

## More Than a Puddle Required: The Importance of Notice in Premises Liability

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In *Bitkowski v Andiamo West, Inc.*, unpublished opinion of the Michigan Court of Appeals, issued February 13, 2026 (Docket No. 373889), Plaintiff slipped and fell on a puddle of water while walking to the restroom at Defendant's restaurant.

Plaintiff filed a premises liability claim against Defendant, alleging she was a business invitee when the slip and fall occurred. Plaintiff asserted that Defendant's failure to warn of the dangerous condition rendered Defendant liable for her injuries.

Defendant moved for summary disposition based on lack of notice. Specifically, that Plaintiff failed to present sufficient evidence that a dangerous condition existed on the premises and that Defendant had actual or constructive notice of it. Plaintiff filed a response, stating there was a question of fact as to whether Defendant had constructive notice of the alleged hazard. Three weeks later, Plaintiff submitted an affidavit to supplement her response without permission of the trial court.

The trial court ruled in favor of Defendant, finding that Plaintiff failed to present sufficient evidence to establish a genuine issue of material fact as to whether Defendant had actual or constructive notice of the water on the floor and that the late affidavit was excluded as untimely. On appeal, the Court of Appeals affirmed the trial court's decision.

Under MCR 2.116(G)(1)(a)(ii), the standard time to file an affidavit is at least seven days before a dispositive motion hearing. However, since Plaintiff submitted her response to the motion three weeks prior, she was required to obtain leave of the court to file the affidavit as a supplemental material under MCR 2.116(G)(1)(a)(iv). Having failed to seek such leave, the affidavit was untimely, and the Court declined to consider it, particularly in light of the request to strike it on that basis. The Court of Appeals affirmed the trial court's decision to exclude the affidavit as untimely.

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This decision emphasizes that in premises liability cases, the plaintiff bears the burden of providing evidence that a dangerous condition existed and that the owner or occupier had actual or constructive notice of the hazard. Simply showing that a dangerous condition existed is not enough to survive a motion for summary disposition.

For defendants, this decision is a crucial safeguard, allowing owners and occupiers to seek early dismissal of meritless claims without proving a perfect inspection history.

This case also reinforces the importance of strict compliance with the Court Rules, since procedurally defective filings and reliance on inadmissible evidence can have significant consequences.

Apart from the affidavit, Plaintiff relied on her own testimony, her husband's observations, and Defendant's manager's comments as relayed by her husband to establish notice. The Court explained these statements were inadmissible hearsay and could not be considered for summary disposition. The Court emphasized that only substantively admissible evidence may be considered when deciding such motions. Moreover, the fact that others noticed or commented on the puddle while rendering aid to Plaintiff did not demonstrate that Defendant had actual or constructive notice of the dangerous condition. Even when viewed in the light most favorable to Plaintiff, the evidence established only the presence of the puddle, not that Defendant had notice of it.

Plaintiff claimed that Defendant breached its duty to inspect the premises for hazards. The Court confirmed that, when moving for summary disposition, a defendant is only required to show that the plaintiff lacks evidence of notice, without needing to prove that routine or reasonable inspections were performed.

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