



9-14 Slips & Falls – Fact or Friction?



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SLIP | TRIP & FALLS: Fact or Friction?

Presented by

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Richard Harer, VP – Specialized Investigations

John Madsen, Esq. Liebman, Quigley & Sheppard



Slip | Trip & Fall Statistics

According to OSHA and The National Safety Council:

- **Slip and falls account for over 300,000 disabling injuries per year in North America;**
- **It is the second leading cause of accidental death and disability after automobile accidents;**
- **Slip and falls result in Work Comp claims over \$1.8 Billion a year or about 40% of all accidents claims paid out;**
- **Slip and falls account for 40% of general liability claims**



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Slip | Trip & Fall Red Flags

- **No witnesses to the accident;**
- **Accident results in subjective soft tissue injuries only;**
- **Claimant wants to settle claim quickly and for less money;**
- **Claimant was in area inconsistent with their general travels**



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Slip | Trip & Fall Red Flags

- Claimant has a history of prior slip/trip and fall accidents;
- Claimant immediately brings up the subject of "liability" or "insurance."
- Claimant goes by a common (gypsy) name (e.g. Marks, Adams, Smith, etc.)
- Claimant is represented by an attorney before even reporting the incident;



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"I don't do 'slip and fall,' but if you're ever
in need of a good tax attorney..."



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Slip | Trip & Fall Red Flags

- **Claimant alleges unsubstantiated damages to an item of unusual value as a result of the fall, such as expensive jewelry, camera, or personal electronic equipment (stereo, computer);**
- **Claimant refuses or is unable to provide reasonable documentation of lost time from work, rate of pay, or other damages related to the accident.**



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Investigation of Slip | Trip & Fall Claims

- **Take detailed statements of claimant to include logistics, biomechanics, and injuries;**
- **Interview property owner/business owner/employees/landlord/tenants, etc.;**
- **Interview paramedics, 1st responders, and/or other medical personnel;**
- **Canvass for witnesses and surveillance camera footage;**





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Investigation of Slip | Trip & Fall Claims

- Take detailed statements of witnesses, **INCLUDING “no knowledge” witnesses;**
- Obtain and/or take extensive photos and measurements (including lighting conditions, potential hazards, surroundings, etc.);
- Check on prior losses or notice;
- Conduct surveillance on the claimant



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Investigation of Slip | Trip & Fall Claims

- Obtain all medical history and records of claimant for prior injuries, questionable treatment, etc.;
- Conduct thorough background check
 - Financial
 - Claims History
 - Criminal | Civil
 - Medical History (medical canvass)



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Investigation of Slip | Trip & Fall Claims

- Request maintenance records (“sweep sheets, restroom logs, janitor records, contracts, etc.);
- Interview maintenance | janitorial workers, cleaning companies, others;
- Ask for the manuals on safety policies and procedures for the store;
- Retain services of forensic expert to evaluate legitimacy of accident



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Questions?



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The Forensic Approach

William King, President and CEO

Impact General, Inc.



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A Three-Pronged Approach...

- Building Code Compliance, Standards and Guidelines
 - Human Factors
 - Biomechanics
-
- Measuring the floor to determine if it is slippery



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Guidelines and Standards

American National Standards Institute

American Society for Testing and Materials

- ANSI A117.1 Standard on accessible and usable buildings
- ANSI A1264.2 Standard for the provision of slip resistance on walking/working surfaces (suggests dry COF of 0.5 walking surfaces)
- ASTM D2047 Standard test method for static COF of polish-coated floor surfaces
- ASTM D5859 Test method for determining the traction of footwear on painted surfaces
- ASTM F1637 Standard practice for safe walking surfaces
- ASTM F1646 Standard guide for selection of certain walkway surfaces when considering footwear traction
- ASTM F1679 Standard test method for using a variable incident tribometer
- IESNA Lighting Handbook, Reference Application (2000), Illuminating Engineering Society of North America: New York
- ASTM D-2047 (UL 410) Slip resistance of floor surface materials
- ASTM F2508 Validation of tribometers using human ambulation study



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Codes and Standards

- International Building Code
 - Stairways, Ramps, Platforms, Railings, Walkways, Exits and Illumination
 - Relating to slipping: *At points of egress walkway surface shall be slip resistant*
- ADA – “slip resistant”
- OSHA non mandatory appendix proposed
- COF – no final ruling
- reference = .5
- ANSI A137.1 Acutest
- ANSI B101.1 and B101.3



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Human Factors

- Physical Environment
- Sensory/Perception Reaction
- Cognitive (decision making)
- How human interact with their environment
- Analysis of Visual Cues...do they exist?
- Foreseeable conditions
- Rely on empirical studies to form opinions



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Human Factors in Action...



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Disorienting Patterns Unsafe



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Absence of Visual Cues too Unsafe

- Escalators built for the Metropolitan Atlanta Rapid Transit system under the Peachtree Center
- Lighting was florescent tubes along the ceiling running parallel to the escalator' path
- As was alignment of wall tiles
- No reference to the true vertical or true horizontal axis
- Traversed 190 feet at 120 feet per minute
- Deprived for over a minute of true spatially orienting cues



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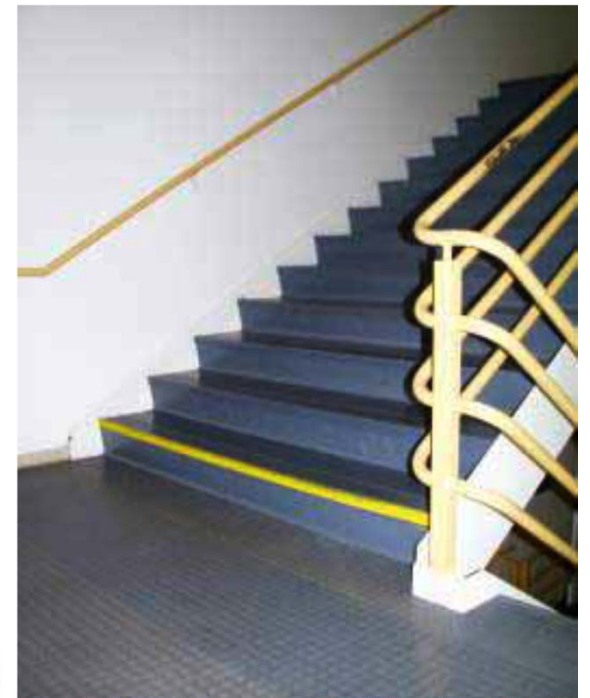


Design for Human Factors Increase Perception



- Make/highlight step edges and transition areas (changes in elevations). Use anti-skid paint.

- Make sure stairs have sufficient lighting and handrails.



