

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JEREMY T. McLAUGHLIN,)
) C.A. No. 04C-03-013 JTV
Plaintiff,)
)
v.)
)
DOVER DOWNS, INC., a Delaware corpor-)
ation, KEATING BUILDING CORP-)
ORATION, a foreign corporation, OVER-)
HEAD DOOR CORPORATION, a foreign)
corporation, AUTOMATIC DOOR ENTER-)
PRISES, INC., a foreign corporation, DEL-)
MAR SERVICES, INC., a Delaware corp-)
oration and MIAMI TESTING LABORA-)
TORIES, a foreign business entity,)
)
Defendants.)

Submitted: January 11, 2008
Decided: July 17, 2008

I. Barry Guerke, Esq., Parkowski, Guerke & Swayze, Dover, Delaware. Attorney for Plaintiff.

Michael Tighe, Esq., and Melissa L. Rhoads, Esq., Tighe & Cottrell, P.A., Wilmington, Delaware. Attorneys for Defendants Dover Downs and Keating Building Corporation.

Timothy A. Dillon, Esq., Salmon, Ricchezza, Singer & Turchi, Wilmington, Delaware. Attorney for Defendant Overhead Door Enterprises.

Stephen P. Casarino, Esq., Casarino, Christman & Shalk, Wilmington, Delaware. Attorney for Automatic Door Enterprises.

James T. Perry, Esq., Perry & Sensor, Wilmington, Delaware. Attorney for Del-Mar Services.

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July 17, 2008

*Upon Consideration of the Motions for Summary Judgment
Filed by Defendants' Dover, Downs, Inc.,
Keating Building Corporation, Overhead Door Corporation,
Automatic Door Enterprises, Inc., and Delmar Services, Inc.*

GRANTED

VAUGHN, President Judge

OPINION

All defendants have filed motions for summary judgment. The facts, taken in large part from the plaintiff's statement of facts in his brief, are as follows:

FACTS

On March 10, 2002, the plaintiff, Jeremy T. McLaughlin, his fiancée, and his future mother-in-law attended an event at the Dover Downs Hotel and Casino. They entered the premises through doors at the casino. After the event, they exited by going through an automatic revolving door at the hotel entrance. The plaintiff's future mother-in-law went through the door first. He and his fiancée had to wait for the automatic revolving door to come around before they could get in. His future mother-in-law was already out of the door when he and his fiancée, who was in front of him, entered the same compartment. What then occurred is described by the plaintiff in his deposition:

A. . . . Me and my wife – fiancé, we were waiting for the panel – for the door to come around before we got into it. My future mother-in-law was already out. We stepped in. My – my wife now was in front of me. And at that particular time, we were looking forward on our way out to go to the door. And then all of a sudden, something hit me in my back and the back of my head. Just as a reaction,

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thinking that someone pushed me, so I tried to turn around. And I couldn't turn around. Then when I did realize it was the panel, what had happened is it went back, and then hit me again. And at that particular time, the front panel didn't move. So it hit me in the front of my head. Then the back panel at the time hit me in the back of the head and the lower back. From there, at that time, I just recall falling to the ground, unfortunately. Someone just grabbed me, and the doors weren't even open. They just pulled me out of the doors. . . .

As a result of the incident, the plaintiff suffered serious permanent injuries.

Prior to the accident, construction started on the Dover Downs Hotel and Conference Center in early 1999, and the hotel opened in February 2002. The automatic revolving door in question was placed in service at the time the hotel opened.

Defendant Overhead Door Corporation, through its Horton Automatics Division (referred to hereinafter as Horton), designed, manufactured, and sold the revolving door installed at the Dover Downs Hotel. It is a Series 9300 model. The door consists of a circular drum with three wings creating three compartments having a ten foot diameter with a five-and-one-half foot opening or entrance. Horton sold the door to defendant Automatic Door Enterprises, its distributor, which in turn sold it to Dover Downs.

The door had a number of safety features. Of particular significance in this case is a standard safety feature known as "torque limiting." The torque limiting feature limits the amount of force which the door will exert on an immovable object

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to fifteen to twenty-five pounds of force. When that limit is reached, the door will stop. The door can be set to remain stopped until it is manually pushed, at which time it will resume movement, or it can be set to restart automatically after a brief interval.

At the time of the plaintiff's accident, Horton offered two optional safety features, neither of which were installed on the door in question. One is the VistaStop™ sensor, which is a sensor installed at the top of the trailing door panel of each compartment. It senses, by infrared technology, if a person comes too close to the trailing panel after the person enters the compartment. When the distance becomes too close, it stops the rotation of the door before it strikes the person. The wing sensors of the VistaStop™ are fully adjustable and can be set anywhere from twelve to eighteen inches out from the face of the panel.

The other optional safety sensor, called the FootGuard™, would be installed at the bottom of the trailing panel behind the user and would react to pressure by stopping the door. It is also sometimes called a "heel guard" because it is normally activated by the door coming into contact with the occupant's heel. The FootGuard™ is activated by a force of approximately ten pounds, distinguishing it from the torque limit feature which requires fifteen to twenty-five pounds of force.

The VistaStop™ was developed in the early to mid 1990s. It became a standard safety feature for Horton's Grand line of automatic revolving doors before 2002. The FootGuard™ has also been standard on the Grand Series. The Grand series is a line of larger doors available in three or four compartment models of various sizes from a diameter of sixteen feet up to twenty feet. Horton states that it

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did not include the VistaStop™ as standard equipment on the smaller 9300 Series because it would result in “nuisance” or unnecessary stops, which would cause inconvenience. It did not include the FootGuard™ as standard equipment on the 9300 Series because it was similar, although more sensitive, to the torque limiting feature which was already standard.

American National Standards Institute (ANSI) is a non-profit membership organization that oversees the promulgation of industry standards. In 2002, when the revolving door was installed at Dover Downs and when the accident involved in this case occurred, there was no ANSI standard governing automatic revolving doors. An ANSI standard for automatic revolving doors, including the one involved here, was published in June 2003 (ANSI Standard A156.27). That standard requires a wing sensor capable of detecting a person at least twenty-eight inches tall that causes the door to stop or slow to the maximum kinetic energy speed now be installed as a standard safety feature in revolving doors, including the model installed at the Dover Downs Hotel. The standard does not specify whether the wing sensor has to be a FootGuard™ type or an overhead VistaStop™ type.

Horton is represented on a subcommittee of Builders Hardware Manufacturers Association (BHMA), which developed and revised the ANSI standards that affect the automatic door industry. Its representative has served on that committee since 1996.

