PRESENTATION TITLE

Presented and Prepared by:

Stephen R. Ayres
sayres@heylroyster.com
Chicago, Illinois • 312.853.8700

Prepared with the Assistance of:

Brett M. Mares
bmares@heylroyster.com
Edwardsville, Illinois • 618.656.4646

Heyl, Royster, Voelker & Allen
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The cases and materials presented here are in summary and outline form. To be certain of their applicability and use for specific claims, we recommend the entire opinions and statutes be read and counsel consulted.
I. OVERVIEW OF PREMISES LIABILITY – RULES AND EXCEPTIONS

A. The Rule

It is well settled that a possessor of land can be liable to an invitee under certain circumstances. The Restatement (Second) of Torts provides:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he

(a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

(b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(c) fails to exercise reasonable care to protect them against danger.

Restatement (Second) of Torts § 343 (1965).

B. The Exception – Open and Obvious Doctrine

However, the open and obvious doctrine is an exception to the general duty of care owed by a possessor of land. The Restatement of Torts provides that:

A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

Restatement (Second) of Torts § 343A (1) (1965).

C. The Exceptions to the Exception – Distraction Doctrine and Deliberate Encounter Doctrine

There are two exceptions to the open and obvious doctrine. The first one is the distraction exception. This exception involves a situation where a possessor of land should anticipate the harm because it has reason to expect that the invitee’s attention may be distracted, so that the invitee would not discover the condition despite its obviousness or will forget what he has discovered and fail to protect against it. Restatement (Second) Torts § 343A, Comment f (1965).
The second exception is the deliberate encounter exception. This exception is triggered when the possessor of land has reason to anticipate or expect that the invitee will proceed to encounter an open and obvious danger because to a reasonable person in the invitee’s position the advantages of doing so outweigh the apparent risk. Restatement (Second) Torts § 343A, Comment f (1965).

II. PREMISES CASE LAW UPDATES

A. Illinois Supreme Court Confirms Open and Obvious Rule in Reversing Multimillion Dollar Judgment for 12-Year-Old Who Attempted to Jump Aboard a Slow Moving Train

*Choate v Indiana Harbor Belt Railway Co.*, 2012 IL 112948, 980 N.E.2d 58. The 12-year-old plaintiff sustained severe injuries while attempting to jump aboard a slow moving freight train to impress his girlfriend. He alleged that the railroad failed to adequately fence the area, failed to prevent minor children from accessing the tracks, failed to post warning signs and failed to monitor the area to prevent children from gaining access. Defendant moved for summary judgment, contending that jumping onto a moving train is an obvious danger to children of plaintiff’s age, and relying on plaintiff’s deposition which established that plaintiff subjectively appreciated the danger. The trial judge initially granted the motion, but on reconsideration, reversed that ruling. The case proceeded to trial and a jury found for the plaintiff. The trial court entered judgment in the amount of $3.875 million, reducing the $6.5 million verdict by 40 percent in accordance with the jury’s findings on comparative negligence. The defendant filed a motion for J.N.O.V, which was denied. The First District Appellate Court affirmed the trial court’s judgment and the Supreme Court granted leave to appeal.

One of the central issues addressed by the Supreme Court involved the trial court’s repeated rulings that the jury must decide whether the danger involved in jumping a moving train was “open and obvious.” The court noted that the issue of duty is one of law, and that the existence of a duty necessarily subsumes the question of whether the danger of a particular condition should be obvious to children of plaintiff’s age. The court unequivocally held that, “[w]here there is no dispute about the physical nature of the condition, whether a danger is open and obvious is a question of law. . . that must be resolved by the court.” *Choate*, 2012 IL 112948 at ¶ 34. At trial, the plaintiff had testified that he had no thought whatsoever that he might lose a leg as a result of jumping on the train, and the Supreme Court also addressed the issue of whether the plaintiff must appreciate the full risk of harm in order for the open and obvious doctrine to apply. The court held that knowledge of the obvious danger, or appreciation of the risk, does not require the clairvoyance to foresee the precise injury which in fact occurred. The court further held that the issues in cases involving obvious dangers like fire, water or height is not whether the child does in fact understand the nature of the risk, but rather, what the landowner may reasonable expect of the child. The test is an objective one, grounded partially on the notion that parents bear the primary responsibility for the safety of their children. Because
plaintiff was a trespasser, defendants owed him no duty of reasonable care except to refrain from willfully and wantonly injuring him, which was not alleged.

