Premises Liability in Mississippi

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Premises Liability Practice in Mississippi

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CHAPTER 1
PREMISES LIABILITY – THE BASICS

I. OVERVIEW OF THE CAUSE OF ACTION

Accidents occur and injuries frequently result because of the condition in which property is maintained. "Slip and fall," "trip and fall," and premises liability are all titles employed to designate these accidents often caused by the condition of traversed areas. The causes of slip and fall injuries increase in number and variety as construction materials and methods vary, as the uses to which premises are put multiply, and as the objects that find their way onto walkways continue to increase in variety. The increased causes of accidents lead to an increase in the number of accidents which, in turn, correlates into a rise in the number of lawsuits that are filed.

When a plaintiff commences an action against a premises owner alleging injury occurred while the plaintiff was present upon commercial or residential premises, due to the negligence of the premises owner, management, or some other person or entity associated with the ownership or operation of the premises. These premises liability claims essentially involve allegations of negligence. To establish a prima facie case, the plaintiff must prove the existence of a duty owed by the defendant to the plaintiff, a breach of that duty by the defendant, and the breach of the duty was the proximate cause of the plaintiff's injuries.

A. Duty

What duty may be owed by a premises owner to those entering upon the premises depends upon the legal status of the plaintiff at the time of the occurrence. A plaintiff may have been a trespasser, a licensee, an invitee, or a person on the premises as a matter of right, but it is this status of the plaintiff that determines the measure of duty owed by the defendant to the plaintiff.

Traditionally, the possessor of a premises owed to invitees, those whose presence is not only desired but induced, the duty to exercise reasonable care for their safety while they are on his premises; while a mere licensee is entitled to a lesser degree of care. Subject to certain exceptions where children are concerned, an owner or occupant owes no duty to a trespasser to anticipate his presence, is only required to avoid injuring him by wanton, willful, or reckless conduct and must avoid injuring him by active negligence after his presence has been discovered.[1]

[1] Some jurisdictions have rejected the common-law status classifications as determinative of liability and have adopted the rule that an owner or occupier of land is held to a duty of

Open and Obvious Hazards

At one time Mississippi imposed no duty on a premises owner to remedy or even to warn about obvious hazards on the premises instead placing the duty squarely on the plaintiff to look out for and avoid such hazards, and the failure to do so barred recovery. *King v. Dudley*, 286 So. 2d 814 (Miss. 1973). This is no longer the law for the most part; the failure on the part of the plaintiff to avoid an open and obvious hazard is generally no longer a complete defense, but is rather to be treated as contributory negligence and to reduce the damages the plaintiff is entitled to recover in accordance with the comparative negligence system.[2] *Tharp v. Bunge Corp.*, 641 So. 2d 20 (Miss. 1994); *Baptiste v. Jitney Jungle Stores of America, Inc.*, 651 So. 2d 1063 (Miss. 1995).

In *Jones v. James Reeves Contractors, Inc*., however, the Supreme Court of Mississippi ruled that no warning of a dangerous condition need be given to employees of a contractor, so long as the contractor knows of the danger. *Jones v. James Reeves Contractors, Inc.*, 701 So. 2d 774, 783 (Miss. 1997). In addition, the Fifth Circuit has interpreted *Jones* as affirming the continued validity of the so-called "intimately connected" exception by holding that a premises owner did not owe an independent contractor's employees any duty with respect to defects of the premises which the contractor undertook to repair. *Stokes v. Emerson Elec. Co.*, 217 F. 2d 353, 357 (5th Cir. 2000).

But, the open and obvious defense may not be a forgotten relic yet. The Supreme Court has issued a holding which seems to indicate that the open and obvious defense remains a complete defense in certain cases involving natural hazards (such as snow and ice) located on remote areas of premises. *Fulton v. Robinson*, 664 So. 2d 170, 175 (Miss. 1998). Additionally, the open and obvious defense may apply to warnings/instructions defect cases decided under the Mississippi Products Liability Act. MISS. CODE ANN. § 11-1-63(e). It is thus apparent that the open and obvious defense retains some vitality under Mississippi law, as a matter of both common law and statute.
Government entities remain protected, as well. The Mississippi Tort Claims Act provides that "a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care." MISS. CODE ANN. § 11-46-9(1)(v).

In 2005, in the decision of *Mayfield v. The Hairbender*, the Supreme Court, on rehearing en banc, clarified the current state of the open and obvious defense as applied to Mississippi's premises liability law. *Mayfield v. The Hairbender*, 903 So.2d 733 (Miss. 2005). In *Mayfield*, the plaintiff, while an invitee on defendant's premises, tripped on

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reasonable care under all circumstances. In such premises liability actions, the basis of liability is generally held to be negligence. *See* Stallings v. Food Lion, Inc., 539 S.E.2d 331 (N.C. Ct. App. 2000).

[2] It should be noted that failure to avoid an open and obvious hazard could still totally bar plaintiff's recovery if the jury were to conclude that the plaintiff's negligence was the sole proximate cause of the injury, which it has the right to do.