The ANSI standard applicable to automatic revolving doors published in June 2003 had been in the process of development in this subcommittee for several years

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prior to the publication date. Accordingly, Horton, through its representative, was aware of the development of the standard on an ongoing basis. The Horton representative voted in favor of the 2003 standard even though Horton takes the position that the VistaStop™ and FootGuard™ on doors the size of the one at Dover Downs create more of a nuisance and impede traffic flow than provide safety.

Horton states that its policy is to design and manufacture products in compliance with ANSI standards. It notes that the automatic revolving door standard was not in effect at the time this door was installed at the Dover Downs Hotel. There are a number of instances, however, where Horton has gone beyond what is required by a particular ANSI standard and in which it has, in at least one instance, initiated changes in product design in anticipation of a revised ANSI standard. For instance, the FootGuard™ and VistaStop™ safety sensors have long been standard equipment on the Grand line of automatic revolving doors even though not required by any ANSI standard until 2003. Another example is that Horton recommends four rpms for an automatic revolving door such as the one involved in this case, which was significantly lower than the codes of the day which allowed up to seven rpms.

Horton made changes in design for other automatic doors in anticipation of upcoming ANSI standards. For example, Horton designed its automatic sliding doors to allow for presence detection on both sides of the sliding door before this feature became a minimum requirement of the ANSI standard. A representative for Horton explained that the technology was available at the time and reliable, acceptable, and good enough to make presence detection a standard part of the sliding door package

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even though not yet required by ANSI.

Where there is no applicable ANSI standard, such as before the publication of the automatic revolving door provision in June 2003, Horton will look at existing standards applicable to other automatic doors for guidance in establishing its internal parameters. For example, the torque limiting feature of the automatic revolving doors causes the door to stop when it encounters pressure between fifteen and twenty-five pounds on the standard run speed. What Horton did in setting that standard, even before the ANSI provision was enacted, was to look at the closing and opening forces of automatic sliding doors as being sufficiently similar to adapt to the automatic revolving doors. Essentially, what Horton did was borrow standards from the automatic sliding doors and plug them into the automatic revolving door situation. This is no more or less than what the plaintiff's expert engineer, Dr. Warren Davis, Ph.D., did in his analysis.

On February 16, 2002, shortly after the Dover Downs door was placed into service, an incident occurred involving a hotel guest named Ellen Jenkins. An incident report prepared at the time records that Ms. Jenkins stated that the revolving door was moving too fast and had pushed her down to the ground. A valet reported that he was outside the door and turned around to see Ms. Jenkins on the ground inside one of the door's compartments, with the door bumping against her back. He stopped the door and helped her get up.

Defendant Keating Building Corporation, the general contractor for the construction of the hotel, was still on the site when the Jenkins accident occurred.

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However, neither Dover Downs nor Keating took any steps in response to Ms. Jenkins' accident.

Ten days later, on February 26, 2002, Dover Downs placed a service call to defendant Del-Mar Door Services, Inc. regarding the door. The complaint was that the door "needs adjustment." The Del-Mar Door technician who responded to the call, however, found that the door was working properly according to the manufacturer's specifications. The service technician discussed the door's operation with hotel management.

As mentioned above, the torque limiting safety feature could be set for a manual or automatic restart. The plaintiff contends that it is apparent from the description of the Jenkins incident and the incident involving the plaintiff that it must have been in the automatic restart mode. The Del-Mar Door technician who had paid a service call on the door on February 26 recorded that he set the door for the first mentioned restart option, the manual push restart.

The plaintiff's expert engineer, Dr. Davis, places significance on the Jenkins incident because he opines that the initial pushdown of Ms. Jenkins and the continued striking of her while on the floor of the compartment are direct consequences of the failure to have the VistaStop™ and FootGuard™ installed within the compartments of the automatic revolving door. The incident, according to Dr. Davis, put Dover Downs on notice of defects in the door (the absence of VistaStop™ and FootGuard™). He further opines that Dover Downs, being on such notice, should have taken the door out of service completely until the problem could be remedied.

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Instead, Dover Downs allowed the door to remain in service even though the owner's manual instructs the owner to shut down the door and call for service in the event of malfunctions.

There was also a service call on April 10, 2002, one month after the plaintiff's accident. The service ticket from Del-Mar Door indicates that Dover Downs wanted Del-Mar Door to check out the revolving door operation. The Del-Mar Door technician who responded again found that the door was working according to the manufacturer's specifications. Nonetheless, according to the plaintiff, someone at the Dover Downs Hotel believed it was not working properly, that it was malfunctioning, and it needed to be checked out.

The American Association of Automatic Door Manufacturers (AAADM) is a trade association of manufacturers of automatic doors and members who wish to become certified as technicians or inspectors. The AAADM was formed to promote product safety by means of training and certification programs, educational materials, and improved communication. Horton, Automatic Door, and Del-Mar Door have been members since the association began in the 1990s. The individual technicians and inspectors of Del-Mar Door are all AAADM certified. Horton advertises its membership on its website and in its written materials. Automatic Door states on its website that it is a member of AAADM and "certified AAADM installers will do the right job so you can enjoy your automated doors for years."

The AAADM certification program deals with the safety of automatic doors, focusing on safety and trying to prevent, inter alia, pedestrian accidents. AAADM

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instructs its certified inspectors and technicians that they are required to bring deficiencies in automatic doors to the attention of the owners and that they should request authorization from the owner to correct deficiencies. If the door owner refuses, the AAADM certified technician or inspector should note the refusal in writing. AAADM guidelines also require that certified inspectors and technicians never leave a door in an unsafe operating condition. If a technician or inspector finds an unsafe operating condition in an automatic door, he should take the door down until it is safe.

One of the primary thrusts of AAADM is to promote safety with regard to automatic doors. There are circumstances where AAADM recommends that its members promote safety beyond what might be required by standards such as ANSI. For example, AAADM imposes an obligation on certified inspectors and technicians to emphasize to an owner the importance of a daily safety inspection that is not otherwise a part of an ANSI standard. AAADM also recommends that a technician note additional safety recommendations that are not covered by ANSI. Thus, if a technician or inspector knows that the manufacturer recommends additional features or a higher level of performance than that required by ANSI, the comment section of the service ticket should be used to note these other recommendations. A certified AAADM member should advise the customer if there are any additional manufacturer recommendations or requirements so the customer can make a decision as to whether to comply with them.

Although the AAADM guidelines in effect at the time of installation of the

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automatic revolving door at the Dover Downs Hotel did not specifically refer to the ANSI standard for automatic revolving doors because none was yet in effect, AAADM certified inspectors and technicians applied the same safety practices and principles to installation and work on automatic revolvers as they did on other types of automatic pedestrian doors.

Following the format of the plaintiff's brief, the remainder of this statement of facts addresses each defendant separately.

