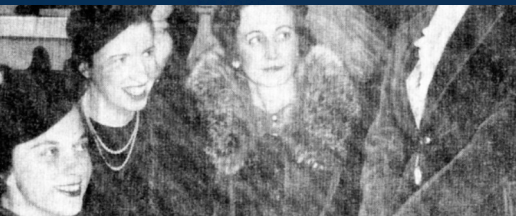


# NEW SLIP AND FALL LAW

SLIP AND FALL ACCIDENTS ARE COMPLICATED

WE MAKE IT SIMPLE TO GET BACK ON YOUR FEET



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# THE FUNDAMENTALS OF MICHIGAN SLIP & FALL CLAIMS

**It only takes an instant to trip and fall, yet that moment can have long-lasting physical and financial consequences.**

Falls are the second leading cause of accidental deaths in the U.S. and the number one cause of death among older adults. Furthermore, one out of every five falls causes injuries serious enough to require emergency medical treatment or hospitalization.

If you are hurt in a fall on someone else's property, you may be entitled to seek compensation for your injuries from the responsible party. However, these claims are far more complicated than they appear. Our experienced slip and fall lawyers are experts in this complex area of the law and will do whatever it takes to win the recovery you deserve.



## BASIC REQUIREMENTS FOR A SLIP & FALL LAWSUIT

Not every fall meets the criteria for a lawsuit. As with every personal injury claim, the plaintiff must prove that another party is liable, or responsible, for the situation that caused their injuries. In a slip and fall case, the claim is usually filed against the property owner or their agent employee, such as a landlord or property manager. To receive compensation for injuries resulting from a slip and fall accident, certain conditions must be met.



- ❶ The fall must occur on someone else's property
  - ❷ The fall was caused by a dangerous condition on the premises
  - ❸ The victim had a lawful right to be on the property
  - ❹ The property owner was negligent in their duty to maintain a safe and hazard-free premises
  - ❺ The property owner or agent "knew or should have known" about the hazardous condition
  - ❻ The property owner had a reasonable amount of time to remedy the condition and failed to do so
  - ❼ The fall and subsequent injuries occurred as a result of the hazardous condition
- The victim suffered significant physical and/or emotional harm such as medical bills, lost income, long-term care and pain and suffering

# SLIP & FALL CASES INVOLVE COMPLEX LEGAL ISSUES

Slip and fall law includes several concepts.

## PREMISES LIABILITY

This is the basis for most slip and fall claims. It applies to situations where an individual is hurt because of an unsafe condition on someone else's property. In Michigan, as in most states, property owners have a legal duty to keep their premises safe and free from potential hazards.

To file a premises liability lawsuit, the following conditions must exist:

- The defendant failed to fulfill the above obligation
- The accident and subsequent injuries were a result of the defendant's negligence (also known as "proximate cause")
- The plaintiff suffered significant injuries/damages as a result of the accident

The victim must prove the injuries resulted from the defendant's failure to maintain a safe environment. A person who trips and falls because they were texting and failed to see a step may not be eligible for compensation. However, if a faulty handrail gives way and causes someone to fall down the stairs and suffer a back injury, that victim may have grounds for a lawsuit.

The injuries have to be serious enough to result in damages such as medical bills, lost wages and/or pain and suffering.

- Bruises
  - Scraped knees and elbows
  - Other minor injuries
- usually do not justify bringing a premises liability lawsuit.

## NEGLIGENCE

To prevail in a lawsuit, the plaintiff must prove the property owner was negligent by failing to use "reasonable care" in maintaining a safe environment.

This also means proving the owner "knew, or should have known" about the hazardous condition and had reasonable time to remedy the situation before the accident occurred.

A property owner may be found negligent under the following conditions:

- They caused the unsafe condition and failed to remedy it in a reasonable time frame. This may include spilling liquid on the floor of a retail store or office or leaving electrical cords or tools in the middle of a walkway.
- They did not cause the condition, such as an ice patch on the sidewalk, but they knew, or should have known, about it and failed to fix the problem in a reasonable amount of time.

## "NATURAL ACCUMULATION" RULE

This term refers to the fact that Michiganders should expect a certain amount of snow and ice during the winter months. In the past, this precept made it difficult for victims to sue property owners for injuries caused by slippery conditions on sidewalks or parking lots. In addition, the former version of the "open and obvious" doctrine allowed landlords to escape liability when snow and ice were visible to the average person.

However, plaintiffs will now have an easier time receiving compensation due to a recent Michigan Supreme Court ruling on the "open and obvious" rule. Property owners will no longer get an automatic pass in these situations; instead, the court will consider whether they breached their duty to keep the premises safe, along with any fault on the part of the victim.

## MODIFIED COMPARATIVE NEGLIGENCE

Like many other states, Michigan follows the doctrine of "modified comparative negligence." This means compensation may be reduced by the degree of fault assigned to the plaintiff. A victim must be less than 50 percent at fault to recover non-economic, or intangible, damages such as pain and suffering.

Here are some situations where a plaintiff may bear some of the responsibility for an accident:

- Plaintiff was using a cell phone or was otherwise distracted at the time of the accident
- Plaintiff was wearing footwear that was inappropriate or unsafe for the conditions

### Example:

If the plaintiff is found partially at fault, the compensation would be determined as follows:

- Plaintiff's attorney negotiates a settlement of \$100,000
- Plaintiff is determined to be 30 percent at fault for texting at the time of the fall
- Settlement is reduced by 30 percent, or \$30,000
- Plaintiff receives \$70,000, less attorney fees and expenses

## TIME IS RUNNING OUT! STATUTE OF LIMITATIONS FOR MICHIGAN SLIP & FALL CASES

Michigan slip and fall cases are governed by a strict statute of limitations, which means lawsuits must be filed within a specified time limit. Those who fail to meet this legal deadline risk having their claims dismissed and missing out on the chance to receive the compensation they are entitled to.

