

HOSPITALITYLAWYER.COM PRESENTS:

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FEBRUARY 10th - 12th, 2014

# RISK MANAGEMENT: BUILDING A DEFENSIBLE CLAIM WITH THE HELP OF YOUR EMPLOYEES

Bruno Katz, Wilson Elser

Jennifer Willis Arledge, Wilson Elser

# PRESENTERS



## **Bruno Katz- Partner**

- Litigation experience includes labor and employment, professional liability, corporate litigation and complex, multi-party litigation.
- Preferred counsel for the California Restaurant Association
- CAPT, U.S. Navy Reserves-Litigation Practice Group Leader



## **Jennifer Willis Arledge- Partner**

- Jennifer Willis Arledge practices in the areas of product liability and hospitality, representing some of the largest resorts on the Las Vegas Strip.
- Most of her cases are complex and include serious injury or death as well as substantial monetary damages.

Jennifer Willis Arledge, Esq.  
Bruno Katz, Esq.

February 10, 2014

# RISK MANAGEMENT:

*Building A Defensible Claim  
with the Help of Your Employees*

**HOSPITALITY**  
**LAW CONFERENCE.COM**

# OVERVIEW

What we will cover-

Employee Training

Investigation

Witness Interviews

Photographs

Preserving Video

Physical Evidence

Business Records

Post-Incident Follow-Up

# EMPLOYEE TRAINING

- Can prevent most problems
- At hire and re-train
- Explain why these things are important
- Advise they may have to give a deposition
- This will encourage better record-keeping

# WITNESS STATEMENTS

# INVESTIGATION - WITNESSES

## PROBLEM – INCOMPLETE AND UNTIMELY

- Obtain complete written statements from injured person, all witnesses, including employees, immediately.
- Contact information must be obtained and IDs should be checked to verify accuracy.
- Don't rely on hotel database.

# INVESTIGATION – WITNESSES

- If a piece of furniture broke causing injury—  
How was the patron using it before it broke?  
How were other patrons using it?  
Did any employee have knowledge of its condition?
- If a negligent security case—  
When did the fight start?  
What activities led up to the fight?  
Where were the patrons before the fight?



# INVESTIGATION - WITNESSES

- Case study

- Slip and fall on food spilled by a patron at buffet

- Witnesses saw hotel response differently

# INVESTIGATION - WITNESSES

SECURITY DEPARTMENT

DR # 10-26945

DATE 6/1/10

M T W T F S S

## GUEST/EMPLOYEE STATEMENT

NAME \_\_\_\_\_ ID # \_\_\_\_\_

ADDRESS \_\_\_\_\_

I witnessed a gentleman drop a dessert off at his plate and he kept walking past my table. I noticed the server that the food was on the floor & getting tracked around & suggested that she should get it cleaned up before it got to spread out and slipper. A couple minutes later that blonde woman was walking past & a slipper was the next she with feet came out from under her and she fell forward onto both knees & hit. Although I heard she fell with much force and appeared to have hurt her knees she started to get up and quickly the manager was called who then called security in for a medical attention. When the lift was there on scene she got her feet all over herself and got in the plate scattered a piece of the cookie plate but was in the lift for a while. She instead advised there was no way she was going to sign anything to delay the patient about the hospital.

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

Original Filename:  
twain.jpg

Date Attached:  
6/1/2010 8:59:45PM

Attached Size:  
133,798

# INVESTIGATION - WITNESSES

a Attachment

SECURITY DEPARTMENT

DR # 15-75 46

DATE 05/12/10

M T W T F S S

## GUEST/EMPLOYEE STATEMENT

NAME J ID # 107662

ADDRESS

The lady was carrying a plate of food and tripped and fell on one knee. She caught herself on the railing of the Olympic Hall. She said she was with the person - name of the person she had slipped & claimed she it was because of the person because the guy that slipped in stepped on it then kept walking. The clearest evidence the spot was put a chair over to the left of the spot. The person was removed shortly after the lady that the person stepped on so we expect expect the FBI. FBI kept saying the claim was suspicious. She didn't have any contact with the person since that was in the area. She was wearing pants in 7 credit her her name.

J 107662  
Signature of the witness

Original Filename:

Date Attached:

Attached Size:

# INVESTIGATION - WITNESSES

- Employees should not be allowed to leave property before completing statement.
- Employees statement should be well thought-out before reduced to writing.

# INVESTIGATION - WITNESSES

- Case study
  - Slip and fall in bathroom
  - Employee's statement is good...

