

CLM LEADING OUT LOUD

RETAIL, RESTAURANT, & HOSPITALITY

SLIPS, TRIPS, AND FALLS ARE CERTAINLY NOT NEW HAZARDS FOR RETAIL, RESTAURANT, AND HOSPITALITY BUSINESSES, BUT THEY REMAIN A PERSISTENT SOURCE OF CLAIMS NONETHELESS. WHAT STEPS—BOTH NEW AND TRIED-AND-TRUE—CAN BUSINESSES TAKE TO PROTECT THEMSELVES? WHAT NEW TECHNIQUES ARE EXPERTS USING TO EVALUATE SLIP, TRIP, AND FALL CLAIMS? WHAT ARE SOME OF THE LATEST DEVELOPMENTS IN THE COURTS? BELOW, SEE WHAT SOME OF THE TOP EXPERTS HAVE TO SAY ABOUT THIS PERSISTENT RISK TO RRH BUSINESSES.

WITH SLIPS, TRIPS, AND FALLS CONTINUING TO BE A SIGNIFICANT SOURCE OF LOSSES FOR INSURERS AND A SIGNIFICANT RISK FOR BUSINESSES, WHAT ARE SOME ESSENTIAL RISK-MANAGEMENT STEPS BUSINESSES SHOULD BE TAKING THAT ARE OFTEN OVERLOOKED?

TAMARA COHEN, ARCCA: There are really two different areas to address for this question. For slips, there are a number of proactive steps that can be taken by businesses to reduce the risk. Making sure your flooring is slip resistant under wet conditions is a great first step. Getting your flooring materials tested using a reliable and validated slip resistance device, either prior to installation or after, can give you the peace of mind that your flooring will reduce the risk of slips and/or will let you know that additional remediation needs to occur. Having a well-planned inspection and maintenance protocol can also help to prevent slips by reducing the likelihood of contaminants on the floor. Finally, full-sized, heavy-duty mats that resist buckling, curling, and sliding and which patrons cannot avoid using, will help reduce water from being tracked onto floors.

Unfortunately, people are more and more distracted these days, and you also may have patrons with visual or walking impairments.

Mats are an important product for reducing water and dirt, but they can also be a potential trip hazard if not maintained properly.

For trip hazards, as just mentioned, any items such as mats that are placed in the walkway need to be kept in good physical condition and not allowed to bunch up or have rolled edges. In addition, the walkway surface needs to be kept level and clear of low hazards such as the “foot” of a sign that sticks out beyond the upper portions of the sign. A person might be reading the sign while walking by and not notice the foot sticking out into their walking path.

JOHN ALLIN, JOHN ALLIN CONSULTING: Documenting actions taken is the most important aspect of protecting oneself from slip-and-fall claims. That is the area where any defense case can be won or lost. Saying, “I’m sure we applied deicing material” is not nearly as good as saying, “We did apply deicing material several times and here is our

documentation showing that this was accomplished, what time it was done, who did the work, and here are the weather conditions at the time.”

The latter statement adds considerable credibility to the defense’s view of the situation. In restaurants and hospitality situations, cleaning bathrooms is usually documented, but checking the sidewalks and applying chemical deicing material is often given short shrift.

HAVE THERE BEEN ANY RECENT COURT DECISIONS THAT HAVE CHANGED THE LEGAL LANDSCAPE FOR SLIP-AND-FALL ACCIDENTS—EITHER BY ENCOURAGING OR DISCOURAGING MORE SUITS TO BE FILED?

JOHN ALLIN, JOHN ALLIN CONSULTING: There has been some case law made with regards to whether or not a “storm in progress” is a justifiable defense for the site owner, manager, or contractor. Again,

documenting efforts made can make or break a defense position here too. “We were there – we did the work” sounds good, but proving it by documenting those efforts is much, much better. Additionally, the standard of care is to document those efforts. No documentation is a violation of the snow industry standard of care and problematic for a solid defense.

TAMARA COHEN, ARCCA: The aspect of trivial defects and “open and obvious” has come up in recent court decisions. For a complaint to be dismissed on the basis that the alleged defect is trivial, it must be shown that the defect was physically insignificant and that the characteristics of the defect and surrounding conditions were not inherently dangerous. This means that the entirety of the incident, including the plaintiff’s behavior, the time, place, and circumstances of the injury, as well as the width, depth, elevation, irregularity and appearance of the defect, must be addressed.

ARE THERE ANY RELATIVELY RECENT PRODUCTS/ TECHNOLOGIES THAT ARE HELPING EXPERTS TO BETTER ANALYZE HOW A SLIP, TRIP, OR FALL INCIDENT OCCURRED?

TAMARA COHEN, ARCCA: While not new, surveillance and CCTV cameras have become more prevalent on commercial properties, and the quality and frame rates of those cameras have improved over the years. When

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available, these upgrades allow biomechanical experts to analyze the nuances of a captured incident.

Portable FARO scanners (3-D laser measuring devices) have also made it possible to document the scene in a digital format and create 3D computer models, which can be used for subsequent analysis, and to create animations and other graphics. This tool is specifically useful for preserving the scene in the event that it will be demolished.

JOHN ALLIN, JOHN ALLIN CONSULTING: Experts follow the documentation. Without it, one can only assume nothing was done. That’s a problem. All parties should document a pre-season site inspection

and instructions, the in-event work performed, any and all inspections of the site and post-event work performance. You cannot document too much of what is accomplished.

WHAT ARE SOME OF THE MOST CONVINCING FORMS OF EVIDENCE FORENSIC EXPERTS CAN BRING TO THE TABLE DURING A TRIAL? WHAT FINDINGS BY FORENSIC EXPERTS TEND TO BE MOST CONVINCING FOR JURIES?

JOHN ALLIN, JOHN ALLIN CONSULTING: Proving the responsible parties were following the applicable standards of care in the snow industry goes a very long way to convincing juries of whether or not what those responsible did was reasonable and prudent in terms of providing a safe environment for vehicular and pedestrian traffic; on any site be it retail, commercial, residential, or industrial.

TAMARA COHEN, ARCCA: Demonstrative aids, such as animations based on the evidence available, can help jurors visualize an incident when no video is available or allowed. Animations can take jurors to the scene of the incident without ever having to leave the courtroom. In addition, old-fashioned photographs, along with newer laser measurements and the resulting computer generated 3-D models of the actual location, enable the juror to understand the incident area and are still valuable. ■

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