



THE BASSETT FIRM
WWW.THEBASSETTFIRM.COM

Passion. Preparation. Persistence.

Volume 2, Issue 3

THE BASSETT BULLETIN TM

EYES ON THE TEXAS SUPREME COURT

For premises liability cases, courts are divided about the definition of “actual knowledge.” Some courts lean towards the theory that a defendant *must* have actual knowledge of the dangerous condition in order to be liable. Others allow jurors to infer knowledge of the condition based on the circumstances surrounding the incident.

The Texas Supreme Court is leaning toward the belief that a defendant can be held liable under a premises liability theory if the circumstances show that they should have known about the dangerous condition. This is a lesser burden than actual knowledge.

In *Castillo v. Price Construction, Inc.*, Mr. Castillo was fatally injured while traveling through a construction zone on a highway which Price Construction was developing. 49 Tex. Sup. Ct. J. 228 (Tex. 2005). Price Construction contractually retained exclusive control over the traffic movement and lane delineations through the construction zone.

At the trial, the attorneys for Mr. Castillo’s family provided evidence that the lanes were not clearly marked and were confusing to drivers. The jury found that Price Construction created a dangerous condition and they inferred actual knowledge of the dangerous condition to Price Construction.

What does this mean for you? Juries can now infer, but do not have to, that a defendant had actual knowledge of a dangerous condition that they created. This is a lower standard than having to prove that a defendant had actual knowledge of an unreasonably dangerous condition.

Here are 3 tips to help reduce the possibility that you could be held liable for a premises liability case under these new guidelines:

1. Watch your reprimands or written warnings. These can be evidence against you that you had knowledge that the situation you created was unreasonably dangerous.
2. Know what laws or ordinances apply to you and follow them. For example, if a local city ordinance requires that you have lights on a particular building and you do not – this could be used against you to support an inference that you created an unreasonably dangerous condition if a Plaintiff makes such a claim. In essence, you should have known of the ordinance even though you didn’t.
3. Re-evaluate. Do you notice your employees leaving boxes or crates out in common areas so that customers may trip or fall? Or, are there new laws or ordinances that you have not had the opportunity to review? If this is the case, now is the time to re-evaluate and change those conditions.

Nothing can guarantee that you will not be sued. However, you can take the steps necessary to help alleviate the possibility. In the words of Justice Harriet O’Neill, “[t]he creator of a dangerous condition may not escape responsibility by looking the other way and claiming no knowledge of the danger it created.”

The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1600
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769**

www.thebassettfirm.com

ATTORNEYS

- **MIKE H. BASSETT**
- **STACI Q. CASSIDY**
- **JENNIFER R. ELDRIDGE**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**

Information regarding *The Bassett Bulletin* TM is available from *Shari Scaife* (sscaife@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

The Bassett Bulletin TM is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.