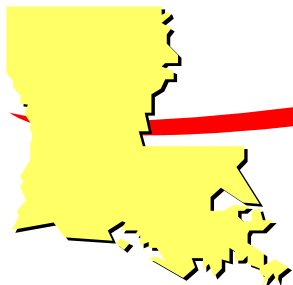


LOUISIANA PREMISES LIABILITY UPDATE

TAYLOR, WELLONS,
POLITZ & DUHE, APLC



NEW ORLEANS ♦ BATON ROUGE

MARCH 2007

INTRODUCTION

This newsletter, which is published quarterly, is designed to provide you with a brief synopsis of recent cases that analyze issues of interest to our clients with potential premises liability concerns. For your convenience, we have organized the cases based on the type of claim. If you need more information, please contact us.

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FALSE ARREST

Adams v. Harrah's Bossier City Investment Co., 948 So.2d 317, 41,468 (La. App. 2 Cir. 01/10/07)

The casino's employees believed video surveillance showed the plaintiff stealing chips from another customer's tray and notified the local police, who arrested the plaintiff after reviewing the videotape. The district attorney subsequently dismissed the charges, and plaintiff sued for false arrest, intentional infliction of emotional distress and negligence. The casino filed a motion for summary judgment, claiming it had no liability because the police conducted their own investigation prior to the arrest. The trial court denied the summary judgment, but the Second Circuit reversed. Citing Kennedy v. Sheriff of East Baton Rouge, the court found that Kennedy's rationale was not limited to a malicious prosecution claim, but to the plaintiff's claims as well. Plaintiff argued that Kennedy was distinguishable because the casino had its own security force, which was highly trained and tantamount to a private police force. The court disagreed, finding that the critical factor that precluded liability was the independent investigation by the police. The court noted that the allegedly missing chip was not found on the plaintiff, and the other customer did not notice anything missing. The court found that even if there was a possible error on the part of the casino, it did not rise to the level of a disputed issue of fact regarding good faith. The law had to encourage citizens to make good faith reports of allegedly wrongful acts by others without fear of civil liability, and the plaintiff could not establish causation between the casino's actions and the arrest.

SLIP AND FALL - INSIDE

Boeshans v. Petsmart, Inc., 951 So.2d 414, 06-0606 (La. App. 5 Cir. 01/16/07)

Plaintiff took her dog to the defendant's store to be groomed on a rainy day. She testified in her deposition that the dog bolted from the car and ran to the door before she could get his leash on, but she did not run after him, and she slipped and fell just inside the door, breaking her arm. Plaintiff admitted that she saw no liquid on the floor, but assumed there had to be liquid present to cause her fall. The store manager witnessed the accident and testified that plaintiff entered the store being forcefully pulled by her dog, and as soon as she came through the front door, she was tripped by the dog. He acknowledged that the store had no specific policy procedures for rainy conditions, but testified that the floor was not wet prior to the plaintiff's fall. The trial court granted the store's motion for summary judgment, and the appellate court affirmed. Plaintiff argued that the lack of a specific policy for rainy day conditions was sufficient to defeat the motion for summary judgment, but the court disagreed since the defendant had no notice of any liquid on the floor prior to the fall. Because the plaintiff could not meet her burden of proof on the issue of actual or constructive notice, there was no issue of material fact to be decided, and summary judgment was proper.

TRIP AND FALL - OUTSIDE

Hammonds v. Reliance Insurance Co., 947 So.2d 847, 06-0529 (La. App. 1 Cir. 12/28/06)

The plaintiff's son parked his car in the driveway of the apartment complex where his mother lived. As they were talking, she stepped into a hole near a sunken water meter case located approximately six inches from the driveway, causing her to fall. She sued both the water company and the owner of the premises. At trial, the jury determined that there was no defect in the premises, and the plaintiff was completely responsible for her fall. On appeal, the court noted that although the water meter case was below the grade of the surrounding area, and less than a foot from the driveway, it was open and obvious such that its utility outweighed the low risk of injury. The plaintiff acknowledged that she was aware of the water meter case, but she was not paying attention to it as she talked to her son. There was also testimony that the water company had inherited the existing equipment at that site in 1990, and this was the first report of a fall or injury. Because the plaintiff knew about the sunken water meter case, and admitted she was not paying attention, the court determined that there was no manifest error in the jury's conclusion that there was no defect in the premises. (This case was not selected for publication).

UNREASONABLE RISK OF HARM

Lawrence v. City of Shreveport, 948 So.2d 1179, 41,825 (La. App. 2 Cir. 01/31/07)

As the plaintiff left a friend's boat, she stepped onto a concrete slab at the defendant's public boat launch and then onto the grass at the edge of the cement, where she stepped into a large hole that was hip-level deep. She claimed she could not see the hole because it was covered by grass, which was at least four to five inches long. The court determined that the concrete slab formed part of the sea wall and was intended to provide a step from which to enter or leave boats using the launch. The City's parks supervisor said that the City was aware that holes tended to form in the area, and park employees inspected the area daily for holes. The court determined that the ground surrounding the sea wall had a propensity to develop sinkholes due to the continuous wave action and created an unreasonable risk of harm. The defendant argued that it did not have any notice of that particular hole and there were no prior accidents at that specific location. The court concluded, however, that the plaintiff had met her burden of proof on the issue of notice since the City had knowledge of the conditions which created the problem prior to the accident and affirmed the trial court's finding in favor of the plaintiff.

