



GENERAL LIABILITY COST CONTROL

Prevention – Handling the Injured Customer – Claim
Filing/Investigation – Photographing The Scene – Floor
Inspection/Maintenance Logs – Third-Party Contractors

Loss Control For the
Retail Grocer

Prevention

The only good accidents are the ones that never happen!

Obviously, the preferred first line of defense is to prevent customer-related accidents all accidents all together. You already know what causes customer accidents, but what steps but what steps do you regularly take to prevent them? If you don't adhere religiously to religiously to the best practices outlined in this section, your organization is in trouble. in trouble.

Most customers feel that you are inherently liable for **any** injury they sustain as a result of an accident on your premises. This simply is not true. If a customer falls, and you have extended a "reasonable degree of care," the extent to which you are liable is reduced considerably or even eliminated. It is, therefore, imperative that you eliminate customer-related hazards as soon as they are detected.

- Inspect your store on a daily basis looking for slip or trip hazards in parking lots, sidewalks, sales floors and checkout lanes.
 - Establish and enforce strict rules for stockers concerning the placement of boxes on the floor during stocking. Boxes waiting to be stocked should be on an appropriate stock cart and empty boxes should be broken down and placed in a separate cart.
 - Instruct employees in high-hazard areas to constantly monitor the walking surfaces and hold them accountable for the condition of the floor. Checkers should be responsible for the front-end, produce personnel for their aisle, and carryout's should be responsible for the parking lot and sidewalks including regular collection of carts from the lot.
 - Use Floor Maintenance/Inspection Logs (Covered in Section 5).
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Care for the Customer

Often, the manner in which a customer injury is handled has more influence on the outcome of the claim than the accident itself.

Despite your best efforts to provide a safe environment for your customers, accidents may occur. Through simple housekeeping, attention to adverse conditions and employee training, nearly all legitimate customer accidents can be avoided. However, in the event of a customer accident, a proper and thorough investigation provides the basis for a timely and fair claim settlement and discourages the fraudulent claimant.

What to Do In The Event of a Customer Accident

As soon as you are made aware of a customer accident, certain steps must be followed to care for the injured party and prepare the scene for a proper investigation. The following “do’s” and “don’ts” will provide a simple, easy to follow guide for anyone responsible for responding to a customer accident.

DO.....

- Go immediately to the scene of the alleged accident.
 - Make the injured person as comfortable as possible.
 - Be courteous and helpful to the injured party and any witnesses.
 - Assess, to the best of your ability, the extent of any possible injuries.
 - Let the injured person decide whether or not they need medical attention.
 - Inspect the scene carefully.
 - Secure names of witnesses (other customers first, then employees).
 - Conduct a thorough accident investigation.
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DON'T.....

- Admit fault.
- Apologize.
- Dispute the cause of the alleged accident with anyone.
- Reprimand employees at the scene.
- Discuss the accident with strangers, now or later.
- Refer the injured party for medical attention (unless they clearly require medical attention and they are not able to communicate with you).
- Offer to pay medical expenses.
- Disturb the scene of the accident (unless necessary) until you have completed an accident investigation.
- **Share a copy of the incident report with the claimant, their attorney, or any other representative other than your claims adjuster.**

Summary

By following these very basic steps, you provide care for the legitimate claimant, discourage the fraudulent claimant, and demonstrate your commitment to safety to employees and other customers alike. You are now prepared to perform a competent, thorough accident investigation.

Investigate the Accident

Your ability to gather facts is the first and most important link in the claim process.

Often, there is a general consensus among injured customers that the store is absolutely liable for any injury sustained on store premises...regardless of fault. This simply is not true. The accident investigation is not performed to find fault or place blame. Rather, the purpose of the investigation is to gather the facts necessary in the settlement of the claim and to determine the cause of an accident to identify ways to control or eliminate future accidents of the same type.

Begin Your Investigation

Having provided the appropriate level of care for the injured party, you are now ready to begin your investigation. Done properly, an investigation can be completed quickly and should complement the General Liability Accident Report that you submit to Avant Supermarket Group. Your goal is to objectively gather as much information as possible about the claimant, any witnesses, the alleged accident, the alleged injury, and the scene. As you investigate the situation and complete the General Liability Accident Report, remember that the information you provide will have a definite influence on the outcome of the claim.

The following steps are described in the order in which they appear on the General Liability Accident Report. In addition to these required items, you are encouraged to write down any additional circumstances you feel are pertinent on a separate sheet of paper.

