

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CRAIG L. HANCOCK and	:	
DEBORAH K. HANCOCK,	:	
Plaintiffs	:	
	:	
v.	:	Civil Action No.
	:	3:97 CV 2162 (CFD)
MOBIL OIL CORPORATION,	:	
Defendant.	:	

MEMORANDUM OF DECISION

The plaintiffs Craig L. Hancock (“Hancock”) and Deborah K. Hancock brought this action to recover damages sustained after Hancock fell on the premises of the defendant, Mobil Oil Corporation (“Mobil”). Hancock seeks relief under Massachusetts state law¹ and has asserted claims for his pain, suffering, and medical expenses, as well as work-related expenses and loss of earning capacity. Deborah Hancock has asserted a claim for loss of consortium.² The trial in this case has been bifurcated as to liability and damages, and this decision resolves liability only.

The following are the findings of fact and conclusions of law determined by the Court:

I. Findings of Fact

The plaintiffs are citizens of the State of Connecticut. The defendant, Mobil, is a New York corporation with its principal place of business in Virginia.³ On the morning of October 18, 1994, Hancock traveled from his home in East Hartford, Connecticut to Boston, Massachusetts

¹The parties do not dispute that Massachusetts state law governs the plaintiff’s claims.

²The Court does not reach Ms. Hancock’s claim in this decision.

³Jurisdiction is based upon diversity of the parties and an amount in controversy exceeding \$75, 000, pursuant to 28 U.S.C. § 1332(a)(1).

for the purpose of visiting customers of his business. En route to Boston, Hancock stopped to make a purchase at the Charlton Mobil Station, located at a rest stop on the Massachusetts Turnpike in Charlton, Massachusetts. After parking and exiting his vehicle, Hancock walked towards the restroom and telephone area and slipped and fell on a curb which had been recently painted, and as a result, was still wet at that time.⁴ The curb was located in an area patrons would be expected to traverse and was under the care, maintenance, and control of Mobil at the time of the accident. There were no warnings displayed indicating the recent painting of the curb or other measures taken to warn of the condition. Nor was the dangerousness of the curb open or obvious to Hancock.

Hancock sustained injuries as a result of the fall. After he fell, Hancock reported his fall to the station's shift supervisor, Donald Collette. After speaking to Collette, Hancock drove to the State Police Barracks in Weston, Massachusetts. Hancock reported the fall to a Sergeant Martin of the Weston Barracks. Martin subsequently called Massachusetts State Trooper Michael Sullivan and asked him to investigate the accident at the Charlton Mobil Station. Upon arrival at the station, Trooper Sullivan spoke to Collette regarding Hancock's fall and asked Collette to direct him to the area of the fall. Trooper Sullivan examined the area, found it to be freshly painted, and then ordered Collette to put up cones around the area where the curb was located.

⁴The Court does not rely on Plaintiff's Exhibit 10, the "Baron Report," in making the finding that Hancock fell on the freshly painted curb. The Court finds that the report, which compared paint which had accumulated over the years on the curb to the paint on Hancock's shoes, fails to satisfy the requirements of Rule 702 of the Federal Rules of Evidence. The Court does not find the report to be "based upon sufficient facts or data" or "the product of reliable principles and methods." Fed. R. Evid. 702. The Court does rely, *inter alia*, on Massachusetts State Trooper Michael Sullivan's testimony that his examination of the curb revealed it to be "glistening in the sunlight" and "tacky" to the touch, Lurinda Dakers' testimony that she saw a person fall near the curb, and Hancock's testimony that wet paint on the curb caused him to fall.

Hancock and his wife subsequently brought this action against Mobil in a complaint dated September 25, 1997.

