

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DOREEN BINT and ROBERT BINT,

Plaintiffs-Appellants,

v

ROGER DOE, USF HOLLAND, INC., TST  
SOLUTIONS, INC., USF LOGISTICS, INC., US  
FREIGHTWAYS, INC., US FREIGHTWAYS  
CORPORATION, THOMAS NATIONWIDE  
TRANSPORT, and KPN, INC.,

Defendants-Appellees.

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UNPUBLISHED  
February 12, 2004

No. 242252  
Huron Circuit Court  
LC No. 02-001746-NI

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DOREEN BINT and ROBERT BINT,

Plaintiffs-Appellants,

v

ROGER DOE, USF HOLLAND, INC., and  
CITIZENS INSURANCE COMPANY,

Defendants-Appellees.

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No. 242253  
Huron Circuit Court  
LC No. 97-000256-NI

Before: Cavanagh, P.J., and Jansen and O'Connell, JJ.

JANSEN, J. (*concurring*).

I concur with the result in majority opinion, but only because I believe that law of the case applies.

With regard to plaintiff's<sup>1</sup> first issue on appeal, I agree with the majority that the trial court did not err when it granted summary disposition to US Freightways Corporation, US

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<sup>1</sup> The singular term "plaintiff" refers to plaintiff Doreen Bint, as Robert Bint's claim is a  
(continued...)

Freightways, Inc., USF Logistics, and Thomas Nationwide Transport for the reasons stated in the majority opinion. With regard to the other defendants, I agree with the majority that the trial court erred in granting summary disposition, but only because law of the case applies.

The question before this Court is whether the trial court improperly granted summary disposition on plaintiff's claims against defendants, trucking companies who use trucks with a "TNT" logo, when plaintiff had identified a "TNT" logo, colors and markings on the truck that struck her. This is the exact question that was presented and decided by this Court in *Bint v Doe*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2003 (Docket No. 220309). The only difference is that new parties have been added.

The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals as to that issue, *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000), and that issues "may not be differently determined in the same case where the facts remain materially the same," *Bruce Twp v Gout (After Remand)*, 207 Mich App 554, 557; 526 NW2d 40 (1994). Thus, law of the case binds this panel to the previous decision.

I do not agree with my colleague's rationale in the present case or in the prior appeal. But, generally, the law of the case applies regardless of the correctness of the prior decision. *Sumner v GMC (On Remand)*, 245 Mich App 653, 662; 633 NW2d 1 (2001). If not for law of the case, I would hold affirm the trial court's grant of summary disposition because I believe this case is distinguishable from *Kaminsky v Hertz Corp*, 94 Mich App 356, 358; 288 NW2d 426 (1979), where the parties stipulated that ninety percent of the vehicles were owned by Hertz. In the present case, there is no such evidence and I do not believe that the testimony regarding a "TNT" logo created a question for the jury. Regardless, *Kaminsky, supra*, was decided before November 1, 1990, and, thus, is not binding precedent. MCR 7.215(I)(1).

In all other respects I agree with the majority.

/s/ Kathleen Jansen

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(...continued)

derivative claim.