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Identify Hazards

Human Factors – Can a person perceive that a walking surface is slippery or is changing surfaces



Unmarked elevation changes:

- Speed bumps
- Tire bumpers (wheel stops)
- Wheelchair accessible curbs, ramps
- Driveways



Biomechanics

- The study of external and internal forces on the living body and how those forces affect the various components of the body (muscles, tissues, tendons, skeletal structure)
- Answers the question: **Was there a mechanism in the claim scenario that could have caused the specifically claimed injury?**



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Biomechanical Analysis Requires:

- Biomechanical Analysis
 - Information from Accident/Investigator's Report
 - Safety Expert's Report
 - Medical Records (age, weight, gender)
 - Depositions/Statements (pre-slip, slip and post slip)



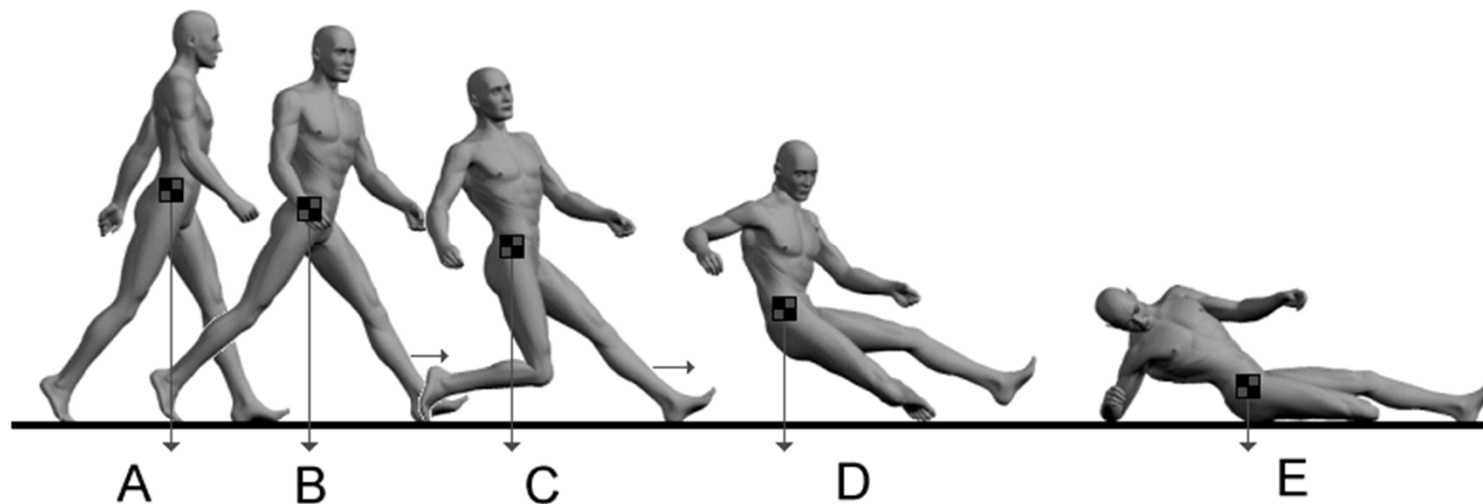
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Impact Force Applied to Body

- During ambulation, individual slips and falls
- Victim Perceives that footfall will occur with sufficient SCOF
- Gravity line falls outside the support base



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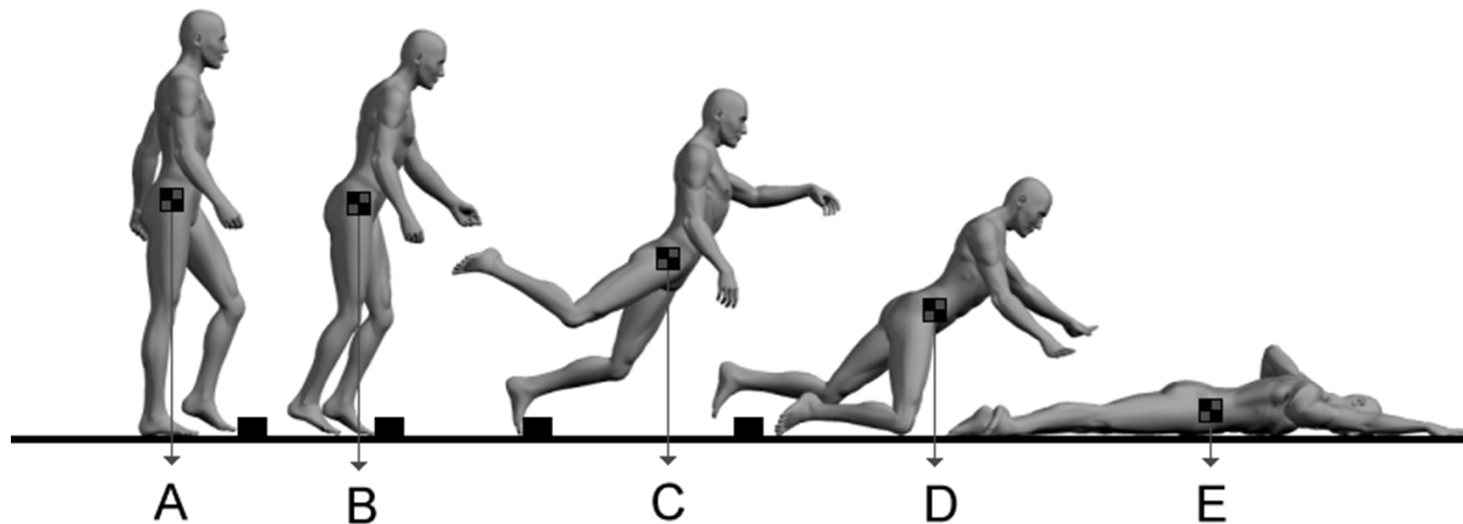
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Impact Force Applied to Body

- During ambulation, individual trips and falls
- Primary impact to the right knee with subsequent force to face/head



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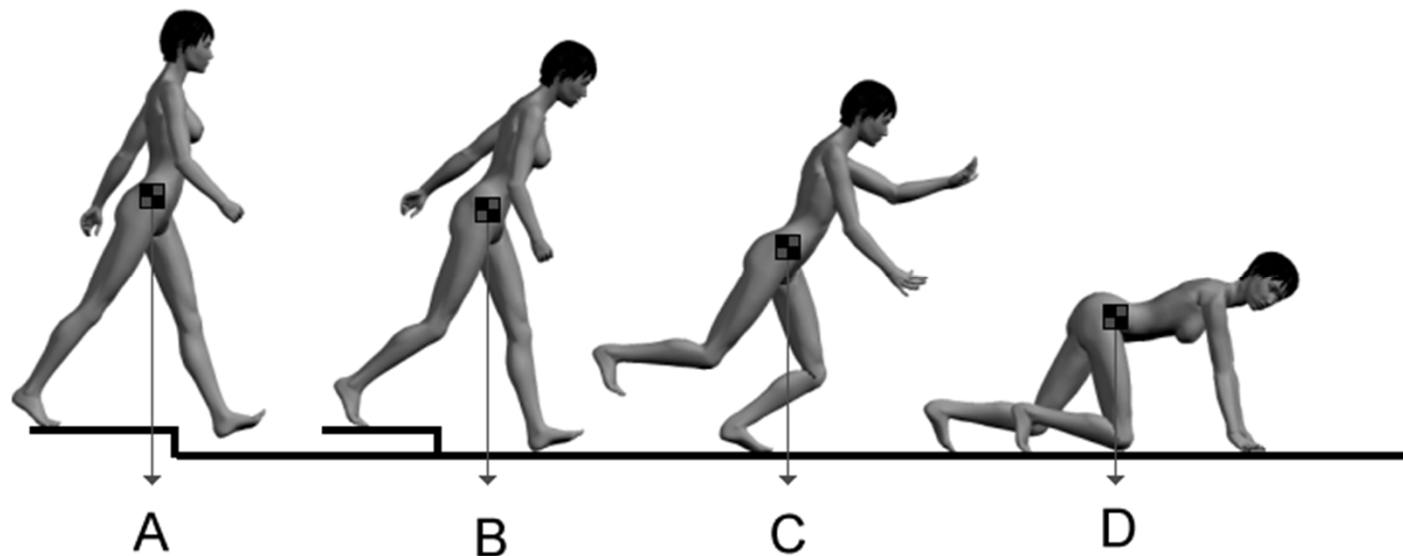
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Impact Force Applied to Body

