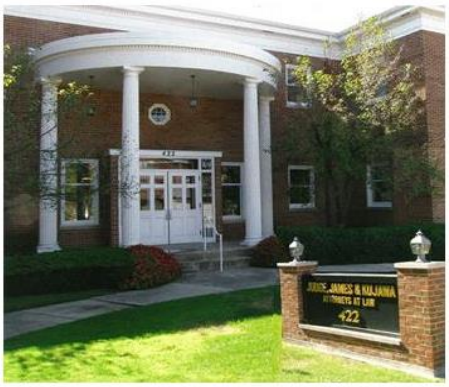
JJ&K The Law Offices of
JUDGE, JAMES & KUJAWA
422 North Northwest Highway, Suite 200
Park Ridge, IL 60068 | 847/292-1200 | 847/292-1208 (Fax)
www.judgeltd.com

JUDGE-MINTS: NUGGETS OF LAW FOR THE DEFENSE
FROM JUDGE, JAMES & KUJAWA



THE OPEN & OBVIOUS DANGER/NO DUTY RULE: A LANDOWNER OWES NO DUTY TO PERSONS ON PROPERTY TO WARN OR PROTECT THEM FROM AN "OPEN & OBVIOUS DANGER" THEREON

The landmark Supreme Court "open and obvious danger/no duty" case is *Bucheleres v. Chicago Park District*, 171 Ill.2d 435, 665 N.E.2d 826 (1996) (Park District had no duty to warn swimmer of "open and obvious danger" of diving off pier and hitting head on bottom of Lake Michigan). Explaining why there is no duty to warn or protect against an "open and obvious danger," the Supreme Court in *Bucheleres* stated:

> In cases involving obvious and common conditions, such as fire, height, and bodies of water, the law generally assumes that persons who encounter these conditions will take care to avoid any danger inherent in such condition. The open and obvious nature of the condition itself gives caution and therefore the risk of harm is considered slight; people are expected to appreciate and avoid obvious risks. (171 Ill.2d at 448, 665 N.E.2d at 832.)

The following cases found the defendant property owner not liable based on the "open and obvious danger/no duty" rule:

(1) *Choate v. Indiana Harbor Belt Railroad Co.*, 2012 IL 112948, 980 N.E.2d 58 (2012) (Moving freight train on railroad tracks is an open and obvious danger which can injure and railroad had no duty to warn 12-year old not to try to hop onto a freight car).

(2) *Park v. Northeast Illinois Regional Commuter Railroad Corp. (Metra)*, 2011 IL App (1st) 101283, 960 N.E.2d 764 (1st Dist. 2011) (Metra and Canadian Pacific railroads had no duty to warn pedestrians not to cross tracks in front of a moving train which is an open and obvious danger where train struck and killed pedestrian).

(3) *Ballog v. City of Chicago*, 2012 IL App (1st) 112429, 980 N.E.2d 690 (1st Dist. 2012) (City not liable for fall on 2" gap between sidewalk and street as it was an "open and obvious danger").

(4) *Mt. Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill.2d 110, 660 N.E.2d 863 (1995) (Utility company in placing a stub/short pole near fence had no duty to warn of the "open and obvious danger" of climbing on the pole, over the fence, and drowning in the swimming pool in the fenced-in yard).

(5) *Sollami v. Eaton*, 201 Ill.2d 1, 772 N.E.2d 215 (2002) (Homeowner with trampoline on premises had no duty to warn 15-year old of the "open and obvious danger" of rocket-jumping and falling and sustaining injuries).

(6) *Prostran v. City of Chicago*, 349 Ill.App.3d 81, 811 N.E.2d 364 (1st Dist. 2004) (City owed no duty to warn plaintiff pedestrian on sidewalk of "open and obvious danger" of walking on debris and rocks from construction work in alley).

(7) *Sandoval v. City of Chicago*, 357 Ill.App.3d 1023, 830 N.E.2d 722 (1st Dist. 2005) (City had no duty to warn pedestrian of a missing 5 ft. by 6 ft. section of city sidewalk because condition was an "open and obvious danger" — especially to plaintiff whose home was located at address of missing section).

(8) *Belluomini v. Stratford Green Condominium Association*, 346 Ill.App.3d 687, 805 N.E.2d 701 (2nd Dist. 2004) (Bicycle in condo hallway of which plaintiff was aware was an open and obvious peril of which there was no duty to warn or protect plaintiff from).

(9) *Bonavia v. Rockford Flotilla, 6-1, Inc.*, 348 Ill.App.3d 286, 808 N.E.2d 1131 (2nd Dist. 2004) (Algae growth on dock pier on which boater who rented dock space slipped was an "open and obvious peril" imposing no duty on dock operator to warn of or guard against).

(10) *Whittleman v. Olin Corp.*, 358 Ill.App.3d 813, 832 N.E.2d 932 (5th Dist. 2005) (No duty of plant owner where electrical work was being done to warn electrician of the "open and obvious danger" of touching high-voltage lines with aluminum conduit).

(11) *Wreglesworth v. Arctco*, 317 Ill.App.3d 628, 740 N.E.2d 444 (1st Dist. 2000) (Owner of pier or boat dock not liable to passenger riding in Tigershark jet ski boat who sustained serious head injuries when jet ski collided with pier which presented an open and obvious danger).

The *Park v. Metra* Moving Train On Railroad Tracks Case Held A Moving Train Is An "Open & Obvious Danger" & Neither Of The Two Exceptions To The "Open & Obvious Danger" Rule Applied: (1) No "Distraction" Exception; & (2) No "Deliberate Encounter" Exception

The *Park v. Metra* Appellate Court case, in which our firm represented Metra, provides an excellent discussion of the "open and obvious danger/no duty" rule and the "distraction" exception and the "deliberate encounter" exception.

In *Park v. Northeast Illinois Regional Commuter Railroad Corp. (Metra)*, 2011 IL App (1st) 101283, 960 N.E.2d 764 (1st Dist. 2011), the Appellate Court held as follows.

Finding no "distraction exception to the open and obvious danger/no duty rule" applied, the *Park* Court stated:

> The issue here is whether, as a matter of law, it was foreseeable that Hiroyuki would be distracted from the open and obvious danger of an approaching train due to foliage located near the east passenger platform and inclement weather. We find that it was not. The allegations in plaintiff's fifth amended complaint show that, despite the foliage and weather, Hiroyuki was aware of the approaching train before the accident. There is no evidence that the rain and foliage distracted Hiroyuki such that he forgot about the approaching train. Rather, as argued by plaintiff, it was Hiroyuki's mistaken belief that the approaching train was a Metra train that led Hiroyuki to attempt to cross the tracks. (2011 IL App (1st) 101283, par. 25, 960 N.E.2d at 772.)

And, finally, holding the "deliberate encounter" exception to the open and obvious danger/no duty to warn of rule did not apply, the Appellate Court explained:

> We likewise find that the deliberate encounter exception does not apply. Under the deliberate encounter exception to the open and obvious rule, a duty is imposed when a defendant has reason to expect that a plaintiff will proceed to encounter the known or obvious condition, despite the danger, because to a reasonable person in his position the advantages of doing so would outweigh the apparent risk. . . . Plaintiff has alleged 'no indication of any compulsion or impetus under which a reasonable person' in Hiroyuki's position would have disregarded the obvious risk of crossing railroad tracks while a train is approaching. (2011 IL App (1st) 101283, par. 26, 960 N.E.2d at 772.)