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Does an Illinois Entrepreneur Have a Duty to Provide a Reasonably Safe Means of Ingress and Egress to Its Business Premises or Has This Well-Established Rule of Law Become a Mere Exception?

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CASE COMMENTARY

DOES AN ILLINOIS ENTREPRENEUR HAVE A DUTY TO PROVIDE A REASONABLY SAFE MEANS OF INGRESS AND EGRESS TO ITS BUSINESS PREMISES OR HAS THIS WELL-ESTABLISHED RULE OF LAW BECOME A MERE EXCEPTION?

*Robert S. Minetz**

INTRODUCTION

Until the decisions in *Seipp v. Chicago Transit Authority*[1] and *Decker v. Polk Brothers*,[2] it was well-established by Illinois appellate courts[3] that entrepreneurs had a duty to provide their customers with safe means of ingress and egress to their business premises. Accordingly, entrepreneurs were held liable to their patrons who were injured on adjoining parcels of property even though the operator of the business did not own or lease the property at the precise point of the injury.[4] This established rule of law[5]

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1. 12 Ill. App. 3d 852, 299 N.E.2d 330 (1st Dist. 1973). For a discussion of the *Seipp* case, see notes 40-44 and accompanying text *infra*.

2. 43 Ill. App. 3d 563, 357 N.E.2d 599 (1st Dist. 1976). For a discussion of the *Decker* case, see notes 45-49 and accompanying text *infra*.

3. *See* Geraghty v. Burr Oak Lanes, Inc., 5 Ill. 2d 153, 125 N.E.2d 47 (1955); McDonald v. Frontier Lanes, Inc., 1 Ill. App. 3d 345, 272 N.E.2d 369 (2d Dist. 1971); Jones v. Granite City Steel Co., 104 Ill. App. 2d 379, 244 N.E.2d 427 (5th Dist. 1969); Cooley v. Makse, 46 Ill. App. 2d 25, 196 N.E.2d 396 (2d Dist. 1964); Stedman v. Spiros, 23 Ill. App. 2d 69, 161 N.E.2d 590 (2d Dist. 1959); Thomas v. Douglas, 1 Ill. App. 2d 261, 117 N.E.2d 417 (1st Dist. 1954); Steinberg v. Northern Ill. Tel. Co., 260 Ill. App. 538 (2d Dist. 1931); Mauzy v. Kinzel, 19 Ill. App. 571 (1st Dist. 1886). *See also* Donovan v. Raschke, 106 Ill. App. 2d 366, 246 N.E.2d 110 (1st Dist. 1969) (business property owner abutting public sidewalk owes duty of care to noninvitees using sidewalk if business owner has used sidewalk for his own purposes); King v. Swanson, 216 Ill. App. 294 (1st Dist. 1919) (same).

4. According to Prosser, the area where a business invitee may reasonably expect safe conditions "extends to the entrance to the property, and to a safe exit after the business is concluded." W. PROSSER, HANDBOOK OF THE LAW OF TORTS §78, at 391 (4th ed. 1971) (citations omitted).

5. According to the United States Supreme Court:

> [T]he rule—founded in justice and necessity, and illustrated in many adjudged cases in the American courts [is] that the owner or occupant of land who, by invitation, express or implied, induces or leads others to come upon his premises, for any lawful purpose, is liable in damages to such persons . . . for injuries occasioned by the unsafe condition of the land or its approaches, if such condition was known to him and not to them, and was negligently suffered to exist, without timely notice to the public, or to those who were likely to act upon such invitation.

was premised upon the recognition that merchants must entice customers onto their business property and customers must depend upon merchants to provide safe means of access and exit. Therefore, courts found it fair to hold business owners liable if they engendered reliance by their patrons and subsequently failed to provide appropriate access and exit facilities.

In recent years, however, some Illinois courts have begun to label the duty to provide a safe means of ingress and egress to businesses over adjoining property an exception rather than a general rule of tort liability. The suggestions made by the *Seipp* court and the decision rendered by the *Decker* court, both of which limit the patron's right to recover, have recently been accepted and extended by the United States Court of Appeals for the Seventh Circuit in *Strauch v. United States.*[6] This trend deserves critical examination to determine whether a fundamentally sound rule of law is becoming a mere exception.