- During ambulation, individual UNEXPECTEDLY missteps and falls
- Primary impact knees and upper extremities



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BACK_AISLE 1 - 09/06/2008 21:32:20



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The Problem with Tribometry today

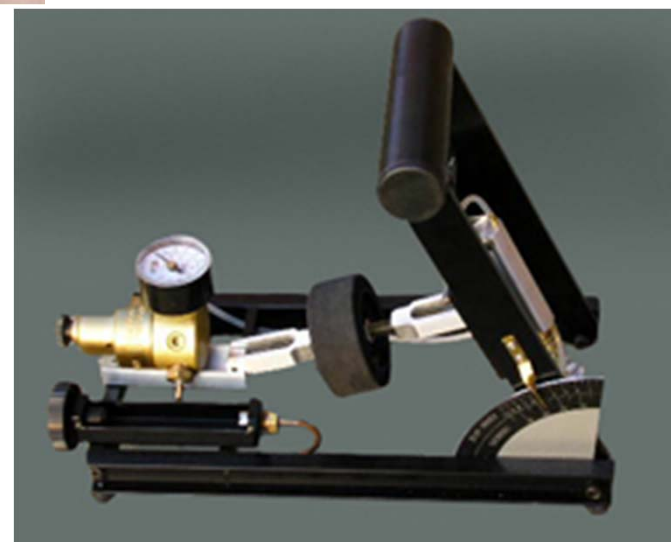
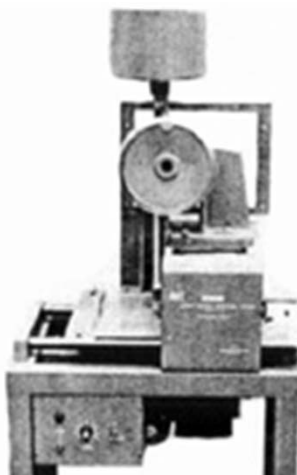
- Tribometry = measuring interactions between two surfaces
- Currently over 30 different tribometer models using wide range of mechanical designs and COF calculation methods
- Top 11 models in use today produce different numbers on the same surface
- Illustrated by Powers, et al. (2010 Journal of Forensic Sciences)



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What is COF?

Coefficient of Friction

- Determined by creating a ratio of two forces:
- Gravity (Normal Force) N
- Tangential Force (f) – force to move an object from point of rest horizontally
- Static and Dynamic measurements
- $f/N = \text{COF}$ 4lbs / 10lbs = .4 COF



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Introducing the GS-1 Tribometer



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Accident Investigation Guide
Slippery Surfaces Accidents
American National Standard A1264.2 – 2012

PORTION OF FOOT THAT SLIPPED OR TRIPPED	
<input type="checkbox"/> Toe <input type="checkbox"/> Heel	<input type="checkbox"/> Right Foot <input type="checkbox"/> Left Foot

LOCATION OF FALL	
Where did slip or trip begin?	
Where did person end up?	
What was their body position?	

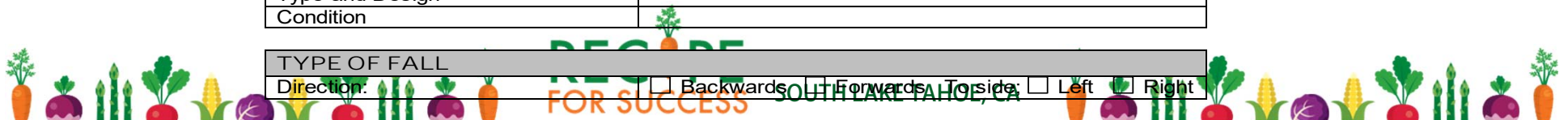
TYPE OF FLOORING	
Did claimant walk off a different type of surface?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, specify type and number of steps:
Type of Flooring Involved in Fall	<input type="checkbox"/> Resilient <input type="checkbox"/> Ceramic <input type="checkbox"/> Marble <input type="checkbox"/> Terrazzo <input type="checkbox"/> Concrete <input type="checkbox"/> Asphalt <input type="checkbox"/> Carpeting <input type="checkbox"/> Other (specify):

FLOOR FINISH	
Type	<input type="checkbox"/> Wax <input type="checkbox"/> Sealer <input type="checkbox"/> Slip Resistant Treatment (specify): <input type="checkbox"/> Other (specify):
Sample available for testing	<input type="checkbox"/> Yes <input type="checkbox"/> No
Product test results (if any)	
Manufacturer Specifications (Use and COF)	
Non-slip additive used	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, specify:
Floor Care: • Materials and Mixtures • Frequency of Care • Procedures (cleaning, finishing) • Date last refinished prior to accident	

FOREIGN SUBSTANCES	
Did claimant or witness see wetness or shoe sole after fall?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain:
Did claimant or witness see substance on floor before or after the fall?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain:
Were claimant's clothes moist, wet or soiled after fall?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain:

FLOOR MATS (if any)	
Type and Design	
Condition	

TYPE OF FALL	
Direction:	<input type="checkbox"/> Backwards <input type="checkbox"/> Forwards To side: <input type="checkbox"/> Left <input type="checkbox"/> Right



TYPE OF INJURY		
<input type="checkbox"/> Hip	<input type="checkbox"/> Arm (upper)	<input type="checkbox"/> Mid-back
<input type="checkbox"/> Knee	<input type="checkbox"/> Forearm	<input type="checkbox"/> Cervical (neck)
<input type="checkbox"/> Ankle	<input type="checkbox"/> Hand	<input type="checkbox"/> Head
<input type="checkbox"/> Shoulder	<input type="checkbox"/> Lower back	

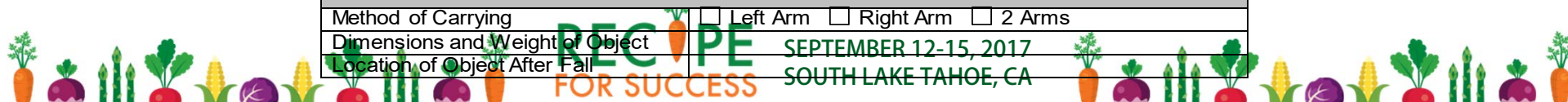
FOOTWEAR	
Type	
Sole Material	
Heel Size and Material	
Available for Inspection?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have they been worn since the accident?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain:
When were they purchased?	
Did they fall off during the accident?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain:

EYEWEAR	
Does claimant normally wear glasses?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, specify distance:
Type of glasses	<input type="checkbox"/> Bi-Focal <input type="checkbox"/> Tri-Focal <input type="checkbox"/> Normal <input type="checkbox"/> Other (specify):
Were glasses being worn at time?	<input type="checkbox"/> Yes <input type="checkbox"/> No

LIGHTING	
Walking from dimly lit area to well lit area?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Walking from well lit area to dimly lit area?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Windows nearby the fall	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, specify location in relation to pedestrian path:
Was the light behind or in front of the claimant?	<input type="checkbox"/> Behind <input type="checkbox"/> In Front <input type="checkbox"/> Balanced
Illumination levels	
Lighting controls manual or automatic?	<input type="checkbox"/> Manual <input type="checkbox"/> Automatic If automatic, describe:

WITNESSES	
How close were they?	Specify distance:
How many?	
What was their orientation to the accident scene?	<input type="checkbox"/> Left <input type="checkbox"/> Right <input type="checkbox"/> In Front <input type="checkbox"/> Behind

LOAD CARRYING	
Method of Carrying	<input type="checkbox"/> Left Arm <input type="checkbox"/> Right Arm <input type="checkbox"/> 2 Arms
Dimensions and Weight of Object	
Location of Object After Fall	



Case Scenario #2: Monday Morning (Black & Blues



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Case Scenario Facts

- Employee trips and falls at work on Monday morning, leaves work, and reports injuries the following day;
- Accident not witnessed and no surveillance camera in area;
- Employee in good physical condition, but has a history of poor performance and absenteeism (especially Mondays);
- Employee immediately retains an attorney



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What would you/your company do?

