Michigan Court of Appeals Holds that Black Ice is not Open and Obvious

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On March 17, 2009, the Michigan Court of Appeals held in an unpublished opinion that black ice did not constitute an open and obvious danger. *Wilson v Lakepointe Gas and Oil, Inc*, (Docket No. 281459).

Plaintiff sustained injuries when he slipped and fell in broad daylight on a patch of black ice while walking into a service station to pay for gasoline. Plaintiff sued both the service station company and the owner of the property, Defendants Lakepointe Gas and Oil, Inc., and IS Real Estate, LLC, on theories of public nuisance and negligence. Plaintiff stated that there was snow on the roof of the service station but none near the area where he fell, and that the parking lot seemed "perfectly dry." Plaintiff testified that the ice was the "same color as the asphalt," but he admitted that after he fell, a focused inspection did reveal the presence of the black ice.

Defendants filed a motion for summary disposition, arguing that the ice was open and obvious and that plaintiff failed to state a claim for public nuisance. The trial court agreed and granted defendants' motion.

On appeal, the Court of Appeals held that the trial court properly dismissed plaintiff's public nuisance claim but erred in finding that the black ice was open and obvious because, based on plaintiff's testimony, a genuine issue of material fact existed as to whether a reasonable person could have discovered the ice upon a casual inspection prior to the fall.

This case continues a trend that began in *Slaughter v Blarney Oil Castle Co*, 281 Mich App 474, 479; 760 NW2d 287 (2008), in which the Court of Appeals held that the characteristics of black ice are "inherently inconsistent with the open and obvious doctrine."