THE DEVELOPMENT OF THE RULE OF LAW

Prior to recent appellate court decisions, Illinois had long been among the jurisdictions[7] that recognize the doctrine of "off-premises" liability and impose liability on businesses for injuries sustained by their patrons even if the injuries did not occur within the technical lot lines of the business' property. The decision in *Mauzy v. Kinzel*[8] provides an early example of this tort doctrine. In *Mauzy,* the plaintiff was a hotel patron who left his room one night to "answer a call of nature."[9] He wandered down a hall that was not under the hotel's control and fell down an elevator shaft he mistook for a

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Bennett v. Railroad Co., 102 U.S. 577, 580 (1880). In *Bennett,* plaintiff, in order to reach his destination, was forced to traverse "a plank-way . . . extending from Danville along a side-track of the railroad, and terminating at or near the northern end of the depot; thence up a flight of stairs to the depot floor, and across the floor of the depot towards its southern end; thence down a flight of steps, located between two of the hatch-holes, to the wharf-boat, over a macadamized or gravel way." *Id.* at 579. While crossing the depot floor towards its southern end at night in total darkness, plaintiff fell through one of the hatch-holes in the floor, thereby severely injuring himself. *Id.* at 579-80. The court cited several English cases in which defendant merchants were held liable for injuries incurred on unsafe approaches to land, *id.* at 581-84, and concluded that defendant railroad company breached its duty to maintain the passageway in a reasonably safe condition. *Id.* at 586.

6. 637 F.2d 477 (7th Cir. 1980). For a discussion of the *Strauch* case, see notes 50-56 and accompanying text *infra.*

7. *See* Bennett v. Railroad Co., 102 U.S. 577 (1880); Blaine v. United States, 102 F. Supp. 161 (E.D. Tenn. 1951); Sexton v. Brooks, 39 Cal. 2d 153, 245 P.2d 496 (1952); Viands v. Safeway Stores, Inc., 107 A.2d 118 (D.C. 1954); Shields v. Food Fair Stores of Fla., 106 So. 2d 90 (Fla. 1958); Scroggins v. Campbellton Plaza Corp., 113 Ga. App. 23, 150 S.E.2d 179 (1966); Perl v. Cuhudas, Peterson, Paoli, Nast. Co., 295 Mich. 325, 294 N.W. 697 (1940); Evans v. Sears, Roebuck & Co., 104 S.W.2d 1035 (Mo. 1937); Chapman v. Parking, Inc., 329 S.W.2d 439 (Tex. Civ. App. 1959); Rockefeller v. Standard Oil Co. of Cal., 11 Wash. App. 520, 523 P.2d 1207 (1974); Werner v. Gimbel Brothers, Inc., 8 Wis. 2d 491, 100 N.W.2d 920 (1960).

8. 19 Ill. App. 571 (1st Dist. 1886).

9. *Id.* at 571.

door. Mauzy subsequently sued the hotel to recover damages for his injuries. The defendant hotel operator argued that there could be no liability because he did not have control over the elevator or the passage immediately adjacent to the elevator.[10] The appellate court rejected this argument and held the defendant liable even though he did not have control over the precise place of the plaintiff's fall.[11] The court held that the defendant owed a duty to his patrons to maintain not only the property owned by him, but also the area where his patrons might reasonably travel. The *Mauzy* holding in 1886 was representative of Illinois law for many years.

The *Mauzy* doctrine was reaffirmed by the Illinois Appellate Court for the Second District in *Steinberg v. Northern Illinois Telephone Co.*,[12] decided in 1931. In *Steinberg*, the plaintiff was injured while traversing an enclosed stairway that was the sole means of access to the defendant's place of business. The defendant claimed that it did not lease or control the property at the place of the fall and, therefore, was not liable for the plaintiff's injuries. The appellate court rejected the defendant's contention, stating that it was not necessary for the plaintiff to show that the defendant was "the owner, lessee, or even in control of the hall and stairway."[13] Noting that the only means of access to defendant's telephone exchange was the stairway where the plaintiff fell, the court decided that it was immaterial whether the defendant had any control over the property.[14]

According to the *Steinberg* court: "[a]n owner or occupier of land who, by invitation, express or implied, induces or leads others to go upon premises for any lawful purpose is liable for injuries occasioned by his negligent failure to keep the land or its approaches in a reasonably safe condition."[15] The court, stating the policy basis for its decision, reasoned:

> No sound reason can be advanced why a person should be excused from liability for injuries when he knowingly permits or invites his patrons to use an unsafe means of ingress and egress to and from his office. If he knows the means are unsafe or has good reason for knowing it, he should not invite his patrons to use them. If he is negligent in that regard and injury results, he has no cause to complain if he is asked to respond in damages.[16]

This quote succinctly stated the law on the issue of off-premises liability in 1931.