II. Conclusions of Law

To prevail on a claim of negligence under Massachusetts law, Hancock must show that 1) there was a duty or standard of care owed to him by Mobil; 2) Mobil's conduct constituted a breach of such duty or standard of care; 3) Mobil's conduct was the proximate cause of his harm; and 4) he suffered actual harm. See O'Sullivan v. Shaw, 726 N.E.2d 951, 954 (Mass. 2000) ("Before liability for negligence can be imposed, there must first be a legal duty owed by the defendant to the plaintiff, and a breach of that duty proximately resulting in the injury.") (internal quotation marks omitted); Bennett v. Eagle Book Country Store, Inc., 557 N.E.2d 1166, 1168 (Mass. 1990) (listing elements of negligence claim under Massachusetts law). With regard to the first element, "[a]n owner or possessor of land owes a common-law duty of reasonable care to all persons lawfully on the premises." O'Sullivan, 726 N.E.2d at 954; see also Mounsey v. Ellard, 297 N.E.2d 43, 53 (Mass. 1973) (holding that Massachusetts "no longer follow[s] the common law distinction between licensees and invitees and, instead, create[s] a common duty of reasonable care which the occupier owes to all lawful visitors"). As Hancock was a business invitee of Mobil, Mobil owed such a duty of care to him. See Mounsey, 297 N.E.2d at 53 (adopting the "economic benefit" theory which assigns invitee status by reason of the potential economic benefit the occupier may receive from the invitee's presence). The duty owed to Hancock was "an obligation to maintain his property in a reasonably safe condition in view of all of the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk, and to warn visitors of any unreasonable dangers of which the

landlord is aware or reasonably should be aware.” O’Sullivan, 726 N.E.2d at 954 (internal citations and quotation marks omitted); Oliveri v. Massachusetts Bay Transportation Authority, 292 N.E.2d 863, 864 (Mass. 1973).

The Court finds that Mobil breached its duty of care to Hancock. First, as noted above, the Court finds that the area in which Hancock fell was under the care, maintenance, and control of Mobil, and it was foreseeable to Mobil that its invited visitors would traverse that area. See Kurtigian v. Worcester, 203 N.E.2d 692, 693 (Mass. 1965). As well, the Court finds that the premises were not in a reasonably safe condition in light of the danger presented by the recently painted curb, and the recently painted curb was not an “open and obvious” danger to Hancock. See O’Sullivan, 726 N.E.2d at 954 (“[I]t is well-established in our law of negligence that a landowner’s duty to protect lawful visitors against dangerous conditions on his property ordinarily does not extend to dangers that would be obvious to persons of average intelligence.”); Thorson v. Mandell, 525 N.E.2d 375 (Mass. 1988) (no duty on the part of the landowner to warn visitor of a dangers obvious to anyone of ordinary intelligence using ordinary care). The Court also finds that Mobil knew or should have known that the recently painted curb would be a source of danger to invited persons, see Oliveri, 292 N.E.2d at 864-65 (“Where a foreign substance on a floor or stairway causes the business visitor to fall and sustain injuries, he may prove the negligence of the defendant by proof that the defendant or his servant caused the substance to be there, or he may show that the defendant or his servants had actual knowledge of the existence of the foreign substance.”), but failed to warn Hancock of this danger by failing to put up cones or warning signs around the area. Additionally, the Court finds that Hancock suffered injury as a result of the fall and that the negligence of the defendant was the proximate cause of such injury.

Mobil has asserted the defense of comparative negligence. Massachusetts General Laws ch. 231 § 85 provides, in relevant part:

Contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not greater than the total amount of negligence attributable to the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made. In determining by what amount the plaintiff's damages shall be diminished in such a case, the negligence of each plaintiff shall be compared to the total negligence of all persons against whom recovery is sought. The combined total of the plaintiff's negligence taken together with all of the negligence of all defendants shall equal one hundred per cent.

Mass. G.L. ch. 231, § 85. As the Court finds that Hancock was not negligent to a greater degree than Mobil, the Court declines to bar Hancock's recovery from Mobil based on the defense of comparative negligence. Additionally, the Court finds that Hancock's recovery should not be reduced, as he was not negligent, but rather exercised the degree of care of a reasonable person under the same or similar circumstances. He "use[d] his facilities for his own protection and guard[ed] himself from obvious hazards." Benjamin v. O'Connell & Lee Mfg. Co., 138 N.E.2d 126, 128 (Mass. 1956).

III. Conclusion

Accordingly, the Court finds for Hancock on the issue of liability.

SO ORDERED this ___ day of May 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE