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Standards of Care a.k.a. Property Owners Liability Exposure

11:15 AM - 12:15 PM

Ryan Bankas

CEUs: 1

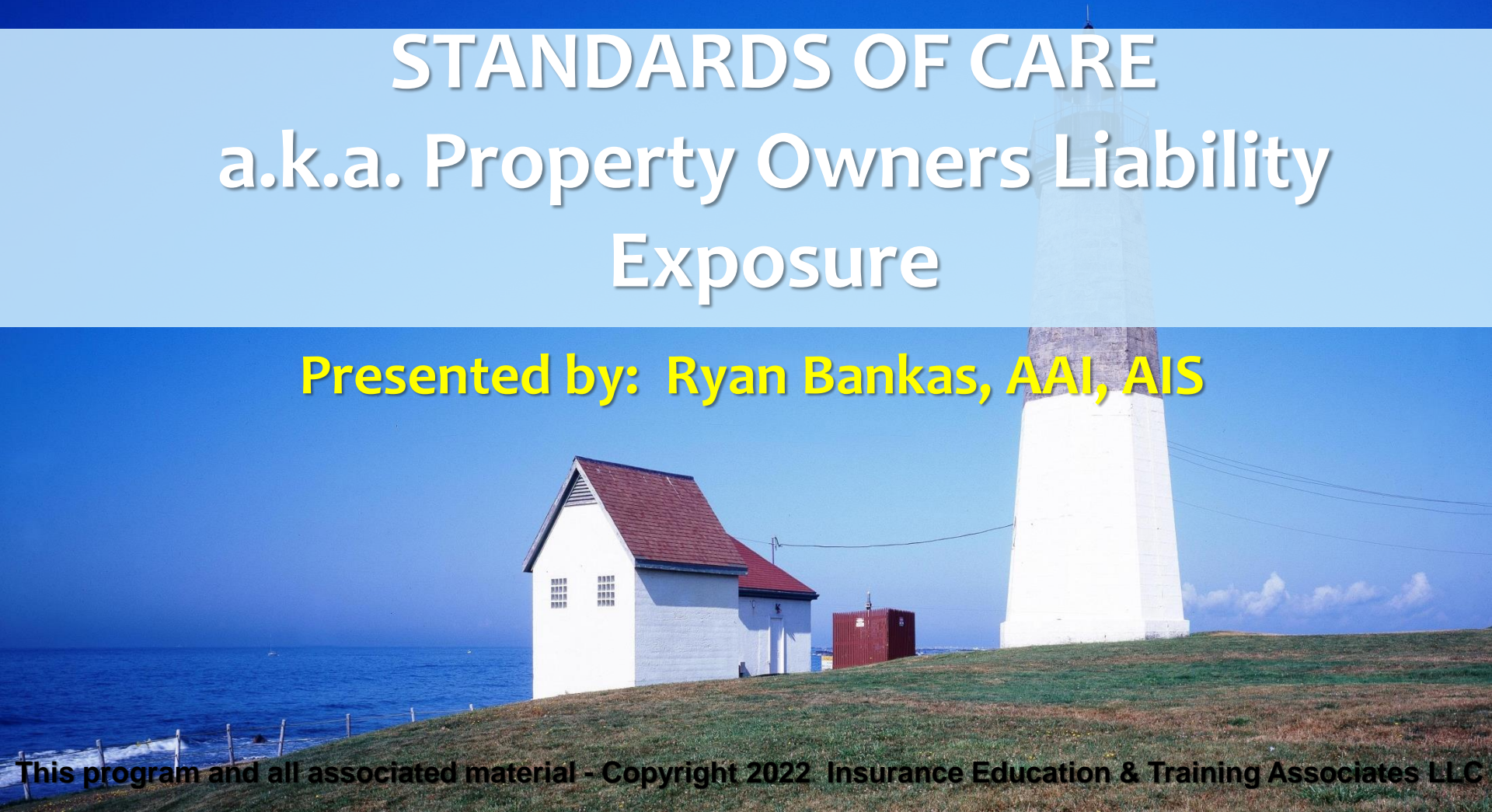
Massachusetts Association
of Insurance Agents





