





PLUNKETT COONEY
ATTORNEYS & COUNSELORS AT LAW



Watch Your Step!

Avoiding Premises Liability Pitfalls in a Property-owner Friendly State

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Possession & Control

- Defendant must have both possession and control of premise in question
- Ownership alone is not dispositive






Plaintiff's Status

- Premises liability claims first involve determination of plaintiff's status.
- This will determine duty owed to plaintiff by the defendant.



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Definitions

- Invitee
– Example: customer
- Licensee
– Example: social guest
- Trespasser



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Different Duties of Care

- Invitee – Possessors of land owe duty to maintain, warn and inspect.
- Licensee – Possessors of land owe duty to use ordinary care to prevent injury arising from defendant's active negligence.
- Trespasser – Possessors of land owe no duty to keep their premises safe.



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Notice

- There is no liability for harm resulting from conditions from which no unreasonable risk was to be anticipated, or those which premise possessor did not know and could not have discovered with reasonable care.

Continued



Notice

- Actual notice
- Constructive notice - "was present long enough that the defendant should have known of it."
 - Passage of time
 - From type of condition involved
 - From combination of the two



Open & Obvious Doctrine

- Objective test is used to establish whether an average person with ordinary intelligence would have discovered the danger upon casual inspection.
- Characteristics of particular plaintiffs are not relevant.



Special Aspects

- “[O]nly those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine.”

Continued



Special Aspects

- Typical open and obvious dangers, such as cracks in driveway or potholes, do not give rise to these special aspects.
- Unguarded 30-foot-deep pits in middle of parking lots or standing water blocking only exit from a commercial building could present special aspects.



'Effectively Unavoidable'

- *See Hoffner v Lanctoe*
 - Woman slipped and fell when she slipped on an icy sidewalk directly outside of building while trying to enter her health club.

Continued



'Effectively Unavoidable'

- Court rejected her contention that hazard was effectively unavoidable because she had contractual right to enter the premise.
- Decision narrows applicability of "effectively unavoidable" situations.



Comparative Negligence

- Michigan is a modified comparative negligence state.
- Typically, issue of comparative negligence is question of fact rather than question of law.



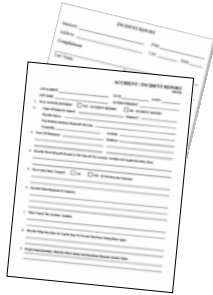
Preservation of Evidence

- Failure to do so can result in loss of crucial information and, in some circumstances, an adverse inference against the defendant.



Incident Reports

- Reports should be filled out as fully and completely as possible, even if there is little information to include.
- Even if they allege they are not injured.



Video/Surveillance/Photos

- Premises owner should check immediately to see if incident was caught on camera.
- If yes, preserve footage from entire day, if possible!



Negative Inference

- If party in possession of evidence fails to preserve it or produce it, jury is allowed an adverse inference that evidence was not preserved/produced because it failed to support or outright contradicted claims/defenses of party who failed to produce/preserve it.



Questions & Answers



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Questions?



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Post-webinar Survey

We want to hear from you!



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Thank You!



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