

# Casino Slip and Fall Accidents

## How *Not* to Gamble With Safety

By David B. Willis



**A** trip to the casino can mean fun, excitement, and hopefully financial rewards. Yet with thousands of people visiting casinos each day across the country, even when every safety precaution is taken, accidents can happen in casino restaurants, hotels, nightclubs, and in the gambling areas.

According to a study conducted by the American Gaming Association, U.S. casinos had a \$240 billion economic impact in 2013. Unfortunately, with all of that money at stake, casinos are seen as a mecca to the plaintiff's bar. In fact, a number of attorneys have specifically targeted casinos in their advertising. Lawyers in New Jersey, Las Vegas and Florida's Gulf Coast have focused blogs and websites on advising clients regarding claims against casinos. "People just figure, well the casinos have a ton of money so they can afford to pay these claims," indicated one prominent Las Vegas attorney.

The types of casino incidents these plaintiff attorneys tend to seize on include food poisoning, shuttle bus accidents, broken slot machine chairs, burns, and assaults — but by far, the most commonplace (and most costly to the property owners) are slip and fall accidents. With tens of millions of people visiting casinos each year, a disproportionate share of the costs associated with slip and fall claims rests with casino operators and their insurers.

The most common causes of slip and falls are obvious, and it would seem because of this, easy fixes, but those don't always happen. We will take a closer look at the some of the most common causes for slip and fall accidents and steps that can be taken toward preventing them in the future.

### Common causes of slip and fall accidents (and how to help avoid them in the first place)

First, it's important to examine some of the most common causes (direct and indirect) of slip and fall accidents. Direct causes are such things as spilled liquids, food, cracked or broken tiles, mats, cracked or broken sidewalks, uneven steps, ice and snow, potholes, and physical obstacles. Indirect causes include inadequate or dim lighting, and missing handrails or guardrails, among other things. Some of the most common causes include:

**Wet Floors.** Food or beverages, rain, snow, and ice can be deposited on the floor or tracked into buildings. In reviewing housekeeping, maintenance, and cleaning policies, floors should be cleaned during non-peak hours and the premises inspected on a consistent and routine basis. Audits should be conducted, and performance tracked and maintained. Caution/warning signs need to be placed in close proximity to the actual spill or wet area. These signs should be sufficient in number and placed in a timely manner so as to provide proper warning.

**Ice and Snow.** A business is responsible for the sidewalks, parking lots and landscaping on their property. Walkways may include areas outside the sidewalks. In most cases, the law does not require a business owner to remove snow and ice off the property. However, if the weather causes an unusually heavy accumulation of snow on the roof, and that snow then melts

*Continued on next page*

## Casino Slip & Fall

*Continued from previous page*

and drips off onto the sidewalk and freezes on the ground, the business owner could be held responsible for an injury resulting from the ice created by the melting and refreezing.

**Misplaced Physical Objects.** Misplaced mats, furniture, door stops, moldings, fallen merchandise, power cords or wiring can all be the source of a slip and fall injury.

### **Congested Means of Ingress and Egress.**

Business owners must ensure adequate means for patrons to enter and exit the building or premises without severe congestion. Heavy amounts of congestion through obstructed areas could cause a business owner to become liable for injuries stemming from the congestion.

**Inadequate Lighting.** Dim or inadequate lighting can result in liability by hiding hazards such as steps, curbs, potholes or uneven pavement (and it can also invite criminals to assault or steal from patrons).

**And a Note about Sidewalks.** In some jurisdictions, the business owner is responsible for maintaining the sidewalk adjacent to its property. In other jurisdictions, the business owner and governmental entity share the responsibility for maintaining the sidewalk.