STANDARDS OF CARE a.k.a. Property Owners Liability Exposure

Presented by: Ryan Bankas, AAI, AIS



PERSONAL LIABILITY

- * **"A man's home is his castle"** goes the saying.
- * However, **today's castles are not surrounded by stone walls and moats.**
- * **Does the unguarded condition** of a homeowners premises **leave the homeowner open to unforeseen consequences?**



PERSONAL LIABILITY



- * Are there any **legal safeguards**?
- * What is the **homeowner's duty** regarding **the premises**?
- * **Must** the **premises** be **scrupulously free** from **any hazard**?
- * Does the **homeowner** have an **obligation to warn any and everyone** about **potential dangers**?

PERSONAL LIABILITY

- * Does the homeowner **have a different duty of care owed** to a **friend or neighbor**, who is **often free to come upon the property uninvited**?
- * Is there a **different duty** to the **mail carrier, or other person coming** on the premises for **some business purpose**?
- * Is there a **duty owed** to **trespassers**?
- * And, **what if the trespasser** is a **child**?



HO LEGAL LIABILITY





PERSONAL LIABILITY

- * The **HO** policy provides **WORLDWIDE** liability coverage for **bodily injury or property damage** that is **accidentally caused by an insured**
- * There **are exclusions** that the coverage is subject to.
- * For most insureds, the **biggest exposure** is the **homeowners premises itself.**



HO DEFINITIONS

Insured Location vs. Residence Premises:

Residence Premises:

- * Used in Section I – Property
- * Described location ONLY

Insured Location:



- * Used in Section II – Liability

SECTION II

“Insured Location”



- * Identifies **locations** where **premises liability is extended**
- * **Does not**, however, **limit personal activities exposures**



“Insured Location”

1. **“Residence premises”**
2. Any **other location shown** in the declarations **or acquired during the policy period** for “your” residence
3. Any **premises used by “you” in connection** with the “residence premises”
4. **Non-owned temporary residence** (hotel room)



“Insured Location”

5. **Vacant land**
6. **Land owned** on which a **1 to 4 family dwelling** is being **built** for an “insured”
7. Individual or family **burial vaults or plots**
8. Any **premises occasionally rented** to an “insured” **for non- “business” use**

PERSONAL LIABILITY

A. Coverage E—Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "**bodily injury**" or "**property damage**" caused by an "occurrence" to which this coverage applies, we will:

- * Pay up to the limit of liability for the damages that the insured is legally liable for.
- * Provide a defense at the insurer's expense, **even if the suit is without merit or is fraudulent**

DAMAGES

Compensatory Damages:

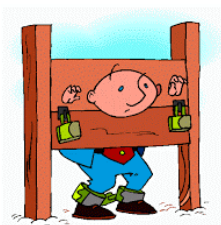
Sums of money to compensate for the loss:

1. **Special Damages**
2. **General Damages**



Punitive Damages:

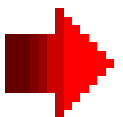
- * **Sums of money awarded** to another **intended to punish the wrong doer** and **make example of them** to discourage others



Compensatory Damages



- * **Sums of money** that will compensate for the loss
- * Includes **Special Damages** and **General Damages**
- * Represents the **combined total of monetary losses actually sustained** by the plaintiff

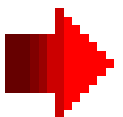
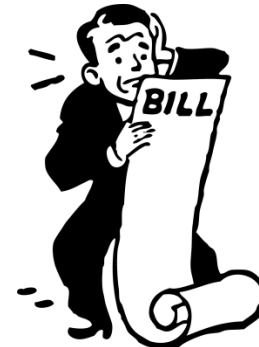


