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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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BLACK ICE IN PARKING LOT IS OPEN AND OBVIOUS DURING WINTER IN MICHIGAN

By Kellie Lecznar

In *Smith v. Hart Expressway Easy Mart*, an unpublished opinion of the Michigan Court of Appeals, the Court examined the applicability of the open and obvious hazard doctrine to black ice in a parking lot. In the case, Plaintiff slipped and fell on black ice when alighting from her vehicle in Hart's parking lot.

Plaintiff sued Hart on premises liability theories. In granting Hart's motion for summary disposition, the trial court the existence of "wintry conditions" and the existence of potentially slippery conditions were open and obvious. The Court of Appeals upheld the dismissal, holding that the hazards presented by ice and snow were open and obvious. Hart had no duty to warn or remove ice or snow, unless some special aspect made the accumulation unreasonably dangerous. The *Smith* Court relied upon the Supreme Court's opinion in *Kenny v. Kaatz Funeral Homes,* 472 Mich 929 (2005). The *Kenny* Court held a snow-covered, icy parking lot presented an open and obvious danger.

Plaintiff argued there was a question of fact as to whether the black ice was open and obvious. The Court rejected this argument, stating that a potentially slippery, snow-covered surface was open and obvious. It reasoned that whether a danger is open and obvious depends on "whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection." *Kenny* was cited again for holding that the presence of both ice and snow was a common occurrence during winter in Michigan. Therefore, the *Smith* Court found that a person of ordinary intelligence would know the parking lot would be potentially slippery.

SECREST WARDLE NOTES:

The Michigan Court of Appeals has established there is no duty for property owners to warn or remove ice or snow in the winter without "special aspects." However, the best defense to a premises liability lawsuit continues to be a preventative one: take reasonable measures to inspect and maintain the premises.

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Plaintiff also established that no special aspects made the parking lot unreasonably dangerous. Falling on an ice-covered parking lot did not present a sufficiently severe risk of injury to constitute a "special aspect." Therefore, the black ice in the parking lot was open and obvious with no special aspects.

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We welcome your questions and comments.

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