

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Travis Vieux at 937-224-3333 or email Travis at tjvieux@green-law.com.

Court of Appeals: Tenth District

Case Name: Sherlock v. Shelly Company
(2007-Ohio-4522)

Decided: September 4, 2007 (Posted September 4, 2007)

Issue: Open and Obvious Doctrine

Summary of Opinion: The Tenth District affirmed the lower court ruling that the standing water with algae was an open and obvious hazard. The court declined to apply the legal standards of Ohio's "no duty winter rule" regarding natural accumulations of ice and snow to the facts of the case.

Plaintiff was a business invitee loading trucks with asphalt at defendant's premises. Plaintiff walked through an area of accumulated running water on a concrete ramp to observe the loading of the trucks. Plaintiff slipped on algae under the water growing on the surface of the ramp and injured his hip. The trial court reviewed photographs of the scene and determined that the algae was readily observable and that the hazard was open and obvious such that defendant owed no duty to warn plaintiff business guest.

Plaintiff appealed arguing first that the running water was a "dynamic condition" and that the open and obvious doctrine only applied to "static conditions" This was based on a

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prior case that used the terms “static” and “dynamic” to contrast hazards that are present on the premises and subject to the open and obvious doctrine versus those created by the acts of negligence of the premises owner or his/her employees and not subject to the open and obvious doctrine. Plaintiff argued that the running water was allowed to exist and accumulate because of the negligence of defendant’s employees, therefore the open and obvious doctrine did not apply. The Tenth District rejected this interpretation stating that the fact that algae was able to accumulate clearly showed that the hazard was “static” for purposes of open and obvious analysis.

Secondly, the plaintiff argued that if the algae was an open and obvious danger, the open and obvious doctrine does not apply because defendant created an “unnatural condition” that caused the plaintiff’s injury. Relying on a number of cases collectively known as Ohio’s “no-duty winter rule” regarding natural accumulations of ice and snow. All Ohioans are presumed to appreciate the risks associated with natural accumulations of ice and snow and is responsible to protect themselves against the inherent dangers thereof.” However, if premises owner takes actions that transform a natural accumulation into an “unnatural condition,” the premises owner is responsible to warn of the dangers. The court strictly limited the “no-duty winter rule” to accumulations of ice and snow.

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