DAMAGES

Compensatory Damages:

Special Damages:

- * Specific dollar amounts that cover costs of:
 - * Medical bills
 - * Lost income
 - * Loss of use of property



DAMAGES

Compensatory Damages:

General Damages:

- * Subjective dollar amounts that cover intangible losses:
 - * Pain & suffering
 - * Loss of consortium



DAMAGES

Punitive/Exemplary Damages:

Sums of money, more than required for compensatory damages, **imposed as a punishment & future deterrent:**

- * Statutes may restrict amounts
- * Statues or case law may bar insuring
- * Some policies exclude coverage



LIABILITY



Purpose:

A **liability loss occurs** when a **person/entities** is **determined** to have been **responsible**, or **liable**, for **loss to another** person or property & **required to make financial restitution**

Types of Legal Liability

Torts

Negligence

Intentional Torts

Strict Liability

Absolute Liability

Statutes

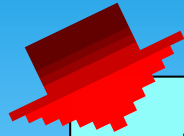
Laws Written by
Legislative Bodies

Modifies
Common Law

Contracts

Assumption
of Liability

Breach of
Contract



TORTS



A **wrongful act other than a breach of contract** for which relief may be obtained in the form of damages or an injunction.



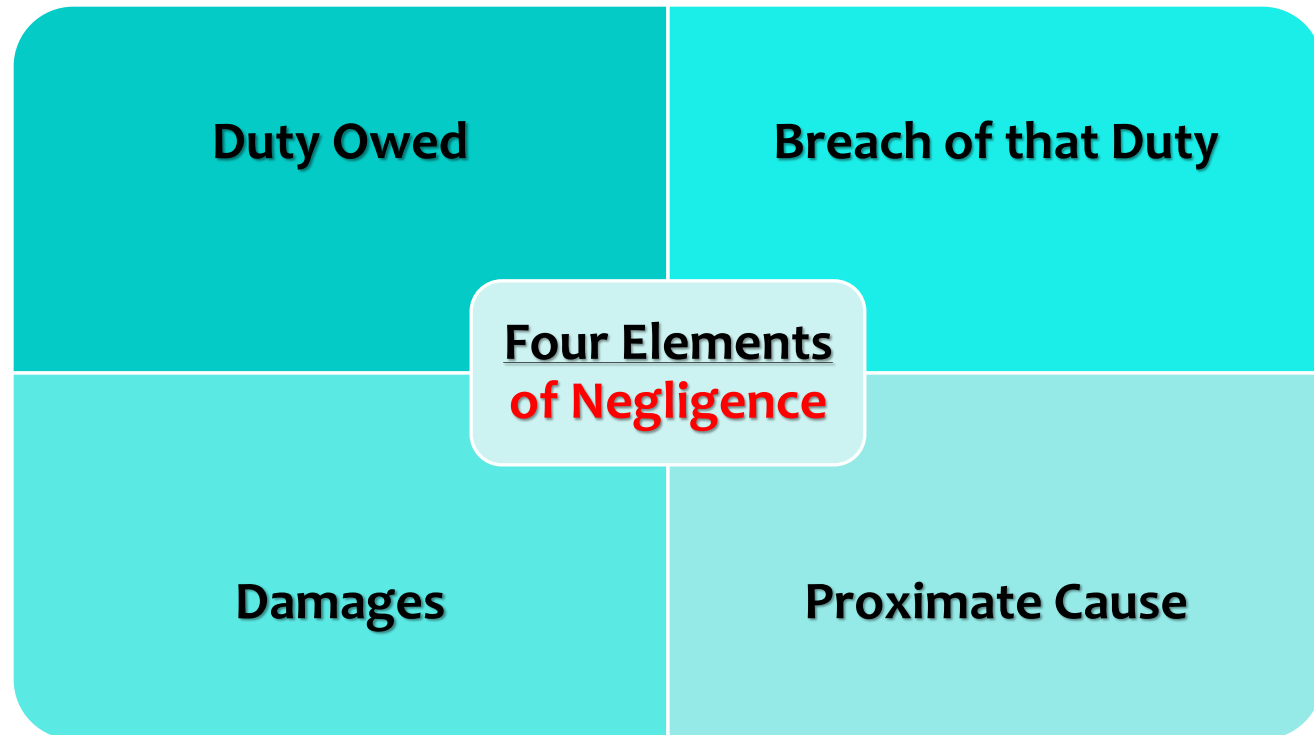
NEGLIGENCE

Negligence is based on four elements:

- * A **duty owed** to another
- * A **breach** of that duty
- * An occurrence of **injury or damage**
- * **Proximate Cause** = A close causal connection between the negligent act and the resulting harm

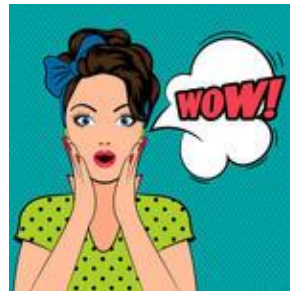
Torts

Negligence



LIABILITY- Premises

- * **Homeowners** are frequently subject to claims based on the recovery theory of **negligence**
- * The **standard of negligence may depend upon the status of the person** making the claim:
 - * **Invitee**
 - * **Licensee, or**
 - * **Trespasser**



PREMISES

INVITEES V. LICENSEES

Black's Law Dictionary

Invitee Defined