# INVESTIGATION - WITNESSES

**FOR SECURITY USE ONLY**

SR #: [REDACTED] PAGE: 1 OF 1

TYPE OF INCIDENT: Slip and Fall

DATE REPORTED: 3/7/2010

TIME REPORTED: 0040

**EMPLOYEE VOLUNTARY STATEMENT**

NAME OF EMPLOYEE GIVING STATEMENT: [REDACTED]

EMPLOYEE I.D. #: [REDACTED] DAYS OFF/ON CALL: 1 hour of PTO

DEPARTMENT: EVS TITLE: Porter SUPERVISOR: Jessie

ICE EXT. #: [REDACTED] CONTACT PHONE #: [REDACTED]

DATE OF OCCURRENCE: 3-7-10 TIME OF OCCURRENCE: 12:30 (AM/PM)

LOCATION OF OCCURRENCE: South Elevator Restroom

**ALB:**

I walk to restroom to leave my stuff in Bathroom. I came out of closet to go to my station when a girl washing her hands told me someone coded out then put a wet floor sign. called my supervisor to come to her restroom as head code later I then called my supervisor went to the closet. Enter to close the bathroom. The lady walk out of the bathroom. Then then called my supervisor to call security. we had someone fall.

The information set forth within the above statement is a complete and accurate reflection of the information I have provided.  Continued

I, [REDACTED], am not authorized to tender a crime report to law enforcement authorities on my behalf. However, if I consider such a report to be warranted, I should contact the Las Vegas Metropolitan Police Department South Central Command located at 4000 Las Vegas Blvd. South, Las Vegas, Nevada or call the non-emergency phone number of the Las Vegas Metropolitan Police Department at: (702) 228-9111, or the South Central Command at: (702) 828-8222.

This statement consisting of 1 page(s) completed at [REDACTED] Restroom (location) on the 7 day of March 20 10 at 0040 am/pm.

JA 528

# INVESTIGATION - WITNESSES

- ...Patron's statement is better!

# INVESTIGATION - WITNESSES

**FOR SECURITY USE ONLY**

SR # [REDACTED]  
 PAGE: 1 OF 1  
 TYPE OF INCIDENT: Slip and Fall  
 DATE REPORTED: 3/7/2010  
 TIME REPORTED: 0040

**GUEST VOLUNTARY STATEMENT**

PERSON GIVING STATEMENT: [REDACTED]  
 ADDRESS: [REDACTED]  
 STATE: [REDACTED]  
 ZIP CODE: [REDACTED]  
 DATE OF BIRTH: 10-31-50  
 SOCIAL SECURITY NUMBER: [REDACTED]  
 HOME PHONE #: [REDACTED]  
 CELL PHONE #: [REDACTED]  
 HOTEL & ROOM #: [REDACTED]  
 ADDRESS: [REDACTED]

DATE OF OCCURRENCE: 3-7-10  
 TIME OF OCCURRENCE: ~ 12:30 AM

DESCRIPTION OF OCCURRENCE: I was coming out of bathroom stall

**DETAILS:**

and a young lady said be careful at the same time I slipped and fell on the floor. I slipped in toilet, that someone had just run into the restroom and vomited. The lady who worked in the restroom or worked for the Casino called for assistance. I felt pain in my right knee as I slipped and hit the floor. I seemed to hit my bottom and then my head. In 1986 I had the ACL done and my head. In 1986 I had ACL reconstruction and had a joint surgery. I did not see sign indicated wet floor.

The information set forth within the above statement is a complete and accurate reflection of the information I have provided to the Security Personnel regarding the incident. I have authorized the Security Personnel to use the information I have provided in any report, however, if I consider such a report to be inaccurate, I should contact the Las Vegas Metropolitan Police Department at 4800 Las Vegas Blvd, South, Las Vegas, Nevada or call the Central Command at (702) 830-8272.

This statement consisting of 1 page(s) completed at Security Auditor [REDACTED] on the 7 day of MARCH 2010 at 0040 hours.

SECURITY SIGNATURE & TITLE: [REDACTED]



# INVESTIGATION - WITNESSES

- Case study
  - Amusement ride malfunctioned
  - Employees were not well educated or well-trained in writing witness statements

# INVESTIGATION - WITNESSES

WITNESS STATEMENT

IDR # \_\_\_\_\_ DATE OCCURRED: May 24, 2008 TIME OCCURRED: do not remember

LOCATION: Guest Accident

REPORT BY: \_\_\_\_\_ OCCURRENCE LOCATION: \_\_\_\_\_

NAME: \_\_\_\_\_ PHONE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

DATE: 5/24/08 TIME: 8:40 CHARGE/CRIMINAL OFFENSE: \_\_\_\_\_ COUNTY: \_\_\_\_\_

Details: I started the ride then I saw the seat weren't moving and there was no socked. Then I show aboard the ride the light to show start was one then push it then the ride e stop it self then it showed fault. But at that it didn't even say that the ride was in fault that is why I started.