- Investigate claim?
- Investigation performed?
- Report to SIU? Fraud Bureau? Forensic Analysis? Other?



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Defending Slip & Fall Case

John G. Madsen, Esq.

*Liebman, Quigley & Sheppard, APLC
1010 Second Avenue, Suite 2300
San Diego, CA 92101
(619) 232-0777*



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Defending Slip & Fall Cases

Why do they end up in litigation?

Usually due to....

OPPORTUNITY

(by Claimant, Attorney and even the Premises)

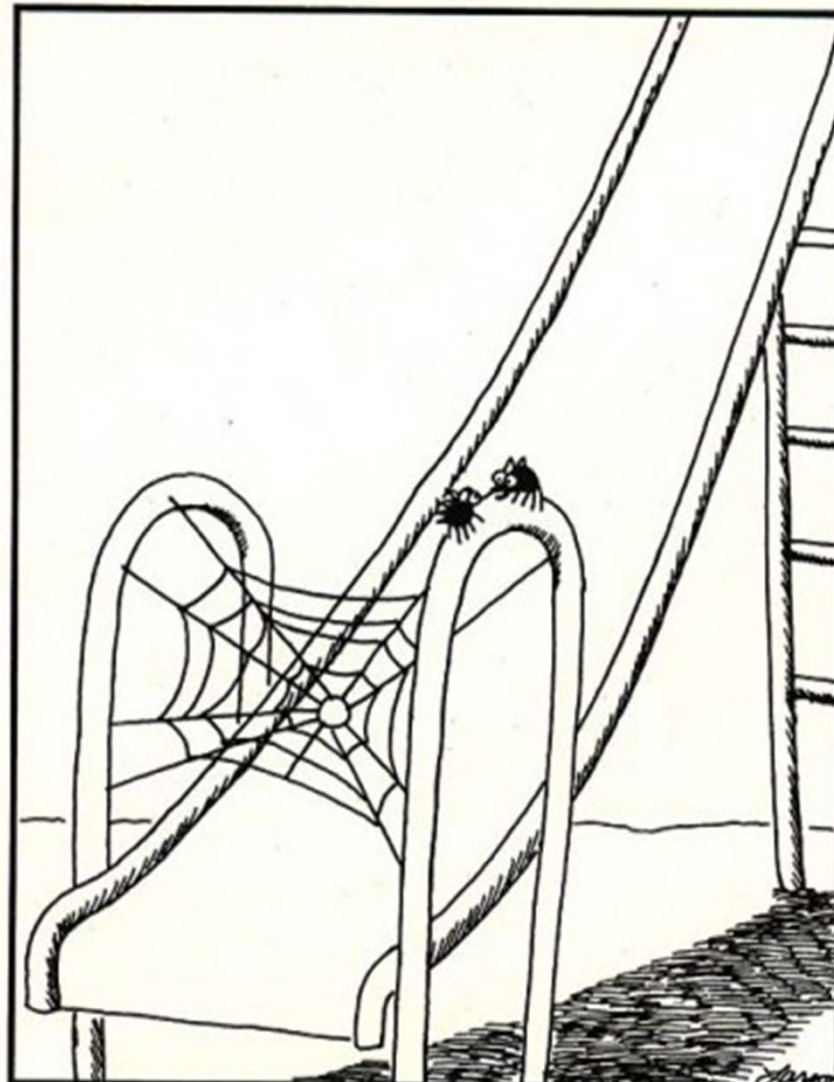


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**“If we pull this
off, we’ll eat like
kings.”**



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“Progress is obtained only by exploiting opportunities, not by solving problems. When you solve problems, all you do is guarantee a return to normalcy.”

Peter Drucker



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Slip & Fall Burden of Proof

- Plaintiff's burden
- Proof of what?
- Usually negligence for premises liability
- Dangerous condition?
- Against owner/occupant
(by business invitee)
- Actual or constructive notice?



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FRAUD...

“Intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right: an act of deceiving or misrepresenting.”

[Merriam – Webster, 2011]



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Taste like fraud?

Sound like fraud?

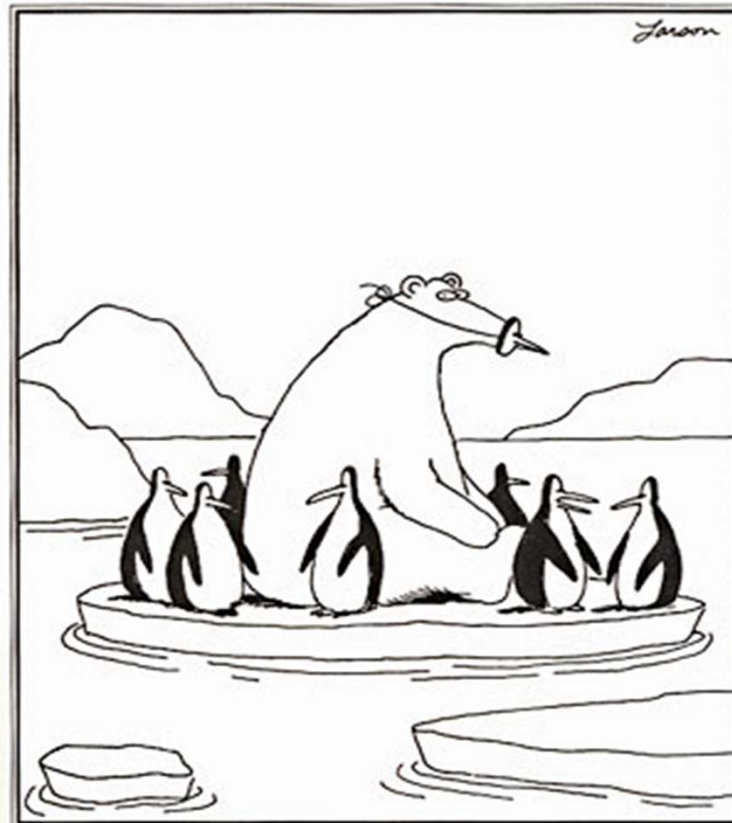
Feel like fraud?