### **Preventative steps can help avoid slip and fall accidents**

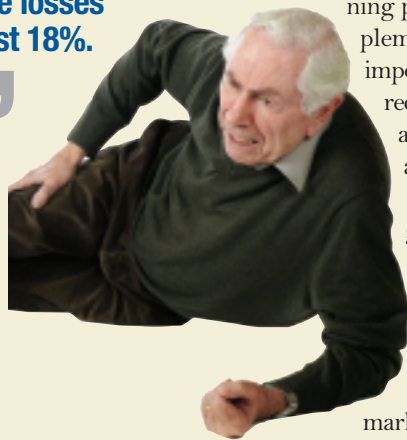
In addition to safety training, take time to survey a property – note potential hazards and take immediate action to eliminate these hazards. These steps include:

- Maintain floors, sidewalks, aisles, and walkways at regular intervals.
- Provide regular training for employees regarding safety measures and protocols with immediate reporting.
- Create safety protocols and instruct employees in slip and fall safety – create incident reports. Instruct employees on procedures for assisting customers who have fallen – emergency assistance police and rescue.
- Conduct regular maintenance of outdoor areas including sidewalks, play areas, and parking lots and, monitor and repair landscaping, potholes, and lane markings, and remove obstacles.
- Maintain records of maintenance including actions to remove and repair conditions. Make sure governmental inspections are all passed and maintain proof of passing scores.
- Conduct daily safety surveillance of mats, carpeting floors, lighting, litter, fallen merchandise, and uneven or buckled flooring.

“

**By creating a culture of safety, the impact of implementing these measures has resulted in a reduction in total losses of nearly 15% and a reduction in the revenue required to pay these losses of almost 18%.**

”



- Maintain proper liability insurance with periodic policy reviews.
- Improve safety through constant monitoring, setting benchmarks, and examining policies and procedures.

Beyond these day-to-day safety procedures and protocols, staff training, and monitoring/inspections to ensure the safety of the casino grounds, there are also some “big picture” planning principles that can be implemented. For example, it’s important to measure (and record) the slip resistance of all floor surfaces (both wet and dry) on the property.

A number of large gaming companies have started to address slip and fall concerns by conducting floor slip resistance testing, which establishes baseline benchmarks using a tribometer set to ASTM requirements in order to establish both dry and wet coefficients of friction for inside and outside walking surfaces. They then monitor the findings and conduct routine audits to ensure compliance with standards (and promptly take any corrective action as required). It is critically important to establish this baseline, in case of future claims.

Also, when considering the installation of new flooring, management should take the opportunity at the initial design and material selection stage to ensure that appropriate design and materials are used, with safety top-of-mind. With respect to existing floors, if the internal floor slip resistance testing demonstrates a below standard coefficient of friction, steps will need to be taken to replace or apply various treatments to bring the flooring up to standard. Implementing a science-based, measurable, benchmarked, and audited program can go a long way in limiting liability and capturing value for your organization.

One prominent east coast casino redesigned its main entryway and parking lot entrances and exits using many of these principles, which resulted in a significant reduction in slip and fall incidents and thus, the corresponding costs associated with these incidents. By creating a culture of safety, the impact of implementing these measures has resulted in a reduction in total losses of nearly 15% and a reduction in the revenue required to pay these losses of almost 18%.

### **What to do if a slip and fall accident occurs**

Unfortunately, even when all of the necessary safety precautions are in place, slip and fall accidents can still happen. Casino owners and operators should train staff (and periodically conduct drills on these slip and fall protocols) to make sure everyone is prepared and trained for what to do, as the likely

first responders to slip and fall incidents:

- Offer assistance – immediately call for medical attention, police, and other first-responders, as appropriate.
- Gather documentation – prepare a comprehensive incident report, including witness statements and contact information, and a statement from the injured party.
- Secure video surveillance footage and/or take photographs of the scene and the claimant (if they allow you).
- Report the incident to risk management, legal and the insurance carrier.
- Follow-up with claimants within 24 hours. Let them know of your concern, and find out if they sought medical attention. Also have a corporate representative contact them within a few days, and maintain records of all contact (and outcomes). If the area of the fall is defective, make sure building operations and risk management are aware of the hazard so that it can be repaired as soon as possible.
- Preserve evidence, i.e. a mat, floor tile, etc. DO NOT conceal evidence. It can result in additional damages from a separate cause of action for spoliation of evidence.
- Monitor for and keep record of social media postings by the claimant/plaintiff.