**B. Open and Obvious Nature of Defect in Street Warrants Summary Judgment for City; Deliberate Encounter Exception Did Not Apply; Good Use of Photographs Depicting the Alleged Defect**

*Ballog v. City of Chicago*, 2012 IL App (1st) 112429, 980 N.E.2d 690. Ballog tripped and fell as she stepped from a portion of a street that had been excavated and refilled with concrete, but not yet resurfaced. Photos of the claimed defect were introduced as exhibits at plaintiff’s deposition, and appended to the appellate opinion. These photos show a two inch dip between the sidewalk and curb and the resurfaced roadway. Asked to describe how she fell, plaintiff testified that she did not see the gap as she crossed the street in the crosswalk.

The city moved for summary judgment, contending that the unfilled portion of the street was an open and obvious condition that did not give rise to a duty of care owed to the plaintiff. In her response, plaintiff contended that a genuine issue of fact existed as to whether the gap in the street was an open and obvious condition, relying on her testimony that she did not see the gap as she walked across the street. Plaintiff also relied on the testimony of another pedestrian who had crossed the street in the same area immediately before plaintiff and also failed to see the gap, almost falling as a result. Lastly, plaintiff argued that the deliberate encounter exception applied, because there was simply no other way to cross the street than by using the crosswalk in question. The trial court granted the city’s motion for summary judgment and the plaintiff appealed.

On appeal, the First District Appellate Court affirmed the trial court’s entry of summary judgment, holding that as a matter of law, the defect in the street was open and obvious precluding the imposition of a duty to prevent the accident. The *Ballog* court confirmed that, “[w]ith respect to conditions on land, generally there is no duty of care owed by the landowner regarding open and obvious conditions because the landowner ‘could not reasonably be expected to anticipate that people will fail to protect themselves from any danger posed by the condition.’” *Ballog*, 2012 IL App (1st) 112429 at ¶ 21. In so holding, the appellate court followed the Illinois Supreme Court’s recent directive in *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 34, that “only where there is a ‘dispute about the physical nature of the condition is the issue of an open and obvious condition’ a question for the trier of fact to resolve.” Photos of the crossing, which were actually attached to the appellate opinion, clearly showed the undisputed physical nature of the defect. The court in *Ballog* refused to frame the issue as one of comparative negligence and plaintiff’s contributory fault, confirming that if the defect is open and obvious, the duty issue is one of law for the court to decide. The court distinguished prior Illinois cases such as *Alqadhi v. Standard Parking, Inc.*, 405 Ill. App. 3d 14 (1st Dist. 2010), which had relied on plaintiff’s experts’ opinions that the open and obvious nature of the danger was disputable. Lastly, the *Ballog* court rejected plaintiff’s assertion that the deliberate encounter applied, noting that plaintiff admitted to have avoided the intersection in question on previous occasions.
C. Summary Judgment Denied Where Deliberate Encounter Forced Plaintiff to Encounter Open and Obvious Hazard from Wrinkled Floor Mat at Restaurant Entrance

Burnam v. Bob Evans Farms, Inc., No. 11-CV-0590-MJR, 2012 WL 3990298 (S.D. Ill. Sept. 11, 2012). Plaintiff’s decedent tripped and fell on a wrinkled floor mat as she and her husband were exiting a Bob Evans restaurant in Marion, Illinois. Her estate’s wrongful death case was removed to federal court, where the defendant moved for summary judgment, arguing that it did not have a duty to protect plaintiff from an open and obvious condition and that there was no evidence as to how the mat became wrinkled or for how long it had been wrinkled. Plaintiff responded that the issues of whether the wrinkled mat was an open and obvious hazard, and whether Bob Evans breached its duty to plaintiff, were material questions of fact that preclude summary judgment. Plaintiffs also contended that if the wrinkled mat was an open and obvious condition, the “distraction and forgetfulness” and “deliberate encounter” exceptions apply.