A person who has an **express or implied invitation** to enter or use another's premises, **such as** a business visitor or a member of the public to whom the premises are held open

INVITEE



Property Owners - Duty

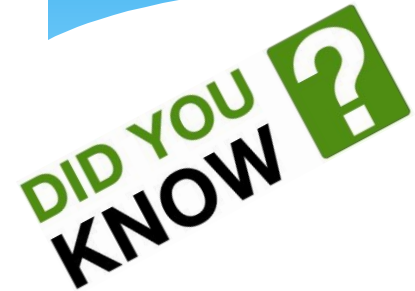
- * The occupier has a **duty** to **inspect** the premises **and** to **warn** the invitee of **dangerous conditions**.
- * A **public invitee** is an invitee who is **invited** to enter and remain on property for a **purpose for which the property is held open to the public**.

Black's Law Dictionary

Licensee Defined

A person who **has permission to enter or use another's premises, but only for one's own purpose** and **not** for the occupier's benefit.

LICENSEE



Property Owners - Duty

The occupier has a **duty to warn** the licensee **of any dangerous conditions known** to the occupier, **but unknown** to the licensee.

An **example** of a licensee is a **social guest**

INVITEE & LICENSEE

Property Owners - Duty



- * The **landowner** has a **duty to warn those** coming on the premises of dangerous situations.
- * **Many court cases focused** on **determining the status before deciding** the **standard of care owed** since the standard varied **according** to whether the person was an **invitee or a licensee**.
- * An **invitee** was owed the **highest duty of care**, while a **licensee** was not owed so much

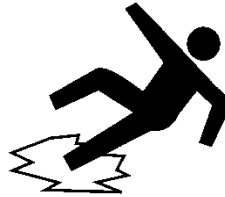


COURT CASES



Chapman v. Chapman

- * The **Idaho Supreme Court** tackled the **duty** owed a **licensee**



- * A **social guest** suffered injuries from a **slip and fall** accident while **using the bathroom during a party**
- * She **brought a premises liability action** against the homeowners for their **failure to warn her of the bathroom's dangerous condition.**

Chapman v. Chapman

Knowledge

- * **The evidence presented** was the:
 - homeowners' knowledge as to the **bathroom's layout**
 - the **guest's consumption of alcohol**, and
 - a **statement that someone else had fallen** in the bathroom some 20 years earlier