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**“And now Edgar’s gone...
Something’s going on around here.”**



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Common Reason for Litigation...Opportunity

Hot Coffee at McDonalds

- Loose lid in cup at drive-thru in LA
- Photos of 2nd degree burn
- \$2K settlement



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Common Reasons Potential Fraud Claims Go to Litigation

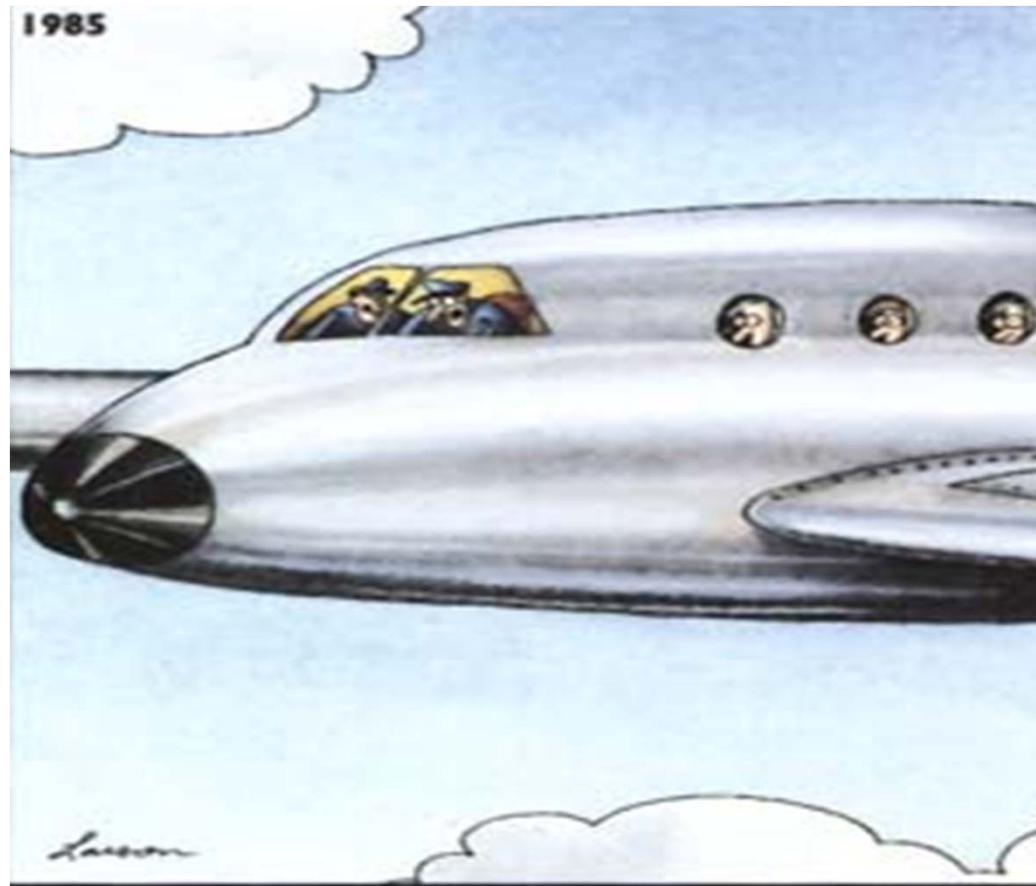
(and possibly without criminal charges)

- Weak or spoiled evidence
- Poor investigation
- Poor adjusting
- Client willing to settle based upon COD
- Blind-notice claims (SOL)
- Greedy or lying claimant
- Lazy attorney for claimant
- Evidence withheld until discovery (or subpoena)



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“The fuel light’s on, Frank! We’re all going to die!...We’re all going to die!...Wait, wait. ... Oh, my mistake – that’s the intercom light.”



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*Slip & Fall Evidence
(key for defense)*

- Scene preservation
(police/incident reports, video, photos, spoliation, etc.)
- Interviewing claimant
(recorded)
- Sweep logs / inspections
 - costs, litigation, MSJ
- Initial expert evaluation (incl. design issues)
 - verbal vs written reports (consultant for atty)



REPORTS (continued)

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Slip & Fall Opportunity Usually Stems from the Type of Claim & Nature of Incident

- Incident never occurred

(or never reported...blind–notice claims)

Impacts evidence preservation



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February 6, 2013

RE Location
Loss Date 2-2-2013
Employee Anthony V
Claim No 30130233490000-1
Claimant: Norma V

San Diego, CA 92154



2/27/2013

301302334900001

5120130227059827



Type of Opportunity Usually Stems from the Type of Claim vs Incident

- Can confirm claimant was on-premises,
BUT the slip/fall incident didn't occur

Better evidence preservation



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Type of Opportunity Usually Stems from the Type of Incident vs Claim

Can confirm...

- Plaintiff on premises,
- Slip-fall incident occurred, AND
- Premises is liable for dangerous condition

However...

- Alleged injury NOT from incident



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Type of Opportunity Usually Stems from the Type of Claim vs Incident

Can confirm...

- Plaintiff on premises,
- Slip-fall incident occurred, AND
- Serious injury was caused by incident

However...

- NO LIABILITY!



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BX2 2:PRODUCE 2 Jul 5, 2008 3:44:10 PM PDT



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Common “Red Flags” in Slip and Fall Cases

- No foreign substance on floor or clothing
- No witnesses
- Only witness is a friend/relative of claimant
- Conflicting info from bystander
- Plaintiff is not a regular patron of premises (or transient)



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Common “Red Flags” in Slip and Fall Cases

- Plaintiff is disgruntled or recently terminated employee
- Plaintiff is unrealistically hostile or talkative
- Blind-notice claims (especially with attorney)
- Early inquiry by plaintiff about premises insurance



Common “Red Flags” in Slip and Fall Cases

- M.I.S.T. cases
- No objective injuries at ER
- Early Tx from a DC (w/o objective findings)
- No documents supporting damages/wage loss



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**“Say...what’s a
mountain goat
doing way up here
in a cloud bank?”**



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Observations in Summary:

Slips, trips, and falls are very complex and involve a multitude of risk factors.

- **Ergonomics** and task related physical demands
- **Interactions** with the walking surface
- **Human Factors** person perceives that a walking surface is slippery
- **Personal Factors** – age vision is reduced, reaction time slows and muscular strength diminishes
- **Physical Factors** – such as friction between the shoe sole and floor, floor contaminant
- **Environmental** – poor lighting, dust, noise (distraction)

From Research to Reality TM



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Case Study

- Client is landlord at strip mall
- Plaintiff struck by patio umbrella outside front of deli/market store
- 6 inch cut on leg
- Blind-notice as to landlord

WHAT INFO DO YOU NEED
TO HANDLE THE CLAIM/SUIT?



