



Michigan Court of Appeals Continues Trend in Determining that Black Ice is not Open and Obvious

Joshua K. Richardson

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On August 25, 2009, the Michigan Court of Appeals published an opinion reversing a trial court ruling that the black ice on which plaintiff fell was an open and obvious danger, stating that the very nature of black ice makes it "inherently inconsistent with the open and obvious doctrine." *Janson v Sajewski Funeral Home, Inc*, __ Mich App __; __ NW2d __ (2009).

Plaintiff slipped and fell on black ice in defendant's parking lot. There had been light precipitation and freezing temperatures earlier that day, but the parking lot had been largely cleared of snow and then salted. Plaintiff, who had been to the funeral home on many prior occasions, denied seeing any other patches of ice in the parking lot prior to his fall. A witness testified that black ice was "everywhere in the parking lot."

Defendant filed a motion for summary disposition, arguing that black ice constituted an open and obvious danger. The trial court agreed, holding that "black ice possessed no special aspects that would preclude the application of the open and obvious doctrine."

The Court of Appeals reversed. Relying on *Slaughter v Blarney Oil Castle Co*, 281 Mich App 474, 479; 760 NW2d 287 (2008), the Court held that "the 'overriding principle' behind 'many definitions' of black ice is its invisibility, which is 'inherently inconsistent with the open and obvious doctrine.'" The court conceded that ice may be open and obvious under certain conditions where other facts should alert Michigan residents to the likelihood of the hazard. However, the court held that in the absence of "some other, visible indicia of an otherwise-invisible hazard, black ice *per se* simply cannot be 'open and obvious.'"

This case continues the recent trend in Michigan premises liability cases that, in the absence of visible aspects indicating icy conditions, black ice is not open and obvious.

CONTACT

Joshua K. Richardson

P: 517.371.8303

E: jrichardson@fosterswift.com