### Slip and falls may still happen, so what's next?

Even with the best of intentions, and with industry leading policies and procedures, proper vigilance and pro-active maintenance and repair, slip and fall accidents will still occur. For property owners in the casino or hospitality industries, it is crucial to develop world class legal protocols designed to limit liability and manage slip and falls when they do happen.

All strategies begin with an initial assessment or audit. Establishing benchmarks through measurement and then implementing constant monitoring followed up by auditing those results will create a culture of safety that will produce measureable cost savings. This culture of safety may involve creating custom models designed to address specific concerns or more broad applications to address systemic problems.

In the final analysis, creating a culture of safety will produce a significant reduction in litigation costs. Even though slip and falls may be a cost of doing business in a highly profitable and visible industry such as gaming, the safety of guests, staff and other visitors does not have to take a back seat to profit. ♣



*David Willis, a trial attorney with more than 25 years of litigation experience, focuses his national practice in the defense of corporations in the areas of complex tort, commercial, and employment law. He represents both public and private corporations in the areas of hospitality, specifically the food and beverage industry, franchise, health care, transportation, and environmental law.*

*David has extensive multi-jurisdictional trial experience and has tried to verdict over 50 cases in state and federal courts.*

## SWEDISH GAMBLING MONOPOLY

*Continued from page 29*

EU Law in each individual case.

In the *Rosengren* case, however, the CJEU did not confer to the Swedish Supreme Court, which requested a preliminary ruling, any independent latitude for action. The preliminary ruling left practically no discretion to the Swedish Court and effectively settled the case.

As was clear, the proportionality principle's significance has varied when it concerned the Swedish alcohol and pharmaceutical monopolies. The foundation upon which the monopolies were built has not been subjected to any proportionality test. The reason for this, as became apparent, was that no proportionality test had been done up to this point under the framework of article 31 EG. Only when measures fall outside the areas of application of this article, such as in the *Gourmet* (see above) and *Rosengren* cases, has the proportionality principle had any decisive significance.

The Swedish gaming regulation allows offering, participation and marketing of cross-border gaming services, and the Government owns and controls two of the major gaming providers and marketing investors on the Swedish market. From the point of view of the consumer, the market is flooded with easily accessible gaming products and marketing messages. The actual design and concrete functioning of the Swedish regulatory regime makes it impossible to claim that Swedish public policy aims to limit gambling in society. Moreover, very few restrictions exist for foreign private operators to offer and market gaming services to Swedish customers.<sup>2</sup>

Hence, the EU legal question in a nutshell is whether the remains of the Swedish gambling monopoly—the prohibition to promote participation in cross-border gaming services, seen as a restriction of the right to freely offer services cross-border in the EU—could be justified on grounds of public health or public order.

It seems fairly rational to conclude that if the Swedish relatively coherent and systematic alcohol monopoly does not survive a proportionality-test performed by both the CJEU and a national court of last instance, the incoherent and unsystematic Swedish gambling monopoly is not likely to survive. Compared to the alcohol monopoly, the gambling monopoly could be characterized as the horror cabinet of 'Madame Tussauds'.

The EU law challenges against the marketing prohibition have been numerous. The prohibition has continuously been justified with reference to public health concerns. This may seem puzzling since the social science is pretty clear regarding the lack of a causal link between the marketing prohibition and any positive health effects. The justification seems even more misguided with regards to the virtual flood of legal marketing channels available to Swedish customers. In this environment, it's scientifically impossible to discern any cause and effect relations. Needless to say, these factual circumstances are of fundamental importance for the EU law conformity of the Swedish gambling policy. If the Government can't prove that the policy in reality limits gambling and that the marketing prohibition has positive effects on public health, the policy constitutes an illegal restriction on the freedom to provide services granted by the EU Treaty.<sup>3</sup> ♣