



2014 CLM Annual Conference

April 9, 2014 – April 11, 2014

**Boca Raton Resort
501 E. Camino Real
Boca Raton, FL 33432**

Roundtable 2: Thursday, April 10, 2014 (11:30 am – 12:30 pm)

Restaurant Liability: From A-Z

I. A-F

ADR

Alternative dispute resolution (ADR) is a way to resolve disputes between parties by using a third party moderator. ADR can be faster and more cost effective than litigation.

Bifurcation

Bifurcation segments a trial into two parts. This is an often overlooked strategy when the damages are minimal, but the incident might have dramatic appeal to a jury.

Comparative Negligence

In comparative negligence claimants must assume responsibility for their own actions, based on the degree to which they were at fault.

Duty of Care

Duty of Care covers legally holding someone to follow a standard of reasonable care. This is a reasonable defense arguments to many claims filed against restaurant companies.

Extortion

Extortion can use the impact of social media as a threat for a higher settlement. Using social media to negatively affect a company's reputation is one example that's becoming more common.

Fraud

There is more and more fraud showing up and these "claimants" are getting extremely creative. There are ways for you to minimize the impact of fraud.

II. G-L

Gift Cards

Gift cards are a good way to resolve claims. Rather than embarking on the litigation process, it is very cost effective to try to resolve claims when the claimant is unrepresented by counsel. Gift cards, even for large amounts, are an excellent means of doing so.

Hazard

Restaurant liability involves a variety of hazards. Common hazards include liquid or other substances on the floor, exposure from food and cooking surfaces and alleged food contamination. It is important not only to deal with these hazards once identified but to avoid them in the first place. Also, remember the importance of notice, either actual or constructive, when dealing with hazards.

Instagram:

We are obviously in the information age. Everyone is constantly on social media. Researching Instagram, Facebook, Twitter, LinkedIn, etc. can provide a wealth of information about your claimant, opposing counsel, judge, jury, etc. Of course social media is fraught with hazards, such as invasion of privacy and ex parte communication, so tread lightly.

Judges

The judge you get can affect the outcome of a restaurant liability case, or may be of little importance.

Kitchen

Kitchens are hotbeds of exposure. From hot stoves to slippery floors, kitchens present a challenge to risk and safety managers to prevent workers' compensation claims.

Late Notice

In many states, failure to notify your employer of a work related accident in a timely fashion can defeat a claim. In other jurisdictions, late notice can create a good faith defense, but one that is easily surmountable.

III. M-R

Motion for Summary Judgment

This is a written request for a judgment in the moving party's favor before a suit goes to trial. A motion is prepared including depositions, admissions of fact and answers to interrogatories that claim all factual and legal issues can be decided in the moving party's favor. It can be difficult and complex to achieve.

Negotiation

Negotiations are discussions and communications that may lead to resolution of claim. Negotiation takes place in all stages of a claim and during litigation. Effective negotiation can save money on litigation and trial costs.

Offer of Judgment

In many jurisdictions, this is a motion that is filed by the defense. An offer is placed on the table at a certain dollar amount. If the plaintiff rejects the offer and is awarded less than that amount at trial or the case is a defense verdict (or motion for summary judgment is granted) then the defendant can recoup some legal fees from the plaintiff. This strategy is used to apply some pressure to the plaintiff to settle their case and/or the possibility to recoup some legal costs.

Punitive Damages

These are damages to punish the wrongdoer and are often significantly more than compensatory damages. Restaurant food safety is regulated by local/state jurisdictions. If there is a pattern to illness related to your restaurant or blatant regulatory violations, you could have a punitive damages claim.

Questions

Questions are a huge part of the litigation process. They will be asked when hiring an attorney, and determining jurisdiction. Questions will also be asked during interrogatories and depositions. Asking the right questions can help bring the case to a positive result and get a clearer picture of the case and exposure.

Risk

A risk is a situation with exposure to possible harm. Foreseeable risk may influence the outcome of the case. The liability for slipping while walking across marble floors in 3 inch stiletto heels may not always land on the restaurant operator.

IV. S-Z

Spoliation of Evidence

Spoliation is a growing issue in premises liability around the country. In most states parties have a duty to preserve evidence that may be relevant to a future lawsuit. Because restaurants are in the business of selling food, not preparing for litigation, it is easy to expose yourself to a spoliation count or missing evidence instruction.

Trial

While most restaurant liability cases settle, in both the general liability and workers' compensation settings you should prepare the case as if it's going to trial. Taking that position from the outset will allow you to more efficiently and economically defend your claim. If the case does go to trial, there are a myriad of issues to consider, including jury selection, use of evidence, choice of defense counsel, venue, etc.

US District Court

Removal to Federal Court is often a worthwhile endeavor in restaurant liability. Federal Court may be preferred if you have a liberal jury pool like in Cook County. Federal Courts are courts of limited jurisdiction. Accordingly, they are only empowered to hear certain cases, those where an exclusive federal question lies or where there is complete diversity among the parties (from different states) and the amount in controversy exceeds \$75,000.00. The removing defendant has the task of proving to the court that the removal was timely. This means that the removing party should file a notice of removal within 30 days of receipt of a document, "other paper", or information that leads the removing party to believe that the case is removable.

Videos

In-store surveillance videos are a key piece of evidence when defending a restaurant liability claim. Questions surrounding in-store surveillance videos include:

- When should the video be preserved?
- How it should be preserved?
- What portion of the video should be preserved?
- What to do after you pull the video?

Also, out of store surveillance videos, depicting a claimant doing something that might be inconsistent with his injury, are also a key defense tool. Key questions include:

- When to use surveillance?
- How much to spend on it?
- What expert to choose?
- How to use a successful surveillance video most efficiently and effectively during pre-trial?

Water

Most restaurant liability claims involve slips, and most of those involve slips on water. Should a restaurant deal with a water spill when they notice it? Also, how long was the water on the floor for and where did it come from?

X-rays

X-rays are an example of medical records that are an important tool when investigating a restaurant liability claim. It is important to obtain all records, both prior and subsequent to the accident date, in order to get a full picture of a claimant's medical history. Claimants often hide a medical history so subpoenaing all records is important.

Yenta

If you have a lot of pending claims, you are probably aware that your employees talk to each other about these issues. Use that "yenta'ing", to your advantage, either by fighting questionable claims or promptly paying on accepted claims.

Zayne Malik