

SECRET WARDLE SUCCESS STORIES

ATTORNEYS: Jack Weston, Lauren A. Sterrett, Matthew T. Nicols and David R. Kinzer

TYPE OF CASE: Premises Liability

DATE OF DISPOSITION: June 20, 2025

TRIED/ARGUED BEFORE: Michigan Court of Appeals

DEMAND: Evaluated at \$60,000

VERDICT/SETTLEMENT AMOUNT: Summary disposition affirmed on appeal

KEYS TO THE CASE:

This case regarded a May 2019 trip-and-fall injury. Plaintiff was not looking and tripped over a construction barricade, which had been placed in the street by Defendant's contractor during an ongoing construction project. The Court of Appeals granted summary disposition in 2022, finding first that the case sounded in premises liability rather than ordinary negligence, and then, in the second portion of the Court's 2022 analysis, dismissing Plaintiff's premises claim due to the barricade's open and obvious nature. The Supreme Court then reversed *only* that portion of the Court of Appeals opinion concerning the barricade's open and obvious nature, after the Court's decision in *Kandil-Elsayed v F & E Oil Co*, 512 Mich 95 (2023) found that whether a condition is open and obvious is a question of fact, typically decided by a jury at trial, rather than a matter of law, decided by a judge on summary disposition.

On remand, Plaintiff again argued that the claim sounded in ordinary negligence rather than premises liability. Defendant wasn't on the scene and did not "possess" the public street, so the company had to be held liable in ordinary negligence. Defendant breached its duties to Plaintiff because it had filled in the sidewalk with gravel and left a construction barricade in the street. Plaintiff also argued that the Court was not bound by either part of the Court of Appeals' earlier 2022 decision, even though the Supreme Court only reversed that portion of the opinion that regarded the open-and-obvious doctrine.

In June 2025, the Court of Appeals rejected those arguments. Analyzing the case as a matter of premises liability, it determined that an ordinary, brightly colored construction barricade was not inherently dangerous, so Defendant had no duty to protect Plaintiff from it. In the second part of its opinion, the Court said that the law-of-the-case doctrine applied to every part of the Court of Appeals' previous decision that had not been reversed by the Supreme Court, including the Court's determination that the claim sounded in premises liability.

Refusing to abandon the case, Plaintiff then applied for leave to appeal to the Supreme Court, arguing again that the claim sounded in ordinary negligence rather than premises liability.

The Supreme Court refused to entertain this argument, denying leave, and officially ending the case after 6.5 years of litigation and appeals.

For more information about **Jack Weston**, please visit <https://bit.ly/3J6psDP>; to contact directly: (248) 539-2801, JWeston@secrestwardle.com.

SECRET WARDLE SUCCESS STORIES

For more information about **Lauren A. Sterrett**, please visit <https://bit.ly/48VX161>; to contact directly: (248) 539-2802, LSterrett@secrestwardle.com.

For more information about **Matthew T. Nicols**, please visit <https://bit.ly/3Z9NIZf>; to contact directly: (248) 539-2834, MNicols@secrestwardle.com.

For more information about **David R. Kinzer**, please visit <https://bit.ly/3VlbYpA>; to contact directly: (248) 539-2811, DKinzer@secrestwardle.com.

For information regarding **Secret Wardle**, please visit www.secrestwardle.com, email info@secrestwardle.com, or phone (248) 851-9500