

Michigan Supreme Court Closes the Door on Decades-Long Open and Obvious Defense

08.02.2023

In a consolidated opinion issued this past Friday, the Michigan Supreme Court dismantled the long-standing “open-and-obvious doctrine.” Previously, property owners could usually defeat slip and fall claims where the danger to the injured individual was open and obvious to a reasonable person — a well-settled legal principle for a state like Michigan, where citizens encounter familiar and thus “obvious” hazards like snow and ice.

The majority opinion of *Kandil-El Sayed v F&E Oil Inc* and *Pinsky v Kroger Co* of Michigan introduces a new framework. Essentially, the open and obvious nature of a danger is now only relevant to the breach of a duty to maintain the premises, or to the plaintiff’s contributory fault — meaning that an owner cannot escape liability if the danger was open and obvious but that the plaintiff could have their recovery diminished if it was.

This marks a significant change from the seminal case of *Lugo v Ameritech Corp, Inc.*, which required the plaintiff, rather than the landowner, to know of and ensure their own safety when it came to obvious dangers. Under that case, the landowner had no duty to warn of an open and obvious condition unless it had certain special aspects like being “unreasonably dangerous” or “effectively unavoidable.” Landowners could therefore usually prevail on summary disposition, arguing that no duty was owed as the subject condition was open and obvious and no special aspect was present.

Now, landowners will be required to warn or protect invitees on their premises from all hazards, even if the danger is open and obvious. Moreover, summary disposition will be more difficult, as the nature of the open and obvious danger will likely be a fact question for a jury to analyze - that is, whether a reasonable person would have anticipated the danger and therefore, whether the injured person bears some fault for their failure to anticipate it. This is a relative sea change from years of precedent and will likely present challenges for Michigan property owners in the winter, as the typical cases involving the facts included

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common dangers like snow and ice.

If you have any questions or concerns regarding this recent major change in law, please reach out to your Novara lawyer. Our insurance defense lawyers are available to meet or present on this topic as well.