

LEGAL ALERT

February 29, 2008

MICHIGAN LIABILITY LAW UPDATE

By Matthew L. Meyer, Attorney

Premises Liability – Open and Obvious Defense Still Going Strong – 2 Recent Cases

The Michigan Court of Appeals has dismissed two premises cases in 2008 based primarily on the “open and obvious” doctrine. In the first case, decided in January 2008, the Michigan Court of Appeals held that a plaintiff could not sue for premises liability after he slipped and fell on wet tiles in a restaurant foyer, because the water on the tile foyer constituted an “objectively open and obvious danger as a matter of law,” and no special aspects were present. The plaintiff claimed that he walked into a Big Boy Restaurant and saw a leak in the ceiling and the sound of running water. Also, there was a wet floor sign but the plaintiff did not see it because he was looking at the ceiling. The Court of Appeals held that the plaintiff could have avoided the injury had he looked at the floor tile or observed the wet floor sign and more carefully walked through the entryway area instead of focusing on the ceiling leak. Additionally, the Court felt that the ceiling leak should have put a reasonable person on notice that water may have accumulated beneath it or around it, thus making a slippery condition even more obvious than it otherwise might have been to a casual observer. Plaintiff failed to demonstrate that the leaky ceiling posed an unavoidable danger or a danger that carried with it an unreasonable risk of severe harm. Therefore, the Court of Appeals dismissed the case. (*Cameron v BigBoy*).

In the second case, decided in February 2008, the Michigan Court of Appeals dismissed a premises liability claim involving a plaintiff who tripped

and fell when she stepped on an expansion joint in the defendant’s parking structure. The Court described the expansion joint as a “uniform channel or depression running along its length and which was less than four inches wide and roughly one inch deep.” They also described the expansion joint as “a minor irregularity in the walking surface of the parking structure.” The Court cited the Michigan Statute § 691.1042a(2) commonly known as the “two-inch rule,” which gives immunity to municipalities for injuries caused by sidewalk defects less than two inches in height. While this statute does not apply to private actions, the statute suggests a legislative determination that no liability should follow from small defects in walking surfaces. Ultimately, the Court ruled that because the irregularity is only about one inch deep, an average person of reasonable intelligence who was paying minimal attention would be able to step over, or even on, the expansion joint without significant risk. (*Jepson v Sparrow*).

Michigan Legislative Update – Proposed Bill Might Eliminate Tort Immunity for Pharmaceutical Manufacturers

Currently, Michigan law protects pharmaceutical makers from product liability lawsuits. The Michigan Legislature is considering a bill that would repeal that “tort reform” law passed in 1995 and allow lawsuits against pharmaceutical companies. The proposed bill arises out of the current Vioxx litigation in which Michigan residents were unable to sue Vioxx. More than 1,000 Michigan residents sued Vioxx manufacturer Merck & Co. in Merck’s home state

of New Jersey. However, the New Jersey Supreme Court ruled 5-2 in 2007 that Michigan's drug immunity law applied to Michigan residents.

The proposed bill has been passed by Michigan's Democrat-majority House but the Republican-controlled Senate has not taken it up. Governor Granholm indicated in her "State of the State" address in January 2008 that she intends to push to repeal the pharmaceutical manufacturer lawsuit ban. The drug lawsuit bills are House Bills 4044-46 and Senate Bill 43.

Recent Michigan Verdicts and Settlements

Here are several brief summaries of jury verdicts and settlements in Michigan in 2008:

1. Road worker injured by drunken driver – \$1.3 million settlement.

The plaintiff was working road construction in Newaygo County when he was struck by a vehicle. The plaintiff had a closed head injury, memory loss, cognitive deficiencies and was hospitalized for 42 days. The defendant allegedly had a blood alcohol content of .07 at the time of the crash. The case settled two weeks prior to trial for 1.3 million dollars.

2. "No cause" verdict in premises liability case.

The plaintiff, a 58 year-old plumber, was working in the defendant's apartment building when the vanity mirror fell on his head and knocked him unconscious. There was a case evaluation award of \$240,000. After a three day trial, the jury found in favor of the defendant. The primary defense was that there was no way that the defendant property owner could have known the mirror was improperly secured to the wall.

3. Slip and fall settles for \$275,000.

On the night of January 27, 2005, the defendant was cleaning the floors at a mall and its employees discharged water from floor cleaning machines onto the walkway outside of the mall. During the night, the water froze to form a large sheet of ice. The plaintiff did not notice the ice as she walked to work the next morning and she slipped and fell. She fractured her right arm and suffered dental injuries. The case evaluation award was \$300,000. The case settled at a settlement conference for \$275,000 in Kent County Circuit Court.

4. Insurer wins \$700,000 in fraud case.

Citizens Insurance Company claimed that the defendants were submitting false claims for reimbursement for 24 hour attendant care for four years. Evidence presented at trial consisted of surveillance videotapes, medical records and testimony from several insurance adjusters. The jury awarded \$700,704 to the plaintiff. The videotape surveillance evidence taken over several years proved to be key evidence during the trial.

Jury Verdict Award "Median" in Michigan is \$134,382

According to the publication, *Jury Verdict Research*, the "median" award for personal injury cases in Michigan is \$134,382. The median is the middle value among awards listed in ascending order. This statistic is based on verdicts rendered in Michigan over a seven year period.

Matt Meyer can be reached directly at mmeyer@shrr.com or 616.458.9224.