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January 2008

**The Michigan Supreme Court  
Precludes Recovery in Premises Liability  
Case Involving “Black Ice” Conditions**

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& BUIKEMA, P.C.***

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**Summary:**

**The Michigan Supreme Court Precludes Recovery in Premises Liability Case Involving "Black Ice" Conditions**

In a recent order, the Michigan Supreme Court reversed the Michigan Court of Appeals on the issue of whether a premises liability claim may be based on "black ice" conditions.<sup>1</sup> In adopting the dissenting opinion of the Michigan Court of Appeals ruling that affirmed the trial court's denial of a motion for summary disposition, the Supreme Court ruled that a premises owner may benefit from the "open and

obvious doctrine" in cases involving "black ice."

The plaintiff was visiting the defendants' home for business purposes. The plaintiff slipped and fell on "black ice" in the defendants' driveway as she was leaving. She testified that there was inadequate lighting, and there was no snow on the ground or visible ice accumulations. The plaintiff sued the defendants under a premises liability theory.

The defendants moved for summary disposition contending that the "black ice" was an open and obvious condition. The trial court denied the motion, finding that there was a question of fact as to whether an average person would have discovered the "black ice" condition in the driveway upon casual inspection.

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<sup>1</sup> *Kaseta v Binkowski*, \_\_ Mich \_\_ (2007). An order of the Michigan Supreme Court is binding authority. See *Mullins v St Joseph Mercy Hospital*, 271 Mich App 503 (2006).

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A majority of the Court of Appeals affirmed the trial court's ruling. The majority noted that the Michigan Court of Appeals had previously found snow-covered "black ice" to be an open and obvious condition. However, the majority observed that the inherently invisible nature of "black ice" prevented it from being readily observable upon casual inspection if it was not covered with snow.

In a dissenting opinion, Judge William C. Whitbeck opined that the trial court should have granted the defendants' motion for summary disposition. He opined that the weather conditions of snow, warm temperatures, and then colder temperatures should have placed the plaintiff on notice of potentially icy conditions. He placed particular importance on the plaintiff's

status as a lifelong resident of Michigan. Finally, Judge Whitbeck opined that the presence of snowy conditions puts a person on notice that there may be black ice conditions, even if not visible.

In lieu of granting the defendants' application for leave to appeal, the Michigan Supreme Court entered an order adopting Judge Whitbeck's opinion. Thus, the matter was remanded to the trial court for entry of an order granting the defendants' motion for summary disposition.

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