

LEGAL ALERT

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GOVERNMENTAL LAW UPDATE

Three New Supreme Court Cases Assist Governmental Agencies

Hatch v. Grand Haven Township Michigan Supreme Court

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March 7, 2000

The plaintiff was riding his bike when the front tire struck a hole in a bike path. The plaintiff claimed he was entitled to recovery because the bike path was not properly maintained under the highway exception to governmental immunity. The township claimed that the bike path did not fall under the highway exception as it was outside of the improved portion of the highway designed for vehicular travel.

The highway exception to governmental immunity states that each governmental agency having jurisdiction over a highway must maintain it in a condition reasonably safe and convenient for public travel. The duty to maintain a highway in reasonable repair extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, cross walks, or any other installation outside of the improved portion of the highway.

Additionally, a highway is defined as every public highway, road, and street, which is open for public travel, and includes sidewalks . . . on *any* highway. The *Hatch* Court was faced with two questions: (1) What does the phrase "sidewalks ... on any highway" mean and (2) Is the bike path a sidewalk?

The Court examined a recent case involving a "hike bike" path to answer the first question. The Court stated in that case that the highway exception applies to situations where the injury happens on a sidewalk adjacent to or along the road. In the present case, the Court found that these basic requirements were, in fact, met.

Next, the Court considered whether the bike path qualified as a sidewalk. The court looked at the words used by the legislature and concluded that sidewalks and bike paths are distinguishable. Using this analysis for guidance, the court noted that a paved way's proximity to a highway is a necessary consideration, but alone would not render it within the highway exception. Therefore, a bike path's proximity

to a highway does not qualify it as a sidewalk under the highway exception to governmental immunity.

Hardy v. Oakland County Michigan Supreme Court – March 28, 2000

A sheriff's deputy drove a marked patrol car into the back of the plaintiff's moving car. The officer was speeding, but not responding to any emergency. The plaintiff sued the county for damages and stated that he was not obligated to show serious impairment of body function or any other threshold requirement of the No-Fault Act.

Under the Michigan No-Fault Act, a person must show that he or she has suffered death, serious impairment of body function or permanent disfigurement in order to maintain a non-economic tort action. The statutory exception to governmental immunity states that a governmental agency shall be liable for damages resulting from the negligent operation of a motor vehicle owned by a governmental agency.

The Court recognized that there was a conflict between the two

statutes. The Court determined that the restrictions of the No-Fault Act control over the broad statement of liability found in the immunity statute. Therefore, a plaintiff is required to meet the no-fault thresholds and show serious impairment of body function in order to prevail against a governmental agency in an automobile liability claim.

CS&P, Inc v City of Midland
Michigan Supreme Court -
April 18, 2000

In a concurring opinion to a one-paragraph order vacating leave to appeal in this case, Justice Corrigan indicated a desire to revisit the issue of whether trespass-nuisance claims against governmental agencies, other than the State of Michigan, are barred by statutory governmental immunity. The Michigan statute establishing governmental

immunity specifically did not modify or restrict "the immunity of the state from tort liability as it existed before July 1, 1965." Since trespass-nuisance claims against governmental agencies were allowed prior to that date, the courts have not applied the governmental immunity statute to such claims for over 30 years.

Justice Corrigan points out that the statute grants governmental immunity, with certain statutory exceptions, to "all governmental agencies." However, the reservation of tort liability prior to July 1, 1965, is limited to "the state." Because the "state" and "governmental agencies" are defined differently, Justice Corrigan questions whether the statute preserved trespass-nuisance claims against governmental agencies other than the State of Michigan.

It seems likely that the Supreme Court will revisit this issue at its first opportunity. If Justice Corrigan's approach is adopted by the majority of the court, trespass-nuisance claims (such as claims for damage resulting from government-initiated or controlled surface water drainage, sewer backups, etc.) may become a thing of the past.

The Governmental Law Practice Group of Smith Haughey Rice and Roegge monitors cases being considered by the appellate courts in the State and will continue to update you regarding such decisions and their impact on your governmental agency. Any questions regarding these or other court rulings can be directed to any member of the Governmental Practice Group.

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