SECREST WARDLE

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Ramp Lip Was Open and Obvious

By Robert Heston

In the *Lucas v. Huntington Bancshares, Inc.,* the Court of Appeals revisited the issue of "special aspects" relative to the Michigan Supreme Court's often cited opinion in *Lugo v. Ameritech Corp.,* 464 Mich 512 (2001).

In general, a premises possessor owes invitees a duty to exercise reasonable care to protect them from unreasonable risks of harm caused by dangerous conditions on land. This duty does not extend to dangers that are "open and obvious", unless "special aspects" of the open and obvious condition exist which create an unreasonable risk of harm. If an unreasonable risk of harm exists despite the open and obvious nature of the condition, then the premises possessor has a duty to take reasonable steps to protect the invitees from risk. To determine if a danger is "open and obvious", the test is whether "an average user of ordinary intelligence [would] have been able to discover the danger and risk presented upon casual inspection."

In *Lugo,* the Michigan Supreme Court held "the critical question is whether there is evidence that created a genuine issue of material fact regarding whether there are truly 'special aspects' of the 'open and obvious' condition that differentiate the risk of harm, i.e. whether the 'special aspects' of the condition should prevail in imposing liability upon the defendant or the openness and obviousness of the condition should prevail in barring liability."

The *Lugo* Court recognized two types of special aspects: (1) where the "open and obvious" condition is effectively unavoidable, and (2) where the conditions present a substantial risk of death or severe injury. The *Lugo* Court held that "only those aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not

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Whether or not a condition is open and obvious, and whether or not there are "special aspects" of the condition which would avoid the open and obvious defense are determined by an objective standard. Specifically, the analysis focuses on what an ordinary reasonable person would have seen and done, and what sort of injury would likely be caused by the condition. A case will not fall outside of the open and obvious defense merely because a specific person failed to notice the condition, or suffered an unusually severe injury as a result of the condition.

avoided will serve to remove that condition from the 'open and obvious' doctrine."

In Lucas, the Court of Appeals held that the trial court erred in denying Defendant's motion for summary disposition where Plaintiff alleged that he tripped on the lip of a ramp leading into Defendant's bank. Plaintiff alleged that he incurred serious bodily injuries, including a rotator cuff injury, as a result of the fall.

In *Lucas,* the Court focused on whether the condition of the ramp was such that a jury could determine that it had "special aspects" which gave rise to a duty to protect Plaintiff from the condition despite its "open and obvious" nature. The Court of Appeals held that Defendant had no duty to warn or protect Plaintiff from the alleged defects in the ramp because the lip of the ramp was "open and obvious". There were no "special aspects" giving rise to a duty to protect Plaintiff from the condition despite its "open and obvious" nature. While the Court acknowledged that Plaintiff allegedly suffered a serious injury, the elevated condition on the bottom of the ramp did not present a greater risk of injury than other types of conditions that might cause a person to trip and fall, such as an uneven sidewalk, a curb or a pothole in a parking lot. The Court further noted that although a person in a particular case may suffer a greater injury than others, the condition in this case not present "special aspects" that made it unreasonably dangerous to most people. Specifically, the three-quarters of an inch lip on the ramp did not render it unreasonably dangerous because it could not be foreseen to cause such a severe risk of harm. Lastly, the Court found that there was no evidentiary record to indicate that the condition was "effectively unavoidable" as contemplated by the Supreme Court in Lugo. Therefore, the lip of the ramp was open and obvious, and there were no special aspects of the lip to immunize the case from the open and obvious defense.

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