Question #1: Name of Insured

Seems straightforward enough, but often we receive claims where this information is not provided. Clearly, we cannot properly respond to an Accident Report unless we know who has submitted it. Be sure to include a phone number where you can be reached.

Question #2: Name of Injured

Pay particular attention to the claimant's address. Are they frequent customers or are they visiting from out of town? Do they list a P.O. Box instead of a street address?

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Question #3: Name of Injured Person's Companion, If Any

Often, the companion is the only witness to the actual (or alleged) accident. Do you know them? Are they cooperative and helpful?

Question #4: Customers, Guests Or Patrons Present

Did any other non-employees see the alleged accident? Are they willing to provide a statement as to what they saw or heard? The testimony of one impartial customer is equal to that of three employees.

Question #5: Employee Witnesses

After gathering statements from other customers, obtain a written statement from any employee who may have witnessed the accident or who may have been nearby when the accident occurred. Obtain statements as to the condition of the scene prior to the accident. Remember; don't reprimand employees at the scene of an accident.

Question #6: Date of Accident

Question #7: Exact Time of Accident

Most legitimate customer accidents occur between 5:00 p.m. and 6:00 p.m... Did the accident occur just prior to closing time or shortly after opening? Was the customer on their way into or out of the store?

Question #8: Weather Conditions

At the time of the accident and for the few hours prior to the accident.

Question #9: Exact Location of The Accident

Use drawings, if necessary, to illustrate where the accident occurred. This eliminates any future dispute concerning the location of the alleged accident.

Question #10: Description of The Accident

Tell the story, as you understand it, in as much detail as possible. Unless you are sure that an accident has taken place, do not use definitive statements. Indicate if the accident is "alleged" or if it can be confirmed by an employee or impartial customer.

Question #11: Insurance Agent Name

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Question #12: Nature of Injury

Unless you are a doctor, do not attempt to diagnose the claimant's alleged injury. For instance, if the claimant says they broke their ankle, indicate that the claimant "alleges" to have broken their ankle. When you approach a customer who appears to have been injured, ask them if they are okay rather than if they are hurt. Write down their answer.

Question #13: Where Was The Claimant Taken?

If you are aware, indicate where the claimant received or intends to receive medical care. Did they request an ambulance? Were they taken by a companion? Did they indicate that they did not want or need medical attention?

Question #14: Did You Witness The Accident?

Question #15: If You Did Not Witness The Accident, Who Informed You of The Accident?

Question #16: Address of Informant

Question #17: Did You Inspect The Location Immediately After The Accident?

Inspect the scene prior to cleaning up any material that may have caused or contributed to the accident.

Question #18: Exact Time of Your Inspection

Question #19: Number of Photos You Have Taken of The Accident Scene (see next section).

Question #20: Was The Location Clean?

If not, describe what was unclean about it. When the area was last swept or mopped?

Question #21: Was The Location Dry?

If not, describe the moisture. Was it water? Product? Where did it come from? How much was there?

Question #22: Water Puddles?

Was the area slightly damp, or were there puddles? Where did the puddle(s) come from?

Question #23: Any Foreign Matter?

Paper, wrappers, debris, spilled product? Dirt?

Question #24: Floor Type

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What is the floor make of? Is the area tiled? Is the tile slip resistant? Was a rug or mat involved?

Question #25: Describe Any Defects

Missing tiles, broken tiles, cracks, transition from one type of floor to another, etc..

Question #26: Describe The Lighting Conditions

Particularly for accidents that occurred in the parking lot, or otherwise outdoors.

Question #27: Was The Inured Person Wearing Glasses?

Look at their nose or their temples for signs that they may wear glasses normally. Were they wearing them at the time of the injury?

Question #28: Type of Shoes

Describe the shoes worn by the claimant. What condition are their shoes in? What are the soles made of? Are they worn or damaged? If they allege to have slipped on liquid or on a piece of produce, are their soles wet or soiled by the produce?

Question #29: Carrying Bundles or Other Objects?

Was the claimant carrying groceries or something else? Could their vision have been limited by something they were carrying? Were they trying to carry too much for their size and weight?

Question #30: Injured Person's Physical Condition

Did the claimant appear sober? Intoxicated? Nervous? Were their pupils dilated? Were they wearing sunglasses indoors?

Question #31: Injured Person's Attitude And Account of What Happened

Were they cooperative? Irritable? Did they request a settlement at the scene? Did they inquire about liability or insurance? Did they speak "legalese" or use medical terminology?

Summary

Remember to answer every question on the General Liability Accident Report. If a question does not apply, indicate so. The information you provide will be used in the settlement of the claim, which may take months, even years. Over time, you will forget certain details, which is why you should complete the report thoroughly and quickly. Some general liability claims are settled in front of a jury...therefore, it is imperative that you obtain complete documentation concerning the details of the accident.