The federal district judge, applying Illinois law, noted that the plaintiff’s decedent had admitted to seeing the wrinkled floor mat before entering the restaurant. Thus, as a matter of law, the wrinkled floor mat was an open and obvious hazard. The court then addressed the two exceptions to the open and obvious rule. “Under the distraction exception, the open and obvious danger rule will not apply if the possessor of land has reason to anticipate or expect that his invitees’ attention will be distracted such that the invitee will fail to discover the open and obvious danger or will forget about the danger or will fail to protect himself from the danger.” Id. at *5 (citing Kleiber v. Freeport Farm and Fleet, Inc., 406 Ill. App. 3d 249, 259 (3d Dist. 2010)). Because plaintiff’s decedent had noticed the wrinkled mat, and in fact witnessed another patron almost fall on it, the court ruled that the distraction and forgetfulness exception did not apply. However, the court went on to hold that the “deliberate encounter” exception did apply. Under this exception, the open and obvious danger rule “will not apply if the possessor of land has reason to anticipate or expect that the invitee will proceed to encounter an open and obvious danger because a reasonable person in the invitee’s position would conclude that the advantages of proceeding outweigh the apparent risk.” Burnam, 2012 WL 3990298, at *5. The court noted that this exception is most often applied in cases involving some economic compulsion, but not always. Because the entrance with the wrinkled mat was the sole means of ingress and egress at the restaurant, it was reasonable to expect that plaintiff’s decedent would utilize the entrance despite the crumpled rug. As such, the there was a question of fact as to whether the deliberate encounter exception applied, requiring denial of the summary judgment motion.

D. Judgment for Plaintiff Who Slipped on Icy Spot in Danville Gas Station Parking Lot Reversed Under Natural Accumulation Rule Despite Allegedly Improper Plowing and Salting of Lot

Barber v. G.J. Partners, Inc., 2012 IL App (4th) 110992, 974 N.E.2d 452. Plaintiff slipped and fell while exiting her car in defendant gas station’s parking lot. The trial court denied defendant’s
motion for summary judgment and judgment was entered on a jury verdict in plaintiff’s favor. It had snowed on the day in question, and per operating procedures, employees of the gas station had shoveled the sidewalks and near the gas pumps. Additionally, snowplows had cleared the snow from the lot. There were some circular metal manhole plate covers for access to the underground gauges, which were indented, resulting in some residue snow despite the plowing. Employees of the station put salt down on the manhole cover plates on the morning of plaintiff’s fall, and approximately 20 or 30 minutes later, plaintiff parked on top of one of the manhole covers. An employee of the station believed ice on the metal plate caused plaintiff to fall. Plaintiff testified that she thought she slipped on a circular spot of ice and, on cross examination, she admitted that she did not know if she slipped on concrete or a manhole cover. The jury found for the plaintiff, finding plaintiff’s negligence to be 25 percent, and the trial judge entered judgment on the jury verdict.

The Fourth District Appellate Court reversed and remanded with instructions that the trial court enter judgment for the defendant. In so doing, the court held that the condition in the parking lot causing plaintiff’s injuries was a natural accumulation for which the defendant owed plaintiff no duty. “Along with snow removal operations like shoveling and plowing, ‘[t]he mere sprinkling of salt, causing ice to melt, although it may later refreeze, does not aggravate a natural condition so as to form a basis for liability on the part of the property owner.’” Barber, 2012 IL App (4th) 110992, at ¶ 20. “Although a property owner has no duty to remove natural accumulations, he ‘may be subject to liability if his voluntary undertaking to remove snow and ice is performed in a negligent manner.’” Id. at ¶ 21 (citing Judge-Zeit v. General Parking Corp., 376 Ill. App. 3d 573, 581 (2007)). However, because snow removal efforts are to be encouraged, and based on prior cases holding that snow removal operations need not be perfect, the court held that the natural accumulation rule warranted judgment for the defendant.

