

# boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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## Poorly Developed Facts and Law Lead to Bad Precedent: Open and Obvious Defense Does Not Apply to General Negligence Claims

By Jack Weston

In *Laier v Kitchen*, \_\_\_ Mich App \_\_\_ (2005), Plaintiff's decedent was killed in an accident on Defendant's property while helping Defendant with hydraulic hose repairs on the front-end loader bucket of a tractor borrowed from Plaintiff, which broke while Defendant used it to compress materials in a dumpster. The decedent and Defendant were aware that the tractor's hydraulic system was broken and set out to repair it. Defendant raised the bucket four or five feet into the air so the decedent could get into a position to work on the hydraulic hose and fitting. During these repairs, the hydraulic system holding up the bucket failed for unclear reasons. The bucket fell, fatally injuring the decedent. While it was arguable whether or not some action or inaction by Defendant resulted in the fatal event, it was clear that Defendant failed to secure the bucket in the raised position.

Plaintiff alleged a single count of negligence, without identifying any specific theories of liability; however, it was clear, based upon the duties Plaintiff claimed were breached by Defendant, that Plaintiff was relying at least in part on a theory of premises liability. Defendant filed a Motion for Summary Disposition based upon the open and obvious defense, arguing that a reasonably prudent person of ordinary intelligence would have realized the dangers presented by the raised bucket. Defendant's motion was granted by the trial court and Plaintiff appealed.

The Court of Appeals, noting the lack of specificity in Plaintiff's theory of liability, and admonishing plaintiffs in general to properly set forth their causes of action in their complaints so that the appropriate legal analysis can be applied, held: "In an effort to assist in that regard, we give

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This case is a legal mess which will create problems in premises liability cases for years to come. Frankly, this was truly not a premises liability case since the accident and injury had nothing to do with the land. This case involved a tractor accident which was solely related to the mechanics of the tractor. This was no different than a two car accident which occurred because the steering or brakes failed on one of the vehicles, but the crash happened to occur on someone's land. Nevertheless, the parties and the judges characterized it as such.

You can expect that every premises liability case in the future will contain a claim of general negligence in an attempt to avoid the open and obvious defense. For instance, every slip and fall on snow case will likely now include a claim of negligent shoveling or salting.

Three Court of Appeals judges decided *Laier*, with each one authoring a separate opinion. This was admittedly a case with a poorly written complaint and a poorly developed factual record. Nevertheless, since it is a published decision, it has precedential effect on future trial courts and other Court of Appeals decisions. It is likely that this case will be appealed to the Michigan Supreme Court, who will hopefully clean up this mess.

## CONTINUED...

due consideration to what we presume are Plaintiff's claims, despite these shortcomings." Using this "presumption," the Court found that Plaintiff's claims sounded in both premises liability and general negligence.

Initially, the Court held that the open and obvious defense did not apply to any theory of general negligence raised by Plaintiff. The Court noted: "There is no basis for extending the open and obvious defense to ordinary negligence," because premises liability "emanates from the Defendant's duty as an owner, possessor, or occupier of land," and not that owner/possessor/occupier's negligent conduct in general. The Court further noted that raising a premises liability claim does not preclude Plaintiff from raising claims under alternate theories of liability, such as general negligence.

Applying this analysis to the facts of the case, the Court concluded that the trial court had erroneously dismissed Plaintiff's general negligence claim, as Defendant owed the decedent the ordinary duty of care to act reasonably and to ensure that the repair was conducted safely. Because it was unclear from the record whether Defendant had acted negligently or whether decedent was comparatively negligent, the Court found issues of fact precluded granting summary disposition of the negligence claim.

As for the premises liability claim, the Court of Appeals held that the trial court also erred in granting summary disposition. The Court of Appeals held that the trial court conducted an improper, subjective "open and obvious" analysis by giving weight to the fact that decedent was knowledgeable about repairs to farm machinery and should have recognized the dangers presented by the repair. The Court held that the appropriate analysis should have been whether a reasonably prudent person of ordinary intelligence would have discovered the danger upon casual inspection. The Court further held that the trial court improperly relied on this subjective analysis in determining whether a "special aspect" existed that made the condition unreasonably dangerous. The holding of the trial court on both the negligence and premises liability claims was therefore reversed and remanded.

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