

Michigan Court of Appeals Applies New Construction Case Law Retroactively to Preclude Liability for Construction Site Injury

By Janet Callahan Barnes

In *Porter v Daimler-Chrysler Corp.*, ___ Mich App ___; ___ NW2d ___ 2005, the Michigan Court of Appeals concluded that the inherently dangerous activity doctrine did not apply to injuries that the plaintiff, an employee of an independent contractor, received on a construction site on Daimler-Chrysler's premises. Citing *DeShambo v Nielsen*, 471 Mich 27, 28; 684 NW2d 332 (2004), the Court concluded that the purpose of that doctrine was to protect innocent third parties who are injured because of an inherently dangerous activity, not employees of independent contractors engaged in that activity.

Citing *Ormsby v Capital Welding, Inc.*, 471 Mich 45, 53; 684 NW2d 320 (2004), the Court also rejected plaintiff's "retained control" theory of liability, finding that the issue of retained control is relevant only to the extent that the common work area doctrine applies. Plaintiff did not establish liability under that theory because he did not present any evidence that the defendant failed to take reasonable steps within its supervisory and coordinating authority to guard against readily observable and

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While this case was pending on appeal, the Michigan Supreme Court released opinions in *DeShambo v Nielsen*, 471 Mich 27; 684 NW2d 332 (2004) and *Ormsby v Capital Welding, Inc.*, 471 Mich 45; 684 NW2d 320 (2004), which strengthened the defense positions that Secret Wardle had raised in the appeal. Secret Wardle filed statements of supplemental authority with the Court of Appeals explaining how the new authority affected the defendant's arguments. That Court applied the new authority retroactively to affirm the summary dismissal of plaintiff's Porter's claims.

The Court of Appeals decision in this case signals that that Court is applying *DeShambo, supra*, and *Ormsby, supra*, retroactively to limit owners' and general contractors' liability for construction site injuries.

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avoidable dangers; failed to present evidence that other workers were subjected to the same hazard; and failed to establish that there was a high degree of risk to a significant number of other workers.

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