

# boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

## Revisiting Steps: Open and Obvious Dangers

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### SECRET WARDLE NOTES

There is no duty to warn invitees of visible steps that otherwise do not present an unreasonable risk of harm. The danger of tripping and falling on a visible stairway is an open and obvious one, thus a landowner need not warn an invitee of this potential danger. Further, the lack of a guardrail on a broad flat stairway lacking significant elevation is not a special aspect rendering the open and obvious stairway unreasonably dangerous even in the presence of distracting circumstances.

\* \* \* \*

In *Ayvazian v Quest Golf Club*, an unpublished opinion per curiam of the Court of Appeals issued on September 13, 2016 (Docket No. 327792), the Court of Appeals affirmed the trial court's order granting Defendant's Motion for Summary Disposition. Although it is an unpublished opinion and therefore not binding authority, the Court in *Ayvazian* affirmed the established precedent that the dangers associated with traversing steps are generally open and obvious conditions that an average user with ordinary intelligence would be aware of upon a casual inspection.

The Plaintiff in *Ayvazian* walked into Defendant's clubhouse without incident. After drinking "some refreshments" Plaintiff left the clubhouse. He used the same pathway he entered the clubhouse to exit. The pathway included "two broad, flat steps" without a railing. As he left the clubhouse, Plaintiff tripped on the steps, fell and suffered a serious neck injury.

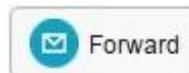
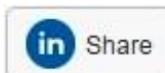
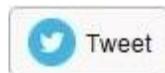
Plaintiff contended that at the time of his fall there were no shadows to identify the contour of steps and that the steps lacked necessary markings or other visual indications to differentiate them. The evidence established that photographs taken at or near the time of day of the subject fall showed that it was difficult to distinguish between the steps at the noon hour. However, other photographs clearly depicted the two steps. Also, Plaintiff admitted that a trashcan at the bottom of the steps provided a visual indication that more than one step existed and "more importantly" that Plaintiff was generally aware of the steps having used the pathway on prior occasions. The Court agreed that the steps were open and obvious. Thus, Defendant did not owe Plaintiff a duty to warn of any potential danger in traversing them.

The appellate court also agreed that no special aspects existed that rendered the open and obvious steps unreasonably dangerous. A premises owner may be liable for injuries resulting from an open and obvious condition if the condition is inherently dangerous. However, in this instance the steps were “broad” and did not present a risk of fall from a prominent elevation. The Court held the steps’ lack of a guardrail, location and surrounding conditions did not give rise to a finding that the steps posed a substantial risk of death or serious injury.

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