The information set forth on the above statement fully and accurately reflects the information I have provided to personnel regarding the incident I have reported. I understand that \_\_\_\_\_ is not authorized to tender a crime report to the Law Enforcement authorities on my behalf and that if I consider such a report to be warranted I should contact the Las Vegas Metropolitan Police Department at 400 Stewart Ave. Las Vegas, NV. Telephone number 229-3911.

This statement consisting of 1 page(s) was completed at (location) Las Vegas

on the day of May 24 at 8:40 (AM/PM) 2008

# INVESTIGATION - WITNESSES

DR #		DATE OCCURRED:	TIME OCCURRED:
OCCURRENCE:		5/24/08	7:30
NAME LAST:	FIRST:	MIDDLE:	INITIALS:
S.M. EX			
ADDRESS:	CITY:	STATE:	ZIP:
HOME PHONE:		WORK PHONE:	
		BUSINESS RELATIONSHIP TO COMPANY:	
		APRIL WORK 7:30	
SEX:	HAIR:	HEIGHT:	WEIGHT:
M	B	5'10"	170
OCULARS:	CONTACTS:	SCAR:	MARKS:
EMPLOYEE:			
Central			
<p>Details: The reason how it stopped was because when Maria loaded the guest onto the ride everybody put on their seat belt then when Maria went to go push the start button then all of the sudden the platform was moving to the position then all of the sudden the platform came crashing down so she pushed the show abort then she pushed the e-stop</p>			
<p>The information set forth on the above statement fully and accurately reflects the information I have provided to the Law Enforcement authorities on my behalf and that I will cooperate with such report to be submitted. I should contact the Las Vegas Metropolitan Police Department at 400 Stewart Ave., Las Vegas, NV, Telephone number 228-3811</p>			

# EMPLOYEE STATEMENTS

Employee statements may be binding on the company

- "McDonald" example

- Security officer said "These cords should not be hanging down like this. They should be tucked into this holder."
- Argued not within officer's knowledge how the cords should be placed.
- Argued security officer not someone who could bind the company
- Court disagreed and allowed plaintiffs to testify as to what the officer said.

# TRAINING IS KEY

- Even a well-trained employee is no guarantee against a lawsuit
- Training is the first line of defense to mistakes in an investigation

# PHOTOGRAPHS

# PHOTOGRAPHS

- Have a written policy.
- Use company camera rather than personal cell phone.
- Set up the camera to record the date and time.

# PHOTOGRAPHS

- Capture scene perspective by taking wide angle and close ups.
- Photograph several angles of the same thing; you can't have too many photos.
- View the photos after taken for clarity and content.



# INVESTIGATION – THE SCENE

## PHOTOS

- Verify location of incident with witnesses.
- Photograph injured person, if he/she consents.
- Document nearby signage, if relevant.
- In falls, photograph shoes, including bottom.

# PHOTOGRAPHS

- Examples -
- Wet spill in the restroom

# PHOTOGRAPHS



# PHOTOGRAPHS



# PHOTOGRAPHS

- Examples -
- Food spill in buffet

# PHOTOGRAPHS



# PHOTOGRAPHS

- Photos did not help identify location of fall.

