

# boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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## Parking Lot Design Was Open and Obvious

By Kellie Lecznar

The allegedly negligent design of a parking lot was open and obvious. In *Richardson v. Rockwood Center* – Mich App – (2007), the Court of Appeals examined the applicability of the open and obvious doctrine to the design of a parking lot. In reversing the trial court’s decision, the Court found a parking lot design was open and obvious and did not constitute a “special aspect.”

Plaintiff was a patron of a store located in Defendant’s shopping center. Plaintiff was struck by a vehicle while crossing traffic lanes to the parking spaces. Plaintiff sued Defendant on various premises liability theories. Defendant moved for summary disposition on various grounds, including the open and obvious defense. The trial court found questions of fact for the jury, thereby precluding summary disposition.

The Court of Appeals reversed, concluding that the parking lot design was open and obvious. The *Richardson* Court relied on a 2002 unpublished opinion of the Michigan Court of Appeals, *Kirejczyk v Hall*, in determining the applicability of the open and obvious doctrine to a parking lot design.

In *Kirejczyk*, the Court found no reasonable factfinder could conclude the design of a parking lot involved an unreasonable risk of harm. The *Kirejczyk* Court further held that it was typical for parking lots outside businesses to lack signs or traffic controls. Drivers are expected to rely on traffic laws and customary practices while driving in these parking lots.

While not required to follow the unpublished *Kirejczyk* decision, the *Richardson* Court nevertheless found the prior opinion instructive. The Court found that since it was common for business parking lots to lack signs

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The Court of Appeals has made it clear that parking lot designs are open and obvious. The lack of traffic control devices in a parking lot does not constitute a “special aspect” to avoid application of the open and obvious defense. However, the best defense for property owners still remains the reasonable maintenance, inspection, and repair of the property.

Interestingly, the Court heavily relied upon an earlier unpublished decision, which had no precedential effect. This unusual reliance was likely predicated on the somewhat novel basis for this claim, and the parallel facts of the earlier case.

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or traffic controls, it was not uniquely dangerous. The Court held that pedestrians in parking lots should look both ways before crossing driving lanes. Therefore, the hazards posed to pedestrians by vehicles in parking lots were open and obvious. The lack of traffic control devices did not constitute a “special aspect” either.

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