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**The Michigan Supreme Court Rules
That a Duty of Care Attaches to *Any*
Undertaking**

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Summary:

Breaking from recent trends, the Michigan Supreme Court holds that a duty of care attaches to any undertaking.

In a break from its recent general trend to narrow causes of action sounding in tort, the Michigan Supreme Court recently adopted an appellate court dissent which held that a duty can attach to any activity.¹

¹ *Kwiatkowski v Coachlight Estates of Blissfield, Inc*, ___ Mich ___ (Docket No. 135036, issued February 4, 2008).

The plaintiff resided at a mobile home park owned and operated by Defendant Coachlight and managed by co-Defendant Rupp. The plaintiff allegedly suffered severe injuries as a result of an accident on Rupp's porch. As the plaintiff ascended the porch stairs, Rupp opened the screen door outward striking Plaintiff in the face and chest, causing him to fall backwards.

The defendants moved for summary disposition, contending that they did not owe the plaintiff a duty with respect to opening the door. The defendants further argued that the claim should have been pleaded as a premises liability claim. They argued that such a claim could not be maintained in the absence of a defect in the door. The trial court disagreed and denied the defendants motion. The

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defendants appealed to the Michigan Court of Appeals.

In a split decision, the majority of the three judge panel agreed with the defendants' arguments raised below. The dissenting opinion, authored by the Hon. Kathleen Jansen, cited forty-year-old precedent for the basic proposition that "the common law imposes on every person engaged in the prosecution of any undertaking an obligation to use due care, or to so govern his actions as not to unreasonably endanger the person or property of others."

In lieu of granting the plaintiff's application for leave to appeal, the Michigan Supreme Court peremptorily reversed the Court of Appeals decision. In a one paragraph Order, five justices adopted Judge Jansen's analysis as their own.

This ruling may signal a significant limitation on the application of the Michigan Supreme Court opinion in *Fultz v. Union Commerce Associates*, 470 Mich 460 (2004).² In that decision, the court held that a defendant does not owe a duty of care to those foreseeable injured by an undertaking resulting solely from a contractual obligation. Following *Fultz*, there has been uncertainty about whether a contractor who is negligent in the performance of its contractual obligations owes a duty to those foreseeably harmed by the negligent conduct. This ruling suggests that such a duty does exist.

² It is also noteworthy that the two dissenters Justices, Justice Maura Corrigan and Justice Stephen Markman, were not joined by Justices Clifford Taylor and Robert Young, Jr. This split is unusual in that Justices Taylor and Young generally have been aligned with Justices Corrigan and Markman in opinions considering tort claims.