The 1954 decision in *Thomas v. Douglas*[17] is also consistent with the earlier opinions in *Mauzy* and *Steinberg*. In *Thomas*, the plaintiff, defend-

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10. *Id.* at 572.
11. *Id.* at 573.
12. 260 Ill. App. 538 (2d Dist. 1931).
13. *Id.* at 540-41.
14. *Id.* at 541.
15. *Id.*
16. *Id.* at 542.
17. 1 Ill. App. 2d 261, 117 N.E.2d 417 (1st Dist. 1954).

ant's tenant, incurred injuries when she fell "into a window well on defendant's premises while walking upon a private passageway located on land adjoining defendant's premises and adjacent to the window well."[18] The jury found for the plaintiff and awarded damages. On appeal, the defendant argued that he owed no duty to the plaintiff because she failed to prove his ownership of the passageway.[19] Moreover, the defendant claimed that the plaintiff's cause of action was barred because she was a trespasser upon a private passageway when she was injured.[20] The appellate court rejected both of these arguments, reasoning that the evidence showed that tenants had used the passageway for several years and that the unguarded window well constituted a dangerous condition. The *Thomas* court, therefore, held that the defendant was responsible and that his lack of ownership was immaterial.[21] The holding in *Thomas* provides another example of the perpetuation of off-premises liability by an Illinois court.

Ten years after the *Thomas* decision, an Illinois appellate court was again confronted with the issue of whether the lessor and lessee of a tavern were liable for an injury sustained by a patron who fell over some loose bricks on a walkway leading to a tavern entrance. In *Cooley v. Makse*,[22] the municipally-owned walkway on which the injury occurred was adjacent to a tavern.[23] The trial court directed a verdict in favor of the tavern owner and the plaintiff appealed.

The *Cooley* court first examined *Stedman v. Spiros*,[24] an Illinois case in which the defendant hotel owner was absolved from fault for injuries suffered by a guest who had fallen "some 15 feet away from the sidewalk [adjacent to the lodge] and some 50 feet from the lodge."[25] The *Stedman* court surmised that the outcome of the case might have been different had

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18. *Id.* at 263, 117 N.E.2d at 417.

19. *Id.* at 267, 117 N.E.2d at 419.

20. *Id.* The general rule is that landowners are not liable for injuries suffered on their land by trespassers absent knowledge by the landowner that trespassers frequently traverse his land. W. PROSSER, HANDBOOK OF THE LAW OF TORTS §58 (4th ed. 1971).

21. 1 Ill. App. 2d at 267, 117 N.E.2d at 419.

22. 46 Ill. App. 2d 25, 196 N.E.2d 396 (2d Dist. 1964). Halloran v. Belt Ry., 25 Ill. App. 2d 114, 166 N.E.2d 98 (1st Dist. 1960), also held that there is no magic to lot lines and that liability will be extended beyond lot lines in proper circumstances; however, the *Halloran* decision presents a different factual problem. In *Halloran*, the appellate court considerd the liability of a landowner to children who played on a sand pile on the defendant's property. The trial court granted summary judgment for the defendant because the injured child was hurt thirty feet from the sand pile. The appellate court reversed the trial court even though the defendant did "not own or control the premises on which plaintiff was injured." *Id.* at 119, 166 N.E.2d at 101. The basis of the court's decision was the defendant's knowledge of the children's play habits and its knowledge of the dangers inherent in the route to and from the sand pile. Thus, the *Halloran* court properly held that the defendant had a duty to use due care for the safety of the children traveling to and from its property if the children "were exposed to dangers in the immediate approach to its premises." *Id.*

23. 46 Ill. App. 2d at 26, 196 N.E.2d at 396.

24. 23 Ill. App. 2d 69, 161 N.E.2d 590 (2d Dist. 1959).

