

# WASHINGTON CASE UPDATE

## Will a Conclusory Expert Declaration Preclude Summary Judgment?

**From the Desk of Kyle D. Riley:** In a slip and fall case, will an expert's declaration concluding that a condition on the property is dangerous be enough to survive a summary judgment motion? Read on to see how the Washington Appeals Court answered this question.

**Claims Pointer:** The Washington Court of Appeals affirmed the grant of summary judgment in favor of Albertson's, holding that the plaintiff did not establish through expert testimony that Albertson's had notice of a dangerous condition on the premises. While the expert's declaration provided statements including that the mat in question was flimsy, unsecured and created an unreasonable trip hazard, the Court of Appeals found that the trial court may disregard the expert's affidavit where it provides legal conclusions rather than new factual information. Mere legal conclusions of an expert will not prevent a case's dismissal through summary judgment.

*Smith v. Albertson's LLC*, No. 46875-1-II, Washington Appeals Court, Div. I (Feb. 29, 2016)(unpublished).

Barbara Smith ("Smith") visited an Albertson's store. Once inside, she immediately walked the length of two long, narrow carpeted mats meant to protect against moisture. Smith proceeded further and stepped onto a shorter mat by a flower display with her left foot. She took another step and her right foot snagged against the edge of the mat, causing the mat to bunch up. Smith tripped on the bunched up mat and fell into the flower display. Her fall was recorded by the store's security camera.

Smith sued Albertson's alleging she suffered injuries due to its negligence. The trial court ultimately granted summary judgment, agreeing with Albertson's that Smith could not prove that the mat was a hazardous condition nor that Albertson's had notice of any danger.

The Washington Court of Appeals affirmed the decision of the trial court, ruling that summary judgment was proper because Smith did not establish that Albertson's had notice of a dangerous condition and, as a result, she failed to show that Albertson's owed her a duty.

Smith argued that, as an invitee, Albertson's owed her a duty to exercise reasonable care to protect against the dangerous condition, or the shorter mat in question. She asserted that summary judgment was improper because

she created a genuine issue of material fact by submitting an expert declaration. Smith offered the declaration of Tom Baird, a safety consultant, whose review was based solely on the pleadings and exhibits, as well as the security video of Smith's fall. He did not inspect the mat in question, nor did he inspect the store. He speculated that the longer mats were different from the shorter mats and noted that another customer rubbed his feet on one of the long mats without crumpling it. He also mentioned the existence of standards. He ultimately opined that that shorter mat in question was too flimsy and unsecured, such that it created an unreasonable trip hazard. The trial court decided that Baird's declaration only offered legal conclusions without an adequate factual basis. The Court of Appeals agreed.

While an expert opinion on an ultimate question of fact may be sufficient to preclude summary judgment, an expert must support his opinion with specific facts rather than conclusions of law. In this case, Baird merely drew conclusions from the same information available to the court and did not provide new information to establish a question of fact. Consequently, Baird's declaration did not provide any facts about the weight, stiffness, or slip resistance of the shorter mat. He also did not state a particular standard or attempt to apply a standard requiring a particular weight, stiffness, or slip resistance for commercially used mats. Furthermore, he presented no

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information to suggest that wiping one's feet is comparable to Smith's trailing foot catching on the rug. Instead, Baird merely repeated what was in the security video. His characterizations that the mat was flimsy and dangerous were conclusory statements without new factual information. According to the court, the fact that there was a fall does not establish negligence, nor does the fact that the mat crumpled in front of Smith establish that the mat was per se dangerous. Rather, the evidence led to only one reasonable conclusion: Smith crumpled up the mat while walking and she tripped as a result.

Because the expert provided no new factual information, the trial court properly disregarded the expert's declaration. The ruling of the trial court granting Albertson's summary judgment motion was affirmed.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

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