

Inc., was in possession and control of the supermarket premises.

Plaintiff Denise Brockney alleges that she sustained injury when a wheel of the shopping cart she was using caught in the pavement near the store entrance and caused her to fall.

Approximately one month after the accident, this entrance area was repaved with asphalt.

2. Discussion

Rule 407, Fed. R. Evid.,² makes clear that evidence of subsequent remedial measures "to prove negligence or culpable conduct" is inadmissible, although such evidence may be offered for other purposes such "as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment." Id. See Clausen v. Sea-3, Inc., 21 F.3d 1181,

²Federal Rule of Evidence 407 states,

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

1191 (1st Cir. 1994).³

The defendant does not here contest ownership, control, or feasibility of precautionary measures, and, accordingly, the motion in limine must be granted.

3. Conclusion

Defendant's motion in limine is granted, and plaintiffs are barred from offering or attempting to offer evidence as to the subsequent repair of the premises on which the alleged accident occurred.

SO ORDERED.

Shane Devine, Senior Judge
United States District Court

September 21, 1995

cc: Gary P. Westergren, Esq.
Robert C. Dewhirst, Esq.

³The difficulties arising from application of the "impeachment loophole" require trial judges to consider carefully whether even such evidence should be declared inadmissible under the "unfair prejudice" provision of Rule 403, Fed. R. Evid. Harrison v. Sears, Roebuck & Co., 981 F.2d 25, 31-32 (1st Cir. 1992).