IN THE SUPREME COURT OF TEXAS

NO. 07-0783

IRVING W. MARKS, PETITIONER,

v.

ST. LUKE'S EPISCOPAL HOSPITAL, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Argued September 11, 2008

CHIEF JUSTICE JEFFERSON, concurring.

In *Diversicare*, a case involving a sexual assault of one nursing home patient by another, I argued that the MLIIA's broad "safety" definition encompassed what would otherwise be ordinary premises liability claims against health care providers. *Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 859-61 (Tex. 2005) (Jefferson, C.J., concurring and dissenting). The Court, however, disagreed, noting that "[t]here may be circumstances that give rise to premises liability claims in a healthcare setting that may not be properly classified as health care liability claims." *Id*. at 854. The Court described the plaintiff's claims in that case as "implicat[ing] more than inadequate security or negligent maintenance," unlike claims involving "an unlocked window that gave an intruder access to the facility or a rickety staircase that gave way under her weight." *Id.*

The loose footboard here is indistinguishable from the rickety staircase referred to in *Diversicare*. Under *Diversicare*, Marks's claim is a "premises liability claim[] in a healthcare setting that may not be properly classified as [a] health care liability claim[]." *Id.* Accordingly, I join the Court's opinion and concur in its judgment.

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Wallace B. Jefferson
Chief Justice

Opinion Delivered: August 28, 2009