

# boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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## No Special Aspects for $\frac{1}{2}$ " – $\frac{3}{4}$ " Height Difference between Carpeting and Floor Tile

By Caroline Grech-Clapper

In *Sovis v Hyatt Corporation*, the trial court dismissed Plaintiff's case based on the open and obvious defense. Plaintiff was a guest of the Defendant hotel, which was under renovation at the time. Plaintiff admitted in her deposition that she was aware of a  $\frac{1}{2}$ " –  $\frac{3}{4}$ " height difference (or "lip") between the carpeting and floor tile near the reception desk on the day that she checked in to the hotel. Plaintiff also admitted that she could see the height difference between the tile and the carpeting after she fell, and that the lighting in the hallway was adequate, although the lights were dimmed.

Plaintiff's friend witnessed the fall and testified that the area was adequately lit and she could see where she was walking. Plaintiff's friend also testified that she and Plaintiff had walked through the corridor and over the tile lip at issue on the day before the fall without incident.

The Court of Appeals affirmed the trial court's dismissal of the case. The Court of Appeals held that the condition described by Plaintiff and her friend was open and obvious because an average person of ordinary intelligence would have been able to discover the condition (the  $\frac{1}{2}$ " –  $\frac{3}{4}$ " tile lip) upon casual inspection. The Court also held that there were no special aspects of the  $\frac{1}{2}$ " –  $\frac{3}{4}$ " tile lip because it did not create an unreasonably dangerous condition. The Court further held Plaintiff could have avoided the situation because there were alternate ways to exit the hotel to go to the parking lot.

### SECRET WARDLE NOTES:

Establishing a "special aspect" of an open and obvious condition is a common way for a claimant to defeat a motion for summary disposition based on the open and obvious defense. Special aspects have not been clearly defined by the courts; therefore, each opinion describing what is or is not a special aspect is important. An alternative means of ingress and egress is one of the keys to avoid a Court finding that a special aspect existed. In this case, admissions solicited in the depositions of Plaintiff and an eyewitness once again proved instrumental in obtaining a victory for the defense.

# SECRET WARDLE PREMISES SEMINAR COMING THIS SUMMER

The Premises Liability Practice Group will be conducting a day long seminar this summer on various aspects of premises liability law. As always, we are anxious for your input regarding what specific topics are most important to you and your business. If you have any requests or suggestions please contact Mark Masters at 248-539-2804 or [mmasters@secretwardle.com](mailto:mmasters@secretwardle.com).

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We welcome your questions and comments.

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