

News from the Legislative Corner

This Convention Year brings a new Chair to the corner, Attorney Lisa Wade with the firm Swift Currie takes a seat in the Legislative Corner. Stay tuned for articles that speak to all lines of business that impact and interest the claims community. Lisa is a graduate of the University of Georgia School of Law and Brown University



Lisa A. Wade joined Swift, Currie, McGhee & Hiers, LLP, as a partner in 2000. She is responsible for a practice that consists of the defense of workers' compensation claims and general insurance defense litigation. Ms. Wade has worked on cases involving premises liability, automobile accidents and

uninsured motorist defense litigation, product liability, coverage issues, slips and falls and property damage cases. In the area of workers' compensation, Ms. Wade represents companies that are both self-insured and commercially insured and has defended claims of all types. In her capacity as approved counsel by the Atlanta Board of Education since 1991, she has responded to various employment practice issues as well as defended several of the Board's workers' compensation claims. She is currently lead defense counsel for the City of Atlanta's workers' compensation matters.

What's in a Name?

By C. Whitfield Caughman

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A property "owner" can be liable for injuries incurred on its property even if it did not create the alleged hazard. But can an entity that leases, reserves, promotes/ advertises, or otherwise uses a property be sued under Georgia Premises Liability Law? The answer is simple in its ambiguity: It can be liable if it is an "occupier." Non- "occupier" status can certainly dam a sea of costly litigation from the beginning.

In Georgia, an owner has a "nondelegable duty" to keep a property safe for invitees. In reality, an owner often delegates property related duties on a daily basis. Other entities may use the property and are involved in its support. A property's "occupier" may be liable to the same extent as an owner on a premises liability theory.

Case law defines an occupier as one who has "possession" of the property. Thus, the typical occupier is a lessee. Georgia courts further define "possession" as having personal charge of or exercising rights of management or control over property in question. Unfortunately, there is not much case law that delineates an Occupier from a Non-Occupier. In *Gibson v. Rezvanpour*, 268 Ga. App. 377 (2004), the Court of Appeals avoided the question whether

real estate agents who showed houses to potential buyers were "Occupiers." Instead, the Court skipped to the agent's knowledge of any hazard.

The existence of a contract or formal agreement can force the Court to rule on this issue. In *Dixon v. Infinity Broadcasting East, Inc.*, 289 Ga. App. 71, 72 (2007), the Court of Appeals affirmed summary judgment against a Plaintiff whose injury occurred during a jump-rope contest sponsored by radio stations at the Georgia World Congress Center (GWCC). The plaintiff brought a premises liability claim against the radio stations' owner, Infinity Broadcasting (Infinity), regarding an irregularity in the GWCC stage that allegedly caused injury. The Court emphasized control, rather than ownership, of the premises to determine Occupier status. The Court examined the "license" agreement between GWCC and Infinity. This agreement explicitly stated GWCC would provide the premises and perform inspections and repairs within a reasonable time. As Infinity was not a tenant or co-owner of the property under the agreement and had no duty to inspect the premises, it owed no duty to the plaintiff under a premise liability theory.

Plaintiffs are seeking potential "Occupiers" as another source of recovery, especially if the actual owner is judgment proof. *Dixon* illustrates that, as usual, forethought and preparation are life preservers in future litigation. A full and explicit contract regarding the responsibilities of each party connected with the property can help the Court recognize that, despite some association, an entity may lack control of the premises such that it is not an Occupier of the property.

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