

Premises Liability



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What is Premises Liability?

- The Michigan premises liability law establishes when a property owner can be held liable for a person's injury or death resulting from an incident caused due to a defect, hazard or dangerous condition on the land of another.
- Common causes of slips, trips, and falls include:
 - Wet Floors: slippery floors, liquid spilled, and mopped floors.
 - Hazardous Weather: snow, sleet, ice, and rain.
 - Defective Surfaces: potholes, cracks, depressions, and uneven surfaces.
 - Walking Hazards: curled-up floor mats, exposed wires, or extension cords.
 - Inadequate Lighting: low-light situations.
 - Animals: dog bites



Examples of Premises Liability Claims



How to Prove a Premises Liability Case?

- The injured party needs to prove the following:
 - **Duty of care:** The injured party was legally on the property, and the property owner had an obligation to reasonably maintain the property;
 - **Violation of that duty:** The premises owner breached the duty of care;
 - **Causation:** An injury was directly caused from the violation of the duty of care; and
 - **Damages:** The injured party is entitled to compensation of damages.



What is the Status of the Injured Party?

- There are three visitor statuses:
 - **Invitees:** A person who is on the property for commercial reasons.
 - A customer at the grocery store, a restaurant, hotel, movie theater and etc.
 - **Licensees:** A person invited to the property for social reasons.
 - Social guests visiting a friend's house, delivery personnel (Amazon, UPS, FedEx, and etc.)
 - **Trespassers:** A person who enters the property, without the property owner's permission.



What Type of Duty of Care is Owed?

- The duty of care owed is based on the visitor's status.
- **Invitees:** Property owners should fix, guard against, or warn of unreasonable risks of harm posed by dangerous conditions that they knows or should know about.
- **Licensees:** Property owners must warn the guest of hidden conditions known to the premises owner.
- **Trespassers:** Property owners do not owe a duty.



How is the Injured Party Compensated?

- If a party is injured in a premises liability case, he/she may be entitled to seek compensation for the following:
 - Medical Expenses
 - Medical Liens
 - Rehabilitation Expenses
 - Lost Income
 - Lost Earning Potential
 - Pain and Suffering
 - Lost Quality or Enjoyment of Life
 - Loss of Consortium/Companionship



What is a Property Owner's Defenses?

- The Open-and-Obvious Danger Doctrine
 - Historically, premises owners owed no duty to protect against or warn of open-and-obvious conditions because such conditions, by their nature, provide individuals with notice of, and an opportunity to avoid, potential risks.
 - Common open-and-obvious risks, include: slipping and falling on snow or ice during winter, black ice, steps, uneven surfaces (potholes and other defects in pavements).
 - Only “special aspects” could justify imposing a legal duty despite the open-and-obvious nature of the condition. These “special aspects” are divided into two categories: (1) unreasonable danger (those that pose an unreasonably high risk of harm), and (2) effectively unavoidable conditions.



The “Fall” of the Open and Obvious Doctrine

- In July 2023, the Michigan Supreme Court overruled its long-standing rule that property owners have no duty to protect against open-and-obvious dangers.
- In *Kandil-Elsayed v F&E Oil*, the plaintiff slipped and fell on snow and ice at a gas station while walking from the pump to the store to pay for her gas. The path to the store was covered in snow and did not appear to have been plowed or salted.
- In *Pinsky v Kroger*, the plaintiff tripped and fell inside a grocery store. At the checkout, the plaintiff realized that she had an open bag of flour and went to get a new one. She went down another checkout aisle that had a cable strung across it, signaling that the lane was closed. The plaintiff tripped over the cable and sustained injuries.



The “Fall” of the Open and Obvious Doctrine

- *Kandil-Elsayed* summarized the current state of the law as follows:
 - A land possessor owes a duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land. If the plaintiff establishes that the land possessor owed plaintiff a duty, the next step in the inquiry is whether there was a breach of that duty.
 - A land possessor need only **exercise reasonable care** under the circumstances.
 - As part of the breach inquiry, consider, among other things, whether the condition was open and obvious and whether, despite its open and obvious nature, the land possessor should have anticipated harm to the invitee.
 - If breach is shown, as well as causation and harm, then the jury should consider the injured party’s comparative fault and reduce the injured party’s damages accordingly. A determination of the injured party’s comparative fault may also require consideration of the open and obvious nature of the hazard and the choice to confront it.”



