

## 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 Sean McCormick at 937.224.3333 or send an email to [smccormick@green-law.com](mailto:smccormick@green-law.com).**

Court of Appeals: Twelfth Appellate District

Case Name: *Forste v. Oakview Constr., Inc.*, 2009-Ohio-5516

Decided: October 19, 2009

Issue(s): Premises Liability/Negligence

Summary of Opinion: Nancy Forste injured her knee when she tripped on the edge of a raised concrete pad and fell in a parking lot outside of a restaurant. The property was owned by the Deerfield Towne Center, LLC (Deerfield), and the concrete was poured by Oakview Construction, Inc. (Oakview). The concrete pad had been poured about a month after the restaurant opened, and it was raised one and a half inches above the concrete sub base.

Although Oakview acknowledged the surface was uneven, it explained that a finished layer of asphalt was expected to be applied to the lot but had not yet been poured because the asphalt plants were closed. Forste filed suit, and the trial court granted Deerfield and Oakview's motions for summary judgment. Forste appealed.

The Twelfth District Court of Appeals determined that the concrete pad was an insubstantial defect that did not present a jury question on the issue of negligence. The court explained that a defect is determined to be insubstantial if it is less than two inches in height, unless attendant circumstances elevate the defect to an unreasonably dangerous condition. Because the concrete pad in this case was raised less than two inches, it was a minor defect.

Addressing Forste's argument that attendant circumstances elevated the concrete

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pad to an unreasonably dangerous condition, the court held that they did not. The court concluded that, as a matter of law, the items Forste was carrying, her unfamiliarity with the area, her argument that she could not see the height difference between the concrete pad and the concrete sub base, and the traffic in the parking lot, did not unreasonably increase her chance of harm. In conclusion, the court affirmed the judgment of the trial court and held that reasonable minds could only conclude that the insubstantial defect did not present a foreseeable risk of harm to Forste.

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