



## Ankin Law Office LLC

Protecting the Rights of Injured Workers

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## Was Unmarked Curb an “Open and Obvious” Danger?



Normally, a property owner need not warn visitors of a dangerous condition that is “open and obvious.” However, as discussed in a recent [Illinois personal injury case](#), *Alqadhi v. Standard Parking, Inc.*, 2010 WL 4517204, it's not always clear whether a condition is properly classified as “open and obvious.”

In *Alqadhi*, the plaintiff injured her knees when she was leaving the defendants' parking garage. She tripped and fell on an unmarked 3/4-inch rise in the concrete of a wheelchair-accessible ramp.

As the Court explained, one of the arguments offered by the defendants when seeking summary judgment was that the condition was “open and obvious” and thus they were not liable.

Defendants contend that “the step” was an open and obvious condition, negating any alleged duty owed to plaintiff. The open and obvious doctrine is an exception to the general duty of care owed by a landowner and in Illinois is based on the Second Restatement of Torts:

“A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.” Restatement (Second) of Torts § 343A(1) (1965).

The Court disagreed with the defendants, however, based on evidence offered by the plaintiff that tended to show that the lack of contrast—i.e. paint markings—located at the raised surface of the wheelchair ramp effectively disguised the increase in elevation:

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In the case before us, both plaintiff and her expert testified to impaired visibility which concealed an otherwise minor defect. We believe the testimony was sufficient to remove this case from application of the open and obvious doctrine and the de minimus rule.

As such, the Court concluded that the plaintiff effectively rebutted the defendants' arguments in support of their motion for summary judgment and remanded the case to the lower court for further proceedings.

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By [admin](#)

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