

## COA Opinion: Party performing a contract can be sued for third-party negligence when performance creates a “new hazard”

10. September 2010 By John Bursch

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In *Boylan v. Fifth-Eight Limited Liability Company*, No. 291141, the Michigan Court of Appeals clarified when a party can be held liable to a third-party for the negligent performance of a contract. In 2007, flooding and sewage damaged a rental home owned by Fifty-Eight Limited Liability Company. Fifty-Eight determined that the home’s septic system failed from excessive surface water run-off caused by Pamar Enterprises’ regarding of the property while constructing a water main for Lyon Township. The trial court granted summary disposition to Pamar based on *Fultz v. Union-Commerce Assoc.*, 470 Mich. 460; 683 N.W.2d 587 (2004), in which the Michigan Supreme Court held that a party performing a contract does not automatically assume a contractual or common-law duty to third parties to perform without negligence; instead, tort liability may arise only if the party performing the contract creates a “new hazard.” For example, a snow removal company cannot be held liable to a third-party plaintiff based on a negligent breach of a snow removal contract, because the company did not create a new hazard; the ice and snow was present regardless of the company’s failure to remove it. In contrast, the Court of Appeals in *Boylan* held that Pamar’s entry onto Fifty-Eight’s land when performing under the contract with Lyon Township triggered several separate and distinct common-law duties to avoid permanently damaging the property. In addition, because the flooding created a “new hazard,” flooding, Pamar could be liable to Fifth-Eight for the resulting damages. Accordingly, the case was remanded for further proceedings.