

COA Opinion: Public building exception to governmental immunity applied when a loose I-beam fell and injured plaintiffs.

12. March 2011 By Jeanne Long

In *Tellin v Forsyth Township*, the Court of Appeals determined that the public building exception to governmental immunity applied when plaintiffs were injured by a loose I-beam that became dislodged and fell on them. On appeal the Townships argued that they should be immune because the children's injuries were caused by a *re-design defect* and not by a failure to maintain the building. The Court of Appeals affirmed the trial court's denial of summary disposition, concluding that the I-beam installation was a preventative measure to supplement and coincide with the existing structure rather than a redesign of the roof overhang.

Forsyth Township owned a building that it leased to West Branch Township. In 2004 the Townships opened the Learning Center, located in the building, to the public. There was a roof overhang awning above the main entrance to the Learning Center, and at some point the husband of the Learning Center's director delivered a steel I-beam configuration (an I-beam with a vertical steel post welded at each end) to the Learning Center, intending it to supplement the existing beam and column supporting the roof overhang. Local Navy Seabee volunteers installed the I-beam. There is no evidence that any Learning Center authority found the extra support necessary. The I-beam was not secured to the existing structure and only held in place by the downward pressure of the roof.

At 8:00 pm, when the Learning Center was closed, plaintiffs and other children gathered under the awning, waiting for their parents to pick them up. One child started swinging and twisting around the steel pole attached to the I-beam. She became dizzy, stopped swinging on the pole and started to lean up against it. The I-beam configuration dislodged and fell, injuring two children.

In affirming the trial court's denial of the Townships' motion for summary disposition based on governmental immunity, the Court of Appeals relied on *Renny v Dep't of Transp*, 478 Mich 490, 506-07; 734 NW2d 518 (2007). In *Renny*, the Michigan Supreme Court held that the public building exception to governmental immunity applies to claims of failure to repair or maintain a public building and not to design defect claims. In other words, when a design defect causes injuries or damages, then the government is immune and the plaintiff cannot recover. In the present case, the appellant townships claim that they should be immune because the children's injuries were caused by a *re-design defect* and not by a failure to maintain the building. The trial court found that regardless of whether there was a re-design defect, the townships failed to maintain the structure by way of inspection. The trial court concluded that the townships were not immune from suit. The Court of Appeals affirmed, determining that the I-beam installation was a preventative measure to supplement and coincide with the existing structure rather than a redesign of the roof overhang. The Court of Appeals also concluded that the Townships had a continuing duty to repair and maintain the I-beam configuration if it became loose, damaged, or unstable.

This case may be of interest to the Supreme Court, because it would provide the Court with an opportunity to clarify the distinction between re-designing a building and building maintenance. This distinction will have a significant effect on how broadly or narrowly the failure to maintain a public building exception to governmental immunity is construed.