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OREGON LAW UPDATE

case in point ...

When Life Throws You Post Pounders: Business Premises Liability Revisited

From the Desk of Jeff Eberhard: In a case update a few months ago, (Hammer v. Fred Meyer Stores, Inc.), I discussed a case in which the Oregon Court of Appeals considered a store's liability for failing to properly maintain merchandise displays. In that case, the court held a store was negligent when a woman was injured in the store by lemonade cartons flying off a shelf. The Court recently had an opportunity to revisit the scope of a store's duty to protect its customers, but this time the product flying off the shelf was a post pounder, and this time, the Court held the store was not liable. Read on to find out why.

Claims Pointer: A store owner cannot be found liable on a premises liability theory for displaying merchandise on shelving unless the particular manner of display created an unreasonable risk to customers. Additionally, the doctrine of res ipsa loquitur, which assumes negligence when none can be shown in the facts, is not generally applicable to merchandise that is ordinarily handled or manipulated by customers in a store because the store owner's control is non-exclusive.

Hagler v. Coastal Farm Holdings, Inc., in the Court of Appeals of the State of Oregon (Case No. A142965, August 3, 2011).

Keri Hagler and her friends were walking around a hardware store when a post pounder fell off a shelf and injured her foot. She sued the store (Defendant), arguing it negligently created an unsafe display of post pounders that it knew or should have known would create a hazard. Neither Hagler nor her friends saw the post pounder fall. A photograph of the display was taken five to ten minutes after the incident, and both parties agreed it accurately represented the condition of the display. The assistant store manager testified about the store's safety procedures, stating that employees walked the aisles each morning, regularly throughout the day, and again each evening to prevent safety hazards. Defendant moved for summary judgment, which the trial court granted. Hagler appealed to the Court of Appeals.

On appeal, Hagler argued the display created an unreasonable risk of harm, or alternatively the doctrine of res ipsa loquitur should apply because the circumstantial evidence would permit a jury to infer both causation and negligence on behalf of Defendant. The Court of Appeals disagreed with Hagler because her available evidence did not support a claim of negligence as to the maintenance of the display.

A few months prior to this case, the Court of Appeals decided a similar case in Hammer v. Fred Meyer Stores (Case No. 05CV0875, April 20, 2011). There, a customer removed a half-gallon carton of lemonade from an "end cap" refrigerated display. After she removed the carton, the shelf flipped back, ejecting the remaining lemonade cartons at her. Evidence showed Fred Meyer was in charge of installing, handling, moving, and inspecting the end cap and the shelf within it. Moreover, there was no evidence that a third party altered, manipulated, damaged, or mishandled the defective shelf. Thus, the Court found the evidence was sufficient to entitle her to the res ipsa loquitur instruction.

Here, the Court emphasized that a store cannot be found liable on a premises liability theory for product displays "unless it can be shown that the particular manner of display created an unreasonable risk to customers." Additionally, the court found the fact the post pounder display could be manipulated or handled by customers in the store negated the Defendant's exclusive control of the merchandise display, which in turn negated a res ipsa loquitur inference of liability. Thus, the Court of Appeals affirmed summary judgment for Defendant.

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