Mouhot v. Twelfth Street Baptist Church, 949 So.2d 668, 06-1283 (La. App. 3 Cir. 02/07/07)

Plaintiff, a 71 year old parishioner at the defendant-church, was walking from the Sunday School building to the main auditorium, exiting through a set of double doors. As she placed her foot on a mat just outside the doorway, she testified that the heel of her shoe became stuck in a hole in the mat, causing her to fall and break her hip. The mat was a "debris mat," that automatically removed dirt and grit from the bottom of a shoe as an individual walked across it and had holes in it for drainage. The plaintiff's expert testified that the mat, while appropriate for industrial use, was dangerous in that location because a woman's high heeled shoe could wedge in the hole, and it was more likely that women would wear high heels to attend church. The appellate court agreed, affirming the decision that the mat presented an unreasonable risk of harm at that location. The jury, however, assessed the plaintiff with 45% fault, and the appellate court reversed that portion of the decision, assessing 100% fault to the defendant.

LIABILITY OF AN OWNER

Palermo v. Port of New Orleans, 951 So.2d 425, 04-1804 (La. App. 4 Cir. 01/19/07)

Plaintiffs alleged that their deceased fathers were exposed to asbestos while working on the Mississippi River wharves in New Orleans which were owned by the defendant. The trial court found for the plaintiffs, holding that the defendant had a duty to provide the decedents with a safe work environment and failed to do so. On appeal, the defendant argued that simply because there was asbestos cargo at the wharf facilities, that fact did not create a duty on its part to the decedents. The court noted that the Dock Board leased its facilities to the plaintiffs' employers, and as a property owner, could be held liable only if it knew or should have known of a defect in the property and failed to remedy it within a reasonable period of time. The court found no evidence that the defendant knew what type of cargo would be arriving at its facilities, or that there was a defect in the warehouse itself. Moreover, since the defendant had no custody or control of any asbestos-containing cargo, it did not breach any duty to the plaintiffs, and the trial court's decision was manifestly erroneous and had to be reversed.

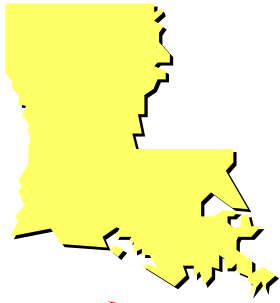
Beteta v. City of New Orleans, 950 So.2d 862, 06-0972 (La. App. 4 Cir. 01/10/07)

The plaintiff was walking on a public sidewalk in the French Quarter when she tripped on a small metal hook embedded in the concrete. She sued not only the City, but the adjoining landowner, based on an unsworn statement from a City employee that the owner had installed the hook as a stabilizing brace. When the plaintiff and the City could not submit any credible evidence that the owner caused the defect in the sidewalk, the trial court determined that unless there was evidence that the owner created the condition that caused the accident, it had no liability as an abutting property owner, since it had no responsibility for the repair or maintenance of a public sidewalk. The City argued that summary judgment was premature because discovery was not complete, but the court noted that over five months had elapsed between the filing of the motion and the hearing and over two years since the filing of the lawsuit. That period of time was more than enough to allow the plaintiff and the City to come forth with competent evidence, and the granting of summary judgment was proper.

LIABILITY OF AN DOG OWNER

Beck v. Keasler, 950 So.2d 92, 05-1479 (La. App. 4 Cir. 01/17/07)

Plaintiff claimed that as she was walking by the defendant's property, she felt something grab onto her arm and realized that the defendant's large dog had reached through the fence and bitten her. The defendant's roommate, however, testified that the plaintiff was attempting to pet the dog and reached through the fence when the dog bit her. The owner stated that the dog was kept tied in the yard and had never bitten anyone in the past, but had been known to charge the fence and bark at passing children. The court noted that the fence had six inch gaps between its bars, and even though the dog was tied, the length of the rope allowed it to come close to the fence. Additionally, the court noted that the injury to the plaintiff's upper arm was not consistent with reaching into the yard to pet the dog, and concluded that the bite was unprovoked. The court reviewed photographs of the yard and determined that it was big enough to allow the defendant to restrain the dog in such a way that it posed no risk to passersby, and the manner in which the dog was restrained constituted an unreasonable risk of harm. Accordingly, based on Civil Code Article 2321, the owner was strictly liable and the Fourth Circuit affirmed the trial court's decision.



TAYLOR, WELLONS, POLITZ & DUHE, APLC

NEW ORLEANS

1515 Poydras Street, Suite 1900
New Orleans, LA 70112
Phone: (504) 525-9888
Fax: (504) 525-9899

Email:

James M. Taylor
Paula M. Wellons
Paul J. Politz
Charles J. Duhe, Jr.
B. Scott Cowart

Desiree Adams
Jeanne Marie Bourque
Sebastian Caballero
Gina Talluto Cursain
Daryl Daigle
Sammie Henry
Aaron Lawler
Denise Ledet
Faye D. Morrison
Marvin Olinde
Scott Rainwater
Brent Steier

BATON ROUGE

7924 Wrenwood Blvd., Suite C
Baton Rouge, LA 70809
Phone: (225) 387-9888
Fax: (225) 387-9886

jtaylor@twpdlaw.com
pwellons@twpdlaw.com
ppolitz@twpdlaw.com
cduhe@twpdlaw.com
scowart@twpdlaw.com

dadams@twpdlaw.com
jbouque@twpdlaw.com
scaballero@twpdlaw.com
gcursain@twpdlaw.com
ddaigle@twpdlaw.com
shenry@twpdlaw.com
alawler@twpdlaw.com
dledet@twpdlaw.com
fmorrison@twpdlaw.com
molinde@twpdlaw.com
srainwater@twpdlaw.com
bsteier@twpdlaw.com

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TAYLOR, WELLONS, POLITZ & DUHE, APLC
1515 Poydras Street, Suite 1900
New Orleans, LA 70112