

“OUCH”— The Word No Business Owner Wants to Hear

To recover against a defendant for negligence, a plaintiff must establish three elements: (1) that the defendant owed a duty to the plaintiff to conform its conduct to a certain standard of care (2) that the defendant breached that duty and (3) that an injury resulted from that breach. One of the most often litigated parts of this formula is the existence of a duty. However, in the case of a business owner defendant and a customer plaintiff, the breadth of the duty owed is fairly well defined by Indiana law.

Under the concept of premises liability, a landowner or possessor of land must exercise reasonable care for the protection of its “invitees.” Insofar as businesses are concerned, “invitees” can be public invitees, those persons invited to enter or remain on land as a member of the public for which the land is held upon to the public, or business invitees, those persons who are invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.

A possessor of land owes the duty to exercise ordinary and reasonable care to protect its invitees from injury caused by conditions on the land or third persons on the land. The duty only binds the possessor to prevent acts by third persons that are reasonably foreseeable to occur. A possessor of land is not liable to his invitees for physical harm caused to them by an activity or condition on the land whose danger is known or obvious to the invitees, unless the possessor should anticipate a harm despite the condition’s obviousness.

In the case of Dennis v. Greyhound Lines, Inc., 831 N.E.2d 171 (Ind. Ct. App. 2005), the plaintiff was a traveler on a Greyhound bus headed from Illinois to Kokomo. While using the restroom in a Greyhound station in Indianapolis, the plaintiff was attacked by an unknown assailant. He sued Greyhound claiming that it had breached a duty to him to protect him from third persons. The court first found that Greyhound owed the plaintiff a duty to exercise reasonable care to protect him from injury by third persons. The court found that a jury would need to decide whether the attack was foreseeable and therefore whether Greyhound had breached its duty of care to the plaintiff, because Greyhound could not establish as a matter of law that its security guard was alert but still unable, under the circumstances, have predicted or discovered the attack.

In Golba v. Kohl’s Department Store, Inc., 585 N.E.2d 14 (Ind. Ct. App. 1992), the plaintiff was shopping at a department store when she stepped on a rounded object, which in combination with the high gloss finish on the floor caused her to fall. The court noted that the modern technique of self-service in such stores makes it more likely that items and substances will fall to the floor, and that the owner of such a store is aware of this problem. Items dropped to the floor by other customers are no less dangerous than those dropped by a store employee, and therefore if a store has chosen to allow for self service to store items the law requires that he take reasonable care to protect customers from the actions of other

customers. The court found that ultimately a jury would need to decide whether or not the store had met that duty by sweeping and observing its floors once a day.

So where does Indiana law leave the business owner? If you are aware, or by the exercise of reasonable care should be aware, of a dangerous condition on your property, and you should realize both that it involves an unreasonable risk to your customers and that the customers will not necessarily discover or realize the danger, you may be held liable if you do not act to protect them against the danger.

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