

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Footprints Near Puddle of Soapy Substance in Store Aisle Are Insufficient To Demonstrate How Long the Puddle Had Existed.

By Todd M. Rowe

In *Hernandez v. K-Mart Corp.*, unpublished decision of the Michigan Court of Appeals, Plaintiff brought suit based on allegations that he was injured when he slipped on a soapy substance on the Defendant store's floor. The trial court entered a judgment in favor of Plaintiff. Defendant appealed this decision on the basis that there was no evidence from which the jury could conclude when the spill of the soapy substance occurred. Therefore, Plaintiff failed to establish a prima facie case of negligence.

On appeal, the Court of Appeals focused on whether Plaintiff had offered sufficient evidence that Defendant should have known that the soapy substance on the floor presented a hazard. In Michigan, a plaintiff in a premises liability action must establish when and how a hazard was created. While direct evidence of the creation of the hazard is not always required, juries will not be left to speculate as to when or how the hazard was created to determine whether a defendant had constructive notice.

The Court of Appeals found the trial court erred by entering a judgment in favor of Plaintiff because there was no evidence from which the jury could have concluded when the spill occurred. The only evidence offered by Plaintiff to show Defendant should have been aware of the soapy substance on the floor was the testimony of Plaintiff and his family that there were "dirty," "brownish mushy" footprints near the puddle heading in the opposite direction. Plaintiff

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In the absence of direct evidence of a property owner causing a hazard, a plaintiff in a premises liability action is compelled to demonstrate the alleged hazard was either known to a property owner or "existed for a sufficient length of time that he should have had knowledge of it." However, as this case demonstrates, it is impermissible for a jury to be left to speculate as to when a hazard was created or whether a property owner had constructive notice of the hazard

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asserted that these footprints were evidence of at least one other person walking in the puddle before Plaintiff did. Plaintiff further contended that these footprints indicated the soapy substance had been on the floor for a significant length of time before he fell in it.

The Court of Appeals rejected Plaintiff's argument and found the footprints did not indicate the soapy substance was on the floor for any significant length of time, or that Defendant should have known about it. Only the Plaintiff and his family testified that footprints could be seen near the soapy substance. The Court found that based upon the scant evidence presented it was just as likely that the spill had happened seconds before Plaintiff slipped as it was that the spill had happened hours before Plaintiff's accident. Because there was no evidence from which the jury could conclude when the spill of the soapy substance occurred, the Court of Appeals found Plaintiff failed to establish a prima facie case of negligence and the trial court's decision in Plaintiff's favor was reversed.

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