

The Importance of Investigations, Documentation and Recorded Statements in Response to a Claim

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In claims management and litigation, the foundation of a strong defense or successful resolution often rests on the quality of early investigations, thorough documentation and the collection of accurate recorded statements. Whether dealing with slip-and-fall incidents, negligent security claims or dramshop liability cases, these elements are critical in shaping the outcome of a claim and mitigating potential damages.

Understanding Common Scenarios

Three frequent scenarios are encountered in claims against retail and hospitality businesses:

1. **Trip/Slip-and-Fall Cases:** These often involve hazards such as liquids on the floor, unsecured carpets or deteriorated sidewalks. The central issue is whether the property owner had notice of the dangerous condition and whether reasonable steps were taken to prevent harm.
2. **Negligent Security Claims:** These arise when patrons or guests are harmed by third parties on the premises. Liability hinges on whether the criminal act was foreseeable and if the property owner implemented adequate security measures.
3. **Dramshop Cases:** These involve claims against establishments for serving alcohol to visibly intoxicated individuals who subsequently cause harm. The ability to prove or refute that the individual was served while intoxicated is crucial.

Best Practices for Early Investigation

Early investigation is not just about gathering facts—it is a strategic process that can facilitate common defenses, optimize the ability to win at summary judgment or trial and avoid issues such as spoliation of evidence. Key practices include:

- **Assessing Defenses:** Early on, determine which defenses may be viable, such as lack of notice, trivial defect, or open and obvious conditions in slip-and-fall cases. For negligent security, investigate prior incidents and the effectiveness of security measures. In dramshop cases, focus on whether the individual was served while visibly intoxicated.
- **Preserving Evidence:** Secure surveillance footage, inspection logs, and any physical evidence related to the incident. For example, in a slip-and-fall case, video showing when a liquid appeared on the floor can be pivotal in establishing lack of notice.
- **Documenting Inspections and Statements:** If inspection logs are absent, obtain written statements from employees who inspected the area prior to the incident. These should be recorded promptly and signed

- **Identifying Early Settlement Opportunities:** Robust investigation can reveal cases where liability is clear, making early settlement preferable to avoid escalating damages.

Legal Standards Across Jurisdictions

A comparative analysis of legal standards across New York, New Jersey and Virginia reveals distinct approaches to liability, notice requirements and evidentiary thresholds in claims involving slip-and-fall incidents, negligent security and dramshop liability:

- **New York:** Summary judgment may be granted if the defendant can show lack of actual or constructive notice of the hazard. The threshold for constructive notice is fluid but some cases have utilized one hour prior to the incident as a guide.
- **New Jersey:** Courts have used 45 minutes as a benchmark for constructive notice, but shorter intervals may suffice depending on the circumstances. Constructive notice can be inferred from the characteristics of the dangerous condition.
- **Virginia:** The duty of care requires owners to maintain safe premises and warn of hidden dangers. However, if a condition is open and obvious, the plaintiff may be deemed contributorily negligent, barring recovery.

Spoliation Considerations

Spoliation—the destruction or failure to preserve evidence—can have severe consequences. The duty to preserve evidence arises when litigation is reasonably anticipated. Remedies for spoliation include adverse inference jury instructions, discovery sanctions, and, in some cases, claims for fraudulent concealment. Each jurisdiction has specific standards and remedies, but the underlying principle is the same: failure to preserve relevant evidence can significantly undermine a defense.

Discoverability of Pre-Suit Investigative Materials

Attorney-client privilege and work product doctrine offer protections for investigative materials prepared in anticipation of litigation. However, routine business investigations may not be protected unless there is a clear shift toward litigation preparation, such as the retention of outside counsel. In New Jersey, a multi-part test determines whether work-product privilege applies, focusing on the need for the materials and the inability to obtain them elsewhere.

Practical Application: Hypotheticals

- **Slip-and-Fall:** The absence of inspection logs and failure to document the condition can weaken the defense. Timely recorded statements and preserved video are essential.
- **Third-Party Interloper:** Immediate contact with law enforcement, employee statements, and preserved video footage are critical.

contribution or indemnity.

- **Intoxicated Driver:** In dramshop cases, statements from servers, records of beverage sales and surveillance footage help establish whether the individual was served while visibly intoxicated.

Effective claims response hinges on proactive investigation, meticulous documentation and timely recorded statements. These practices not only support viable defenses but also safeguard against spoliation and ensure compliance with legal standards. By embedding these principles into claims management protocols, organizations can better navigate the complexities of litigation and achieve favorable outcomes.

Questions? Click [here](#) to contact an MGC attorney.

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