25. 46 Ill. App. 2d at 28, 196 N.E.2d at 397.

the plaintiff injured himself closer to the defendant's premises.[26] According to the court in *Cooley*, "[t]his [conclusion] was made arguendo rather than decidendo. Nevertheless, it does impel us to pause and take a closer look."[27] The court then examined the decision in *Viands v. Safeway Stores, Inc.*,[28] a case in which the Municipal Court of Appeals for the District of Columbia held the defendant merchant liable for the injuries incurred by a customer who fell when leaving the merchant's grocery store.[29] While the plaintiff in *Viands* had one foot in the store at the time of the fall and, thus, was at least partially on the defendant's premises, the *Cooley* court viewed the *Viands* holding as extending beyond the situation in which "the mere presence of a foot . . . on the property of the defendant imposes a liability where the causa de injuria and the injury occurred on the public sidewalk."[30]

Having recognized a duty on the part of entrepreneurs to maintain adjoining property if used as a means of ingress or egress, the court in *Cooley* refused to distinguish between the liability of the lessor and lessee of the tavern. The court held that both parties knew or should have known of the defective condition of the walk and, therefore, both should face the consequences.[31] Finally, the appellate court rejected the time-worn contention that imposition of liability against nonowners would open the "floodgates to litigation," and dismissed the argument that the municipality alone had the duty to repair.[32] The court downplayed the likelihood that liability would be extended to cover plaintiffs located great distances from the defendant's property, thereby causing "catastrophic results,"[33] and noted that plaintiffs in these cases would be considered invitees as opposed to members of the general public. Moreover, the court stated that, while the city may have had a duty to repair the sidewalk, the defendants also had the duty to protect their customers through "adequate illumination, proper warning or otherwise."[34]

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26. 23 Ill. App. 2d at 83, 161 N.E.2d at 597. Although the decision in *Stedman* held against the invitee, the opinion recognized that there is a duty imposed on Illinois businesses "to exercise reasonable care to keep in a safe condition those portions of the premises included within the invitation to the invitee, including reasonably safe means of ingress and egress, even where the mode chosen is not the customary one but one which is allowed by the owner." *Id.* Nevertheless, the court in *Stedman* held that the plaintiff who was injured near the defendant's concessions in a 700 acre state park was not entitled to recover because the defendant could not be responsible for the vast area that was not within the leasehold. Accordingly, the court refused to extend the decision in *Mauzy* to the facts of *Stedman*.

27. 46 Ill. App. 2d at 29, 196 N.E.2d at 398.

28. 107 A.2d 118 (D.C. 1954).

29. In *Viands*, the defendant was aware that neighborhood boys often lined up with wagons outside his store in order to assist shoppers carry away their packages. The plaintiff was injured when she tripped over one of these wagons. *Id.* at 119.

30. 46 Ill. App. 2d at 30, 196 N.E.2d at 398.

31. *Id.* at 31, 196 N.E.2d at 398. The court determined that the walk was in a state of disrepair when the lease was signed and that both the landlord and tenant acknowledged the necessary use of the walk by business invitees. *Id.*

32. *Id.* at 32, 196 N.E.2d at 399.

33. *Id.*

34. *Id.*

The most recent Illinois decision to impose liability on an entrepreneur for an off-premises injury is *McDonald v. Frontier Lanes, Inc.*[35] The *McDonald* case involved an injury sustained by a person who "stepped into a hole in a parkway owned by the City of Elgin located across a public sidewalk from the parking lot maintained by Frontier for its tavern and bowling patrons."[36] The plaintiff had parked her car on a public way and walked to the defendant's tavern. After consuming a few drinks, she left the defendant's premises to return to her car and, subsequently, fell into a hole in the parkway. The trial court entered judgment on a jury verdict against Frontier.[37]

Frontier contended that its duty to provide safe access was limited to the premises that it owned and controlled. The Illinois appellate court flatly rejected this argument in favor of the general rule that the merchant owes a "duty to provide an invitee with reasonably safe means of ingress and egress both within the confines of the premises owned or controlled by the inviter and, within the limitations dictated by the facts of the case, beyond the precise boundaries of such premises."[38] In so holding, the court relied on the decisions rendered in *Stedman*, *Thomas*, *Steinberg*, and *Mauzy*. The court affirmed the jury verdict against Frontier and noted that the evidence supported the jury's determination that the defendant Frontier had assumed the use and control over the area where the injury occurred and that Frontier had breached its duty to warn the plaintiff of the dangerous condition.[39]

Thus, a clear line of precedent gradually had developed by the early 1970's holding that business owners in Illinois owed a duty to their patrons to

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35. 1 Ill. App. 3d 345, 272 N.E.2d 369 (2d Dist. 1971). *Accord*, Smith v. Rengel, 97 Ill. App. 3d 204, 422 N.E.2d 1146 (4th Dist. 1981). The appellate court in *Smith* relied on *McDonald* in imposing a duty on a landlord to provide a safe means of ingress and egress, however, the premises in question were not business premises. Thus, the *Smith* reasoning can be easily distinguished from the cases in which a duty is imposed on a business owner.