Defendant Horton. Horton's representative stated that the normal use of a revolving door of the type in this case is one pedestrian per compartment, and if the plaintiff had proceeded through the revolving door by himself in a compartment of his own, the accident most likely would not have occurred. However, there is no mention or recommendation in the Series 9300 instructions, or in any signage at or near the door, that people should pass through the door one person in the compartment at a time. This is so even though with a ten foot diameter, this is the largest door in the 9300 Series with an entrance at the throat opening to the door of about five-and-one-half feet. The next size up, a twelve foot diameter door, was equipped with the VistaStop™ and FootGuard™ safety sensors as standard equipment.

The failure to make the VistaStop™ and FootGuard™ standard equipment on the 9300 Series door occurred in the context of Horton claiming that it always does everything it can from a design standpoint to make doors as reasonably safe as possible. Even though it provides no signage warning that only one person should

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use a compartment at a time, Horton claims that one of the risks it designs around is the risk of someone being struck by one of the wings of the door as the person progresses through the door.

The 9300 Series is intended by Horton for use by the public in general, including children and elderly. Horton acknowledges that the application of the door in a hotel setting is typical and appropriate for this particular line. Although Dover Downs does not know what segment of its patrons are elderly, it does nothing to restrict its categories of patrons: the hotel is handicapped accessible and accommodates wheelchairs, walkers, and people with canes and crutches. Horton recommends the installation of, and its automatic revolving door package includes, an alternate door adjacent to the revolving door for any person who may not want to use the automatic revolving door. However, Horton neither recommended nor provided any signage for the Dover Downs revolving door advising users of the alternative means of ingress and egress through the adjacent door.

The plaintiff's expert, Dr. Davis, states that the automatic revolving door failed to carry adequate warnings of the hazard presented by the door as required by the ANSI Z535.4 national warning standard. He further states that if such warnings had been present, the plaintiff might well have used one of the alternate doors available, thereby avoiding the incident and injuries.

The decision by Horton to equip the Grand line of doors with VistaStop™ and FootGuard™ sensors as standard equipment was the result of a team effort involving meetings and group discussions with input from marketing, product management,

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sales, engineering, tech support, etc. The decision was made to equip the Grand line with both safety sensors even though there was no ANSI standard, UL standard, or any other standard or code that so required. Because the Grand line is larger in size and invites multiples users in the same compartment, Horton decided it would be prudent to have these sensors on the Grand line.

A similar team effort consisting of meetings and group discussions with input from various departments within Horton made the decision not to equip the 9300 Series with the same safety sensors, but instead to make them available as options only. Horton believed it was not practical on the 9300 Series because it could cause nuisance stoppings and because the 9300 Series doors were already equipped with a number of safety devices, although no other safety feature on the door would stop or slow the door down without actual contact with the user.

In the process of developing the 9300 Series, Horton did not undertake any product safety studies, either internally or externally, nor were human factors experts called in to evaluate performance. Similarly, Horton never undertook any safety studies internally or externally with regard to the VistaStop™ and did not receive any human factors analysis on its application.

The plaintiff's engineering expert, Dr. Davis, states that the failure to have the VistaStop™ and FootGuard™ optional safety sensors installed on the Dover Downs door was the cause of the accident and the plaintiff's injuries. If they had been standard on this door, the VistaStop™ would have prevented the incident from occurring at all because it does not require contact with the door to arrest the motion

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of the door panel. Dr. Davis states that the FootGuard™ would have stopped the door once the bottom of the door came into contact with a user, which likely would have prevented the first blow to the plaintiff's head, which in turn would have prevented the forward thrust to the head that caused it to strike the panel in front.

It is likely that this door carried several times the maximum kinetic energy (two-and-one-half feet per pound) allowed by ANSI A156.10 and UL 325 for sliding, swinging, and folding doors. Failing to incorporate the VistaStop™ and FootGuard™ as standard safety features precluded Horton from meeting its responsibility to market a safe door because the kinetic energy generated by a revolving door of this diameter exceeded the maximum safe value for other types of doors. The presence of the VistaStop™ and FootGuard™ as standard equipment on the Grand Series of automatic revolving doors manufactured and sold by Horton indicates its awareness of the hazard resulting from being struck from behind by a door panel.

Defendant Dover Downs. Horton identifies the owner's manual as one of the safety features of this particular automatic revolving door. The owner's manual gives instructions on how the door should work and what the owner should do on a daily basis to ensure the door is safe for use by people coming in and out of the facility. A daily safety inspection by the owner is important because the owner is in the best position to observe the operation of the door on a daily basis. The owner's manual is designed to give the owner guidance, including guidance on performing the daily inspection that is the owner's responsibility. The owner's requisite daily inspection

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includes checking the torque limiting feature, testing the electronic activation sensor that starts the door revolving, verifying the detection pattern, assuring it is at least as wide as the entry opening, checking the red reduced speed button, inspecting the weather stripping, inspecting the door's overall appearance, including the safety decals, and checking the speed of rotation. In addition to the manual, there are two decals on the door, one from Horton and one from AAADM, that provide the step by step instruction to the owner for such daily inspections, emphasizing the importance of them.

Dover Downs did not perform the required daily inspections. Only visual inspections were performed by Dover Downs on the automatic revolving door, and there was no set routine and no specific individual was assigned to that task. The inspections were casual, such as the doorman merely noting a malfunction and then calling the maintenance department to investigate. There was no structured program implemented by Dover Downs for the required daily safety check of the automatic revolving door or inspection other than casual observation by employees; there was no set time frame, such as once a week or twice a month, let alone the recommended daily frequency, for safety checks or inspections of this door. In this connection, Horton recommends that this particular door rotate at a speed of four rpms. When Horton's expert inspected the door, he reported that it rotated at 5.1 rpms. The speed adjustment for the automatic revolving door is contained in a box to which the owner does not have access. It is preset by the installer or after installation by a qualified technician. The recommended daily inspection includes checking the speed (the rpms

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of the automatic revolving door). The plaintiff alleges that since both the Jenkins incident and the plaintiff's incident involved being struck from behind, it is likely that the rotation speed was excessive. The plaintiff also alleges that it is likely that had Dover Downs performed the daily safety checks, including checking the speed for rpms, a technician would have been called to adjust the speed to the recommended four rpms at least after the Jenkins incident, but certainly at some time prior to the plaintiff's injury. This was never done by Dover Downs.