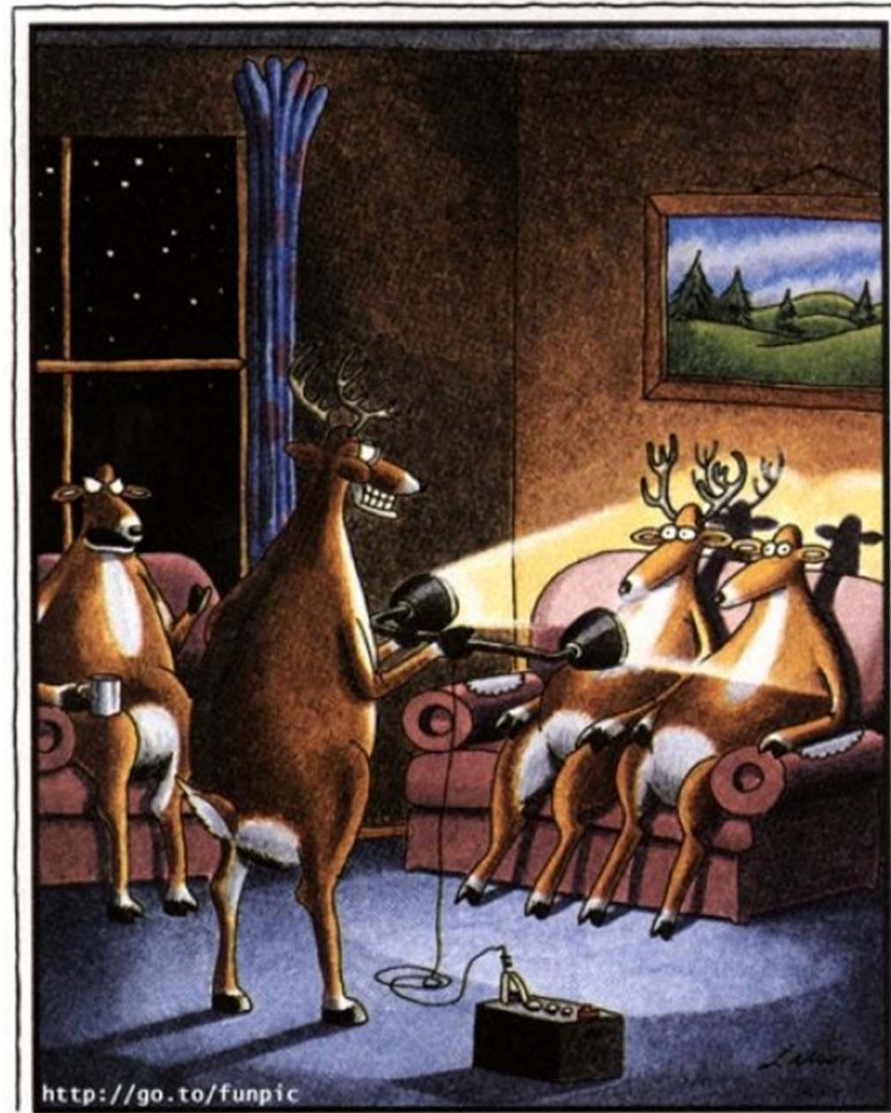
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Ok, Frank, that's enough. I'm sure the
Jeffersons are quite amazed at your

Questions?



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FRAUD...

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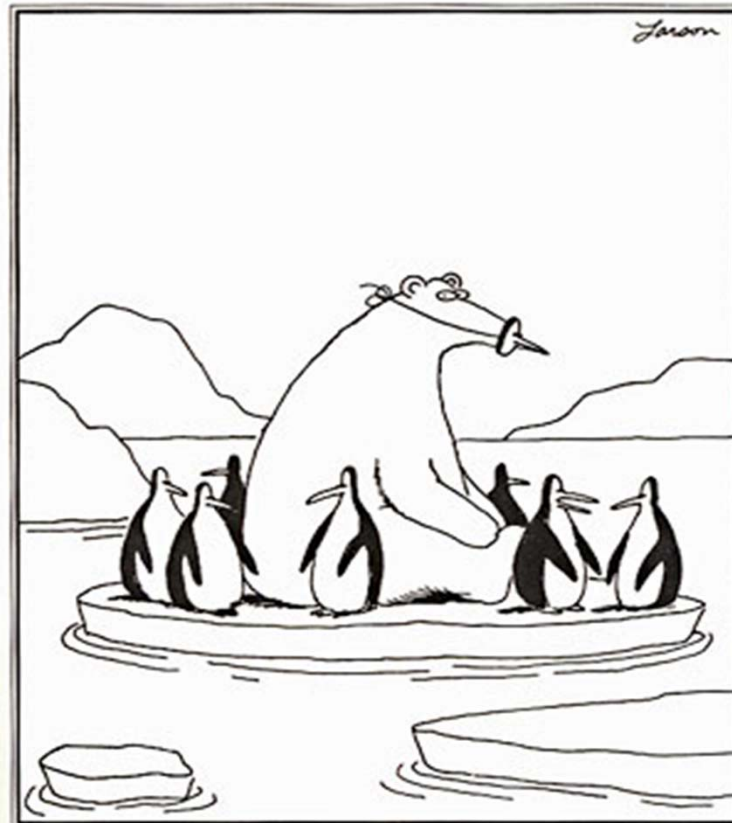
[Merriam – Webster, 2011]



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**“And now Edgar’s gone...
Something’s going on around here.”**



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Slip & Fall Accidents

- 3rd leading cause of injury to customers and employees
- Slip & Fall fraud is up 57%
- Avg liability awards (\$60K - \$100K)
- Annual cost to businesses: \$70 Billion
- Most fraud in LA, NY, Philly, LV, Chicago
- Most common type of criminal insurance fraud: staged event by 2 actors

[Sources: National Safety Council, National Insurance Crime Bureau, National Floor Safety Institute]



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Defending Slip & Fall Cases

Why do they end up in litigation?

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OPPORTUNITY

(by Claimant and/or Premises)



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However...

- Alleged injury NOT from incident

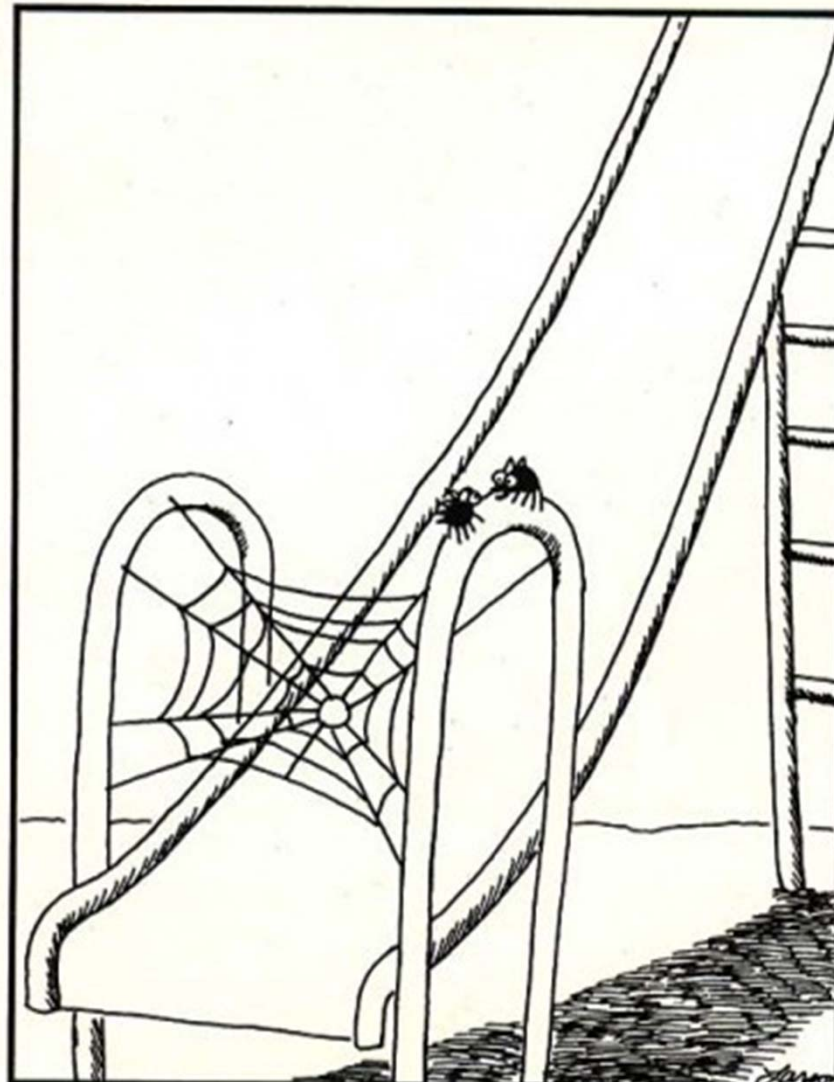


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Common Reason for Litigation...Opportunity

