



A SLIPPERY SLOPE

How Counsel and Experts Can Work Together to Detect Slip and Fall Claims Fraud

By Jonathan H. Colman and Angela DiDomenico

Questionable slip and fall claims aren't going away anytime soon. According to the National Safety Council, slip and fall incidents are the third leading cause of injury to customers and employees each year, costing American businesses a whopping \$70 billion annually in workers compensation and insurance claims.

In analyzing a slip and fall claim, either pre-litigation or at the onset of litigation, an investigation and

discovery plan is crucial. Depending upon the nature of the claim and potential injury exposure, counsel representing companies and insurers are tasked with the responsibility of directing investigations (to protect attorney-client privilege whenever possible) as well as discovery. In advance of the retention of an expert, it is important that fact-specific requests for admissions and contention interrogatories are used to force the claimant to narrow the facts of the loss as much as possible. Detailed deposition questioning—

including, most importantly, eliciting testimony about all of the movements of the claimant prior to, during, and following the alleged incident—will help not only counsel at trial, but also the designated expert.

Red-flag indicators specifically relating to questionable slip and fall claims include the following:

1. An unusually long distance between the location of the fall and the claimant's residence.
2. Attorney involvement may include linkage with medical clinics and prior slip and fall claims, attorney representation on the date of the loss or soon thereafter, and the first notice of loss being made by the attorney.
3. Inspection of the scene shows no defect in the surface that could have caused the slip and fall.
4. The reported body movements are contrary to the laws of physics based upon the reported facts.
5. Minor slip and fall procedures with highly questionable and exaggerated medical costs.

Retention of the appropriate investigators and experts is important to obtain detailed statements from the claimant, conduct interviews of property/business owners as well as employees, and canvas for witnesses and surveillance, medical history, background checks, and even sub rosa. Investigators also will request maintenance records (sweep sheets), interview potential maintenance witnesses, obtain necessary safety manuals, and arrange for a determination of whether the location of the incident complies with appropriate building codes, standards, and guidelines.

Analyzing an alleged slip and fall event entails ascertaining, if possible,



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the causative factors that accounted for the fall incident. In doing so, the scientific methodology of ruling in or out various scenarios is employed. The facts of the case, witness testimony, and physical evidence (or lack thereof) are correlated to the dynamics of the accident in conjunction with the fundamental laws and principles of physics, engineering, biomechanics, and human factors. The following case study illustrates how this methodology can be employed.

On Aug. 23, 2012, at approximately 7:10 p.m., Maria Gomez, a 71-year-old woman (5'1" and 133 pounds), was involved in a slip and fall event while walking into the lobby of an office building in Manhattan. Gomez alleges that she slipped on water that was on the floor.

STATEMENTS

Gomez testified that on a cold and dry day, she was walking from the front door of her office building to the bank of elevators on the first floor when she slipped and fell forward. According to Gomez, her head was the first part of her body to strike the ground. She testified that, after falling, she noticed that her

pants were wet below her right knee and that there was water on the floor. According to Gomez, she was wearing flat, leather-soled shoes and was not carrying anything at the time of the fall.

A security guard stationed nearby testified that he heard a noise and proceeded to the location of the fall. The guard testified that he did not observe anything on the floor in the area where Gomez was sitting. Based on the materials reviewed, the fall incident occurred in the afternoon. However, the lobby was cleaned in the morning, so the floors would have had time to dry prior to the fall.

Part of the investigation into this matter included conducting a site inspection and slip resistance testing of the subject floor surface to assess the potential for a slip event. The floor had a smooth, commercial-type surface that was level and without visual defects. Slip resistance testing was conducted at the approximate location of the subject fall incident.

ANALYSIS

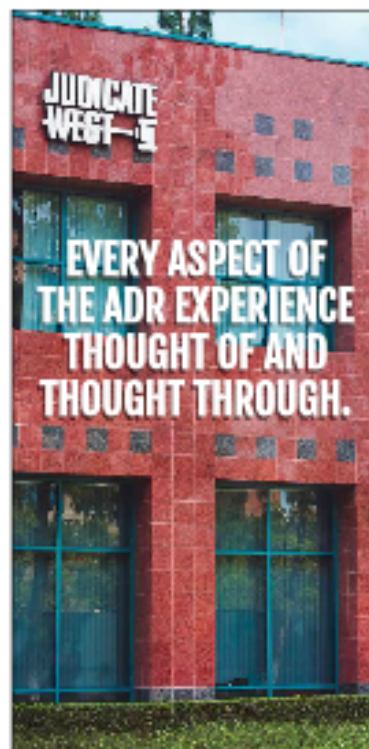
The typical slip and fall event occurs when the heel contacts the floor and the leading foot moves forward,

causing the body's center of mass to move in a rearward direction toward its boundary of stability. Thus, Gomez's description of the slip and fall kinematics are not consistent with the principles of biomechanics and do not describe a slip event.

Gomez's described fall kinematics are consistent with a trip and fall event. Normal ambulation entails that the foot entering swing phase be lifted off the ground and progressed forward as part of the human gait cycle. A tripping mechanism occurs when the foot, during swing phase, interacts with an obstacle or some structure of the surface that protrudes above the walking surface. The obstacle not only must have sufficient dimensional attributes to cause a perturbation during ambulation and be within the expected path of pedestrian traffic, but also must be inherently unexpected.

According to the available information and site inspection, there were no obstacles, structures protruding above the walking surface, or elevation changes in Gomez's walking path. In the absence of an extrinsic factor that caused her to trip and fall forward, it is possible that Gomez's subject fall event was precipitated by a "scuffing" mechanism. A scuffing mechanism occurs when the shoe sole interacts with the walking surface during the swing phase of a person's gait to the extent that it perturbs normal ambulation and compromises a person's dynamic equilibrium. The kinematic result is analogous to the classic trip event wherein an obstacle—the floor in the subject fall incident—impedes the foot's forward progress and the body's center of mass moves anterior (forward) of its base of support.

Based upon the available information, it was determined within a reasonable degree of scientific certainty that the mechanism of Maria Gomez's fall incident was not a slip event. Thereafter, upon the recommendation of counsel, the claim was denied. ■



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