# PHOTOGRAPHS

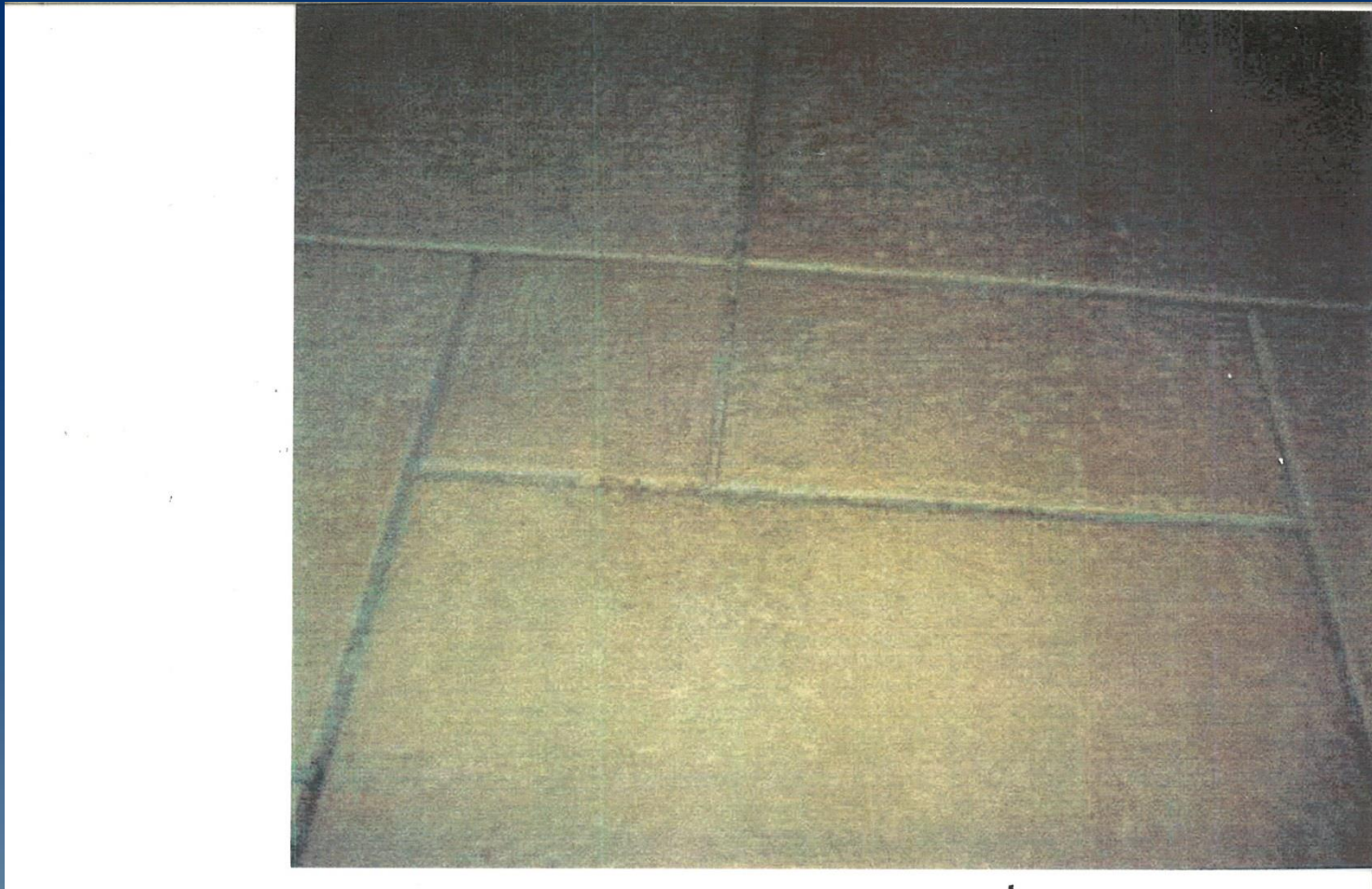




# PHOTOGRAPHS

- Photos intended to depict flooring were not helpful

# PHOTOGRAPHS



# PHOTOGRAPHS



# PHOTOGRAPHS

- Case Study
- Slip and fall in an arcade outside the laser tag area
- The following are all of the photos taken by the investigating security officer

# PHOTOGRAPHS

## Media Attachment

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**Original Filename:**

[report 002.jpg](#)

**Date Attached:**

9/12/2009 7:50:43PM

**Attached By:**

**Type:**

JPG

**Size:**

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[report 003.jpg](#)

**Date Attached:**

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**Attached By:**

**Type:**

JPG

**Size:**

[74,625](#)



Printed: September 14, 2011 16:48

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# PHOTOGRAPHS

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Date Attached:  
9/12/2009 7:51:11PM

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Type:  
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# PHOTOGRAPHS

