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Christian's practice areas consist of appellate advocacy, retail and hospitality liability defense, and state healthcare regulatory issues.

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Hospitality Liability Report: Supreme Court Rules on Municipality Liability for Sidewalk Trips and Falls

Many of our retail and hospitality clients' premises are adjacent to public sidewalks. On occasion, we will defend claims arising from alleged trips and falls on these sidewalks. Because of their proximity to the alleged falls, our clients will be named as co-defendants. We have achieved favorable outcomes in these cases by asserting, among other things, that liability for these falls resides with the public authority that owns and maintains the sidewalk, rather than our retail/hospitality client.

On September 25, the Supreme Court issued *Vaughan v. Town of Lyman*, a case involving an alleged trip and fall on a municipal side-

walk. While the Court held Vaughan possessed a colorable theory of liability against Lyman, the Court determined her claim was common law based rather than statutory. Because of our history of defending these claims, we take notice of this holding.

Judy Vaughan tripped on a sidewalk on Lawrence Street in Lyman, South Carolina. The sidewalk had become broken over time by overgrown tree roots. Vaughan injured her hands, right knee, back, and spine. Vaughan filed suit against the Town of Lyman. In response, Lyman argued that it was not responsible for Vaughan's injuries because it did not own, control, or maintain the

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sidewalk where the injury occurred. Lyman moved for summary judgment, which was granted. On appeal, the Supreme Court reversed in part and affirmed in part.

Vaughan argued the trial court erred in finding that S.C. Code Ann. § 5-27-120 did not create a duty for Lyman to keep the sidewalks within the town in good repair. This statute states a city of over one thousand people shall keep all the streets, ways and bridges within its limits “in good repair.” The Supreme Court disagreed.

Although a statute may impose a duty to act upon a public official, the official may also be immune from a private right of action under the public duty rule. This rule holds that public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually.

The public duty rule’s general principle of non-liability, however, is not absolute. Under the well established “special duty” exception, a public official may be held liable to an individual for the breach of a statutory duty when:

(1) an essential purpose of the statute is to

protect against a particular kind of harm;

(2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm;

(3) the class of persons the statute intends to protect is identifiable before the fact;

(4) the plaintiff is a person within the protected class;

(5) the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty; and

(6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

The Court held § 5-27-120 does not meet the requirements of a “special duty.” It found the statute does not have an identifiable class of persons intended to be protected by the statute beyond the classification of the general public. In its opinion, the intention of the statute to protect the general public is insufficient to amount to an “identifiable class” as required to find a “special duty.” Therefore, the Court held that while § 5-27-120 clearly defines the duty to

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the general public of a municipality to maintain its streets, the public duty rule precludes a private right of action based solely on this statute.

Vaughan additionally argued the trial court erred in finding that no common law duty existed for Lyman to maintain the sidewalk. On this point, the Supreme Court agreed with Vaughan.

Generally, the common law does not impose any duty to act. However, the general rule is that municipalities that have full and complete control over the streets and highways are liable in damages for injuries sustained in consequence of their failure to use reasonable care to keep them in a reasonably safe condition for public travel.

The trial court held that Lyman did not own, maintain, or control the sidewalk where the incident occurred. This holding was made in the face of evidence propounded by Vaughan, which demonstrated Lyman had historically assumed general maintenance of the streets and sidewalks within the town's limits. Based on this evidence, the Supreme Court found the trial court erred in granting summary judgment to Lyman

regarding Lyman's common law duty to maintain the sidewalk on Lawrence Street.

Vaughan further argued the trial court erred in finding that Lyman did not owe a duty to Vaughan based on Lyman's voluntary undertaking of the repair and maintenance of both Lawrence Street and other streets within the town. The Court agreed. While there is generally no duty to act under the common law, a duty to use due care may arise where an act is voluntarily undertaken. In the instant case, there was a genuine issue of fact regarding whether Lyman undertook the duty of maintaining city streets, even though all city streets were not owned by Lyman. As a result, the Supreme Court ruled the trial court erred in granting Lyman summary judgment on the issue of whether Lyman voluntarily undertook the maintenance and control of the town's streets and sidewalks, including Lawrence Street.

Lyman contended that even if Lyman has a duty to maintain its streets, ways, and bridges in a safe condition, Lyman nonetheless has immunity under the South Carolina Tort Claims Act. The



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Court held that because there was no evidence to demonstrate the alleged defect was caused by a third party and because the town had notice of the condition for ten years, any exceptions to liability created by the Tort Claims Act were not operative in the instant case.

Notwithstanding the holding in this opinion, unless there is active negligence by an adjacent premises owner, it remains doubtful that an owner should be held liable for injuries sustained by a third party from a municipal sidewalk trip and fall. However, with the elimination of violation of § 5-27-120 as a theory of recovery, prosecution of sidewalk clam against the government becomes that much harder for claimants. Accordingly, it is conceivable that claimants will be that much more inspired to include adjacent premises owners as co-defendants in an effort to increase their chances of some recovery, even it means a nuisance value settlement from the premises owner.

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welcomes your questions or comments regarding issues of liability in the hospitality sector by either calling him at (803) 256-2660 or emailing him at cstegmaier@collinsandlacy.com. This material is intended to provide information on noteworthy legal issues and is not a substitute for legal advice.



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