



August 31, 2010

Re: RECENT KENTUCKY SUPREME COURT DECISION ON OPEN AND OBVIOUS DOCTRINE

The Kentucky Supreme Court recently decided a case involving the Open and Obvious Doctrine, which will have significant repercussions in defending premises liability cases where the open and obvious doctrine is an issue. The effect of the decision is it will be extremely difficult to prevail in a motion for summary judgment based solely upon the Open and Obvious Doctrine. A link to obtain a copy of the decision is below:

[*Kentucky River Medical Center, et al. v. Irene McIntosh*](#), 2008-SC-000464-DG

The relevant facts of the case are as follows. Plaintiff-Appellee was a paramedic working at the hospital of the Defendants-Appellants. She and two EMT's were transporting a critically ill patient from the ambulance dock to the emergency room. An 11 foot wide surface was adjacent to the emergency room to allow stretchers to be wheeled from the ambulance dock to the emergency room. The flat surface had curbs on both sides, which were unmarked and unprotected. The Plaintiff had previously assisted in transporting some 400 patients through the same area. On the occasion in question, however, she tripped and fell over the adjacent curb. She stated her attention was focused not on the curb, but on the patient, consistent with her duties as a paramedic. The Plaintiff introduced evidence demonstrating this type of tripping hazard adjacent to a hospital emergency room is very rare.

The hospital moved for summary judgment, arguing the Open and Obvious Doctrine negated any duty the hospital owed to the Plaintiff. The trial court overruled the motion. When the case proceeded to trial, the jury awarded a verdict in favor of the Plaintiff. The Court of Appeals affirmed the jury verdict, and the hospital appealed to the Kentucky Supreme Court.

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The Court initially observed land possessors owe a duty to invitees to discover unreasonably dangerous conditions on the land and to either correct them or warn of them. The Open and Obvious Doctrine, however, states that land possessors cannot be held liable to invitees who are injured by open and obvious dangers. The Court determined the critical question is whether the applicability of the Open and Obvious Doctrine is a question of law or of fact.

After reviewing cases from other states, the Court determined the trend of the decisions of other states is to treat the Open and Obvious Doctrine not as a question of law, but rather a question of fact. In states whose courts have ruled the Open and Obvious Doctrine is a question of fact, courts in these states allow the jury to apply the Open and Obvious Doctrine to evaluate the comparative fault of the parties, rather than to absolve the premises owner/occupier of fault based solely on the open and obvious condition of the premises. In applying its ruling to the facts of the case, the Court concluded the hospital did owe a duty to the Plaintiff, notwithstanding the curb presented an open and noticeable condition.

Based on this decision, in defending premises liability cases in Kentucky it will be extremely difficult to prevail on a motion for summary judgment based solely upon the Open and Obvious Doctrine. In applying this decision, a Kentucky trial court faced with a summary judgment motion based upon the Open and Obvious Doctrine will most likely overrule the motion, and allow the case to proceed to trial. The trial court most likely will instruct the jury it may consider the open and obvious nature of the hazard on the Defendant's premises as a factor in considering the extent of the Plaintiff's comparative negligence.

Should you have any further questions regarding this decision or its implications, please do not hesitate to contact our firm.

Yours truly,



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