

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Drain in Parking Lot Was Open and Obvious

By Richard R. Ballentine

In *Holliday v Modern Neon Signs Co., et al*, an unpublished opinion of the Michigan Court of Appeals, the Court held that a snow-covered “depressed and deteriorated sewer/manhole” was open and obvious.

Plaintiff, a delivery truck driver, was injured when he fell in a parking lot owned by Defendant DK-JW Properties, Inc., and leased by Defendant Modern Neon Signs Co. Plaintiff guessed that he fell on a drain in the parking lot, which was located almost directly under the driver’s side door of his delivery van. In his complaint, Plaintiff alleged that he “fell at the site of a depressed and deteriorated sewer/manhole located in the parking lot.” Plaintiff further alleged that the condition was “improperly maintained and was further obscured due to snow and/or ice covering said hazardous condition.”

The trial court granted summary disposition in favor of Defendants, finding that the condition of the drain was open and obvious. The Court of Appeals affirmed. In so ruling, the Court rejected Plaintiff’s arguments that the drain was not open and obvious because it was covered with snow, and that it was unreasonably dangerous.

The Court found that Plaintiff failed to create a genuine issue of material fact regarding whether the drain was covered in snow when he fell. Plaintiff testified in his deposition that he did not look at the drain after he fell. He admitted that he did not know whether it was covered with snow or if he simply did not see the drain because his truck was parked over it. Testimony from the snow plow company’s employee established that snow was plowed off the lot and was salted on the morning of the incident. As a result, Plaintiff failed to present evidence that the drain was covered with snow as he alleged.

Plaintiff’s second argument that the condition was unreasonably dangerous also failed. In *Lugo v Ameritech Corp, Inc*, 464 Mich 512 (1993), the Michigan Supreme Court provided two examples

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Michigan law is clear that potholes in parking lots are an “everyday occurrence” that “ordinarily should be observed by a reasonably prudent person.” In this case, the Court of Appeals similarly held that the drain itself was open and obvious. It reasoned that drains in parking lots, like ordinary potholes, are to be expected and, therefore, constitute open and obvious dangers.

Once again, these sorts of premises liability cases are generally very defensible, but a legal defense is no substitute for inspecting and maintaining your property on a regular basis.

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of unreasonably dangerous conditions. These examples were (1) an unguarded thirty-foot pit in a parking lot (*i.e.*, an unreasonably dangerous condition), and (2) the only exit to a commercial building that was blocked by standing water on the ground (*i.e.*, an effectively unavoidable condition). The *Holliday* Court found that the parking lot drain did not create such a high-level risk. The Court stated “[a] fall on a drain or a sunken manhole in a parking lot does not present the kind of an unusual risk of death or serious bodily harm that a fall into a thirty-foot pit in a parking lot would present.”

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