

WINTER 2011 NEWSLETTER

PREMISES LIABILITY UPDATE

by Dean Foster

***Denton County v. Beynon*, 283 S.W.3d 329 (Tex. 2009).**

At issue in this case was whether a floodgate arm next to a rural roadway constituted a special defect under the Texas Tort Claims Act (TTCA). The court held that the floodgate arm did not meet the narrow definition of a special defect under the TTCA. The TTCA does not define “special defect” but likens it to “excavations or obstructions” that exist “on” the roadway surface. The court held the floodgate arm was not of the same kind or class as an excavation or obstruction, nor did it pose a threat to “ordinary users” in the manner that an excavation or obstruction blocking the road does. As a result, the Texas Supreme Court reversed the court of appeals’ judgment and dismissed the case.

***Scott & White Mem’l Hosp. v. Fair*, 2008 WL 2388018 (Tex. App. – Austin 2008), pet granted, 52 Tex. Sup. Ct. J. 1140 (August 21, 2009).**

The issue in this case was whether Texas should adopt the “Massachusetts Rule” that accumulated ice in its natural condition does not present an unreasonable risk of harm. The trial court granted Scott & White’s summary judgment and the court of appeals reversed. The Texas Supreme Court stated that while a natural accumulation of ice or mud does pose a risk, as a matter of law it does not present an unreasonable risk of harm. As a result, the judgment of the court of appeals was reversed and judgment was rendered that the plaintiffs take nothing.