



Appellate Law Practice Group

May 18, 2010

## MICHIGAN SUPREME COURT CLARIFIES 'COMMON WORK AREA DOCTRINE' ELEMENTS FOR CONSTRUCTION INJURY CLAIMS

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On April 30, the Michigan Supreme Court entered its order in *Alderman v J.C. Development Communities, LLC*, Docket No. 140051 reversing, in lieu of granting leave to appeal, the Aug. 25, 2009 decision of the Michigan Court of Appeals and reinstating the order granting summary disposition in favor of J.C. Development Communities.

The action arose out of a construction site accident. The plaintiff sustained injury from an electric shock while he was holding onto the metal part of a panel which was being lowered by a crane when the crane operator, his co-employee, allowed the crane to make contact with an overhead power line. He sued the general contractor, J.C. Development Communities, LLC, under the common work area doctrine.

Before a general contractor can be held liable under the common work area doctrine, a plaintiff must show that the general contractor: (1) failed to take reasonable steps within its supervisory and coordinating authority; (2) to guard against readily observable and avoidable dangers; (3) created a high degree of risk to a significant number of workers; and (4) in a common work area. A plaintiff's failure to satisfy any one of the four elements of the common work area doctrine is fatal to the claim.

The circuit court granted summary disposition in favor of the defendant, ruling that the plaintiff's evidence was insufficient to establish the requisite elements of a claim under the common work area doctrine. The plaintiff appealed.

Despite the fact that it was undisputed that at the time of the incident the only employees on the construction site were all employees of a single contractor, the plaintiff's employer, J.S. Trudeau, despite the fact that there were only six individuals in total on the site and despite the fact that only two of them were subject to the risk of electrocution from inadvertent contact with the electrical power line, the appellate court held that genuine issues of material fact existed as to the "common work area" and "high degree of risk to a significant number of workers" elements of the common work area exception because workers of more than

one subcontractor would eventually be working in the area of the construction site where the plaintiff was injured.

Plunkett Cooney filed an Application for Leave to Appeal to the Supreme Court. On April 30, the Supreme Court reversed the court of appeals. The Supreme Court's order is significant for several reasons.

First, it defines the risk of injury as a function of what actually occurred – here, electrocution from a crane coming into contact with power lines – rather than what possibly could have occurred such as, according to the court of appeals, a crane striking a power line, tearing it down and causing a fire.

Second, the order is significant in noting the number of individuals subjected to the same risk of injury as the plaintiff, two to six employees, did not constitute a high degree of risk to a significant number of workers.

In addition, it is significant because it emphasizes that only one subcontractor was on the site at the time. Plunkett Cooney attorneys involved in the case believe that this is consistent with *Ormsby v Capital Welding, Inc*, 471 Mich 34, 60 (2004), where the Supreme Court held that the test for the existence of a common work area is whether a substantial number of employees of multiple subcontractors were subjected to the same risk or hazard.

Furthermore, while not explicitly addressing the temporal focus of the inquiry under the common work area doctrine, by emphasizing that only the employees of one subcontractor were exposed to the same risk as the plaintiff, the Supreme Court implicitly rejected the contention that the common work area exception applies when workers of more than one subcontractor would eventually be working in the area of the construction site where the plaintiff was injured.

Ernest Bazzana of Plunkett Cooney's Appellate Department represented J.C. Development Communities, LLC at the appellate level. Hans Pijls of Plunkett Cooney represented the defendant at the trial level. Should you have any questions about *Alderman v J.C. Development Communities, LLC*, please feel free to contact Ernest at (313) 983-4798 or Hans at (313) 983-4846.