For a discussion of the *McDonald* opinion, see Turkington, *Torts, 1972 Survey of Illinois Law*, 22 DEPAUL L. REV. 29, 33-35 (1972).

36. 1 Ill. App. 3d at 348, 272 N.E.2d at 371. The parkway in which the hole was located had been planted with small trees and dedicated to and accepted by the city two years before the accident. *Id.* at 348-49, 272 N.E.2d at 371.

37. *Id.* at 348, 272 N.E.2d at 370. The president of Frontier Lanes, Inc. and Northern Illinois Gas Company were also named as defendants. The Northern Illinois Gas Company was named because the hole was caused by settling in the ground following installation of gas pipe to heat the tavern and bowling alley. A three-inch depression in the parkway existed after the pipe was installed and the trench filled, and testimony was heard at the trial that at least a foot of additional settling could be expected. *Id.* at 349, 272 N.E.2d at 372. The appellate court affirmed the trial court's denial of Northern Illinois Gas Company's motions for a directed verdict or judgment n.o.v. *Id.* at 356, 272 N.E.2d at 377. Further, the court found the president of Frontier Lanes, Inc., Tony Ceresa, personally liable for the negligence of the corporate defendant and remanded the cause to the trial court with directions to enter a judgment n.o.v. against Ceresa. *Id.* at 358, 272 N.E.2d at 377-78.

38. *Id.* at 351, 272 N.E.2d at 372.

39. *Id.* at 352-53, 272 N.E.2d at 374.

provide safe access and exit facilities to and from their businesses. Moreover, the majority of these cases adopted a standard of reasonableness to determine the entrepreneur's liability in each situation.

THE DEVELOPMENT OF THE EXCEPTION

The 1973 opinion of the appellate court in *Seipp v. Chicago Transit Authority*[40] set the tone for the recent trend of Illinois decisions refusing to hold businesses responsible for injuries suffered by their invitees on adjoining premises. In *Seipp*, the plaintiff was injured while walking on a dirt path used by the plaintiff and other Chicago Transit Authority (CTA) riders as a means of ingress and egress to a train station. The CTA had provided a different path along its property for use by its passengers, but Mrs. Seipp chose the "shortcut" on the day of her injury.[41]

The *Seipp* opinion is reconcilable with other decisions in this area of tort law because the court did not seek to establish a new rule of law. Citing *McDonald*, the court restated the principle that there is "a duty to provide an invitee with a reasonably safe means of ingress and egress, both within the confines of the premises owned or controlled by the inviter, and, within limitations dictated by the facts of the case, beyond the precise boundaries of such premises."[42] The court held, however, that the CTA fulfilled this duty by providing its passengers with a paved and illuminated path. In essence, the court held that the CTA was free from any negligence as a matter of law. This ruling, then, is consistent with other decisions which have held that a person who elects to take an unsafe route and disregards a safer route cannot recover for injuries sustained on the former path.[43]

Although the *Seipp* holding is consistent with other decisions, the court's reasoning is problematic. After analyzing the *McDonald* and *Cooley* decisions, the *Seipp* court stated that it found "no evidence that the CTA either prescribed the dirt path to its patrons as a means of egress or ingress or assumed its use as such at the time of the accident."[44] This statement could be interpreted to mean that a plaintiff must prove either "prescription" or "assumption" to be successful in an off-premises case. If the *Seipp* opinion is read to require evidence of prescription or assumption, a drastic change in the law of off-premises tort liability would result. It is erroneous, however,

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40. 12 Ill. App. 3d 852, 299 N.E.2d 330 (1st Dist. 1973).

41. *Id.* at 854-56, 299 N.E.2d at 332.

42. *Id.* at 858, 299 N.E.2d at 334.