Defendant Keating Building Corporation. By the time Keating became involved with the construction of the hotel, specifications for the automatic revolving door at the hotel entrance were already in place. Keating contracted with the distributor/installer, Automatic Door, to produce the product data on the door that was specified, which was submitted to the architect for review and approval. Keating then coordinated the installation of the door in the building with the distributor/installer. Keating first became aware of the Jenkins incident while it was still on site finishing up the construction. Thus, Keating became aware of possible risks for a user of an automatic revolving door who might be a slow walker, or have a disability, or use an assistive device, and who might be struck because of an inability to keep up with the speed of the door. However, it did nothing in response to receiving such notice.

Keating's file in reference to the installation of the automatic revolving door at Dover Downs consisted of approximately thirty-six pages. These included various drawings, faxes, memos, transmittal sheets, and emails between Keating, Automatic

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Door, and others, including the architect, the glass vendor, and the lock vendor. Most of the communications focused on two aspects of the installation of the door. They involved coordination of the color of the revolver and sliders that were on either side of the revolver at the hotel entrance and reductions in the height of the canopy over the automatic revolving door. The dialogue involved consideration of a light bronze versus a darker bronze anodized finish that made the color match “more critical to the design aesthetic.” The canopy height was reduced, changing it to that of a standard canopy instead of one that was more customized because some of the dimensions did not match the system that was being installed. These changes were described as part of value engineering at the hotel entrance. According to a Keating witness, value engineering is a process of taking a specification or a product or a particular amount of construction and reducing it in scope or size to reduce the costs.

The file also reflected a number of coordination meetings that were held where representatives of Keating, Automatic Door, and other vendors, such as the glass provider, discussed the installation, went over drawings, referred to sizes, installation schedule, duration of work between the parties, start up of the work, etc. Typically, such coordination meetings would last close to an hour. At no point during the discussion of the installation of the automatic revolving doors at the entrance of the Dover Downs Hotel, at these coordination meetings or otherwise, was there any reference to the optional safety sensors or safety features of the door, including the VistaStop™ or FootGuard™. In addition, in the entire file regarding the installation of the automatic revolving doors at the entrance to the Dover Downs Hotel there is

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no record of any dialogue, discussion, communication, etc. with respect to either of the optional safety sensors, the VistaStop™ or FootGuard™. At none of these meetings did Automatic Door come forward and say, for example, “Hey, have you considered these two optional safety sensors that might make it more safe for users, such as the VistaStop™ or FootGuard™?” nor did Keating bring the question up on its own.

Defendant Automatic Door Enterprises. Automatic Door has been a distributor of Horton’s automatic doors since 1995. It is in the business of sale and installation of automatic doors; it does not service them. In this instance, Automatic Door was the subcontractor to the general contractor on the Dover Downs Hotel construction, which was Keating.

Automatic Door has been a member of AAADM since its inception in approximately 1994. AAADM standards are voluntary minimum industry safety guidelines. All of Automatic Door’s employees who are technicians or inspectors are certified under AAADM. Automatic Door agrees that AAADM recommends to its certified inspectors and technicians that they are required to bring deficiencies in automatic doors to the attention of the owners, and that if deficiencies are detected, the inspector or technician should request permission to correct it. If the owner refuses or declines, then the AAADM certified technician or inspector is supposed to document the refusal in writing. Automatic Door also acknowledges that AAADM guidelines require certified inspectors and technicians never to leave an automatic door in an unsafe operating condition. Automatic Door further acknowledges that

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AAADM was formed as a trade association of automatic pedestrian door manufacturers to promote product safety throughout the distribution chain through training and certification, education, and improved communication. Automatic Door also acknowledges that standards promulgated by AAADM are at least in part designed to assure that a pedestrian is not entrapped or caught in a closing automatic door. Although Automatic Door contends AAADM guidelines do not apply to automatic revolving doors, it makes every effort to be as careful and conscientious when installing automatic revolving doors as it would be when installing doors covered by the AAADM guidelines. In other words, Automatic Door makes every effort to be as careful and conscientious when installing automatic revolving doors as it is when installing doors covered by ANSI standards and the AAADM manual. Automatic Door acknowledges that the AAADM guidelines called for certified technicians or inspectors, where they are aware, to note a manufacturer's additional specification that is not being met, such as extra equipment not required by ANSI. Automatic Door admits that the optional VistaStop™ and FootGuard™ safety sensors fall into that category as extra equipment not required by ANSI.

Automatic Door acknowledged that the AAADM guidelines also direct that certified technicians or inspectors may make additional safety recommendations that may not be required by ANSI standards. Automatic Door knew that it could make safety recommendations that were not covered by an ANSI standard. Automatic Door acknowledged that AAADM standards recommend that if the certified inspector/technician knows that the manufacturer recommends additional features of

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a higher level of performance than those required by ANSI, it should identify these other recommendations for the customer so that the customer can make a decision as to whether to comply with them. Automatic Door agrees with the foregoing in the context of installations of automatic revolving doors that are not subject to ANSI or AAADM.

Automatic Door was familiar with the safety sensors VistaStop™ and FootGuard™ and was aware that they were available as options at the time that this particular automatic revolving door was installed at the Dover Downs Hotel. Automatic Door knows that neither, however, was installed on the automatic revolving door at Dover Downs. Automatic Door understands that door mounted sensors are an important part of overall safety in the operation of an automatic door. Automatic Door admitted that at no point in the process did it make a recommendation to anyone that either the VistaStop™ or FootGuard™ or both should be installed on the Dover Downs automatic revolving door, even though Automatic Door admits that the operation of the automatic revolving door would be safer if it had the VistaStop™ safety sensor installed on it. The same goes for installation of the FootGuard™ sensor.

The plaintiff's expert, Dr. Davis, confirms that AAADM technicians are required to bring deficiencies to the attention of the door owner, request permission to make appropriate alterations, and if permission is denied, to document that refusal in writing. Similarly, Dr. Davis confirms that AAADM certified technicians are required never to leave a door in an unsafe operating condition. Dr. Davis states that

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Automatic Door's failure to advise Dover Downs of the availability of the VistaStop™ or FootGuard™ sensors was a failure on its part to meet AAADM standards. He states that its failure to recommend that the door be taken out of service because it was unsafe for pedestrian users was also a failure to meet AAADM standards.

Automatic Door admitted that if the Jenkins incident occurred the way Ms. Jenkins described it, with the door panel bumping Ms. Jenkins in the back when she was down in the compartment, it was not operating the way it was supposed to operate. Automatic Door admits that if the door was still bumping into the guest's back, it would be malfunctioning.

Horton requires the installer or distributor to take the owner through a daily safety check procedure for the automatic revolving door when it is given the owner's manual, demonstrating the procedures to follow. This is also required by Horton in its installation instructions. In addition, Automatic Door agrees that AAADM's goal is the promotion of safe practices, including daily safety checks. However, when the automatic revolving door was installed by Automatic Door at the Dover Downs Hotel, no representatives from that company ever went over with the owner the importance of the daily safety checklist. Indeed, Automatic Door is not aware if anybody from any entity ever met with the owner to discuss the daily safety checklists or had a familiarizing session to explain how the inspection should take place, etc.