Photograph the Scene

Your goal is to preserve evidence. Whether the photos indicate fault or not, an accurate description of an accident scene is essential to the proper settlement of a claim.

Some may argue that it is not wise to photograph an accident scene when a grocer is clearly at fault. To preserve incriminating evidence is, according to some, contrary to the purpose of an accident investigation. At Avant Supermarket Group, we disagree with this philosophy. Where our customer is negligent, our goal is to provide honest, timely, and fair service to assure that each claim is handled appropriately. Whether photos exist or not, we do not attempt to dispute causes when our client is clearly negligent. Where some degree of fraud may be present, or where the circumstances surrounding a claim are in dispute, photographs eliminate all doubt as to the condition of the scene of the accident, whether legitimate or alleged.

Obtaining Useful Photographs

When you are confident that the proper level of care has been provided to a claimant, you should begin to photograph the scene. Take pictures of:

- The area in which the accident occurred. Standing at a moderate distance, photograph the immediate vicinity of the accident and the surrounding area.
 - The substance or object supposed to be the cause of the claim. Often, the size, nature, and degree of a hazard is disputed at length during the settlement of a claim. A spill. An empty box. An aisle display. Perhaps there was not a hazard present at all! If so, your photograph will help confirm that your store exercised a **reasonable degree of care** to the customer. Take photos from several different angles and distances to assure that we have several usable shots.
 - The claimant (if possible). If they seem at all reluctant to allow you to take their picture, do not force the issue. Honest, legitimate claimants generally will not object to your taking their photo. Although it may be immaterial to the settlement of the claim, indicate on the Accident Report if the claimant was not willing to have their picture taken.
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Floor Inspection/Maintenance Logs

Proper documentation of floor inspections and maintenance often mean the difference between whether or not you are liable for a customer accident.

Many retailers view floor inspection logs or floor maintenance checklists as unnecessary burdens that interfere with productivity. However, the dollars saved by preventing even one accident (or preparing your organization for a solid defense should an accident occur) can save thousands of dollars in legal costs alone. Your employees probably already inspect your floors periodically throughout the day. If so, you they have done the hard part. Document the inspection and maintenance of walking surfaces to reduce unsafe conditions, as well as provide an invaluable tool for your adjuster to use in the defense of a claim.

- If one person is responsible for inspecting the entire store at specific intervals, one inspection/maintenance log can be used. If different employees are responsible for their departments, use a separate log for each area of responsibility.
 - Once a log is complete, it should be filed in a safe place. Should a customer accident occur, a copy of the log (covering the appropriate time frame) should accompany the incident report.
 - The log should be filled out frequently, thoroughly, and honestly. These documents are our allies in the defense of a claim, **but only when they are completed honestly**. If a store employee gets behind and fills out the log for a period of time during which the floor wasn't actually inspected, the log can be our worst enemy.
 - The logs should be completed more frequently during the times of day when the store is busiest. Statistics show that the majority of customer accidents occur between 4:00 p.m. and 6:00 p.m.
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Third-Party Contractors

By hiring a third-party contractor that is not insured, or not adequately insured, you expose your organization to a substantial amount of risk.

It is difficult enough to manage the risks inherent in your own business – to provide a safe environment in which to work and shop. By hiring uninsured or underinsured contractors, you may make your organization responsible for negligent acts over which you have no control. If an uninsured or underinsured contractor creates a condition that causes a financial loss, bodily injury, or damage to someone else's property, the claim will most likely become the responsibility of the business owner who carelessly hired the contractor.

In one case, a floor maintenance contractor working in a store after hours was shot during a robbery. The court ultimately held the grocer responsible for workers compensation benefits since the contractor had no other form of insurance. In another case, a customer tripped over an electrical cord left on the floor by a maintenance crew. Since the “fly-by-night” crew was not insured, the grocer was held responsible for the damages awarded to the injured customer. In yet another case, a roofing contractor started a fire that completely destroyed a grocery store. The contractor did have liability insurance, but not nearly enough to cover the extent of the damage.

Require all contractors working on your premises to provide certificates of workers compensation and general liability coverage with their bid. Express to them that their bid will not be considered unless they can provide proof that they are insured. Get proof of insurance from:

- Floor maintenance contractors.
 - Refrigeration maintenance contractors.
 - Electricians and plumbers.
 - Builders and other construction companies.
 - Commercial restaurant equipment cleaners and maintenance personnel.
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