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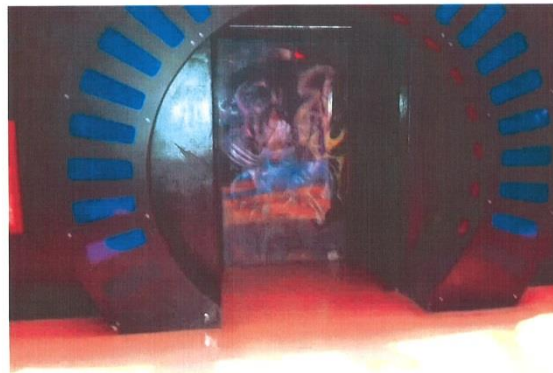
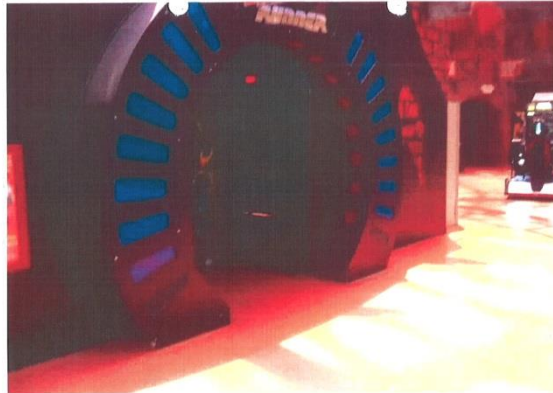
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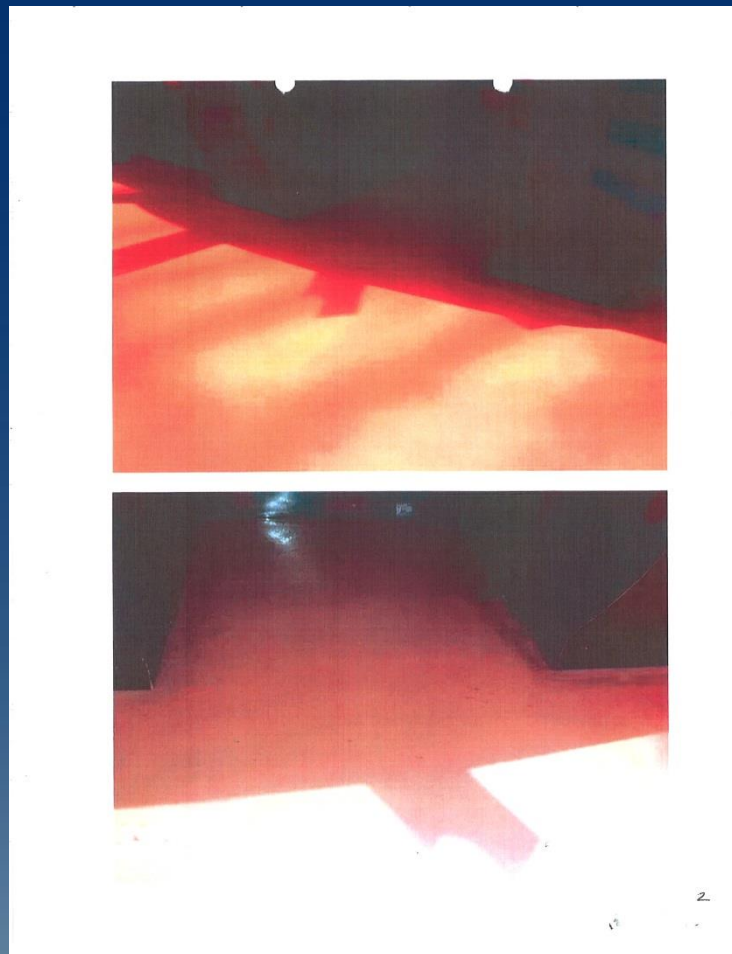
# PHOTOGRAPHS



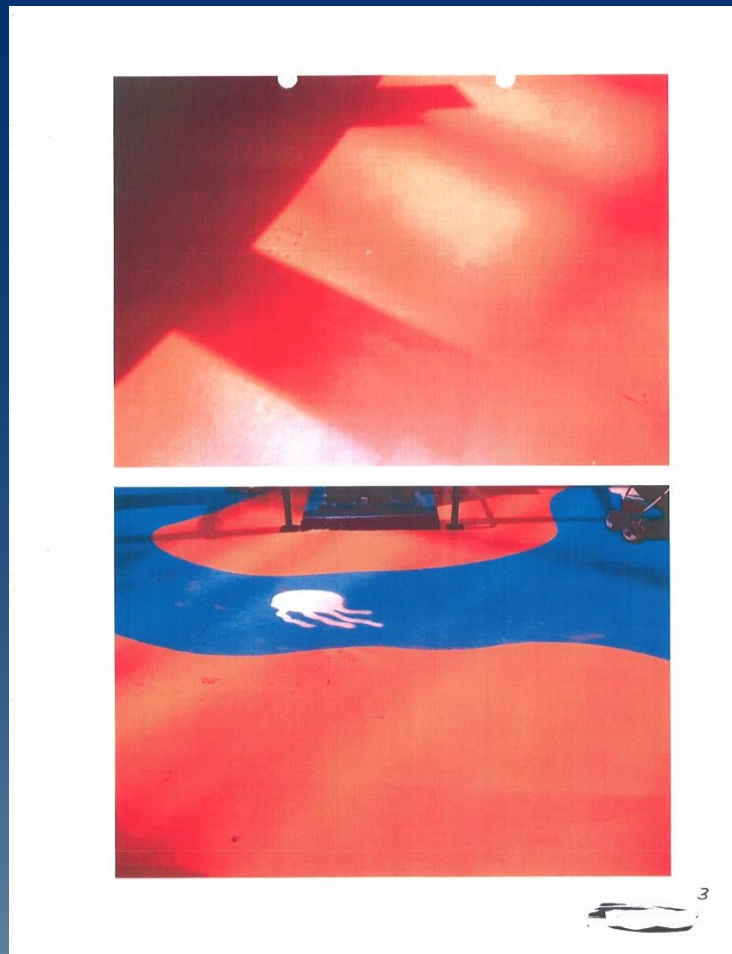
PHOTOS TAKEN : 5-24-10 AT 12:30 PM BY SJO



