



KOPKA PINKUS DOLIN & EADS

Legal Advisory

INJURIES ON YOUR BUSINESS PREMISES Supreme Court: Black Ice Can Be “Open & Obvious”

July 1, 2010

by Partner Angela Harmon-Kuhl

The Michigan Supreme Court recently issued an opinion in the case of *Janson v Sajewski Funeral Home* (docket #140071, May 2010), which involved whether or not black ice can be considered “open and obvious” and the Court determined it can be open and obvious. The ruling of the case is that when a slip and fall occurs in the winter, with temperatures below freezing with snow present, the wintry conditions by their nature alert an average person to discover the danger upon casual inspection. The ruling is favorable to businesses.

In *Janson*, the plaintiff slipped and fell on black ice in the defendant’s parking lot around 6:15 p.m. fracturing his right ankle. There had been light precipitation earlier in the day and temperatures were below freezing all day. While the roads were clear, witnesses testified it had been icy in the morning.

In 2008, precedent was established in *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 483 (2008), holding alleged ‘black ice’ conditions open and obvious when there are ‘indicia of a potentially hazardous condition,’ including the ‘specific weather conditions present at the time of the plaintiff’s fall.’

In *Janson*, the slip and fall occurred in the winter, with temperatures at times below freezing, snow present around the defendant’s premises, mist and light freezing rain falling earlier in the day, and light snow falling during the period prior to the plaintiff’s fall in the evening. These wintry conditions by their nature would have alerted an average user of ordinary intelligence to discover the danger upon casual inspection.

It is recommended that a business should have an incident form available to complete if someone claims they are injured on your business property. If someone claims they were injured on your property, contact our office immediately and we will assist you in the defense of the claim including contacting your insurance carrier.

**For more information on the details of this advisory contact
Angela Harmon-Kuhl in our Sault Ste. Marie, MI office at 906.632.7785**

KOPKA, PINKUS, DOLIN & EADS is a multi state civil litigation defense firm that approaches litigation from the client’s perspective. Among a diverse group of clients, including many of the nation’s largest insurance companies, are a wide range of businesses, manufacturers, service and distribution companies, health care institutions and professionals. The firm’s attorneys have extensive trial experience in numerous federal and state courts nationwide as well as appellate experience which includes the United States Supreme Court, federal appellate circuit courts, state Supreme Courts and various state appellate courts.

For more information, please visit www.kopkalaw.com.