



Risk Management

by Michael Gentile, J.D.

When it comes to liability, it's not who you know — it's whether you know

*Another great article from The Rooms Chronicle, the #1 journal for hotel rooms management! ***Important notice: This article may not be reproduced without permission of the publisher or the author.*** College of Hospitality and Tourism Management, Niagara University, P.O. Box 2036, Niagara University, NY 14109-2036. Phone: 866-Read TRC. E-mail: editor@roomschronicle.com*

Notice: The ideas, opinions, recommendations, and interpretations presented herein are those of the author(s). The College of Hospitality and Tourism Management, Niagara University/The Rooms Chronicle assume no responsibility for the validity of claims in items reported.

Hotel owners and managers may be liable to their guests for injuries caused by the condition of their property. This is true even if the hotel has no actual notice of the defective condition that caused the injury. In such cases a guest who files a lawsuit may prevail against the hotel if he can show that the hotel had “constructive notice” of the condition causing the injury.

Constructive notice is a legal concept that can be every bit as costly to a hotel property as actual notice. A property in Louisiana was found to have had constructive notice of water on the floor of their lobby where a guest slipped and fell. A verdict was issued against the hotel for \$930,000. A resort in New York was ordered to pay \$275,000 to a guest who slipped on food on the floor of a club within the hotel. Depending upon the nature of the injury, if a hotel is deemed to have constructive notice of a condition, the resulting damages may tax the limits of any liability insurance policy and put all of the assets of the hotel and its ownership at risk. For that reason, the elements of constructive notice and the areas where it is most likely to occur will be examined.

What is Constructive Notice?

Essentially, constructive notice exists where a property may not have actual notice that a potentially dangerous condition exists but circumstances are present to infer that the property “should have known” of the condition. In *Demaille v. Trump Castle Associates*, 725 N.Y.S. 2d 40 (N.Y. 2001), constructive notice was defined to occur when a defect was visible and apparent and it existed for a sufficient length of time prior to the incident to allow hotel employees to discover and remedy it. The evidence in the *Demaille* case showed that puddles of water formed on a marble floor in an area where an ice machine was located. The puddles were evident at the scene after the accident. Circumstantial evidence including the size of the puddles and the size of the partially melted ice cubes in relation to those in the ice machine helped to determine whether the defect existed for a substantial period of time. In this case, the evidence was sufficient to support the existence of constructive notice.

There is an irony to this concept that is often a mitigating factor in favor of defendants, in this case hotel properties. If a defect is visible and apparent and has existed for a significant period of time, not only can a defendant hotel have notice of it but the plaintiff guest may also have notice. This could create some comparative negligence upon the guest, but the hotel should not rely on this. Instead, once a defect becomes known, or should become known to the hotel, employees should be vigilant to remedy the situation. Implementing preventative strategies such as conducting systematic inspections, having housekeeping or maintenance personnel watch for and report defects, promptly reviewing all incident reports, and just using common sense can help a property be proactive to prevent accidents involving constructive notice issues. Bear in mind that temporary seasonal changes and undesirable weather conditions should be anticipated, and not treated as an unexpected surprise. So place down those walk off mats and monitor property entrances and exits during rainy and snowy conditions. Additionally, warning signs such as yellow “slippery when wet” signs may be utilized to serve constructive notice to guests and passersby about impending threats.

What are the prime areas for constructive notice defects?

The manager of any property could no doubt conduct an audit of his or her property and identify problem areas for potential slip and fall situations or other constructive notice issues. As a guide, however, a review of past cases can assist in this process. The most common areas of concern can typically be categorized as follows:

- Lobby areas, especially those adjacent to outdoor areas
- Vending and ice machine locations
- Hallways, corridors and stairwells, especially where carpeting and other floor covering is utilized
- Sidewalks, driveways and parking lots
- Areas where food and drink are served
- Condition and placement of chairs, tables and other furniture
- Condition and placement of recreation, fitness and pool equipment

How to ensure that you know?

The one thing that any property can and should do to avoid a constructive notice issue is to implement a policy of systematic inspections with detailed recordkeeping, focusing on the areas identified above. Then, by encouraging employees to be attentive to and report potentially dangerous conditions or to respond to conditions that are reported, most defects should be detected. All that is left to do at that point is to remedy the situation. ✧

(Michael Gentile, J.D. is an attorney and assistant professor of recreation and sports management at Niagara University. As an attorney, he specialized in personal injury and administrative law and is the former law director for the city of Sandusky, Ohio. E-mail: mgentile@niagara.edu.)