# PHOTOGRAPHS



# PHOTOGRAPHS

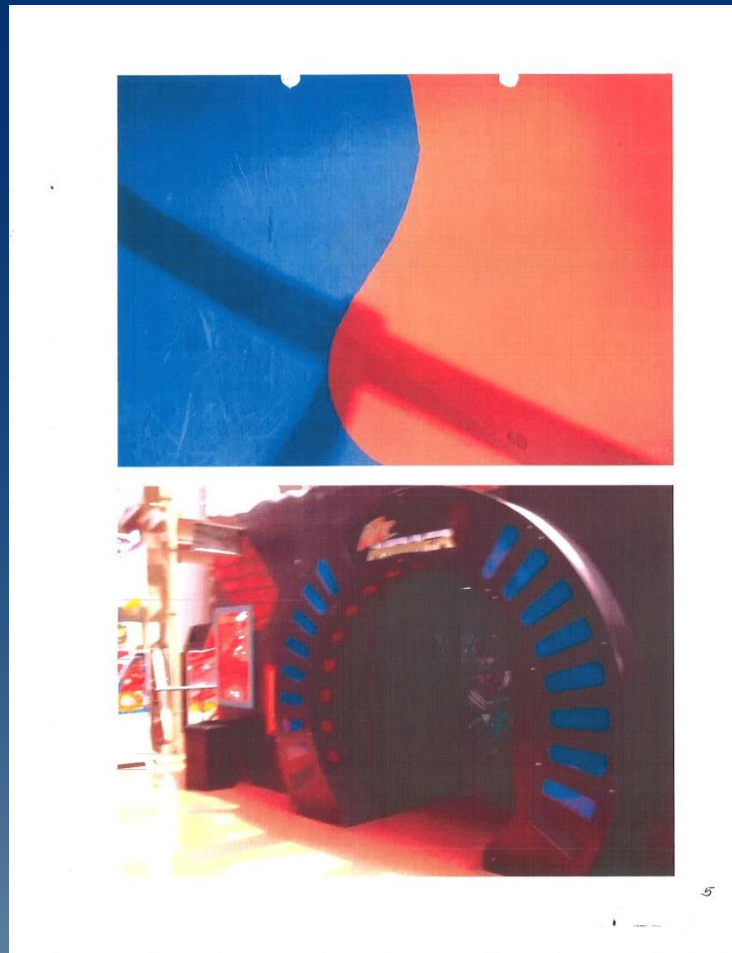


# PHOTOGRAPHS

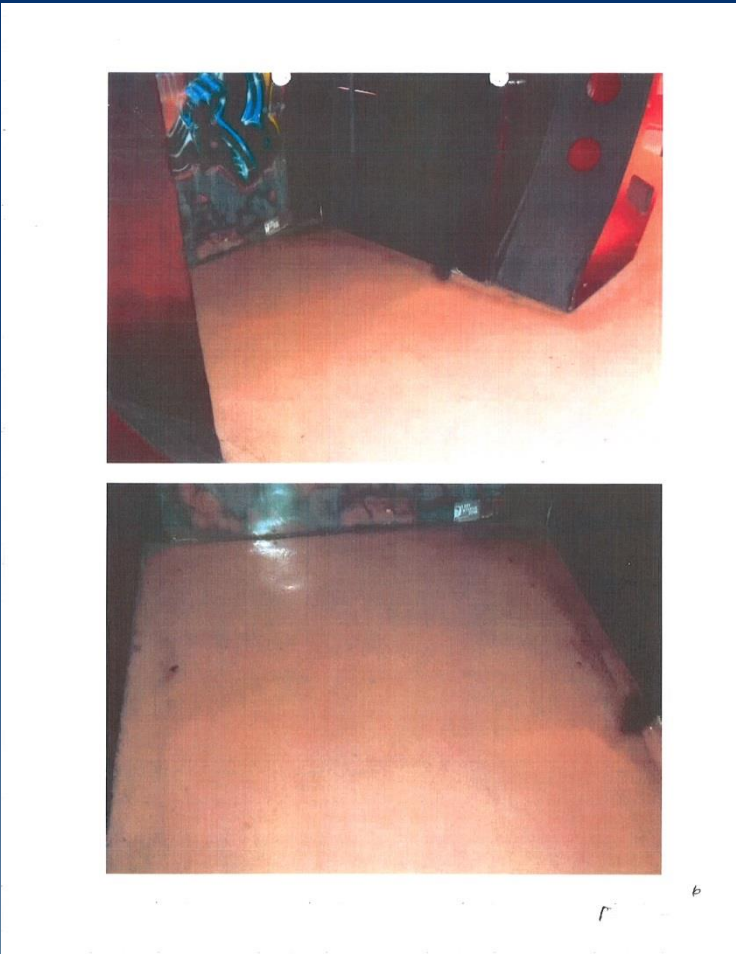