CONTINUE ►

Chapman v. Chapman

- * The court found for the defendants
- * The court said that the owner owed a duty to warn a licensee only of dangerous existing conditions known to the owner, and unknown to and not reasonably discoverable by the licensee



SPECIAL NOTE

Several states contain an **exception** to the **standard of care** owed a licensee

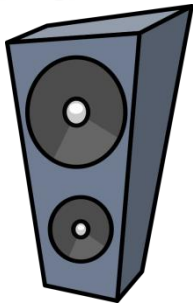
- * **For example** the **following court statement from a case in Texas sums up this concept** (*Lechuga v. Southern Pacific Transportation Company*):

"when a **possessor has knowledge of a dangerous condition on the land**, and the **licensee does not**, the **possessor has a duty** either to **warn** the licensee **or** to **make the condition reasonably safe.**"

Poehls v. Turner



- * A friend of the homeowners was asked to come to their home to help run wiring in the attic.
- * The Turners had no ladder to access the attic, so Turner and Poehls climbed onto a large wooden stereo speaker.
- * While climbing down from the attic, Poehls fell and was injured.
- * Poehls argued he was an invitee



CONTINUE ►

Poehls v. Turner

- * The homeowners, the **Turners**, **stated** he was a licensee **because no financial benefit accrued to him** and thus he was owed a lower standard of care.
- * The **court said** that **Poehls** was more than a licensee.
- * As such, he was owed a heightened standard of care.
- * The owner extending the invitation assumed an obligation to make sure the premises were in a safe condition and suitable for the task being performed



Salinas v. Martin

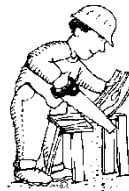
Trial Court



- * **Martin, the homeowner, hired some landscapers and allowed one to keep his pit bull dogs loose on his premises.**



- * **The homeowner also hired some construction workers for a remodeling project.**



- * **One of these workers was bitten by a dog.**




- * **The trial court found the property owner should have actual knowledge of the dog's vicious nature in order for a lawsuit for negligence to succeed**

Salinas v. Martin



Appeals Court

- * The **appeals court** said that the **homeowner owed a duty of care to the worker.**
- * The **construction boss had mentioned** to the homeowner **that the presence of the dogs might be a problem** since they **looked dangerous, and** the **homeowner agreed.** 
- * The **court said that the homeowner could have requested that the dogs be locked in the landscapers' van** when they were not around and the **homeowner had to have known of the dangerous propensities** of the pit bull **breed.**

UNIFORMED PERSONS



INVITEES **V.** LICENSEES



INVITEE **v.** LICENSEE

Uniformed Persons

- * It is **common for homeowners to have various uniformed persons come on their premises**, be they meter readers, mail carriers, or others.
- * The **status of these invitees can vary** by jurisdiction; however, there **are some general holdings**.
- * A firefighter or police officer is held to be a "professional rescuer" or "public safety officer" and therefore **generally barred from bringing action** against property owners **while confronting normal, foreseeable risks**.

Jimenez **v.** Maisch

- * **Letter carriers are usually held to be invitees.**
- * **Jimenez fell on the unshoveled driveway** of the Maisch residence.
- * The **court said that the duty of care owed was fact-specific,** and in this **case the letter carrier was delivering mail during a declared snow emergency** following a blizzard.
- * It was **not reasonable** to expect homeowners to **clear some 30 inches of snow immediately following the storm's end**

Cresswell v. End

- * Water meter readers are usually held to be invitees.
- * Here, the meter reader fell into the homeowner's window well while attempting to read the meter.
- * The court reasoned that because the homeowner was a customer of the meter reader company, the homeowner was obligated to give the company (and its meter reader) permission to come on the premises; the reader was not specifically invited.

Cresswell v. End

- * The **company, not the homeowner**, had **installed the water meter in the location** next to the window well.
- * The **company had never notified the homeowner** that the **window well constituted a hazardous condition** on the premises, which **customary business practice dictated**.
- * The **meter reader was aware of the window well, having read the meter for some time**.
- * The **homeowner breached no duty owed** to the meter reader.

