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FROM THE DESK OF: JAMES W. PUZEY, ESQ.
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Re: My Client: Omar Rosales
Date of Incident: September 2, 2015

Dear Doug and Tom:

As you know, I represent Mr. Rosales with regard to injuries he suffered during the Rib Cook-off on September 2, 2015. You have previously been provided with a comprehensive damage package, but for ease of settlement discussions, I enclose a CD containing both that damage package, as well as documents provided by the City of Sparks and the Nugget.

As set forth in the damage packet, Mr. Rosales was seriously and permanently injured when he stepped on a concrete utility box access lid, which crumbled, causing him to fall into the utility box/vault. As a direct result of the fall, Mr. Rosales suffered injuries to his lower back. His conservative treatment consisted primarily of steroid injections, which provided him relief from a majority of his pain symptoms. However, should Mr. Rosales' pain symptoms return significantly or worsen, it will be necessary for him to undergo future injections and/or consider the possibility of surgical intervention. Mr. Rosales incurred \$116,641.81 in medical expenses directly related to treatment of his injuries, and his medical expenses will likely continue into the future.

Mr. Rosales also incurred significant wage losses and out-of-pocket expenses during his medical treatment and recovery. Mr. Rosales and his family own a small restaurant. His absence during his treatment and recovery required the business to hire additional employees. The cost of those additional employees alone was approximately \$14,400.00. Mr. Rosales was unable to pay rent during his six-month recovery period, and incurred \$7,200.00 in past due rents. Finally, Mr. Rosales, paid \$2,026.52 in out-of-pocket expenses for co-payments.

Restatement of Torts (Third) §51(i), states, in part:

- i. Duty of reasonable care.* The duty of reasonable care includes reasonable care to discover dangerous conditions on the land and to eliminate or ameliorate them. The duty provided in this Section is the same as the one in § 7 (Duty) and invokes the same considerations as those provided in § 3 (Negligence) for breach of that duty. The primary factors to consider in determining whether reasonable care has been exercised are the foreseeable likelihood of harm, the

foreseeable severity of any potential harm, and the burden required of the land possessor to eliminate or reduce the risk.

...

Whether a land possessor must inspect the premises also depends on the circumstances that exist, the duty with regard to acquiring knowledge about dangers on one's property is one of reasonable care. If there is no reason to believe that there are significant risks on property, reasonable care does not require the burden of an inspection that is unlikely to reveal unknown risks. Similarly, if the land is extensive, the burden of an inspection is likely considerable, specifically if the land is unimproved. Residential land possessors often do not inspect their land for dangers that may be posed to them and their families, and that custom is relevant to whether reasonable care was exercised. See § 13. **On the other hand, in a commercial setting, such as a self-service market, dangerous conditions may crop up regularly and pose a significant risk to entrants, such that reasonable care demands periodic inspections by the proprietor.**

(Emphasis added.)

Mr. Rosales was an invitee at an event that attracts thousands of visitors. The sheer volume of expected attendees in this commercial setting dictates the prudence and reasonableness of careful and periodic inspection by the hosts to ensure the safety of those attendees. Inspections and detection of hazards would seem critically important to have been conducted in those areas where attendees were expected to be present in large numbers, such as the area where Mr. Rosales was walking on the day of the incident.

Further, the City of Sparks' Special Event Operations Manual requires that "Event organizers are required to provide a safe and secure environment for the event. This is accomplished through sound preplanning by anticipating potential problems and concerns related to the event activities and surrounding environment. The size, type, time of day and location of the event as well as the overall activities are all areas that need to be analyzed in depth and addressed through the security plan." [COS0043-44] Clearly, neither the City of Sparks nor the Nugget provided "a safe and secure environment" and as a result, Mr. Rosales was seriously and permanently injured.

In an effort to avoid litigation time and expense, I have been given authority by Mr. Rosales to settle this matter for your policy limits. Please let me know your thoughts within ten (10) business days of the date of this letter. I look forward to hearing from you.

Very truly yours,

**HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON**


James W. Puzey, Esq.

JWP:clm

Encl. as noted