

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Depression in Concrete Near Sewer Cap Was Not a Special Aspect of An Open and Obvious Condition

By Jennifer M. Jenkins

In *Hargreaves v. Genoa Lodging*, an unpublished decision of the Michigan Court of Appeals, Plaintiff, an eighty-seven year old woman, was walking to her hotel when she fell after she stepped in a depression in the concrete located by the hotel's side entrance. The trial judge reviewed photographs of the depression and other evidence of its dimensions, location, and surrounding conditions, which showed that the relatively shallow depression was visible and actually accentuated by the fact that it was around the perimeter of a level steel sewer cap. The trial court held that the defect was open and obvious and granted Defendant's Motion for Summary Disposition.

On appeal, Plaintiff argued that the condition was not open and obvious because she could not see the depression. The issue was not whether the depression was noticeable by Plaintiff, but rather if it was noticeable to an ordinary person upon casual inspection. The Court stated that the minor depression resembled the open and obvious defect described in *Lugo v. Ameritech*, a pothole in a parking lot, and based upon the location of the depression near the side of the walk, and the area's generally unremarkable appearance, the open and obvious doctrine was applicable. Plaintiff also offered letter from the Livingston County building inspector

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Typical pavement features, defined by the Court in *Hargreaves* to include potholes in parking lots, cracks in driveways and depressions near sewer caps, are open and obvious conditions which do not possess any "special aspects". While legal defenses are no substitute for making necessary inspections and repairs on your property, decisions such as these allow landowners a certain amount of breathing space to correct problems before they can get worse.

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which stated that the depression was a “potential hazard”. The Court held that the letter offered no assistance in this case because it did not discuss whether the concrete depression was noticeable to the ordinary user upon casual inspection.

In upholding the trial court’s dismissal, the Court further opined that the slight depression near the sewer cap which allegedly caused Plaintiff’s fall did not possess any “special aspects” which made it extraordinarily hazardous. This depression was an ordinary open and obvious condition, which fit into the category of typical pavement features, such as a pothole in a parking lot or cracks in driveway, which do not possess any “special aspects”.

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