



October 2012

***Occupier's Liability and the issue of "control" – an analysis of the law in light of the High Court decision in Patrick Corcoran .v. Aer Lingus Plc. And Dublin Airport Authority Plc.***

The High Court decision in *Patrick Corcoran .v. Aer Lingus Plc. and Dublin Airport Authority Plc* has clarified the law on who will be considered the "occupier" for the purposes of the Occupiers Liability Act 1995.

**Facts**

The Plaintiff was making a delivery to the AL Cargo Terminal when he lost his balance and fell as a result of a hole/broken area of concrete in a compound outside the AL cargo terminal area causing him to sustain a personal injury. An expert engineer retained by the Plaintiff found that the compound at the front of the AL terminal building was paved with bitumen macadam which had broken down locally and created a depression at the point where the Plaintiff had fallen. Mr. Justice O'Neill was satisfied that this represented a hazard and was a breach of the occupier's duty to entrants on the premises, and that the occupier would be liable to compensate the Plaintiff for his injuries. The issue to be decided was who the "occupier" was for the purposes of the Occupiers Liability Act 1995.

**The Occupiers Liability Act 1995**

The primary legislation dealing with occupier's liability is the Occupiers Liability Act 1995 (the "Act"). Under the Act "occupier" in relation to any premises means:-

*"a person exercising such control over the state of the premises, that it is reasonable to impose upon that person a duty towards an entrant in respect of a particular danger thereon and, where there is more than one occupier of the same premises, the extent of the duty of each occupier towards an entrant depends on the degree of control each of them has over the state of the premises and the particular danger thereupon and whether, as respects each of*

For further information on any of the issues discussed in this article please contact:



**Kieran Cowhey**  
DD: + 353 (0)1 673 1783  
[kieran.cowhey@dilloneustace.ie](mailto:kieran.cowhey@dilloneustace.ie)

**Deirdre Kelly**  
DD:+ 353 (0)1 673 1010  
[deirdre.kelly@dilloneustace.ie](mailto:deirdre.kelly@dilloneustace.ie)

*them, the entrant concerned is a visitor, recreational user or trespasser.”*

The definition of an “occupier” makes no reference to the ownership of the property – rather the party which exercises physical control over the premises is the person upon whom liability under this Act will attach.

It is not required that the occupier own the premises, merely that sufficient control be exercised by him over the “state of the premises” that it is reasonable to impose a duty towards an entrant to the premises.

### **Issue Between Defendants**

The controversial issue in this case related to the identity of the “occupier” of the premises for the purposes of the Act.

The court was told that there were leasing arrangements between DAA as lessor and AL as lessee of a variety of parts of the airport which were in a composite lease dated 10<sup>th</sup> April 2000 (the “Lease”). Under the Lease DAA covenanted to use all reasonable endeavours to provide services “in relation to the external common areas of the airport”. The Lease then listed a variety of services, the first of which was:-

*“the construction, repair, renewal, replacement and maintenance of all roads, footpaths, bridges, walkways and accesses on or within the external common areas”*

The compound area where the Plaintiff was injured was not demised to AL in the Lease, however DAA contended that AL had “control” of the compound and accordingly should be considered the “occupier”, notwithstanding the fact that it had not been expressly demised to AL under the Lease. The arguments used by DAA to support this contention included the fact that AL operated a security controlled entry point to the compound at which there is a security barrier manned by an AL operative working in a security hut. It was also argued that the AL operative could admit or exclude entrants from the compound.

AL pointed to the Lease and the fact that the compound had not been demised to AL and that they had no contractual obligation to maintain the external common areas. They also pointed to the fact that DAA had other tenants in buildings adjacent to the AL Cargo Terminal which were serviced and could be accessed by the compound. AL introduced evidence that DAA had carried out maintenance work on the compound area such as an extensive repair to the central heating infrastructure going under the compound. As such, it was argued that notwithstanding the fact AL had a high level of security control at an entry point to the compound, they could not be said to have control over the “state of the premises”.

### **Decision of Mr. Justice O’Neill**

Mr. Justice O’Neill held that the compound area was an area which a number of tenants of DAA were entitled to use and therefore fell to be considered as one of the “external common areas” at

the airport as defined under the Lease. As regards the arguments of DAA that AL had “*control*” over the compound in the sense that access to the compound was controlled by AL, Mr. Justice O’Neill held that the fact that AL had a high level of security control in the area was immaterial to the issue of who had control over the “*physical state of the compound*”. He looked at the legal relationship between AL and DAA, which was governed by the Lease, and the fact that DAA had a variety of tenants that could use the compound area, and held that the “*inevitable conclusion*” was that DAA had control over the physical state of the compound.

## Comment

What are we to make of this decision? The most obvious point to note is the importance Mr. Justice O’Neill placed on the “*control*” any party has over the “*state of the premises*”. While control over who can or cannot enter a premises has often been thought to be a useful yardstick as to whether a party has “*control*” under the Act, Mr. Justice O’Neill disregarded arguments proffered by DAA that the security maintained by AL and their authority to admit or exclude persons from the compound as immaterial to the question of who had control over the state of the premises. What is abundantly clear is that the court will eschew arguments to the effect that a party can be found liable to another under the Act if they do not have control over the physical state of the premises.

The decision of Mr. Justice O’Neill clarifies the question of who will be considered an “*occupier*” under the purposes of the Act.

## DILLON EUSTACE

### Dublin

33 Sir John Rogerson’s Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

### Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

### Hong Kong

604 6F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

### New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

### Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

### DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

### Copyright Notice:

© 2012 Dillon Eustace. All rights reserved.