CONFUSED???

To lessen the confusion over differences in care owed to licensees or invitees, some jurisdictions have taken the approach of **abolishing** the common-law distinction between the two.

PREMISES

TRESPASSER

DEFINITION

Trespasser Defined

“An unlawful act committed against the person or property of another; esp., **wrongful entry** on another's real property.”

TRESPASSER

Property Owners - Duty

No particular duty is owed to someone on one's **property illegally** in terms of warning of danger; however, the **property owner should not wantonly injure the trespasser.**

Black's Law Dictionary

Trespasser Defined


Note that **Black's Law Dictionary** now has a category of **trespass—innocent trespass**.

This is "**one committed either unintentionally or in good faith**", which seems to **encompass most children**.

SPECIAL CIRCUMSTANCES

Trespasser - CHILDREN



- * Frequently, **trespassers are children.**
- * They **often come** onto property in **response to some perceived enticement**—an **"attractive nuisance"** such as a swimming pool.
- * An **extension of legal thinking** in these instances is that the homeowner cannot simply refrain from wantonly or willfully injuring the trespasser; the trespasser is entitled to a warning of a serious artificial danger. 

DEFINITION

Attractive nuisance doctrine

The attractive nuisance doctrine **applies to the law of torts**, in the United States.

It **states** that a **landowner may be held liable for injuries to children trespassing** on the land **if the injury is caused by an object on the land** that is **likely to attract children**.



ATTRACTIVE NUISANCE

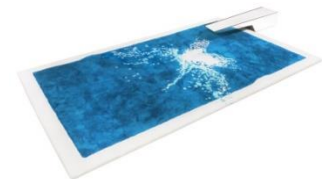
- * The **doctrine is designed to protect children** who are **unable to appreciate the risk posed** by the **object**, by imposing a liability on the landowner.



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- * **For example:** The doctrine has been applied to **hold landowners liable** for **injuries caused** by **abandoned cars**, **piles of lumber or sand**, **trampolines** and **swimming pools**.



DEFINITION

What is a “child”?

- * There is no set cut off point that defines youth.
- * The **courts will evaluate each "child" on case by case basis** to see if the "child" qualifies as a youth.



CONTEMPORARY CONCEPT



- * Under the **old common law** the **plaintiff** (*either the child, or a parent suing on the child's behalf*) **had to show that it was the hazardous condition** itself **which lured the child** onto the landowner's property.
- * **Today,** most jurisdictions have **statutorily altered** this condition, and **now require only** that the **injury was foreseeable by the landowner.**





RESTATEMENT OF TORTS

Restatement of Torts standard has **5 conditions** that **must be met** for a **landowner to be liable** for injuries to a **child trespasser** as a **result of artificial hazards**.

Layman's version

1. The **landowner knows children are around** who might **trespass**
2. The **landowner knows children will be at risk of injury** if they trespass
3. That **children are too young to recognize the risk**
4. The **landowner can fix the problem** at a **reasonable cost**
5. The **landowner does nothing**

SIGNS - WARNING



- * **Posting a sign to warn children** regarding the danger on the property **will not work** when the **children** harmed **are too young to read or comprehend it.**
- * It will **only exempt the landowner** from liability **when it is clear that the injured child could read the sign.**
- * **Usually the landowner must take some more affirmative steps** to protect children



COURT CASES



McColley v. Edison Corporation Center et al.

TRAIL COURT

- * A **14 year old motorbike rider** was injured when he struck a **wire cable strung about two feet high** between two concrete pillars.
- * The **defendants** in the **initial suit** were granted **summary judgment** since the **court held** that the **boy was a trespasser** to whom **no duty was owed**

CONTINUE ►

McColley **v.** Edison Corporation Center et al.