Hot Coffee at McDonalds

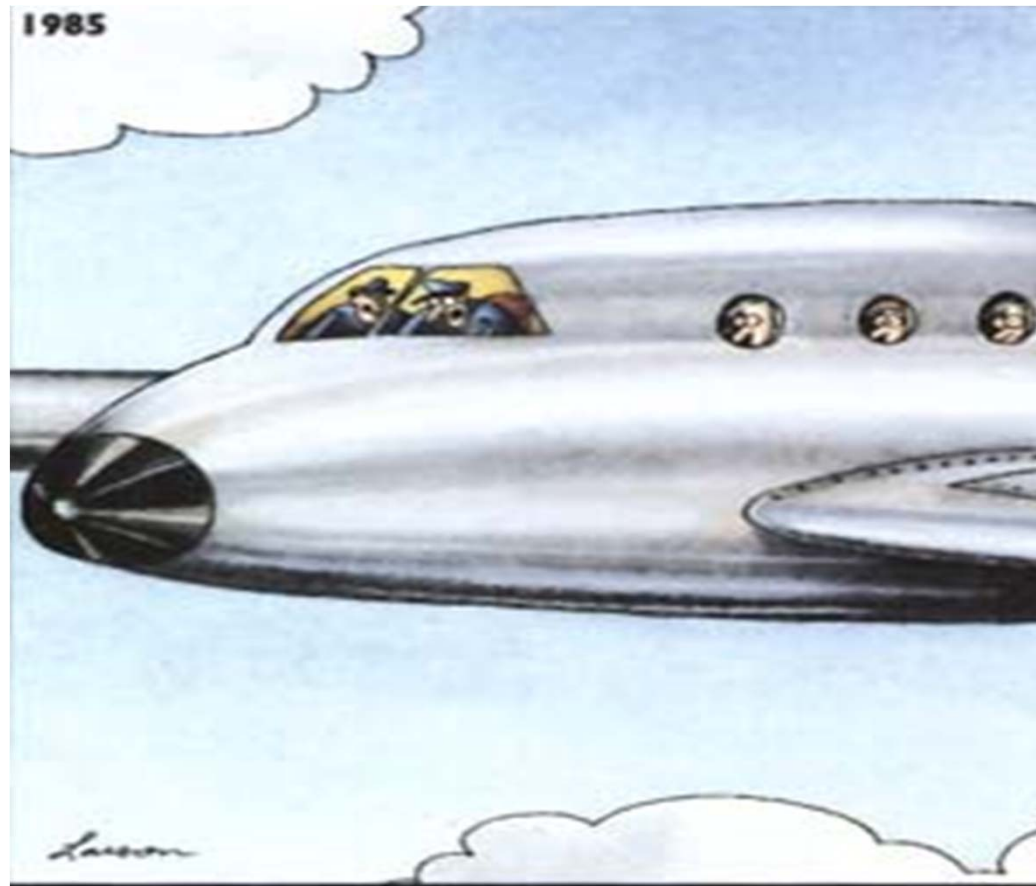
- Loose lid in cup at drive-thru in LA
- Photos of 2nd degree burn
- \$2K settlement



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“The fuel light’s on, Frank! We’re all going to die!...We’re all going to die!...Wait, wait. ... Oh, my mistake – that’s the intercom light.”



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Slip & Fall Opportunity Usually Stems from the Type of Claim & Nature of Incident

- Incident never occurred

(or never reported...blind–notice claims)

Impacts evidence preservation



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Type of Opportunity Usually Stems from the Type of Claim vs Incident

- Can confirm claimant was on-premises,
BUT the slip/fall incident didn't occur

Better evidence preservation



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Type of Opportunity Usually Stems from the Type of Claim vs Incident

Can confirm...

- Plaintiff on premises,
- Slip-fall incident occurred, AND
- Serious injury was caused by incident

However...

- NO LIABILITY!



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**“Say...what’s a
mountain goat
doing way up here
in a cloud bank?”**



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*Other thoughts in handling
Premises Liability claims...*

- Scene preservation
(police/incident reports, video, photos, spoliation, etc.)
- Interviewing claimant
(recorded)
- Sweep logs / inspections
 - costs, litigation, MSJ
- Initial expert evaluation (incl. design issues)
 - verbal vs written reports (consultant for atty)



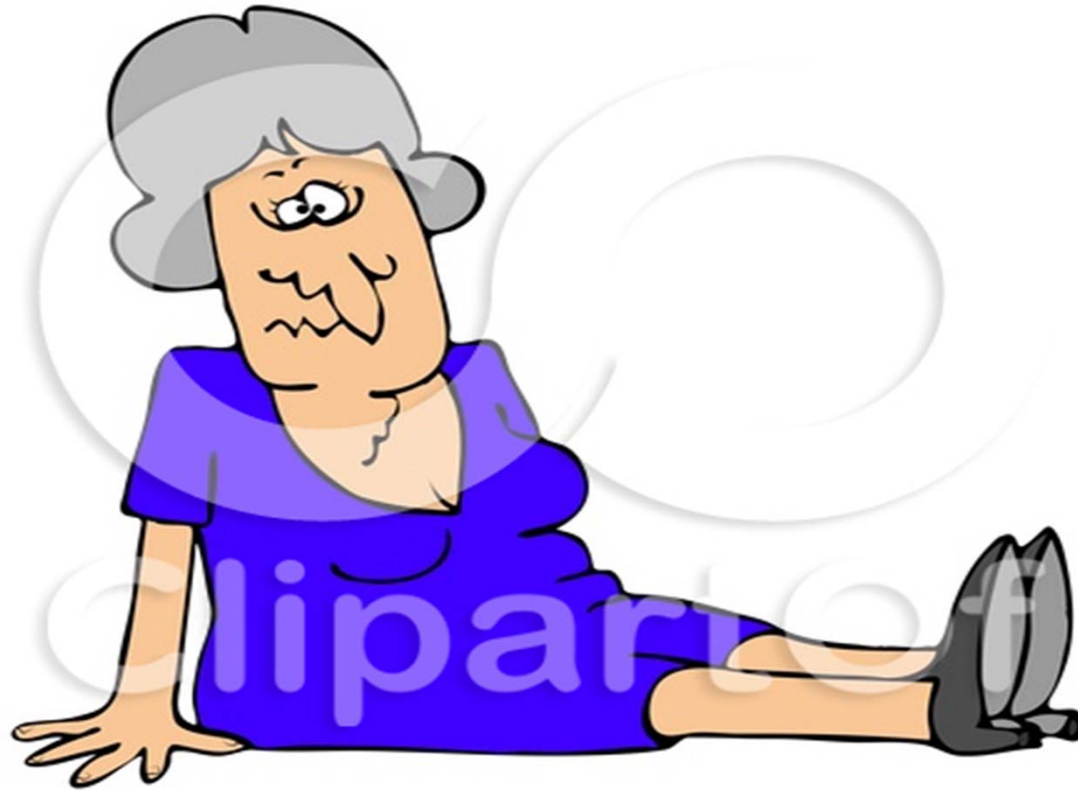
REPORTS (C)

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Case Scenario #1 – I've Fallen...



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Case Scenario Facts

- Elderly woman allegedly falls outside store;
- Claims she broke glasses, and only wants money to replace them; Asks for \$200 and says she was not injured; Store Manager gives her \$200, and reports to insurance company as a “precaution.”
- When contacted by insurance company, woman says that she does not intend to file claim;
- ISO report shows 7 prior slip & fall claims by same claimant;



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What would you/your company do?