43. *See, e.g.*, Shannon v. Addison Trail High School, 33 Ill. App. 3d 953, 339 N.E.2d 372 (2d Dist. 1975) (defendant not held liable for plaintiff's injuries where plaintiff, faced with two routes, chose shortest but most dangerous); Harris v. Union Stock Yards, 29 Ill. App. 3d 1072, 331 N.E.2d 182 (1st Dist. 1975) (defendant not held liable for plaintiff's injuries where plaintiff took shortest, but not safest or only available, path). *See also* Connolly v. Melroy, 63 Ill. App. 3d 850, 380 N.E.2d 863 (1st Dist. 1978) (plaintiff may be contributorily negligent if he has two alternative ways to perform a task and chooses the one most likely to produce hazardous results).

44. 12 Ill. App. 3d at 859, 299 N.E.2d at 335.

for any court to require this strict burden. Instead, the general duty imposed on business owners and the accepted doctrines of negligence, comparative fault, and proximate cause are sufficient to ensure that liability is not imposed arbitrarily.

The trend started by the holding in *Seipp* was subsequently expanded by the decision in *Decker v. Polk Brothers.*[45] The *Decker* opinion represents the most direct conflict with the earlier Illinois cases and, therefore, merits careful analysis to determine the status of off-premises liability. The defendant business owner in *Decker* owned two stores on Central Avenue in Chicago (2850 and 2910). On the morning of the occurrence, the plaintiff parked her car on Central Avenue approximately ten feet north of the 2910 store.[46] Later in the day, having concluded her shopping at the defendant's stores, she headed north on Central Avenue toward her automobile and twisted her ankle on a depression in the sidewalk several feet from the north door of the 2910 store. The jury returned a verdict in favor of the plaintiff, but the court granted the defendant's motion for a judgment n.o.v. because the plaintiff failed to show that the defendant had any legal duty either to repair the walk or to warn the plaintiff of any defect in the walk. The trial court based its decision on the fact that the sidewalk was neither owned nor controlled by the defendant. The appellate court affirmed the trial court's ruling.[47]

The *Decker* court recognized that "an owner or occupier of premises has a duty to provide a reasonably safe means of ingress and egress both on his premises and 'within the limitations dictated by the facts of the case, beyond the precise boundaries of such premises.' "[48] Nevertheless, the court stated that this general rule is inapplicable to injuries incurred on public sidewalks. This reasoning is curious because the court noted that the *Cooley* and *McDonald* cases involved public walks.[49]

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45. 43 Ill. App. 3d 563, 357 N.E.2d 599 (1st Dist. 1976).

46. *Id.* at 564, 357 N.E.2d at 600.

47. *Id.* at 566, 357 N.E.2d at 601.

48. *Id.* at 565, 357 N.E.2d at 600.

49. The court cited Burns v. Kunz, 290 Ill. App. 278, 8 N.E.2d 360 (1st Dist. 1937), to support the proposition that landowners have generally not been held liable for injuries incurred on municipally-controlled public sidewalks. 43 Ill. App. 3d at 565, 357 N.E.2d at 600. The defendant property owners in *Burns*, however, were not entrepreneurs. Neither were the defendant business owners in the cases cited by the *Burns* court as precedent. *See* City of Chicago v. Crosby, 111 Ill. 538 (1884); City of Chicago v. O'Brien, 111 Ill. 532 (1884); Gridley v. City of Bloomington, 88 Ill. 554 (1878); City of Bloomington v. Bay, 42 Ill. 503 (1867). According to the court in *Gridley:*

> [D]efendant has no other interest in the street in front of his property than any other citizen of the municipality. The same is true of the sidewalk. It is part of the street set apart for the exclusive use of persons traveling on foot, and is as much under the control of the municipal government as the street itself. . . .

88 Ill. at 556. Significantly, the *Gridley* opinion includes no mention of business invitees or patrons and no discussion of access and exit facilities.

The holding in *Decker* created a clear conflict among Illinois appellate courts on the issue of off-premises liability. This conflict should be resolved in favor of imposing liability in these situations and the *Decker* rationale should be disregarded. The most compelling reason to disregard the *Decker* decision is because it is irreconcilable with numerous earlier Illinois decisions. Although the *Decker* court recognized the validity of *Cooley v. Makse* and *McDonald v. Frontier Lanes, Inc.*, the court's attempt to distinguish these decisions should not be deemed persuasive. Finally, the failure of the *Decker* court to explain its reasoning substantially weakens the precedential value of this decision.