Defendant Del-Mar Door Services, Inc. A representative of Del-Mar Door admitted that despite whether an automatic door is covered by an applicable ANSI

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standard or not, it must operate safely to protect users from injury. Thus, even though this particular automatic revolving door at the Dover Downs Hotel was not subject to an ANSI standard at the time of the plaintiff's accident, it still had to be safe for people who used it. Del-Mar Door acknowledges that door mounted sensors like the VistaStop™ and FootGuard™ are important to the safety of an automatic revolving door.

Del-Mar Door was familiar with the VistaStop™ and FootGuard™ safety sensors. It knows VistaStop™ protects even the slowest walker from being struck. Del-Mar Door also acknowledges that the addition of the VistaStop™ safety sensor on the revolving door at the Dover Downs Hotel at the time of installation would have made the door safer for users, giving it another device for stopping. Likewise, Del-Mar Door acknowledges that the installation of the FootGuard™ safety sensor on that particular revolving door at the time of installation would have made it safer for users. It also admits that had the VistaStop™ safety sensor been installed on this door at the time of the plaintiff's accident, it would have prevented him from being struck from behind by one of the rotating panels because contact is not required in order to stop or slow the door. If Dover Downs had wanted to install either the VistaStop™ or FootGuard™ safety sensor on this particular automatic revolving door after initial installation of the door, DelMar Door would have been the company that would have been called to do it.

When Del-Mar Door's certified technicians or inspectors are called out for service on an automatic revolving door like the one at the Dover Downs Hotel, they

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do not actually measure the speed of the door, but instead rely upon the controller device in the door itself. With this exception, when Del-Mar Door technicians “tune a door” it means it is adjusted to the manufacturer’s specs. Del-Mar Door acknowledges that Horton’s recommended rpms for this particular door at Dover Downs are “very low.” Del-Mar Door is also aware that on occasion owners will ask them to speed up the door, but they decline to do so, referring back to the manufacturer’s recommendation of four rpms contained in the owner’s manual. The only way to change the speed would be someone going into the controller and physically changing it (or adding a rug which would slow it down). Del-Mar Door admits that if a test were done at a certain time on this particular door which indicated that the rpms were faster than the manufacturer’s recommendations, it would mean that someone had gone in to adjust the speed setting. The installer sets it, and possibly a service technician could adjust it, but those are the only two ways of increasing the setting. Accordingly, if the automatic revolver was tested at 5.1 rpms by Horton’s expert, it was either set wrong at installation by Automatic Door, or if correctly set at four rpms, it malfunctioned by the speed increasing by more than twenty-five percent.

Del-Mar Door ascribes to all AAADM guidelines and recommendations. AAADM guidelines instruct certified technicians never to leave an automatic door in an unsafe condition. AAADM recommends that if a technician is aware of additional manufacturer’s specifications that are not being met, such as extra equipment not required by ANSI, the certified technician should so note that fact.

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Del-Mar Door is also familiar with the fact that AAADM recommends that certified technicians note additional safety recommendations that are not covered by ANSI, and that if a technician is aware that a manufacturer recommends additional features or a higher level of performance than what is required by ANSI, the technician should note these with the owner. Del-Mar Door agrees that AAADM indicates that the certified technician should advise the customer if the technician knows of additional manufacturer's recommendations or requirements so the customer can make a decision as to whether to comply with them. Del-Mar Door also acknowledges that the certified AAADM technician should recommend to the owner that a door be taken out of service if it is unsafe, and if the owner declines, it should be noted in writing. Even though this particular door was not covered by an ANSI standard at the time, Del-Mar Door acknowledges this same standard would be one the company would adhere to, that is, taking any unsafe door out of service, including an automatic revolver. In this respect, the plaintiff's expert engineer confirms that AAADM technicians are required to bring deficiencies to the attention of the door owner, request permission to make the repairs, and if permission is declined by the door owner, to document that refusal in writing, and that AAADM certified technicians are required never to leave a door in an unsafe operating condition. Dr. Davis opines that Del-Mar Door failed to meet these AAADM standards. Del-Mar Door never advised Dover Downs of the availability of the VistaStop™ or FootGuard™ on this particular door and did not recommend that it be taken out of service because it was unsafe for pedestrian users.

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STANDARD OF REVIEW

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.¹ The moving party bears the burden of establishing the non-existence of material issues of fact.² If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.³ In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.⁴ Summary judgment is inappropriate “when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.”⁵

DISCUSSION

“Negligence is generally defined as a failure to meet the standard of care required by law.”⁶ In order to state a claim for negligence, the plaintiff must show that the defendant owed him a duty of care, the defendant breached that duty, and the

¹ Super. Ct. Civ. R. 56(c).

² *Gray v. Allstate Ins. Co.*, 2007 Del. Super. LEXIS 124, at *3.

³ *Id.*

⁴ *Pierce v. Int’l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

⁵ *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 Del. Super. LEXIS 22, at *4.

⁶ *Rogers v. Del. State Univ.*, 2005 Del. Super. LEXIS 341, at *14.

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defendant's breach was the proximate cause of the plaintiff's injury.⁷

Duty is measured in terms of reasonableness⁸ and is equated to the conduct of a reasonably prudent person under the circumstances.⁹ The existence of a duty is generally considered to be an issue of law for the Court to determine.¹⁰ Ordinarily, questions of negligence are not decided on motions for summary judgment but are left for the trier of fact.¹¹ However, if there is a complete failure of proof concerning an essential element of the plaintiff's case and the uncontroverted facts compel only one conclusion, then summary judgment is warranted.¹²

A court may review industry standards to determine whether the defendant used reasonable care under the circumstances.¹³ Compliance with industry-wide

⁷ *New Haverford P'ship v. Stroot*, 772 A.2d 792, 798 (Del. 2001).

⁸ *Macey v. AAA-1 Pool Builders & Serv. Co.*, 1993 Del. Super. LEXIS 152, at *8.

⁹ *Graham v. Pittsburgh Corning Corp.*, 593 A.2d 567, 571 (Del. Super. 1990). For the duty of a manufacturer, see RESTATEMENT (2D) OF TORTS § 395; *Massey-Ferguson, Inc. v. Wells*, 383 A.2d 640, 642 (Del. 1978) (citing § 395 to declare that the plaintiff holds the burden to establish that the defendant "failed to exercise the care of a reasonably prudent manufacturer under all the circumstances").