The usual statute of limitations for personal injury claims, including slip and fall cases, is **three years**. Generally, the clock starts running on the day of the accident, or, in some cases, on the day the injuries are discovered.

In addition, there are exceptions that apply under certain conditions:

### ■ **Victim is a minor (under age 18)**

Slip and fall victims who were minors (under 18) at the time of the accident have one year from their 18th birthday to file a lawsuit. However, a parent or guardian may file a claim on the minor's behalf. This is preferable because there are drawbacks to delaying legal action that can have a negative impact on a case.

### ■ **Victim has a condition of mental impairment**

This exception applies when a victim has a mental condition that prevents them from understanding their rights and acting accordingly. In these circumstances, the person does not have to be declared legally insane for the statute of limitations to be extended.

### ■ **Defendant cannot be served**

If the property owner or other person believed to be responsible for the accident leaves the state before the lawsuit is filed and is absent for more than two months, the statute of limitations may be extended.

Despite the three-year time limit and exceptions, it is always better to consult a qualified slip and fall lawyer and begin legal action as soon as possible after an accident. Otherwise, physical evidence can vanish and witnesses may be unavailable or lose their recollections as time passes.

### ■ **Accident occurred on government property**

Most governmental agencies and municipalities have shorter statutes of limitations and notice requirements for personal injury claims. These cases can be difficult to win due to governmental immunity laws.



# THE "OPEN AND OBVIOUS" DOCTRINE

Slip and fall victims will have an easier time recovering damages following a recent Michigan Supreme Court decision about the “open and obvious” doctrine. In the past, property owners were able to avoid liability when “an average person of ordinary intelligence would have been able to discover the danger and risk upon casual inspection.”

Previous lawsuits focused on the victim’s ability to recognize and avoid a potential danger rather than the owner’s duty to remove the hazard or warn visitors about its inherent risks. While there were some limited exceptions to the rule, most cases were decided in favor of the property owner.

In a recent ruling on two separate cases, the Michigan Supreme Court overturned previous “open and obvious” case law and decided in favor of the victims. Going forward, the courts will consider whether a landowner/possessor breached the duty to maintain a safe premises, along with any fault on the part of the victim. Property owners will no longer be exempt from liability based solely on whether a hazard is visible to the average person.

## COMMON CAUSES OF SLIP & FALL ACCIDENTS

The following conditions can result in serious injuries:

- Broken or uneven concrete on sidewalks or walkways
- Stairway hazards such as defective steps or landings
- Loose or missing handrails
- Inadequate lighting, including burnt out bulbs
- Large puddles or wet floors due to leaks or broken pipes
- Faulty elevators
- Porches, steps or handrails with rotting wood
- Inadequate lighting, including burnt out bulbs
- Electrical cords, cables or other obstacles in areas where people walk
- Wet or newly waxed floors
- Loose carpets or throw rugs
- Icy or snowy steps on porches, walks or parking lots\*

\*Landlords or managers of apartment complexes are not required to clear ice and snow from parking lots

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Our No Fee Guarantee® is our promise that if we don’t win your case, you don’t owe us an attorney fee. We don’t get paid unless you do. It’s that simple.





# HOW COMPENSATION IS DETERMINED IN A SLIP & FALL CASE

Every case is unique. Compensation is based on many factors, there is no one-size-fits-all settlement. In general, compensation for personal injury cases is based on the extent and severity of the injuries and associated damages. Plaintiffs who require long-term care or extensive rehabilitation therapy typically receive larger settlements than those whose injuries are less severe.

## Compensation for a slip and fall claim consists of two parts:

- 1st Part: Direct economic losses such as medical bills and lost income
  - 2nd Part: Intangible, or non-economic, damages such as pain and suffering\*
- \*Under Michigan law, victims who are more than 50 percent at fault for an accident cannot receive non-economic damages.*

## Economic damages typically include:

- Medical expenses, present and future
- Nursing services or other home health care
- Long-term care
- Rehabilitation therapy
- Medications
- Lost wages, short-term and future

## Non-economic damages may include the following:

- Physical pain and suffering
- Mental anguish
- Lingering stress and anxiety
- Loss of consortium or companionship (on behalf of a spouse, partner or family member)
- Loss of self-esteem due to scarring or permanent disability



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GET A SECOND OPINION FROM THE SLIP AND FALL EXPERTS.  
**CALL US TODAY TO RECEIVE THE COMPENSATION YOU DESERVE!**

# CLIENT TESTIMONIALS

Here is what some of our many satisfied clients have to say about our results and unparalleled service:

“Since this was my first experience in dealing with something of this magnitude, this law firm made every step easy for me.”



“All the people I spoke to were helpful, gracious, sympathetic and very kind. They all were very patient with all my questions.”



“I can definitely say: The Sam Bernstein Law Firm's lawyers are the best, the one you can count on to have your justice.”



“From the very start the Bernstein team handled my case with extreme care.”



“They continue to check on me and my wellbeing. They got me a great settlement, I would highly recommend this law firm to anyone.”



“The service and professionalism will always stand by with your case. The only thing they will ever tell you is the truth.”



“Top of the line representation. Great communication and updates throughout the entire process, thus making it all very easy for me.”



“In today's world, it is peace of mind to have a company such as the Bernstein law firm advocating for you.”



“I'm so happy I trusted them to take care of my case! They handled everything perfectly and you could tell they cared.”





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*Sam Bernstein is the founder, of-counsel and retired shareholder of The Sam Bernstein Law Firm®, PLLC.  
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