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SLIP/FALL LIABILITY AND THE ADA

Slip and fall lawsuits are a potential concern for many businesses today. Television advertisements for personal injury attorneys seeking to entice new clients appear on every channel. With the U.S. widely recognized as the most litigious society on Earth, it is likely that sooner or later companies that allow public access to their facilities are going to be sued.

With billions of square feet of flooring, much of it in shopping malls, supermarkets, and retail stores open to the public, slip and fall claims are an inevitability which often represent a classic exercise of the “deep pockets theory”. Anyone who has been the subject of a slip and fall claim knows from experience that a plaintiff is going to name every party they can identify in the hope of locating the “gold mine” that will produce the largest settlement or award.

A common concern surrounding slip and fall incidents is whom will be held responsible by a plaintiff. A favored legal concept of personal injury attorneys is “joint and severable” liability. This legal tenant holds each party in a lawsuit liable both individually, and as a group.

This concept creates several layers of liability. The facility in which a slip and fall occurs is likely to be held primarily liable for the condition and maintenance of their floor surfaces. This liability may be shared if a contract cleaning company is involved in performing the maintenance. The amount of liability assumed by a contract cleaner depends on the wording of their performance contract. Facilities manager would be wise to review contracts to determine what level of performance, and what type and amount of liability insurance is required to be carried by a contract cleaning company engaged to maintain their facilities. Vague contractual wording, which leaves undetermined who is responsible for ADA compliance is a personal injury attorney’s perfect scenario. This provides the opportunity to pursue both parties for contributory negligence, presenting the possibility of much larger settlements or awards. Manufacturer of the cleaning products and any coatings used on the flooring would be liable for the performance of those products. Perma Inc. conducts extensive, continual, testing of our products to assure that our programs provide effective tools for maintaining ADA compliance. The most effective way to reduce liability issues is to involve all parties in implementing an effective, documented maintenance program that increases the safety characteristics of floor surfaces. As in all effective maintenance programs, superior appearance, longevity and cost effectiveness are also integral components.

Under section 4.5.1 of the Americans with Disabilities Act of 1990, the floors of public access facilities “shall be stable, firm, and slip resistant.” The slip resistance standard recommended by the ADA is a 0.6 static coefficient of friction. Facilities that are not in compliance with the ADA

recommendations face liability on two fronts. One, is potential regulatory action by the U.S. Equal Employment Opportunity Commission (EEOC) and/or the U.S. Department of Justice (DOJ). In reality EEOC or DOJ actions are rare, and per ADA guidelines are only undertaken when a situation effects the “public interest.” The second and more likely scenario is that a personal injury lawsuit claiming negligence will be filed. Facilities managers who are either unaware of the ADA requirements, or haven’t implemented an effective program to comply, can face a serious situation. Uninformed facilities or maintenance managers, called to testify in a slip and fall lawsuit can find themselves walking into a minefield carefully laid by personal injury attorneys. With attorneys increasingly aware of these regulations and ready to take full advantage of them, the following questions are almost guaranteed to get asked:

1. Mr. or Ms. Manager, are you aware of the Americans with Disabilities Act and the slip resistance standards recommended by it?
2. Please tell us what those recommendations are?
3. Please describe the procedures you are using to maintain your floors and verify that they are in compliance with the ADA recommendations?

The result of a no, or ineffective answer to any of these questions is likely to be a finding of negligence and consequently liability. As the huge cash award in the now infamous McDonald’s hot coffee lawsuit shows, juries have little compassion for companies who don’t take what may even seem to be extraordinary measures to protect the public from potential harm. Considering the powerful tool provided to personal injury attorneys by the ADA, facilities that fail to implement an effective maintenance program may find themselves on the negative end of 6 or 7 figure damage awards.

Providing effective answers, increasing safety and consequently avoiding liability, is the focus of Perma’s Traction Team Program. As a manufacturer of janitorial maintenance chemicals and coatings for 50 years, Perma Inc. has never been found negligent or liable in any product liability claim. Perma’s success has been the result of careful planning, product testing, and an understanding of the government regulations and liability issues that effect our industry. This knowledge and experience, incorporated into successful maintenance programs is part of the value we bring to our customers.