prove negligence.

James Swaim is a partner with the law firm of Secret Wardle in Farmington Hills. He specializes in defense litigation in the areas of commercial law and premises liability. **R**