COA Opinion: Landowner may face premises liability for negligent location and design of a trapdoor even if it faces no liability for the negligent opening of the trapdoor by an independent contractor

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On April 8, 2010, the Court of Appeals released an opinion in *Jones v. DaimlerChrysler Corp.*, No. 285099, holding that whether the use, design, or location of a trapdoor created a dangerous condition was a fact question for the jury. The question before the Court was whether the defendant was entitled to summary disposition on a premises-liability claim for injuries resulting from the plaintiff's fall through an open trapdoor where the undisputed evidence established that the trapdoor was only open for a few seconds and none of the defendant's employees were present while the trapdoor was open. The trial court had granted the defendant's motion for summary disposition, concluding that the defendant did not know and could not reasonably have discovered that the trapdoor was open under the circumstances. The Court of Appeals agreed with the trial court that summary disposition was appropriate as to the plaintiff's claim based on the opening of trapdoor; but it held that the trial court erred in not permitting the plaintiff's claim to go to the jury based on the design, use, and location of the trapdoor in a walkway. A copy of the Court's opinion can be found here.

In *Jones*, the plaintiff was performing construction work at the defendant's manufacturing plant when he injured himself by falling through an open trapdoor in a walkway at the facility. The trapdoor had been opened by fellow employees of the plaintiff's employer, which was on the site as an independent contractor. None of the defendants' employees were present at the time, and the trapdoor was only open for less than 10 seconds. The Court of Appeals had no trouble concluding that the plaintiff, on these facts, could not maintain an action for premises liability if the opening of the trapdoor were considered the relevant dangerous condition. Relying on *Young v. Delcor Assocs., Inc.*, 477 Mich. 931; 723 N.W.2d 459 (2006), the Court held that the defendant had no duty to protect the plaintiff from the open trapdoor where the defendant could not have learned that it was opened and it was opened by an independent contractor on a construction site to whom the defendant had turned over control.

The Court ruled, however, that the trial court erred by granting summary disposition as to the plaintiff's second theory: that the defendant was liable for creating a dangerous condition by leaving the trapdoor in a walkway, leaving it hinged in a manner that left an unguarded hole when opened, and failing to provide barricades, warnings, or other safeguards when open. The Court relied on *Bluemer v. Saginaw Cent. Oil & Gas Serv., Inc.*, 356 Mich. 399; 97 N.W.2d 90 (1959), for the proposition that "liability of a property owner for the dangerousness of a trapdoor based on 'its use, location, and other circumstances' was a question separate and apart from its liability

based on . . . negligence in leaving the trapdoor open, and that liability could be imposed for the former." Although *Bluemer* and other cases had described the relevant issue in terms of "nuisance," the Court explained that these opinions actually involved, and were applicable to, premises-liability claims. Thus, the Court held that whether the design, use, and location of the trapdoor in the walkway created a dangerous condition subjecting the defendant to premises liability was a question of fact for the jury. And given the evidence that the trapdoor hinges were hidden and that none of the plaintiff's fellow employees were aware that the trapdoor was hinged, the Court further concluded that the condition was not open and obvious. Accordingly, the Court reversed the trial court's grant of summary disposition as to the question of trapdoor placement and hinging only, and remanded the case for trial on that claim.