While not at issue in this case, owners and lessors residing in residential units will benefit from the Snow and Ice Removal Act, 745 ILCS 75/2 (West 2006), which provides that:

Any owner, lessor, occupant or other person in charge of any residential property, or any agent of or other person engaged by any such party, who removes or attempts to remove snow or ice from sidewalks abutting the property shall not be liable for any personal injuries allegedly caused by the snowy or icy condition of the sidewalk resulting from his or her acts or omissions unless the alleged misconduct was willful or wanton.

E. Grocery Store Entitled to Summary Judgment Where There Was No Constructive Notice of Allegedly Defective Ladies’ Room Sink

Lee v. Moran Foods, Inc., No. 11 C 1857, 2012 WL 5048482 (N.D. Ill. Oct. 18, 2012). Plaintiff and her daughter went into the ladies’ room at a grocery store owned by defendant. As plaintiff used the washroom, her daughter washed her hands in the sink. The daughter testified that, before using the sink, she noticed that it had separated from the wall by the width of a pen. After she turned the water off, the sink fell further, striking her in the chest. Her mother, the plaintiff, saw
the sink fall forward and rushed to assist her daughter. She was injured when she lowered the sink to the ground. The store manager testified that the store has a two hour “floor sweep” policy which includes inspection and cleanup of the bathrooms. Logs for the sweeps conducted before the incident reference no issues with the sink, and the manager did not recall seeing the sink being separated from the wall. He was called to inspect the sink after plaintiff’s incident and testified that it was not on the ground, but was merely leaning away from the wall by a foot or foot and a half.

Defendant moved for summary judgment which the district judge granted under Illinois law. Because there was no evidence that defendant had knowledge of the defective sink, the court viewed the suit as a constructive notice case. “In a case involving constructive notice, the time element to establish constructive notice is a material factor and it is incumbent on the plaintiff to establish that the dangerous condition was present long enough to constitute constructive notice to the proprietor.” Lee, 2012 WL 5048482, at *3. Because there was no evidence that the defective sink was present long enough to put defendant on notice, summary judgment was appropriate.

**F. Mall Owners Entitled to Summary Judgment in Slip and Fall Where No Facts Showed Defendants Had Notice of the Liquid or Were Responsible for Its Presence**

*Ishoo v. General Growth Properties, Inc.*, 2012 IL App (1st) 110919, 966 N.E.2d 1160. Plaintiff, an employee of a Neiman Marcus at Northbrook Court Shopping Mall, slipped and fell while walking across the lower level of the mall. She filed suit against the mall owners, whose subsequent motion for summary judgment was granted. In her answers to interrogatories, plaintiff asserted that the fall was caused by what “appeared to be oil or similar substance on the floor near the escalator,” and that “[m]aintenance should have known of the oil.” *Ishoo*, 2012 IL App (1st) 110919, at ¶ 6. Later, in her deposition, plaintiff testified as she was walking, her feet “went up in the air” and she landed on her right shoulder. She stood up and had “some type of substance” on her hands and pants. The substance “smelled like solution, water, solution, cleaning solution, Windex.” She saw “some type of liquid, water” on the floor after she stood up. She did not see the liquid before she fell. She could not recall the amount of liquid but stated that “it wasn’t a puddle.” When asked if she could describe the substance, she responded, “it was just liquidy, I don’t remember the texture of it.” *Id.* at ¶ 7. She did not see any cleaning carts in the area, but testified that janitors “are constantly cleaning the escalators and they’re constantly spraying Windex and squeegeeing it.” *Id.* at ¶ 8. A mall security officer came to the scene after the occurrence and did not see anything wet in the area. The mall’s supervisor of housekeeping testified that the escalators are wiped down with cleaning solution after 9:00 p.m. when the escalators are no longer in service. The defendants moved for summary judgment arguing that plaintiff’s claim amounted to nothing more than mere speculation that her fall was caused by a liquid substance and that defendants could not have had actual or constructive notice of the substance. The trial court granted defendant’s motion.
The First District Appellate Court affirmed. In order to establish negligence, plaintiff must bring forth facts that her fall was caused by a liquid substance on the floor attributable to defendants. Liability may arise if (1) one or more defendants is directly responsible for the liquid substance on the floor or (2) the defendants had actual or constructive notice of the liquid substance on the floor. Unlike *Kimbrough v. Jewel Cos., Inc.*, 92 Ill. App. 3d 813 (1st Dist. 1981), where the plaintiff had no idea why she fell, plaintiff in this case was able to testify that she slipped on a liquid substance on the mall floor. “The gap in the plaintiff’s claim, however, is that no facts exist to connect the defendants to the presence of the liquid substance on the floor.” *Ishoo*, 2012 IL App (1st) 110919, at ¶ 24. Because there was no evidence that mall employees were responsible for the liquid, there was no actual notice. Moreover, plaintiff could not establish constructive notice, which “can only be shown where the dangerous condition is shown to exist for a sufficient length of time to impute knowledge of its existence to the defendants.” *Id.* at ¶ 28. Because plaintiff could not show the length of time the substance was on the floor, summary judgment was warranted.

