Legal Tips

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Hospitality Liability Report: New Case Law Gives Teeth to the "Open & Obvious" Defense in Inclement Weather Slip and Fall Cases

Slip and fall incidents are the bane of the hospitality industry. Often, these incidents arise on days with inclement weather when floors at entrances can accumulate moisture due to patrons and employees tracking water in from the outdoors. Not surprisingly, claimants (and their lawyers) frequently take the position the establishments where the falls occurred are completely responsible for the subsequent alleged injuries and demand high dollar recovery. When making these demands, these claimants often close their eyes to the fact they knew it was inclement and that common sense and experience tells them precipitation sometimes gets tracked inside and may be in their pathway. In other words, these claimants ignore the fact water on the floor during a rainy day is an "open and obvious" condition, which they should have taken steps to appreciate and avoid.

Recently, the federal district court for the District of South Carolina issued a decision, which gives teeth to the "open and obvious" defense in inclement weather slip and fall claims. This opinion, *Hackworth v. United States*, 366 F.Supp.2d 326 (D.S.C. 2005), may prove to be of great assistance to hospitality establishments defending these type of claims.

In *Hackworth*, it had been raining in Charleston for several days and was raining as the plaintiff approached a

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convenience store at the Naval Weapons Station. As the plaintiff moved toward the door of the convenience store, she stopped to stomp her feet and shake the water off of herself before entering. The plaintiff contended that, on her first step inside the convenience store, as soon as she stepped off of a rubber mat, she slipped and fell.

The plaintiff sought recovery for alleged permanent injuries, physical and mental pain and suffering, limitations on her ability to earn a living, loss of enjoyment of life, and future medical costs. The United States government, the owner of the convenience store, moved for summary judgment, asserting it was not liable for the plaintiff's purported damages.

The federal district court granted the government's motion. The court bottomed and premised its order upon the finding that water at the entrance of a retail location during or near a time of inclement weather is an expected condition that is "open and obvious." The judge held recovery for injuries arising from an "open and obvious condition" is not permitted in South Carolina. Specifically, the court explicated:

> Even assuming that a puddle existed before Hackworth's fall, and that the Government had constructive notice of the puddle, under South Carolina law, the owner of property owes no duty to use reasonable care to take precautions against or to warn guests of open and obvious dangers. In such situations, the guests themselves have a duty to discover and avoid the danger. See *Neil v. Byrum*, 288 S.C. 472, 343 S.E.2d 615, 616 (S.C. 1986).
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> [G]iven Hackworth's knowledge of the rainy conditions, the close attention Hackworth says she was paying to the floor, and the fact that a three foot wide puddle could not be entirely obstructed by overhead lights, the Government had no duty to warn.

Id. at 330-31 (emphasis added).

The Hackworth Court determined rain water found at the entrance of the store is a known or "open and obvious" condition, which experience teaches a person to employ due care when approaching and negotiating the same. Our law holds injuries arising from the failure of a patron to recognize and negotiate a known or "open and obvious" danger when encountering it in a circumstance such as the one in the case at bar precludes

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recovery. *Id.; Neil v. Byrum*, 288 S.C. 472, 343 S.E.2d 615 (1986); *House v. European Health Spa*, 269 S.C. 644, 239 S.E.2d 653 (1977); see also *The Santa Barbara Canton Co. of Baltimore v. Brown*, 299 F. 147, 151 (4th Cir. 1924) ("Generally one who uses or enters on the property of another with full knowledge of [a] dangerous condition cannot recover for injuries to his person or property arising from the known danger."). Accordingly, the plaintiff's claim in Hackworth failed as a matter of law.

Hackworth arguably gives traction to the contention that a hotel or restaurant's liability is limited (or even eliminated) for slip and fall claims occurring at entrances on days with inclement weather. As a result, hospitality entities defending these claims may be able to assert tenable arguments supporting pretrial dismissal, directed verdict at trial, or nuisance value out-of-court settlements. However, hospitality establishments should not treat Hackworth as an absolute "get out of jail free" card. Our law still holds that landowners are responsible for keeping their premises in reasonably safe condition for their invitees and there are judges who may not be so inclined to hold a defendant harmless when the evidence shows there were no efforts undertaken to safely maintain the entrance area. With that said, hospitality establishments should still continue to establish and implement protocols for managing inclement weather situations, such as conducting periodic mopping, installing "wet floor" signs in plain view, placing industry-standard mats on the floor, and keeping a close eye out for dangerous conditions and rectifying the same once identified. Evidence of such efforts, in addition to the holding in *Hackworth*, would conceivably give an entity defending an inclement weather slip and fall claim that much more strength to its position in the litigation of such a matter.

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