

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.

Court of Appeals: Second Appellate District

Case Name: *Miranda v. Meijer Stores Ltd. Partnership*, 2009-Ohio-6695

Decided: December 18, 2009

Issue(s): Duty of care to a business invitee

Summary of Opinion: Deborah Miranda was shopping at a Meijer store when she slipped and fell on dry dog food that had been spilled on the floor. Deborah claimed that she injured her lower back as a result of her fall. Subsequently, she and her husband filed a complaint against Meijer alleging negligence and loss of consortium.

Deborah testified that she had clearly observed the spilled dog food after she slipped, and that she would have seen the spilled dog food if she had been watching where she was going. She also admitted that she had no idea who spilled the dog food nor when it was spilled. Thereafter, the trial court granted Meijer's motion for summary judgment and the Mirandas appealed.

Addressing the Mirandas' argument that a genuine issue of material fact existed as to whether Meijer had constructive knowledge of the spilled dog food, the Second District Court of Appeals determined that no evidence presented showed that Meijer caused the spill. Additionally, if the spill was created by a third person, the court concluded that no evidence showed that it was on the floor long enough such that Meijer should have reasonably discovered it and cured it.

Furthermore, the court explained that both of the foregoing conclusions were accurate even though the origin of the spilled dog food likely was one of the many sacks

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shelved in the aisle. The court reasoned that to hold Meijer responsible for Deborah's injury based on such facts would make it an insurer of its invitees' safety, which is a higher standard of care than what Ohio law currently requires.

Lastly, the court refused to address the Mirandas' arguments to abandon clearly established Ohio law in the area of premises liability because the arguments were not raised in response to Meijer's motion for summary judgment.

The judgment was affirmed.

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