Published on *The National Law Review* https://natlawreview.com

Property Owners: Don't Let Michigan's New Slip-and-Fall Case Law Trip You Up

Article By:

Sarah C. Reasoner

Amy M. Johnston

Samantha S. Galecki

All property owners and possessors should be aware of a new legal framework from the Michigan Supreme Court that changes how premises liability cases are litigated. Michigan courts have long held that premises owners generally have no duty to protect invitees from "open and obvious" hazards based on *Lugo v Ameritech*, 464 Mich 512 (2001), and its progeny. But the Michigan Supreme Court concluded on July 28, 2023, that *Lugo* was wrongly decided and should be overruled in two respects.

In the consolidated cases of *Kandil-Elsayed v F&E Oil, Inc* and *Pinsky v Kroger Co of Michigan*, the Court held first, that whether a hazard is open and obvious is not an integral part of duty but is instead "relevant to breach and the parties' comparative fault." Second, the Court overruled the special-aspects exception, which had held that land possessors could be liable for open and obvious conditions only when the invitee presented evidence of special aspects of the condition, such as an unavoidable condition or one that posed a serious risk of injury or death. Instead, the Court held that "when a land possessor should anticipate the harm that results from an open and obvious condition, despite its obviousness, the possessor is not relieved of the duty of reasonable care." Addressing the implications of overturning precedent, the Court concluded that while *Lugo* has "been on the books for more than two decades, it has not created reliance interests strong enough to cut against a decision to overrule it."

Both *Kandil-Elsayed* and *Pinsky* were "slip-and-fall" cases. The respective plaintiffs (who were "invitees") alleged they were injured after slipping on ice in a parking lot and a cable on the floor of a grocery store. In both cases the Court of Appeals granted the defendants' motions for summary disposition because the ice and the cable were open and obvious hazards, and the defendants had no duty to protect the plaintiffs from them. The Supreme Court reversed both decisions, holding that the open and obviousness of the hazards were relevant to whether defendants breached their duties and whether plaintiffs were comparatively at fault—not to whether the defendants owed a duty to the plaintiffs.

To be sure, the open and obvious doctrine still plays a vital role in two essential parts of a premises liability case. First, whether a hazard is open and obvious bears on whether the premises owner or possessor took reasonable steps to protect invitees from the hazard. Second, plaintiffs who are injured by an open and obvious hazard may find themselves unable to recover their full damages under Michigan's comparative fault doctrine based on their own lack of care in failing to appreciate an open and obvious hazard.

This decision dramatically changes the landscape of premises liability torts, particularly slip-and-fall cases.

National Law Review, Volumess XIII, Number 216