¹⁰ *Kananen v. A.I. DuPont Inst. of Nemours Found.*, 796 A.2d 1, 5 (Del. Super. 2000) (citing Super. Ct. Civil R. 56(c)); *Macey*, 1993 Del. Super. LEXIS 152, at *8.

¹¹ *Joseph v. Jamesway Corp.*, 1997 Del. Super. LEXIS 264, at *10.

¹² *Id.* at *10–11.

¹³ *Massey-Ferguson*, 383 A.2d at 642.

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standards does not necessarily absolve one of liability.¹⁴ The defendant may be found negligent according to the prevailing practices in the industry even if the defendant is in compliance with industry standards.¹⁵ Therefore, industry standards are “relevant only in the context of determining a standard of care, and even in this context such evidence is not controlling.”¹⁶ Thus, the fact that ANSI A156.10-1999 did not include automatic revolving doors when it referred to wing sensors is not controlling as to whether a reasonable person would have included the VistaStop™ and/or FootGuard™ as a standard safety feature on the door in question.

HORTON

_____ I first address the motion for summary judgment filed by Horton.

The plaintiff contends that Horton was negligent for offering the VistaStop™ and FootGuard™ as optional safety features rather than standard features and for failing to warn of the door’s dangers. He also alleges that Horton breached implied warranties of merchantability and fitness for a particular purpose.

A manufacturer has a duty to use reasonable care to design its products to be

¹⁴ *Hercules Powder Co. v. DiSabatino*, 188 A.2d 529 (Del. 1963). Delaware Civil Pattern Jury Instructions state that compliance with industrial standards does not preclude a finding of negligence. Del. Super. P.J.I. Civ., § 9.10 (rev. 2003).

¹⁵ *Hercules Powder Co.*, 188 A.2d at 529.

¹⁶ *Bryant v. Delmarva Power & Light Co.*, 1995 Del. Super. LEXIS 438, at *37; *see Massey-Ferguson*, 383 A.2d at 642.

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safe for normal use.¹⁷ A manufacturer is negligent if it fails to exercise reasonable care in making its product such that the product contains a manufacturing defect when placed into the stream of commerce.¹⁸ However, the mere fact that an accident occurs or that the product is defective does not mean that the manufacturer was negligent.¹⁹ The test is whether the manufacturer used the reasonable skill, care, and diligence of an ordinarily prudent manufacturer in making the product.²⁰

A manufacturer owes a duty to use reasonable care, skill, and diligence in designing its product so as to minimize all foreseeable risks.²¹ A manufacturer must reasonably anticipate the environment in which the product is normally used and must design the product to minimize foreseeable risks of harm that may result from using

¹⁷ *Mazda Motor Corp. v. Lindahl*, 706 A.2d 526, 530 (Del. 1998); *see also Brower v. Metal Indus., Inc.*, 719 A.2d 941, 944 (Del. 1998) (The Court has summarized the legal duty of a manufacturer as follows: “[A] manufacturer who fails to exercise reasonable care in the manufacture of a chattel which, unless carefully made, he should recognize as involving an unreasonable risk of causing physical harm to those who use it for a purpose for which the manufacturer should expect it to be used and to those whom he should expect to be endangered by its probable use, is subject to liability for physical harm caused to them by its lawful use in a manner and for a purpose for which it is supplied.”).

¹⁸ *See Massey-Ferguson*, 383 A.2d at 642.

¹⁹ *See Custis v. Barr*, 2006 Del. Super. LEXIS 166, at *4; *Brown v. Gartside*, 2004 Del. Super. LEXIS 83, at *5.

²⁰ *See Gorman v. Murphy Diesel Co.*, 29 A.2d 145, 147 (Del. Super. 1942).

²¹ *See id.*; *see also Brower*, 719 A.2d at 945 (“[T]he purpose of making the finding of a legal duty as a prerequisite to a finding of negligence, or a breach of implied warranty, in products liability is to avoid the extension of liability for every conceivably foreseeable accident, without regard to common sense or good policy.”).

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the product in such an environment.²² Although a manufacturer has a duty to exercise reasonable care, the manufacturer is not required to design a product that is foolproof or incapable of producing injury.²³

Horton equipped the door with several safety features, including a reduced speed switch, a push to slow button, a wall edge safety device that would cause the door to stop when a pressure lasting greater than one-quarter second was placed on the wall edges, and a torque limiting device that stopped the door in the event that the door wing contacted an object while the door was in motion.

There is an apparent dispute as to whether the torque limiting device was in manual restart mode after contact with a user or automatic restart mode at the time of the Jenkins' incident and the plaintiff's accident. I infer, therefore, that it may have been in either of these two modes when the plaintiff's accident occurred, notwithstanding the service technician's note that he left it in the manual, push start mode. There is also a lack of clarity as to how each of the two incidents occurred. However, the evidence does not support a finding that the torque limiting device was not working properly at the time of the plaintiff's accident. The technician who inspected the door on February 26, 2002 concluded that the door was working properly and in accordance with the manufacturer's specifications. The descriptions of the Jenkins incident and the plaintiff's incident are too ambiguous to create a genuine dispute as to the truth of the fact that when the door was inspected on

²² See *Casey v. Pactiv Corp.*, 2004 Mass. Super. LEXIS 200, at *5.

²³ See *Garst v. Gen. Motors Corp.*, 484 P.2d 47, 49 (Kan. 1971).

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February 26, 2002 it was working properly. There is no evidence that any repairs or adjustments were needed to the torque limiting device at any time relevant to this matter. The technician who inspected the door after the plaintiff's injury on April 10, 2002 also concluded that it was working properly. Therefore, the evidence does not permit a jury to find that the door malfunctioned at the time of the plaintiff's accident.

The record does not contain any known history of accidents caused by the 9300 Series door. The only two accidents mentioned in the record are the Jenkins' incident and the plaintiff's incident. There is no evidence that Horton or any other manufacturer had any prior knowledge or notice that the 9300 Series door had any propensity to cause injury.

No ANSI, UL, or other industry standard applied to automatic revolving doors at either the time of the installation or the plaintiff's accident. The 2003 ANSI standard for revolving doors, which was adopted after the plaintiff's accident, requires a wing sensor without specifying whether it has to be of the FootGuard™ type or overhead VistaStop™ type, but it does not require both the VistaStop™ and FootGuard™. Even if the 2003 ANSI standard was in effect at the time of the plaintiff's incident, the door at Dover Downs was equipped with a sensor, the torque limiting device, that provided essentially the same function as the FootGuard™. In addition, there is no evidence of any prior instance where a VistaStop™ or FootGuard™ was installed on a Series 9300 door. At oral argument, counsel stated that, in fact, neither the VistaStop™ nor the FootGuard™ had ever been installed on a Horton 9300 Series door in or prior to 2002. Thus, although Horton offered these two safety

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features as options, there is no evidence that any purchaser or seller of the door thought that either the VistaStop™ or the FootGuard™ was desirable for a door of this size in or before 2002.

