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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Merchandise Display Platform Was Open And Obvious

By Gillian Yee

A merchandise display platform was open and obvious despite possible distractions in the store created by Defendant. In *Snover v. Menard, Inc.*, an unpublished opinion of the Michigan Court of Appeals, Ms. Snover tripped over the edge of a merchandise display platform in Defendant's home improvement store. The trial court ruled that, while the platform itself was open and obvious, there was an issue of fact as to whether the risk of harm that the platform presented was also open and obvious.

The Court of Appeals found that the risk of harm presented by the platform, which was made up of a flat top resting on short risers and extending a few inches beyond the risers, creating a lip, was open and obvious. Therefore, Plaintiff's case was dismissed. The merchandise was stacked on top of the platform and set back several inches from the edges, and the color of the platform contrasted with the color of both the floor and the packages of merchandise. The risk of harm presented by the platform was open and obvious because the protruding edges of the platform's top were not obscured from view and were readily apparent to a person walking in the aisle.

In these sorts of cases, the claimant typically argues there is a question of fact since the store purposefully tried to distract her attention from where she was walking. Specifically, that the store's displays were designed to attract customers' attention to the products on the shelves and on display. Therefore, there is a question of fact for the jury to decide if a reasonable prudent person would have seen and appreciated the danger of tripping on the display platform when pursposefully distracted. The Court of Appeals did not mention whether Ms. Snover raised this particular argument, but she likely did. Relying on *Bertrand v.*

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In a "distracted customer" case, the injured person claims that the store's displays and product placement were intended to distract the customer's attention to the products for sale, rather that where the customer was walking. The injured party argues that the purposeful distraction by the store creates a question of fact as to whether a defect on the floor which caused the person to be injured.

Historically, some of these cases have been decided in favor of the injured customer. In *Snover,* the Court of Appeals emphasized that a defendant will not be held liable when a plaintiff fails to notice something that presents an open and obvious risk of harm and does not present any evidence that demonstrates she could not have discovered it and realized its danger, apparently despite the defendant's displays and merchandise on the shelves.

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Alan Ford, Inc., 449 Mich 611 (1995), the *Snover* Court held that Defendant could not be held liable because 1) Plaintiff failed to notice the platform that created a risk of harm and 2) there was no evidence that she could not have discovered it and realized its danger.

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We welcome your questions and comments.

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