

## Duty to Inspect and maintain is Separate from Duty to Warn

In *Gargano v. Azpiri*, 110 Conn. App. 502, \_\_\_ A.2d \_\_\_ (2008), the Connecticut Appellate Court reversed the decision of the trial court that granted the defendants' motions for summary judgment in a premises liability action where the plaintiff acknowledged she had actual notice of the defective condition that caused her to fall.

Patricia Gargano was hired to assist an electrical contractor who was working at an unoccupied house under renovation. The plaintiff was injured when she fell through a hole that was cut into the floor. She brought suit against the property owner and contractors, alleging that the hole was a defect that rendered the premises unreasonably dangerous.

The defendants moved for summary judgment, arguing that they had no duty to warn of the allegedly offending condition in light of the plaintiff's admission that she had previously observed the opening in the floor and that she was aware it was cut to receive a spiral staircase. The trial court agreed. It granted summary judgment, holding that there was no question that the plaintiff knew about the hole before she fell and a possessor of land has no duty to warn an invitee of a dangerous condition when the invitee has actual knowledge of that condition.

The plaintiff appealed, arguing that while a property owner has no duty to warn an invitee of an open and obvious danger known to the invitee, he does have a duty "to inspect and maintain the premises in order to render them reasonably safe for the reasonably foreseeable activity which would occur there during the invitee's presence."

The Appellate Court agreed with the plaintiff and reversed the judgment entered in favor of the defendants. The court held that under the common law, a possessor of land owed an invitee two separate and distinct duties. Specifically, the court held that a possessor of land owes the duty to inspect and maintain the premises to render them reasonably safe, and the duty to warn of dangers that the invitee could not reasonably be expected to discover. Although the court acknowledged that the duty to warn is obviated when the defect is open and obvious, it reasoned that a possessor of land has a duty to maintain the premises in a reasonably safe condition despite the openness and obviousness of a defect of which an invitee has knowledge. The court reversed the judgment and remanded the case back to the trial court.

Client Quarterly is designed to keep our clients and friends informed about new legislation, court decisions, and issues that affect them. The quarterly is published in both print and electronic formats.

Clients are encouraged to submit questions and topics of interest to be addressed in future issues.

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## Liability Shifted to Subcontractor

In *Archambault v. Sonoco/Northeastern, Inc.*, 287 Conn. 20, \_\_\_ A.2d \_\_\_ (2008), the Supreme Court considered a personal injury claim arising out of an accident on a construction site. The plaintiff was an excavator working for a subcontractor when a trench he was digging collapsed and caused him serious physical injuries. He sued the general contractor alleging that it was obligated to supervise safety at the work site.

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## Motor Vehicle Liability Policy does not Provide Additional Coverage for Bystander Emotional Distress Claim

In *Taylor v. Mucci*, 228 Conn. 379, \_\_\_ A.2d \_\_\_ (2008), the Supreme Court held that a motor vehicle liability policy did not trigger separate “per person” coverage for bystander emotional distress in addition to the payment made for bodily injuries sustained by the plaintiff’s minor son.

Andrew Taylor was injured when he was struck by a vehicle operated by the defendant. Pamela Taylor claimed emotional distress as a result of witnessing the accident. The defendant’s automobile liability policy provided bodily injury coverage limited to \$100,000 for “each person” and \$300,000 for “each accident.” Andrew’s claim was settled for \$100,000 and the parties looked to the trial court to determine whether the policy provided an additional \$100,000 in coverage for the plaintiff’s bystander emotional distress claim. The trial court concluded that it did not.

The Supreme Court affirmed, holding the policy limited recovery to “bodily injury sustained by two or more persons resulting from an accident.” The policy defined “bodily injury” to mean “any bodily injury, sickness, disease or death.” The Court concluded that the plaintiff did not allege any physical or corporeal harm and, consequently, reasoned that only one “bodily injury” within the meaning of the policy occurred, namely the injuries suffered by the plaintiff’s son. The mother, therefore, was not entitled to a separate

recovery under the per accident provision of the policy that required bodily injury to “two or more persons.”

Although the Court acknowledged that emotional distress “might be accompanied by some physical manifestations,” it did not address what symptoms would be required to establish “sickness” sufficient to trigger coverage for a “bodily injury.”

## Social Security Numbers Protected by New Legislation

The Connecticut General Assembly has enacted an act protecting the confidentiality of social security numbers. Public Act Number 08-167, effective on October 1, 2008, provides that any person in possession of another person’s social security number or other personal information must safeguard that data from misuse by third parties.

The legislation requires any person who collects social security numbers in

the course of business to create a privacy protection policy to protect the confidentiality of Social Security numbers, prohibit unlawful disclosure of Social Security numbers, and limit access to Social Security numbers.

Any person or entity violating the provisions of the act shall be subjected to a civil penalty of five hundred dollars for each violation, not to exceed five hundred thousand dollars for any single event.

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The Supreme Court reversed, holding that the general contractor could introduce evidence that the negligence of the plaintiff’s employer, who had paid the plaintiff’s Workers’ Compensation benefits but was not a party to the action, was the sole proximate cause of the plaintiff’s injuries. The Court reasoned that the general contractor’s duty to provide a safe work site did not preclude a jury from considering the negligence of the plaintiff’s employer who had direct responsibility for the safety and supervision of its employees.

## Client Quarterly

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