The plaintiff also contends that Horton had notice that the absence of a VistaStop™ and/or a FootGuard™ rendered the door defective because of its participation on the subcommittee of the Builders Hardware Manufacturers Association, which had been in the process of developing the 2003 ANSI standard for several years. However, the record does not contain any context or substance relating to the process leading to the ANSI standard as it related to wing sensors. A jury could only speculate as to inferences to be drawn from this fact.

The plaintiff's expert, Dr. Davis, opines that Horton was aware that the door was a potential danger to persons using it and a hazard, in part because Horton decided that the VistaStop™ should be standard on the larger Grand line of doors, and in part because Horton knew or should have known that the 9300 Series carried kinetic energy in excess of that recognized as the maximum safe value for other types of doors. In fact, Dr. Davis goes as far as to say that Horton's failure to inform the public through adequate warnings of its decision not to include the VistaStop™ and/or FootGuard™ as standard safety features on the 9300 Series reflects willful, wanton, and/or reckless disregard for public safety. He also opines that Horton should have included with the door other safety warnings of the hazard presented and that its failure to do so violates ANSI Z535.4 national warning standard. However, I find that Dr. Davis' opinions are conclusory assertions, which lack sufficient

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probative value to raise a genuine issue of fact.²⁴

As to the duty to warn, “[a] manufacturer is held to have a duty to warn when a manufacturer and distributor of a product knows, or as a reasonable prudent manufacturer should know, of dangers to users and places that product on the market.”²⁵ The Plaintiff contends that the door should have contained the following warnings: “that the device did not contain either of the two most sensitive safety features, that the trailing panel would strike a user if he didn’t walk at a certain speed, advising against more than one person using a compartment of the revolving door at one time, and directing pedestrians to alternate means of entering or leaving the hotel.” Additionally, the plaintiff cites ANSI Z535.4 Product Safety Label Standard, which sets forth performance requirements for the design, application, use, and placement of safety signs and labels.²⁶ According to the standard in effect at the time of the accident, “a product safety sign or label should alert persons to a specific

²⁴ It should be noted that Dr. Davis never conducted his own independent investigation of the automatic revolving door at Dover Downs. He never inspected the door or its safety features and has no knowledge of the condition of the door at the time of the plaintiff’s accident on March 10, 2002. See *Willis v. Besam Automated Entrance Sys., Inc. et al.*, 2005 U.S. Dist. LEXIS 26466, at *16–20, 25 (excluding an expert’s testimony for similar reasons because “[p]ermitting [the expert] to testify as an expert in support of Plaintiff’s negligence claims would allow too great of an analytical gap between his review of the data and the conclusion that he reached”).

²⁵ *O’Brien-Hastings v. Howmedica Corp.*, 1996 Del. Super. LEXIS 211, at *6; see also *Willis*, 2005 U.S. Dist. LEXIS 26466, at *49.

²⁶ The standard was first published in 1991 and revised in 1998, July 1, 2002, and again in 2007. Although the plaintiff fails to include a copy of the applicable standard in his pleadings, the Court finds that the 1998 version was the version of the standard in effect at the time of the plaintiff’s incident.

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hazard, the degree or level of hazard seriousness, the probable consequences of involvement with the hazard, and how the hazard can be avoided.”²⁷ The door at Dover Downs included the following decals positioned in the middle of the door: (1) an arrow with the words “AUTOMATIC DOOR KEEP MOVING;” (2) “AUTOMATIC CAUTION DOOR ENTER AT RIGHT”; (3) “AUTOMATIC DOOR PUSH ONLY IN EMERGENCY”; and (4) “PUSH BUTTON TO SLOW” with an arrow next to the button. In another automatic revolving door case, a court found that the manufacturer fulfilled its duty to warn of any potential danger to an elderly user by placing yellow “Automatic Door – Caution” decals on the door.²⁸ I find that Horton’s use of the signal word “CAUTION” accompanied by the additional decals was sufficient to fulfill its duty to warn potential users.

It is not enough for a plaintiff to establish that a product might have been made safer.²⁹ After taking into account such factors as the likelihood of injury from the ordinary use of the door as designed; the obviousness of the danger of being struck by the revolving door; the reasonableness or unreasonableness of the risk; the presence of warnings; the effectiveness of the VistaStop™ and FootGuard™, respectively, to prevent the risk of injury as compared to the torque limiting device;

²⁷ ANSI Z535.4-1998.

²⁸ *Willis*, 2005 U.S. Dist. LEXIS 26466, at *49–50.

²⁹ *See Wicker ex rel. Estate of Wicker v. Ford Motor Co.*, 393 F. Supp. 2d 1229, 1236 (W.D. Okla. 2005) (“[T]he fact that a product could be made safer by adding a safety device is not, without more, enough to establish that the product is defective, as a manufacturer ‘does not have a legal duty to produce a product incorporating only features representing the ultimate in safety.’”).

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the foreseeability of Horton's knowledge of the danger; the plaintiff's ability to avoid the danger by the exercise of care; the reasons for and against installing the VistaStop™ or FootGuard™, respectively, as opposed to the torque limiting device; industry custom; the door's compliance with all existing codes at the time; the availability of alternative doors; and the cost of the VistaStop™ and FootGuard™³⁰; and for the reasons set forth above, I conclude that when the standard for negligence is applied to Horton's conduct, the facts will not support a jury finding that Horton committed any negligence concerning the design of the door which proximately caused his injuries.

The plaintiff also contends that Horton breached warranties of merchantability and fitness for a particular purpose. "[I]n Delaware, a product is defective in design where it is not reasonably fit for its intended purpose and where the design has created a risk of harm which is so probable that an ordinary prudent person, acting as the product's manufacturer, would pursue a different available design to substantially lessen the probability of harm."³¹ For the reasons set forth above regarding the plaintiff's allegations of negligence, I find that the plaintiff cannot establish a breach of warranty.

DOVER DOWNS

A landowner owes a business invitee the duty to make the premises reasonably

³⁰ See 99 A.L.R.3d 693. At oral argument, it was suggested by the plaintiff's counsel that the automatic revolving door installed at the Dover Downs Hotel cost approximately \$35,000 and the wing sensors would have cost no more than \$1,000.

³¹ *Allen v. IBM, Corp.*, 1997 U.S. Dist. LEXIS, at *139 (D. Del.).