The “Fall” of the Open and Obvious Doctrine

- The open-and-obvious nature of a danger is still a relevant consideration, but must be analyzed under the context of breach of duty (not whether a duty exists in the first place), and the injured party’s comparative fault.
- The “special aspects” exception no longer applies. Instead, the unreasonableness or unavailability of the danger is considered when deciding whether the harm should be anticipated.



What's Next?

- The Supreme Court's ruling ended the common practice of filing dispositive motions on the open-and-obvious doctrine.
- The Court made it clear that the plaintiff's subjective observations, and notions such as the prevalence of ice and snow in Michigan, remain relevant to arguing comparative negligence.
- More cases will get to a jury.
- Property owners need to take reasonable measures to eliminate the hazard.



Landlord-Tenant/Condominium Associations

- In every residential lease, there are implied covenants of fitness and repair: (1) the “premises and all common areas are fit for the use intended by the parties,” and (2) the landlord will “keep the premises in reasonable repair....”
- A co-owner of a condominium unit injured on a common area of the development is not “on the land of another” and, therefore, cannot be an invitee or a licensee to whom a duty of care is owed under premises liability law.



How to Prevent Slips, Trips, and Falls?

- Clean up spills immediately
- Place signs warning guests of wet floors
- Remove tripping hazards in walkways and doorways and on stairs
- Install handrails
- Ensure adequate lighting
- Have a plan to address hazards caused by wet or icy weather
- Yellow paint
- Walk-thru inspections
- Be reasonable



The Incident Occurred – Now What?

- Incident reports
- Witness statements
- Photographs and/or video footage of the subject area
- Weather reports
- Surveillance footage
- Home security system/Ring doorbell camera
- Social media
- Follow-up telephone call
- Cleaning/inspection logs
- Invoices/billing statements
- Inspections
- Medical payments
- Contact Collins Einhorn Farrell PC



Other Viable Defense Strategies

- **Notice**

- The injured party must still prove that the case involves a dangerous condition on the land and that the premises owner had notice of the alleged condition.

- **Visitor's Status**

- The visitor's status as a trespasser, invitee, and licensee remains important, and impacts the duty owed.

- **Signed Waiver**

- Water parks, country club, axe throwing, amusement parks, lifeguards, fitness centers.



Other Viable Defense Strategies

- **Comparative Fault**

- Under Michigan's modified comparative negligence, if the injured party is more than 50% at fault for their own injury they are not entitled to recovery for non-economic damages.
- And no matter what percentage of fault is allocated to the injured party, their economic damages (and noneconomic damages if their fault is less than 50%) will be reduced by that percentage.
- This will include an analysis of whether the condition was open and obvious.
- Intoxication and/or illicit drugs.

Other Viable Defense Strategies

- **Possession and Control**

- The injured party must prove the premises owner possessed and controlled the property.
- For example: Owner of the building leases the store to a third-party.

- **Criminal Acts of Third Parties**

- A property owner has no duty to protect another from the criminal acts of third parties, unless there is a special relationship between the injured party and the property owner.
 - Landlord-tenant relationship (installing locks on doors, providing adequate lighting).



Other Viable Defense Strategies



- **Contracting with Third Parties**

- A contractor is typically not liable to an injured party unless, the duty is “separate and distinct” from the contractual obligation to the property owner or unless the injured party is specifically named as a third-party beneficiary to the contract.
- Example: Snow removal contractors, property managers, landscapers, subcontractors, and etc.

- **Indemnification Provisions/Risk Transfer**

- The purpose of the indemnity provision is to shift the risk from the premises owner (indemnified party) to the contractor (indemnifying party) for any losses or damages arising from a certain event or set of circumstances.
- Example: Snow removal contractor fails to remove snow and ice from the parking lot, escalators, elevators, and etc.



Example of Indemnity Provision

- To the fullest extent permitted by law, Customer agrees to defend, pay on behalf of, indemnify, and hold harmless Contractor, its officials, employees, and volunteers and others working on behalf of Contractor against any and all claims, demands, suits or loss, including all costs therewith, and for any damages asserted, claimed or recovered against or from the corporation, its elected officials, employees, volunteers or others working on behalf of Contractor, by reason of personal injury, including bodily injury and/or death and/or property damage, including the loss of use thereof, which arises out of or is in any way connected or associated with this contract.



Example of Indemnity Provision

- The Contractor hereby agrees to indemnify, and hold harmless the property, their managing agents and employees from any and all liabilities, losses, expenses, damages, claims of injuries, howsoever caused, to any persons or property, arising or claimed to arise directly or indirectly from the performance of services under this Agreement.