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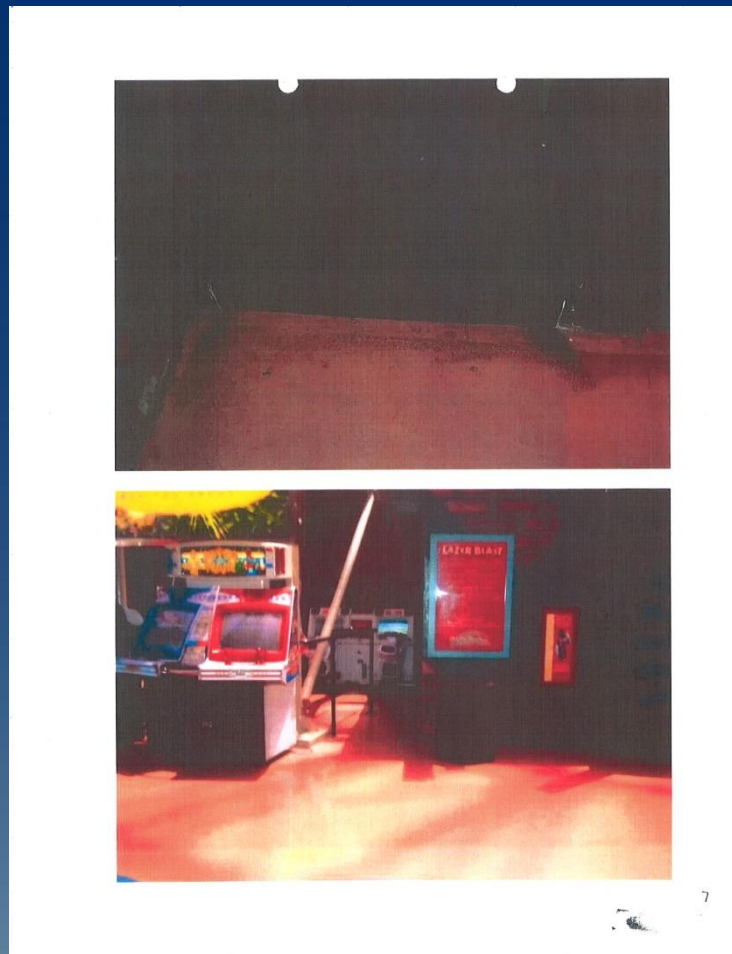
# PHOTOGRAPHS



