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Washington Case Update

case in point...

Snakebit: When Does a Plaintiff Have to Show Notice of a Hazardous Condition?

From the desk of Kyle D. Riley: Under Washington premises liability law, a business invitee usually must show that the owner of the premises had actual or constructive notice of the hazardous condition for the business to be liability to attach. Under the "self-service" Pimentel exception, however, the plaintiff does not have to show that the defendant had notice if the nature of the "self-service" business and its methods of operation are such that unsafe conditions on the premises are reasonably foreseeable. Read on to see how courts will analyze and apply this exception.

Claims Pointer: In this unpublished case arising out of a rattlesnake bite in a Walmart outdoor garden center, the Washington Court of Appeals held that because the Pimentel exception applied, the plaintiff was not obligated to show that Walmart had notice of a hazardous condition and therefore the trial court's granting of summary judgment was inappropriate. The case is a reminder to businesses, insurers, and attorneys of the Pimentel exception and its application where the business's mode of operation involves customers serving themselves.

Craig v. Wal-Mart Stores, Inc., No. 33985-8-III, Washington Court of Appeals, Division III (December 8, 2016) (unpublished)

*I*n May 2012, while shopping for mulch in the outdoor garden center of a Walmart store in Clarkston, Washington, Mica Craig ("Craig") was bitten by a rattlesnake hidden amongst bags of mulch. He brought suit against Walmart on several theories, including a premises liability theory.

Walmart moved for summary judgment against Craig's premises liability claim, asserting it lacked actual or constructive notice of any rattlesnake danger. Specifically, it stated that its Clarkston store had been in operation since September 2009, that over four million customers had visited the store prior to May 2012, and that there had never been a reported incident involving a snake. Walmart also described various efforts it used to decrease the risk of dangerous incidents, including routinely sweeping and checking the garden center area and hiring a company to provide monthly pest control.

In response, Craig submitted several declarations, including one from a layperson who had lived in Clarkston his entire life and another from a snake expert. The layperson asserted that it was common knowledge that rattlesnakes are prevalent in areas around the levies of Clarkston, including in the immediate vicinity of the Clarkston Walmart. The snake expert stated that there were undeveloped lots immediately adjacent to Walmart's outdoor garden center, and that rattlesnakes could live in those lots and the general area. Craig also argued that a specific Washington exception known as the Pimentel self-service exception applied, meaning that he was not required to show that Walmart had actual or constructive notice because the nature of the business and its methods of operation were such that the existence of unsafe conditions on the premises was reasonably foreseeable.

The trial court granted Walmart's summary judgment motion, concluding that to invoke the Pimentel exception, a plaintiff must present some evidence that the unsafe condition in the particular location of the accident was reasonably foreseeable. The court found that there was no evidence of any snake activity on the premises of the particular Walmart store and that Walmart's mode of business operations would not somehow encourage or promote invitees to encounter a rattlesnake. Craig appealed.
On appeal, the Court of Appeals reviewed the Pimentel exception, noting that its application is

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limited to self-service operations where goods are stocked and customers serve themselves by handling the goods. The exception only applies if (1) the area where the injury occurred was self-service, (2) the hazardous condition that caused the injury was within the self-service area, and (3) the mode of operation inherently created a reasonably foreseeable hazardous condition.

Walmart initially argued that its garden center was not a self-service area. Because the record was undisputed that customers are permitted in the entire garden center, including the area where Craig was bitten, to gather goods they wanted to purchase, the court, determined that the garden center was a self-service area.

Walmart next argued that its mode of operation did nothing to cause a reasonably foreseeable hazardous condition. The court disagreed, noting that rattlesnakes are especially prone to wander during the spring, and Craig was bitten in May. According to the court, Walmart's choice to locate an outdoor garden center in its parking lot and adjacent to undeveloped land where rattlesnakes were known to live created a reasonably foreseeable hazard that customers would interact with wandering rattlesnakes hiding in among the plants and other items for sale. Accordingly, the Pimentel exception applied, and the trial court's granting of summary judgment of Walmart was reversed.

The court was careful to explain that its holding would not impose potential liability on all self-service business operating in rattlesnake country because most business have walls and doors that would prevent rattlesnakes from entering. Potential liability would be limited to only those situations where the business owner failed to take reasonable care to prevent rattlesnake bites. Notably, one of the three judges dissented, explaining that the Washington Supreme Court had limited the Pimentel exception to "specific unsafe conditions that are continuous or foreseeably inherent in the nature of the business or mode of operation." The Supreme Court had declined to apply the exception in a prior case where the unsafe condition was water dripping from a leaky roof in a grocery store, noting that such a risk was not inherent in the store's mode of operation. For the dissent, a rattlesnake passing through the outdoor garden area was no more a result of the self-service operation than was the leaky roof in the grocery store.

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.

View full opinion at: https://www.courts.wa.gov/opinions/pdf/339858_unp.pdf

Case updates are intended to inform our clients and others about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.

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