

## COA Opinion: “Open and Obvious” Doctrine Requires a Hazard to be Obvious on Casual Inspection by an Average Person of Ordinary Intelligence

16. December 2010 By Julie Lam

On December 14, 2010, the Court of Appeals published its per curiam opinion in [Watts v Michigan Multi-King, No. 293185](#). In *Watts*, the plaintiff sued for negligence after she fell on a wet, newly-mopped floor in the defendant’s restaurant. The restaurant’s incident report stated that “wet floor” signs were visible, but the plaintiff testified that there were no “wet floor” signs, that the floor did not look wet, and that she had no way of knowing that the floor was wet until after she fell. The Court of Appeals held that a genuine issue of material fact existed as to whether the floor was an “open and obvious” hazard, so it reversed the trial court’s order granting summary judgment to the restaurant.

The parties agreed that the floor was newly-mopped and wet. However, they disagreed as to whether the hazard posed by the wet floor was “open and obvious.” A landowner must exercise reasonable care to “protect invitees from an unreasonable risk of harm caused by dangerous conditions on the land,” but the landowner “is not generally required to protect an invitee from open and obvious dangers.”

The Court of Appeals stated that a condition is “open and obvious” if “an average person of ordinary intelligence” would “discover the danger upon reasonable inspection.” Reviewing the trial court’s grant of summary judgment *de novo*, it concluded that summary judgment for the defendant restaurant was inappropriate because the restaurant “offered no testimony or other evidence to demonstrate that the floor was visibly, let alone obviously, wet at the time of plaintiff’s fall or that a reasonable person would have observed that condition on casual observation.” It reversed the trial court’s order granting summary judgment and remanded for further proceedings.

Judge Wilder filed an opinion [concurring](#) in the result because the defendant did not show that the floor was “visibly wet” such that an “average person of ordinary intelligence” would have seen the hazard “upon casual inspection.”