

LEGAL ISSUES OF A PREMISES INJURY



- Family Law
- Personal Injury Claims
- Bankruptcy
- Real Estate Transactions
- Estate Planning
- Business and Corporate Organizations and Problems
- Arbitration/Mediation
- Litigation
- Planning Board and Zoning Matters
- Probate Matters
- Environmental Law
- Employment Law
- Workers' Compensation
- Criminal Law

111 Concord Street, PO Box 488
Nashua, NH

164 Westford Road, Suite 15
Tyngsboro, MA

603-882-5157

www.winerbennett.com

Legal Fault

Under New Hampshire law, owners and occupiers of property must use reasonable care, i.e. not be “negligent,” in the use, upkeep and maintenance of their property. That does not mean that they are responsible for all injuries caused by or on their property; however, they are responsible for such injuries if they result from their failure to use reasonable care.

By way of illustration, if an injury is caused by slipping on a banana peel, and that banana peel had been on the floor for only 30 seconds, it would be difficult to argue that the property owner failed to exercise reasonable care by not being aware of and not picking up the banana peel. However, if the banana peel was known by the property owner to have been on the floor and/or had been there for while, then an injury resulting from someone slipping on it might be deemed to have been the result of negligence. It is the negligence which creates legal fault, not the injury itself.

If a property owner’s negligence causes injury, the injured party is entitled to fair compensation for the resulting injuries and losses.

Preserve the Evidence

A valid claim can be lost for the lack of evidence to prove it. As a result, it is essential to collect and preserve any evidence you can of how the accident occurred. Photographs should be taken as soon as possible of the site of the fall and of the location in general, as well as of any physical signs of injury. You should also be sure to

keep copies of any documentation involved, such as: accident reports completed, statements given, letters written or received, bills and receipts.

Insurance

As a practical matter, a viable personal injury claim usually requires insurance coverage on the part of the responsible party. In premises injuries, the applicable insurance coverage is homeowner’s insurance or commercial property insurance. Such coverage can apply to injuries on the insured premises, injuries caused off the premises by insured personal property including dogs, and to non-motor vehicle conduct by the insured on or off the premises. However, such insurance coverage does not apply to an injury unless there is legal fault, i.e. negligence on the part of the insured which has caused the subject injury.

If you are a property owner and need to be defended against a claim arising out of a premises injury, it is the responsibility of your insurance company, up to the amount of your insurance coverage. They will investigate the claim, hire and pay a lawyer to defend the claim and to pay compensation due the injured party (within the limits of your liability coverage). It is a precondition to your insurance coverage that you cooperate with your insurance company.

Medical Care

Proper medical care must be promptly obtained following an injury. Doing so is necessary for the treatment of the injuries, and medical documentation of the injuries is crucial evidence for a claim.

Full, Fair and Adequate Compensation

In New Hampshire, a person injured by another's negligence is entitled to compensation to reimburse his or her resulting losses. The compensable losses include: medical bills, incidental financial expenses, lost wages (past and future), physical pain, emotional upset, scarring, loss of normal activity, permanent physical impairment. Our law provides that the party injured by the negligence of another is to receive "full, fair and adequate compensation."

After the necessary information is known, the evidence regarding the incident is collected, and any injuries have either stabilized or finally resolved, a claim can be valued. A claim cannot be competently valued before its components of have been determined. Those components will include: the strength of the evidence that the responsible party caused the injury by a lack of reasonable care; any contributing lack of care, if any, on the part of the injured party; the seriousness of the injury; the extent, intensity and duration of symptoms; the amount of medical bills; the extent and duration of the disruption of normal work and non-work activities; the amount of past and future income lost as a result of the injury; the emotional upset and the loss of enjoyment of life reasonably caused by the injury. Ultimately, the value of a claim is determined by the "market place," i.e. the range of value which cases with comparable facts have yielded in local verdicts and settlements.

Eventually, when the facts of an injury have been determined, the evidence is assembled for presentation to the responsible insurance company. Thoroughness, persuasion, and mastery of the legal and factual issues make for a claim that will be taken seriously. An insurance company will respond to a perceived financial risk created by a properly prepared claim. As a business, it is will not be motivated by "doing the right thing."

Generally, settlement discussions are first attempted with the responsible party's insurance company, with a view towards negotiating an acceptable settlement without a formal lawsuit or trial. The vast majority of these cases are settled without the need for a trial. However, it is the right to bring suit and to go to trial that prompts the responsible insurance company to discuss reasonable resolution. If the insurance company is not acting fairly to resolve the matter, then a suit can be commenced in the appropriate court. Even though a lawsuit may have been started, the possibility of voluntary resolution can be explored at any stage of the process.

The commencement of suit is accomplished by formally serving the responsible party with a document notifying him or her of the claim. The next stage of a suit is the exchange between the parties of all relevant or potentially relevant information. That is first done by written questions (interrogatories) and later by oral question and answer (deposition).

Eventually, if the matter cannot be resolved between the parties voluntarily, testimony and evidence will be presented to a jury made up of 12 randomly selected citizens for a

unanimous decision on the apportionment of the legal fault and for the assessment of fair compensation.

Do I Need a Lawyer?

New Hampshire law provides that a negligently injured party is to receive fair compensation. That includes more than just paying medical bills or lost wages. As anyone who has suffered an injury can tell you, the financial consequences are a small part of an injury.

Insurance companies are contracted and paid to provide fair compensation in the event of such injuries. However, minimizing payment on claims is in the business interest of an insurance company. Insurance adjusters and investigators are good at serving the interest of their employer.

The fact of the matter is that the successful exercise of legal rights usually requires skill and experience. At Winer and Bennett, LLP, you will receive the determination, expertise and resources needed to present a claim which commands the respect it deserves.

This material reflects the law in effect in January, 2015. Due to the changing nature of this area of law, this material should not be construed as legal advice nor should it be used as a final authoritative legal source.

Copyright 2015 by Winer and Bennett, LLP. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of Winer and Bennett, LLP.