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safe,³² including safe ingress and egress,³³ and a duty to warn of any latent or concealed dangers on the premises.³⁴ A landowner is responsible for injuries that are caused by defects or conditions that the landowner had actual notice of or that could have been discovered by a reasonably prudent inspection.³⁵

It is undisputed that between the Jenkins' incident and the plaintiff's accident, Dover Downs placed a service call to Del-Mar Door, the complaint being that the door "needs adjustment." As mentioned above, the Del-Mar Door technician inspected the door on February 26, 2002 and found it to be working properly and in accordance with the manufacturer's specifications. This state of facts remained unchanged to the day of the plaintiff's accident. There is some question as to whether the service call was in response to the Jenkins' incident or some other circumstance,

³² *Kovach v. Brandywine Innkeepers Ltd. P'ship*, 2001 Del. Super. LEXIS 373, at *5. A landowner is liable for injuries caused to his invitees by a condition on his land only if he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against danger. *Ward v. Shoney's, Inc.*, 817 A.2d 799, 802 (Del. 2003).

³³ *Ward*, 817 A.2d at 801. A business invitee is "a person on the premises at the express or implied invitation of the owner to render a benefit or service." *DiOssi v. Maroney*, 548 A.2d 1361, 1365 (Del. 1988).

³⁴ *MacFadden v. Leon Burton & Son, Inc. v. Villa Rosa, Inc.*, 1997 Del. Super. LEXIS 499, at *10. There is no duty to warn of dangers known to the invitee or when the danger is so obvious that the invitee would be expected to discover the danger. *Upshur v. Bodie's Dairy Mkt.*, 2003 WL 21999598, at *2 (Del. Super.).

³⁵ *See Custis v. Barr*, 2006 Del. Super. LEXIS 166, at *3.

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but in my judgment, the answer to this question is not relevant. The relevant, material fact is that the service call occurred and Dover Downs was informed that the door was working properly. Dover Downs was entitled to rely upon that information.

The plaintiff's expert, Dr. Davis, states that "as early as the date of that incident, 2/16/02 [(the Jenkins' incident)], Dover Downs had notice of the deficiencies in the door and should have taken the door out of service completely until the problem could be remedied." This statement illustrates the conclusory nature of Dr. Davis' opinions. If the deficiency referred to is Ms. Jenkins' statement that the door moved too fast, the service call shortly thereafter eliminated that as an issue of which Dover Downs had notice because the service call revealed that the door was working properly. If the deficiency referred to is the absence of the VistaStop™ or FootGuard™, there is no evidence that Dover Downs had ever heard of either one. Even if Dover Downs had taken the door "out of service" after Ms. Jenkins fell, the contention that Dover Downs should have continued to leave the door "out of service" after the technician informed it that the door was working properly makes no sense.

The plaintiff also contends that Dover Downs was negligent in failing to perform daily inspections of the door and verify its rpms. However, the plaintiff cannot establish any causal connection between Dover Downs' failure to inspect and the accident.³⁶

³⁶ The only evidence as to the rpms of the door, apart from what can be implied from the service technicians' visits in February and April 2002, is the speed found during an inspection done three-and-one-half years after the accident. At that time, the speed was 5.1 rpms. That

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The plaintiff also contends that Dover Downs should have posted warnings, although all warnings recommended by the manufacturer were posted. He also contends that Dover Downs should not have relied upon the service technician's finding that the door was working properly, but should have inquired further beyond that. I find these contentions to be without merit.

AUTOMATIC DOOR

The plaintiff contends that Automatic Door was negligent in that it did not comply with AAADM guidelines and did not comply with an obligation imposed upon it in the owner's manual to instruct the owner concerning daily safety checks. He also contends that Automatic Door breached the implied warranties of merchantability and fitness for a particular purpose.

The plaintiff argues that Automatic Door failed to meet AAADM standards in that it failed to advise Dover Downs of the availability of the wing sensors and failed to take the alleged unsafe door out of service. However, AAADM standards do not apply to revolving doors. Additionally, I find that the AAADM standards referred to are taken out of context and applied unreasonably when sought to be applied to Automatic Door's conduct in this case. The door was not unsafe or defective in any sense then recognized in the revolving door industry.

speed is still within the industry standard of seven rpms. In addition, any relationship between four rpms and 5.1 rpms and the plaintiff's accident is complete speculation. *See Willis v. Besam Automated Entrance Sys., Inc. et al.*, 2005 U.S. Dist. LEXIS 26466, at *38 (holding that the evidence that the hotel did not conduct routine inspections of the revolving door alone is not enough to allow the plaintiff's negligence claim to survive summary judgment because there is no evidence that the hotel's failure to inspect the door caused the plaintiff's injury).

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As discussed above with regard to Dover Downs, the plaintiff cannot establish any causal connection between his accident and the failure to perform daily inspections of the door.³⁷

Therefore, for these reasons and the reasons set forth above in connection with Horton, I conclude that the plaintiff cannot establish negligence on the part of Automatic Door which proximately caused his injury or a breach of warranty.

DEL-MAR DOOR

Del-Mar Door's sole, relevant activity in this case prior to the plaintiff's accident was that it performed the February 26, 2002 service call. The plaintiff contends that Del-Mar Door was negligent in that it failed to conform with AAADM standards mentioned above. He contends that AAADM standards required Del-Mar Door to either recommend to Dover Downs that the VistaStop™ or FootGuard™ sensors be installed or that the door be taken out of service as unsafe. As with Automatic Door, I find that AAADM standards are taken out of context and applied unreasonably when sought to be applied to Del-Mar Door's conduct in this case.

Under the facts and circumstances of this case, the contention that Del-Mar Door should have concluded that the door was unsafe or defective for the reasons advanced by the plaintiff would require of it something akin to divination or clairvoyance.

KEATING

_____The plaintiff's claim against Keating is based upon Restatement (2d) of Torts

³⁷ See *supra* note 36 and accompanying text.

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§ 324A, which reads as follows:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if (a) his failure to exercise reasonable care increases the risk of such harm, or (b) he has undertaken to perform a duty owed by the other to the third person, or (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

The plaintiff contends that since Keating undertook an evaluation and reassessment of door specifications with regard to color, finish, trim, and the height of the canopy, it incurred a duty to install or at least recommend the installation of the two optional safety features. However, there is no causal connection between the modifications made by Keating and the accident in this case. Additionally, Keating's conduct does not fall within any of the three, lettered subparts of the Restatement. For these reasons, the plaintiff's claim against Keating based upon Restatement (2d) of Torts § 324A must fail.

For the foregoing reasons, the motions of all defendants for summary judgment are ***granted***.

IT IS SO ORDERED.

President Judge

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oc: Prothonotary

cc: Order Distribution

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