The United States Court of Appeals for the Seventh Circuit most recently considered the issue of off-premises liability in 1980 in *Strauch v. United States*.[50] The primary issue in *Strauch* was whether the federal government was entitled to summary judgment when the plaintiff was injured on a sidewalk owned by the City of Chicago, but located near a United States Post Office. The plaintiff, after parking her car in a postal parking lot, proceeded from the lot to the post office building via the city sidewalk. This section of sidewalk between the exit from the parking lot and the entrance to the office was the only route available to patrons who parked their cars in the lot. After using the postal facilities to mail a letter and purchase a money order, the plaintiff returned to her car via the same route and tripped over some allegedly uneven sidewalk tiles. The point of the plaintiff's fall was approximately one foot west of the fence that bordered the parking lot and nine feet from the northwest corner of the postal office. These facts presented a classic setting for the imposition of off-premises liability, however, the district court granted defendant's motion for summary judgment and the Seventh Circuit affirmed.[51]

In essence, the Seventh Circuit adopted a balancing test to determine if the facts more closely resembled *Decker* or *Cooley* and *McDonald*. The court reasoned that *Decker* was consistent with the "general rule" that an abutting landowner is not liable to members of the public for injuries caused by failure to maintain a sidewalk.[52] Accordingly, *Cooley* and *McDonald* were characterized as exceptions due to distinguishable facts.[53] *McDonald* was distinguished on the basis that the defendant in that case had assumed control of the walkway through his actions.[54] Similarly, *Cooley* was differentiated because the defendant had not "appropriated" the walkway through exclusive use.[55] The *Strauch* court reasoned that there was "signifi-

50. 637 F.2d 477 (7th Cir. 1980).

51. *Id.* at 478.

52. *Id.* at 479.

53. *Id.* at 479-80.

54. *Id.* at 480. The Seventh Circuit deferred to the district court's finding that the defendant in *McDonald* "appropriated the use of the public way by allowing customers to impede the pedestrian use of the walk by the parking of autos." *Id.*

55. *Id.* The court cited the determination of the *Cooley* court that the sidewalk in that case was not only the sole means of access to the tavern but that it was used soley by defendant's

cantly more control over the walkway" by the defendants in *Cooley* and *McDonald* than was exercised by the United States in *Strauch*.[56]

In applying *Decker*, the *Strauch* court refused to recognize the validity of *Cooley* or *McDonald* and stated that they were merely exceptions to the general rule due to their unusual facts. This conclusion is incorrect. For more than eight decades, the general rule in Illinois has been that business invitees are entitled to damages when negligently injured on an access or exit route from a defendant's business. Accordingly, the *Decker* case is the exception, not the applicable rule of law.

CONCLUSION

For nearly a century, Illinois appellate courts have adhered to the rule that entrepreneurs owe their customers a duty to provide safe means of ingress and egress to and from their businesses. The extent of the business owner's duty in a particular case may depend on the accepted practice of his patrons or on the amount of control exercised by him over the area in question. It is clear, however, that the duty of the entrepreneur extends beyond the boundaries of his lot lines, even to public sidewalks.

In recent years, the Illinois courts have reconsidered the general rule of law which imposes a duty on entrepreneurs to provide their customers with a safe means of ingress and egress. In limiting the extent of an entrepreneur's liability and duty, the *Seipp*, *Decker*, and *Strauch* courts have implied that it is unfair to impose liability on businesses for off-premises injuries. This analysis is unsound.

The premise of the implied unfairness is the business owner's lack of control over the property at the precise point of the injury in off-premises liability cases. While this may be a relevant concern in determining liability, it should not affect the duty imposed on entrepreneurs. Instead, the courts should realize that any problem with the entrepreneur's relationship to the property on which the injury occurred is material only to the determination of negligence and not to the issue of duty. Further, since the requirements of proof in a negligence action adequately protect business owners from an unfair imposition of liability, no good reason exists to tamper with the accepted principle that Illinois entrepreneurs owe their patrons a reasonably safe means of ingress and egress to their businesses, extending a reasonable distance over adjoining properties. A contrary result rewards negligent business owners and prejudices the rights of injured persons.

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patrons as well. The Seventh Circuit, thus, concluded that the sidewalk in that case was factually much different from the one in *Strauch*. *Id.*

56. *Id.* at 479. The *Strauch* court did not equate control by the defendant with the fact that the sidewalk was the only available path between the parking lot and the post office. "The mere fact that postal patrons must foreseeably use the sidewalk does not represent sufficient control by the postal station" to hold the United States liable for plaintiff's injuries. *Id.* at 480.