**G. Judgment for Plaintiff Struck By Falling Tree on Golf Course**

*Stackhouse v. Royce Realty & Management Corp.*, 2012 IL App (2d) 110602, 970 N.E.2d 1224. Plaintiff was severely injured when a cottonwood tree located on the property of the defendant golf course fell and struck her. A jury returned a verdict for the plaintiff in the amount of $4,529,322.34 and defendants’ motion for J.N.O.V. was denied. One of the defendants, the course property manager, appealed, contending that (1) it owed no duty to the plaintiff, and (2) its breach of any purported duty was not the proximate cause of the plaintiff’s injuries.

Plaintiff, who lived near the golf course at issue, had at one point worked in the pro shop at the course, and knew the superintendent, Lopez. On July 10, 2006, she heard a noise outside her home. The next day, she saw that a huge tree had fallen across a golf cart path near the 13th tee on the course. When she looked at the stump, she noted that it appeared spongy so she took some photos in anticipation of talking to someone at the course. She met with Lopez and told him that she thought the tree was rotten and that maybe he should have it checked out. He told her that he would have “someone check them.” *Stackhouse*, 2012 IL App (2d) 110602, at ¶ 4. Almost two years later, on April 26, 2008, Plaintiff was walking near the 13th tee when a tree limb struck her on her back, injuring her. At trial, the vice president of the course, who was Lopez’ supervisor, testified that he expected Lopez to check the trees on the course to determine if they were healthy. He admitted that he would be concerned if a tree fell on the course because it could kill someone. He would want Lopez to investigate why a tree fell, because there was a potential that it might happen with another tree at the same location. He testified that, if Lopez did not have the expertise to determine why a particular tree fell, he expected Lopez to hire an arborist to make that determination. Lopez testified that he did not recall the conversation with the plaintiff about the 2006 tree incident but admitted that it may have taken place. He had the 2006 tree removed but did not contact an arborist to determine why it had fallen. Plaintiff’s arborist-expert testified that the 2006 tree and 2008 tree were both cottonwoods, and that both failed because of a fungal growth which traveled through the root systems. He opined that the 2006 tree transported the fungus to the 2008 tree this way.
According to this expert, if an arborist had examined the 2006 tree, he would have determined the cause of the 2006 failure and evaluated the 2008 tree at that time, which would have led to a determination to take the 2008 tree down in 2006, preventing the injury.

In denying the motion for J.N.O.V., the trial court determined that the course manager owed a duty to exercise reasonable care on the basis of its knowledge of the existence of a dangerous condition. The trial court also found that the manager had voluntarily assumed a duty to check the tree at issue when Lopez told plaintiff that he would have “someone check them.” Id. The course property manager appealed.