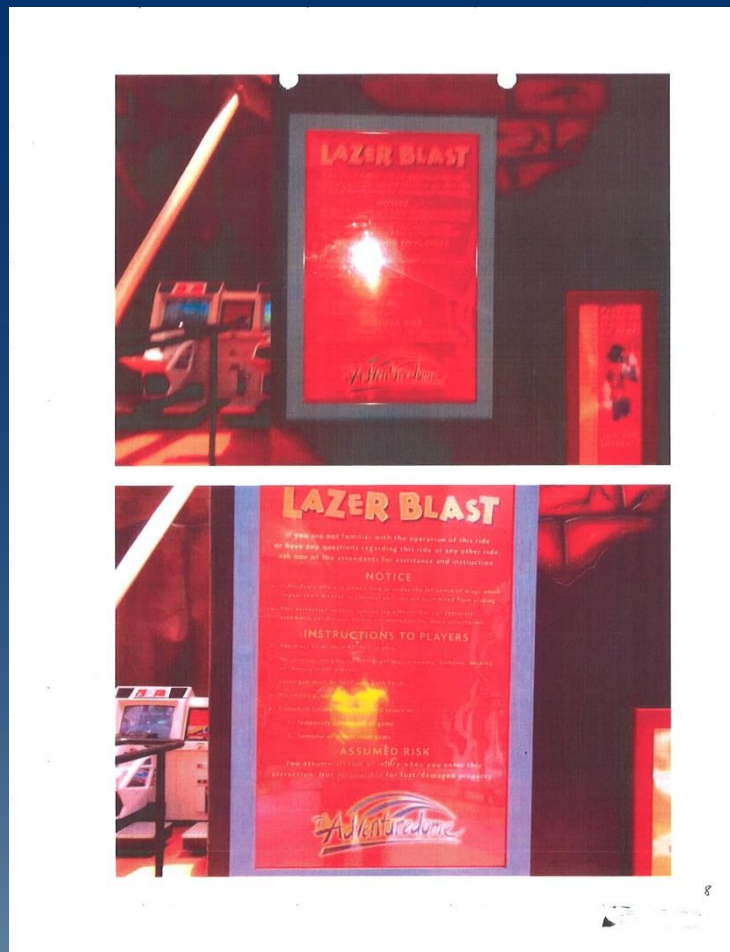
# PHOTOGRAPHS



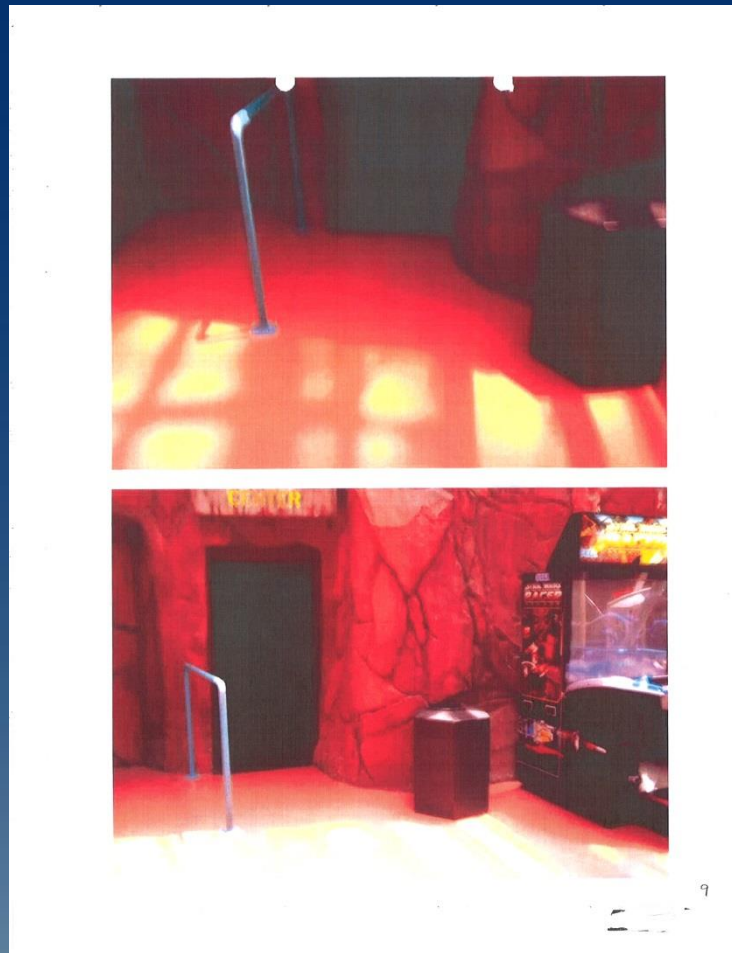
# PHOTOGRAPHS



# PHOTOGRAPHS



# PHOTOGRAPHS





# PHOTOGRAPHS



# PHOTOGRAPHS

- The photos were all taken of the entrance to laser tag.
- The patron fell near the exit.
- Another employee witnessed the fall but the security officer never interviewed the employee.

# PRESERVING VIDEO

# VIDEO

## VIDEO

- Have a written policy.
- Check for all cameras that might have captured the incident and preserve footage.
- Save as much video as possible, entire “tape” would be best.
- If digital, what time frame of video makes sense?

# VIDEO

## VIDEO

- What other video should be saved?
- Confirm the preserved video contains the footage desired.
- If a slip and fall-
  - When did the spill happen?
  - When was the last cleaning person in the area?
  - Did a cleaning person clean up the spill afterwards?

# VIDEO

- Potential problems with video
- Preserving the wrong video
- Not preserving enough
- Preserving video of employees behaving badly

# PHYSICAL EVIDENCE

# PHYSICAL EVIDENCE

Physical Evidence means evidence you can touch such as a broken chair, piece of glass, a foreign object in food.

Physical evidence should be preserved and clearly marked with:

- name of injured person
- date of incident
- incident report number.



# PHYSICAL EVIDENCE

- Real estate can also be physical evidence
- Steps, conditions, amusement rides and real property need to be documented and preserved to the extent possible

# SPOILIATION OF EVIDENCE

- Spoliation of evidence motion
- Adverse jury instruction
- Answer stricken

# BUSINESS RECORDS

# BUSINESS RECORDS

- Customer documents

Guest registrations, credit card receipts, room portfolios, lock interrogations.

- Business records

Employee work schedules

Cleaning sweep sheets

Bar tabs

- Obtain and preserve even if computerized

# BUSINESS RECORDS

- Company policies and procedures
  - Policy manuals
  - Employee handbooks
- Should be page numbered and have a revised date on every page

# POST-INCIDENT FOLLOW UP

# POST-INCIDENT FOLLOW UP

- Prompt and courteous follow up by risk management (manager/supervisor)
- Take care not to admit liability (may be an admission of the company)
- Sometimes a free stay or meal is enough to resolve a problem. (Replace the burnt shirt.)
- Obtain release if compromise is reached

# CONCLUSION

- With good training and vested employees who understand the process, you can improve your claims handling procedures.
- Mindful follow up by risk managers further reduces the number of claims that will ultimately progress into litigation.



# Questions?

# Contact

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