

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DALE CHIMENTI, LIZABETH CHIMENTI,  
JOEY CHIMENTI and STEPHANIE CHIMENTI,

UNPUBLISHED  
November 17, 2000

Plaintiffs-Appellants,

v

APPLE VACATIONS, INC. and KIMBERLY  
TRAVEL, INC.,

No. 208446  
Macomb Circuit Court  
LC No. 94-005355 NO

Defendants-Appellees.

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Before: Zahra, P.J., and Saad and Gage, JJ.

GAGE, J. (dissenting).

I respectfully dissent. I would reach the legal question, argued by the parties both before the trial court and on appeal, whether according to common law negligence principles the tour operator and travel agent defendants owed plaintiff Dale Chimenti a duty to warn him of dangerous currents existing near Cozumel island.

I would find that as a matter of law a travel agency or tour operator owes a legal duty to warn its clients when, as in this case, the following circumstances exist: (1) the agency or operator advises the client that it will look after the client's welfare and keep the client "fully informed", (2) the agency or operator has knowledge of inherently dangerous conditions existing within close proximity to the client's intended whereabouts; (3) it is reasonably foreseeable that the client will engage in activities in the dangerous area; and (4) the dangerous condition creates a risk of death or serious bodily harm.

Because the extent of the relationship, if any, between the individual defendants remains unclear from the instant record, I would remand this case for a determination whether the facts establish the elements of a duty to warn on the part of either or both individual defendants, and if so, for consequent factual determinations whether the applicable defendants breached the duty, the extent of plaintiff's comparative negligence, and whether the breach proximately caused plaintiffs' harm. The concurrence raises several interesting factual considerations for the jury in examining the questions of plaintiff's comparative negligence and whether either one or both of the individual defendant's negligence proximately caused plaintiff's injuries. The concurrence fails, however, to adequately explain why a travel agent or tour operator as a matter of law should be immune from any responsibility to protect its clients, even from the simple, easily

accomplished burden of advising the clients of known, dangerous conditions that they will encounter.

I emphasize that I would not hold that a duty to warn exists with respect to every conceivable potentially dangerous activity. I would limit the duty to warn only of dangers *known* to the tour operator or travel agent that pose a substantial risk of death or serious bodily injury, especially where, as here, it is reasonable to infer the client's unawareness of the danger.

/s/ Hilda R. Gage