On appeal, the defendant argued that it had no duty to protect plaintiff from a natural condition on the property, citing Burns v. Addison Golf Club, Inc., 161 Ill. App. 3d 127 (2d Dist. 1987), a case where the plaintiff had tripped over an exposed tree root on a golf course. In Burns, the court likened the tree root to a natural accumulation of ice or snow. Reviewing a number of cases involving falling tree limbs, the Second District Appellate Court refused to adopt a simplistic “rural/urban” analysis, opting instead to use a traditional negligence analysis which “takes into consideration the various factors of each case, such as the size and type of the road, the traffic patterns of the road, the nature of the surrounding land, the condition and location of the tree, the nature of the danger posed to travelers, and the burden of inspecting and removing the danger.” Stackhouse, 2012 IL App (2d) 110602, at ¶ 23 (citing Eckberg v. Presbytery of Blackhawk of the Presbyterian Church (USA), 396 Ill. App. 3d 164, 173-74 (2d Dist. 2009). While the danger of a tree falling on a golf course and hitting a person due to a naturally occurring fungus is not the type of event which would normally be reasonably foreseen, in Stackhouse, the defendant’s knowledge of the 2006 rotting tree and conversation wherein Lopez told plaintiff he would have the trees checked pointed to the imposition of a duty to prevent the incident. Accordingly, judgment for the plaintiff was affirmed.

H. Firefighter’s Rule Did Not Bar Action for Injuries When Fireman Fell Through an Opening in a Warehouse Floor While Responding to a Nonemergency Call: Summary Judgment Improperly Entered for Building Owner Where There Were Issues of Material Fact on Proximate Cause

Olson v. Williams All Seasons Co., 2012 IL App (2d) 110818, 974 N.E.2d 914. A firefighter fell through an opening in a warehouse floor, sustaining injuries. At the time, the firefighter was responding to “trouble alarm,” which is a nonemergency call. He alleged that the warehouse had improper lighting, that the area in which he fell lacked proper warnings and that the safety gate/door leading to the opening was defective. The building owner filed a motion for summary judgment arguing that the common law “firefighter’s rule” barred recovery. This rule, which is based on assumption of the risk, limits the extent to which firefighters or other public officers may recover for injuries they incur when entering onto private property in discharge of their duties, while fighting fires or in emergency situations. Olson, 2012 IL App (2d) 110818, at ¶ 47. The defendant/owner also argued that the alleged negligence was not the proximate cause of the plaintiff’s fall, since there was no evidence of precisely how the accident occurred and because no witness actually saw the plaintiff fall. The trial court ruled that the firefighter’s rule
did not bar recovery because, under *Rusch v. Leonard*, 399 Ill. App. 3d 1026 (2d Dist. 2010), that rule does not apply where the firefighter is injured due to causes other than the fire. However, the trial court granted the owner's motion for summary judgment, ruling that there was only speculation as to the cause of the fire. *Olson* at ¶ 18.

On appeal, the Second District Appellate Court agreed that the firefighter's rule was inapplicable to this nonemergency situation. As to proximate cause, the appellate court disagreed with the trial court and held that there was an issue of material fact. *Id.* at ¶ 27. Although no one actually saw plaintiff fall, witnesses provided sufficient circumstantial evidence of proximate cause. For instance, witnesses described the warehouse as “dark” and an “abyss.” Witnesses also testified that there was no safety tape on the floor near the opening and that after the incident, the gate/door was found to not close properly and no one heard the door close when the incident occurred. Based on this circumstantial evidence, the court held that the inference that plaintiff fell through the drop because the safety gate was open, there was inadequate lighting, and/or there was no safety tape is both reasonable and probable. *Id.* at ¶ 32. The court went on to hold that the open and obvious rule did not apply because there was a dispute as to the physical nature of the condition, i.e., visibility in the area. Lastly, using a traditional duty analysis, the court found that it was foreseeable that someone looking for a light switch in the dark warehouse could fall through the opening, and that it would not impose an undue burden for the owner to provide adequate lighting. Thus, the court held that the owner owed a duty to plaintiff to provide adequate lighting. *Id.* at ¶ 52.

