

# boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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## Elevated Platform Was Not Unreasonably Dangerous

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In *May v Blarney Castle Oil Company*, an unpublished decision by the Michigan Court of Appeals, Plaintiff, an employee of a landscaping company hired to clear snow from Defendant's premises, fell to the ground from an elevated platform at the rear of Defendant's building. The platform, which held refrigeration equipment, was elevated ten to twelve feet above the ground. Three sides of the platform were protected by two guardrails and the equipment. The remaining side was left open to allow access to the equipment. When Plaintiff finished shoveling the snow off the platform, he walked backward toward the open end. He slipped off the platform and fell to the ground sustaining injuries. The trial court dismissed the case based on the open and obvious defense.

On appeal, Plaintiff argued that despite its open and obvious nature, special aspects existed which made the elevated platform unreasonably dangerous. The Court of Appeals disagreed, explaining that if a condition is so open and obvious that it could be expected that a plaintiff would have discovered it, then there is no liability. Determining whether a condition is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. However, if special aspects of a condition make an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect invitees from that risk.

First, the Court concluded that the only people who would be on the platform were maintenance workers

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The *May* decision, although unpublished, further defines "special aspects" of an open and obvious condition. In considering whether the unguarded side of an elevated platform created an unreasonable risk of harm, the Court examined Plaintiff himself. That is, the Court considered Plaintiff's knowledge as a maintenance worker in the given situation.

Once again, a particular person's knowledge, expertise and experience can work against them when they make a premises liability claim. When examining your own property, you must keep in mind who the likely users of specific areas on your property are. What may be unsafe to a child may be perfectly safe for a skilled worker.

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and other workers, like Plaintiff. Defendant had no reason to foresee that these types of workers, including Plaintiff, would not take necessary precautions to guard against the obvious danger presented by the unguarded side of the platform.

Second, the Court found that there were no special aspects that made the condition unreasonably dangerous despite its open and obvious nature. Plaintiff admitted that after he finished shoveling the snow off the platform, he simply misjudged the length of the platform as he walked backward. The Court further noted that if Plaintiff had watched his step, any risk of harm would have been eliminated.

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