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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

01.03.13

# Deadly Injury Incident Found To Be Open And Obvious

By Alison M. Quinn

In the matter of the *Estate of Nelson E. Hall*, a November 27, 2012 unpublished per curiam opinion from the Michigan Court of Appeals (Docket No. 308071) shows that the special aspects exceptions to the Open and Obvious Doctrine are narrow.

*Hall* is a premises liability action out of Saint Joseph County. Nelson Hall was walking into Defendants' business to deliver a car payment when he fell while stepping into a puddle of water near the business entrance. He struck his head on the concrete sidewalk and later died as a result of the injury. The trial court granted Defendants' motion for summary disposition and ruled that the puddle was open and obvious as a matter of law. Therefore, Plaintiffs' case was dismissed.

**SECREST WARDLE NOTES:**

**The Open and Obvious Doctrine applies even when plaintiff has a contractual or financial obligation to enter the premises or where there is only one business entrance and exit. These facts do not give a condition on the premises "special aspects" so as to preclude application of the Open and Obvious Doctrine. As noted by the Michigan Supreme Court in Hoffner, "the law compels individuals to accept personal responsibility for their well-being by avoiding apparent hazards."**

In holding that the trial court properly granted summary disposition, the Court of Appeals opined that the Open and Obvious Doctrine applied because the puddle did not have "special aspects." Where a condition has special aspects, the Open and Obvious Doctrine does not apply. There are two instances where a condition is found to have special aspects: (1) where the danger is unreasonably dangerous; or (2) where the danger is effectively unavoidable. The Court held that Nelson Hall could have entered the business without walking through the puddle therefore, it was not unavoidable. Even further, the Court held that even though Hall was under a contractual obligation to make his car payment he could have chosen not to enter the business at all. He did not "demonstrate that he was unavoidably compelled to confront the dangerous condition." Moreover, the puddle was not unreasonably dangerous although Hall died as a result of the injury. In fact, the Court held that an ordinary puddle of water in a parking lot does not present a uniquely high likelihood of harm and, in general, does not constitute a hazard at all.

## CONTINUED...

In reaching this conclusion, the Court of Appeals relied heavily on the recent Michigan Supreme Court decision in *Hoffner v Lanctoe*, 492 Mich 450 (2012) and its proposition that the standard for "effective unavoidability" is that "a person, for all practical purposes, must be required or compelled to confront a dangerous hazard." The *Hoffner* Court rejected the argument that the customer's business interest in entering the premises compels him or her to confront the hazard and renders it effectively unavoidable. The Michigan Supreme Court therefore emphasized the narrowness of the special aspects exceptions to the open and obvious doctrine.

*Hall* is just the beginning of what could likely be numerous cases to follow *Hoffner* and its effectively unavoidable standard.

## CONTACT US

**Troy**
2600 Troy Center Drive, P.O. Box 5025
Troy, MI 48007-5025
Tel: 248-851-9500 Fax: 248-538-1223

**Lansing**
6639 Centurion Drive, Ste. 130
Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

**Grand Rapids**
2025 East Beltline SE, Ste. 600
Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

**www.secrestwardle.com**

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## CONTRIBUTORS

**Premises Liability Practice Group Chair**
Mark F. Masters

**Editor**
Bonny Craft

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