To: XXXXXXXXX
From: George Schuhmann
27 April 2009

Legal Memorandum re:
Premises Liability Standards under Indiana Law

I. Duty of Care of Landowner

In *Smith v. Baxter,* 796 N.E.2d 242 (Ind.2003), the Indiana Supreme Court confirmed the adoption of Restatement (Second) of Torts §§ 343 and 343A as containing the relevant standards for understanding the duty of care a landowner owes to invitees. *Smith*, 796 N.E.2d at 243-244.[1] Section 343 provides that

> [a] possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
>
> > (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
> >
> > (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
> >
> > (c) fails to exercise reasonable care to protect them against the danger.

Further, § 343 of the Restatement (Second) of Torts is meant to be read in conjunction with § 343A(1). *Countrymark Cooperative, Inc. v. Hammes*, 892 N.E.2d 683, 688 (Ind.App. 2008). Section 343A(1) provides: "A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, *unless the possessor should anticipate the harm despite such knowledge or obviousness*." *Id*. at 688-89 (emphasis added).

[1] Note: All cases cited have been cite-checked (Sheperdized) as of April 27, 2009, to insure that none has been overturned, overruled, or otherwise abrogated on the point of law for which the case is cited herein.

II. Landowner's Duty to Inspect

"The duty of an invitor to exercise reasonable care for the safety of his invitees is an active and continuing one." *Get-N-Go, Inc. v. Markins*, 550 N.E.2d 748, 751 (Ind.1990). Whether a landowner's inspection of his property for hazardous conditions was reasonable will be a factual inquiry, based on the principles outlined in Restatement (Second) of Torts §§ 343 and 343A, above.[2] Further, this duty "does not cease simply because the invitee learns of unsafe conditions on the premises, but the invitee's knowledge may, of course, be considered in determining his fault." *Id*. This rule is thus important to consider in apportioning comparative fault.

III. Notice Standard

The issue of the landowner's notice of a danger is a question of fact for the jury. *St. Mary's Ctr. of Evansville, Inc. v. Loomis,* 783 N.E.2d 274, 279 (Ind.App.2002), citing *Shloot v. Guinevere Real Estate Corp.,* 697 N.E.2d 1273, 1276 (Ind.App.1998). The evidence to support that the owner had notice of the dangerous condition does not have to be conclusive, but need only establish by a reasonable inference that the owner knew of and should have remedied the dangerous condition. *Id*.

Further, an employee's knowledge of a dangerous condition may be imputed to his or her employer. *Id*., citing *Southport Little League v. Vaughan,* 734 N.E.2d 261, 275 (Ind.App.2000). *St. Mary's v. Loomis* was a slip and fall case against a hospital by a

[2] Based on a Westlaw database search of all Indiana cases using the relevant keywords (e.g., "duty to inspect" & (landowner OR property), landowner /s duty /s inspect, "premises liability" & slip & duty, "continuing duty" & slip, "(hazardous OR dangerous) condition & slip, duty w/3 inspect*, (duty /p inspect* /p condition) & injury & time, etc.), Indiana case law does not appear to impose on landowners a specific "duty to inspect" that is more rigid or specific than the basic tort principles outlined above.

surgeon/employee of the hospital. There was conflicting evidence presented concerning whether the hospital pantry floor was occasionally slippery with water or ice, as well as to whether anyone had previously slipped and fallen on water or ice in the hospital pantry, thus judgment on the evidence in that case was precluded. *St. Mary's*, 783 N.E.2d at 280. Thus, where there is sufficient evidence that a hospital or other business could have discovered a dangerous condition through reasonable inspection, a jury may find that the owner has failed to exercise reasonable care and thus breached its duty. *Id*. at 281.