- * **But on appeal**, the court noted that for **two years prior** children had ridden motorbikes on the property.
- * **No warning** had ever been posted to riders to keep off the property, **nor** was there a **warning about the wire cable**.
- * The **court also noted** that although **there was no definitive age** at which the **duty owed a child trespasser changed to the duty owed an adult trespasser**, still, there were questions about a fourteen-year-old's being able to recognize the risk.



CHILDREN'S PARENTS RESPONSIBILITY??

- * Although it might appear that children have immunity in any and all situations, this is **not the case**.
- * An "attractive nuisance" on a landowner's premises **does not relieve parents** (or supervising adults) from their responsibilities.



EXAMPLE →

Morningstar v. Maynard

- * Corbin Mendez, age 7, was injured while jumping on a trampoline with some other children.
- * His parents asserted that the trampoline owners knew that there was danger when more than one person was jumping, and did not take reasonable steps to prevent this from happening
- * The flaw in the parents reasoning became apparent in that the trampoline owners were away from home and did not give permission for anyone to jump; the boy's grandmother, who lived nearby, told the children they could play on the trampoline



Morningstar **v.** Maynard

- * The grandmother, who Corbin was visiting at the time, was presumed capable of understanding the dangers of trespassing and using the trampoline *when she gave permission.*
- * The "attractive nuisance" doctrine therefore did not prevail and the homeowners were relieved of responsibility

STATES

STATUS OF THE CLASSIFICATION SYSTEM



STATES – Premises Liability

SUMMARY:

- * One **important factor in determining** the premises **liability of a landowner** to those who are injured on his property is **knowing the landowner's duty and his relationship to the injured party.**
- * **Under the traditional classification system, the injured party would fall into one of three categories: *licensee, invitee, or trespasser.***
- * **The following list is a brief state-by-state overview** of the status of the traditional classification system.

CONTINUE ►

STATES – Premises Liability

- * **CT:** Retains traditional classification system. *Morin v. Bell Court Condo Ass'n*, 612 A.2d 1197 (Conn. 1992).
- * **ME:** Abolished traditional classification system for invitees and licensees but retains distinction for trespassers. *Poulin v. Colby College*, 402 A.2d 846 (Me. 1979).
- * **MA:** Abolished traditional classification system for invitees and licensees but retains distinction for trespassers. *Mounsey v. Ellard*, 297 N.E.2d 43 (Mass. 1973).
- * **NH:** Abolished traditional classification system. *Ouellette v. Blanchard*, 364 A.2d 631 (N.H. 1976).

STATES – Premises Liability

- * **NJ: Retains traditional classification system.** *Hopkins v. Fox & Lazo Realtors*, 599 A.2d 924 (N.J. Super. App. Div. 1991).
- * **NY: Abolished traditional classification system.** *Basso v. Miller*, 386 N.Y.S.2d 564 (1976).
- * **RI: Abolished traditional classification system for invitees and licensees but retains distinction for trespassers.** *Tantimonico v. Allendale Mut. Ins. Co.*, 637 A.2d 1056 (R.I. 1994).
- * **VT: Retains traditional classification system.** *Cameron v. Abateiell*, 241 A.2d 310 (Vt. 1968).

DUTY TO DEFEND



THE DUTY TO DEFEND

Basic Questions

Is the duty to defend broader than the duty to indemnify?

- * One of the **most important** policy provisions
- * **No specific limit**
- * **A contractual & good faith obligation**
- * **Independent of and broader** than the **duty to indemnify**



THE DUTY TO DEFEND

Basic Questions

What encompasses that duty?

- The **duty to indemnify** is contingent upon **evidential facts**



- Duty to defend is based upon alleged facts



THE DUTY TO DEFEND

Basic Questions

What is the duty to defend based on?

- * The **duty to defend** is triggered **if any one allegation** in a **suit** is covered
- * Courts generally **give a narrow interpretation** to “**exclusions**”
- * **Ambiguities** will be **interpreted in favor** of the insured



Thank you for attending!