**I. Summary Judgment Properly Entered for Lessor Who Gave Up Possessory Control of the Premises**

*Hilgart v. 210 Mittel Drive Partnership*, 2012 IL App (2d) 110943, 978 N.E.2d 710. Plaintiff was injured when she fell on stairs while leaving the building where she worked. She sued her employer as well as the building owner, alleging that the stairs were defective. The trial court granted summary judgment for the employer based on the exclusive remedy provision of the Workers Compensation Act. The trial court also granted summary judgment for the building owner based on a lack of actual or constructive notice.

The second district affirmed summary judgment for the building owner on appeal, not because of a lack of notice but because the lease in question ended the owner/lessor's control over the property, a prerequisite for tort liability. *Hilgart*, 2012 IL App (2d) 110943 at ¶ 40. The lease provided that the lessee “will keep the Premises including all appurtenances, in good repair” and that the lessor “shall not be liable for any damage occasioned by failure to keep the Premises in repair.” *Id.* Thus, even though the lease also authorized the landlord to inspect the premises and perform any necessary repairs, this reservation “did not ‘change the rule that it is the lessee, as the party in possession and control of the premises, who owes a duty to third parties and can be liable for injuries from defective conditions on the premises.’” *Id.* at ¶ 39.
III. CONCLUSION

Recent case law continues to apply the rules previously established by the Restatement (Second) of Torts as adopted by earlier decisions. Each case is fact specific. Early research and planning as to when and how to attack the duty issues can result in the development of positive facts during discovery which can aid greatly in bringing the case to an early and cost effective conclusion.
Stephen R. Ayres
- Of Counsel

Steve has more than 28 years of experience in a wide array of civil litigation matters, ranging from premises liability and vehicular accidents to complex construction defect and bodily injury cases, products liability cases, environmental and toxic tort claims, as well as related insurance coverage disputes. Steve has handled thousands of matters and tried many to verdict.

He was a former partner at Baker & McKenzie, and later Cheely, O’Flaherty & Ayres prior to joining Heyl Royster in the firm’s Chicago office.

Steve has been a frequent speaker at Illinois CLE programs on construction litigation, mold litigation and insurance coverage issues. He has been named to the 2012 Illinois Super Lawyers list.

Significant Cases
- **Capitol Indemnity v. Elston Self Service Wholesale Groceries** (7th Cir. 2009) - Persuaded 7th Circuit to affirm summary judgment for insured-client holding that alleged sale of counterfeit cigarettes falls within advertising injury coverage and not excluded by “prior acts” exclusion in policy.
- **Great American Insurance Co. v. Helwig**, 419 F. Supp. 2d 1017 (N.D. Ill. 2005) - Obtained summary judgment for insured for underground pollution of well water despite absolute pollution exclusion by arguing that that exclusion was not part of the personal injury or advertising coverage of the insured’s policy.
- **Sycamore Industrial Park Ass’n v. Ericsson**, No. 08-1118 (7th Cir. 2008) - Persuaded 7th Circuit to uphold summary judgment for seller of industrial park alleged to be liable under CERCLA and RCRA for asbestos in the buildings.
- **Farfan v. Commonwealth Edison**, No. 1-10-0502 (Ill. App. 2011) - Obtained summary judgment for utility in electrocution death case which was upheld on appeal in the Illinois Appellate Court, First District.

Public Speaking
- “Common Types of Insurance Coverage Disputes” National Business Institute Teleconference (2009)

Professional Recognition
- Named to the Illinois Super Lawyers list (2012). The Super Lawyers selection process is based on peer recognition and professional achievement. Only five percent of the lawyers in each state earn this designation.

Professional Associations
- Illinois State Bar Association
- Chicago Bar Association

Court Admissions
- State Courts of Illinois
- United States District Court, Northern District of Illinois
- United States Court of Appeals, Seventh Circuit
- United States Supreme Court

Education
- Juris Doctor, University of Illinois College of Law, 1984
- Bachelor of Arts (Cum Laude), De Pauw University, 1981