- Close file?
- Investigate claim?
- Investigation performed?
- Report to SIU? Fraud Bureau? Other?



Case Scenario #2 Facts...

- 15 year old female claims she slipped and fell at wet poolside deck
- At Apartment Complex
- Injury: Face, Nose and Mouth and Wears Braces
- BI Claim against the insured building owner



Red Flags?

What additional investigation facts should be obtained to determine validity of this claim?



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Conclusions...

- Investigator's report shows that a garden hose was being stored at the path of travel
- Injury, scene and statement do not correspond
- COF showed deck was safe when wet
- Conclusion she tripped and fell while running



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Questions?



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SLIP | TRIP & FALLS: Fact or Friction?

Presented by

William King, Owner – Impact General

Richard Harer, VP – Specialized Investigations

John Madsen, Esq. – Lieberman, Quigley & Sheppard



Slip | Trip & Fall Statistics

According to OSHA and The National Safety Council:

- **Slip and falls account for over 300,000 disabling injuries per year in North America;**
- **It is the second leading cause of accidental death and disability after automobile accidents;**
- **Slip and falls result in Work Comp claims over \$1.8 Billion a year or about 40% of all accidents claims paid out;**
- **Slip and falls account for 40% of general liability claims**



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Slip | Trip & Fall Red Flags

- No witnesses to the accident;
- Accident results in subjective soft tissue injuries only;
- Claimant wants to settle claim quickly and for less money;
- Claimant was in area inconsistent with their general travels



Slip | Trip & Fall Red Flags

- Claimant has a history of prior slip/trip and fall accidents;
- Claimant immediately brings up the subject of "liability" or "insurance."
- Claimant goes by a common (gypsy) name (e.g. Marks, Adams, Smith, etc.)
- Claimant is represented by an attorney before even reporting the incident;



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"I don't do 'slip and fall,' but if you're ever
in need of a good tax attorney..."



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Slip | Trip & Fall Red Flags

- **Claimant alleges unsubstantiated damages to an item of unusual value as a result of the fall, such as expensive jewelry, camera, or personal electronic equipment (stereo, computer);**
- **Claimant refuses or is unable to provide reasonable documentation of lost time from work, rate of pay, or other damages related to the accident.**



Slip | Trip & Fall Red Flags - Work Comp

- **Claim involves a recently terminated or disgruntled employee;**
- **Claimant does not return to work the next day after a minor injury or no objective injury;**
- **Accident allegedly occurred on a Monday morning (after a weekend)**



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Investigation of Slip | Trip & Fall Claims

- **Take detailed statements of claimant to include logistics, biomechanics, and injuries;**
- **Interview property owner/business owner/employees/landlord/tenants, etc.;**
- **Interview paramedics, 1st responders, and/or other medical personnel;**
- **Canvass for witnesses and surveillance camera footage;**



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Investigation of Slip | Trip & Fall Claims

- Take detailed statements of witnesses, INCLUDING “no knowledge” witnesses;
- Obtain and/or take extensive photos and measurements (including lighting conditions, potential hazards, surroundings, etc.);
- Check on prior losses or notice;
- Conduct surveillance on the claimant



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Investigation of Slip | Trip & Fall Claims

- Obtain all medical history and records of claimant for prior injuries, questionable treatment, etc.;
- Conduct thorough background check
 - Financial
 - Claims History
 - Criminal | Civil
 - Medical History (medical canvass)



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Investigation of Slip | Trip & Fall Claims

- Request maintenance records (“sweep sheets, restroom logs, janitor records, contracts, etc.);
- Interview maintenance | janitorial workers, cleaning companies, others;
- Ask for the manuals on safety policies and procedures for the store;
- Retain services of forensic expert to evaluate legitimacy of accident

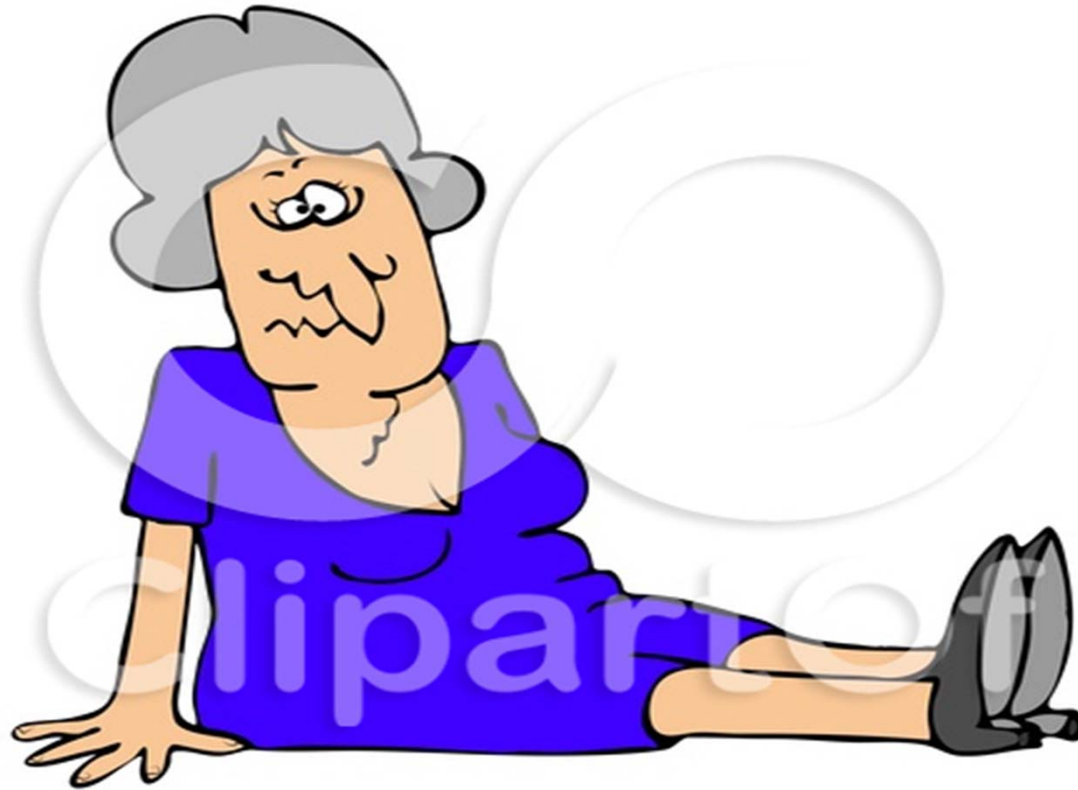


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What would you/your company do?

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- Investigation performed?
- Report to SIU? Fraud Bureau? Other?



Common “Red Flags” in Slip and Fall Cases

- No foreign substance on floor or clothing
- No witnesses
- Only witness is a friend/relative of claimant
- Conflicting info from bystander
- Plaintiff is not a regular patron of premises (or transient)



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Common “Red Flags” in Slip and Fall Cases

- Plaintiff is disgruntled or recently terminated employee
- Plaintiff is unrealistically hostile or talkative
- Blind-notice claims (especially with attorney)
- Early inquiry by plaintiff about premises insurance



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Common “Red Flags” in Slip and Fall Cases

- M.I.S.T. cases
- No objective injuries at ER
- Early Tx from a DC (w/o objective findings)
- No documents supporting damages/wage loss



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