

community watch

MONITORING LEGAL ISSUES THAT AFFECT MICHIGAN MUNICIPALITIES

12.06.07

Michigan Supreme Court Leaves Open-Ended Questions Concerning the Motor Vehicle Exception to Governmental Immunity

By Shannon K. Ozga

The Michigan Supreme Court issued an order on November 16, 2007, in *Martin v City of Grand Rapids*, that interprets state law to provide an exception to governmental immunity where an individual allegedly slipped and fell on a step while exiting a shuttle bus that was owned by the City and maintained by the Rapid Inter-Urban Transit Partnership.

The plaintiff alleged that she slipped and fell on an icy or snowy step of the shuttle bus while she was attempting to exit the bus. The plaintiff filed suit alleging that the defendants failed to install step heaters or to scrape the steps to eliminate snow and ice. The defendants moved for summary dismissal on the basis that the motor vehicle exception to governmental immunity (MCL 691.1405) only applies to negligent “operation” of a vehicle, and plaintiff’s allegations amounted to claims of negligent “maintenance” issues.

The trial court denied defendant’s request for summary dismissal, but the Court of Appeals reversed. The Court of Appeals, in its opinion, applied the definition of “operation” set forth in *Chandler v Muskegon Co*, 467 Mich 315 (2002), concluding that the failure to remove ice or snow from steps was not directly associated with driving the bus. The Court found the plaintiff’s allegations, i.e. failure to remove snow and ice or install step heaters, pertain more to improper maintenance than to functions necessary for driving; therefore, the Court concluded that the statutory exception found in MCL 691.1405 did not apply.

SECRET WARDLE NOTES:

The Supreme Court’s order raises many questions that will likely result in further litigation concerning the motor vehicle exception to governmental immunity. The Court does not fully distinguish between negligent “maintenance” and negligent “operation” and leaves open the door for claims alleging injuries from activities that have historically been considered part of “maintenance” as opposed to “operation.”

CONTINUED...

By way of order, a majority of the Michigan Supreme Court, in lieu of granting appeal, reversed the judgment of the Court of Appeals. The majority of the Supreme Court found that the loading and unloading of passengers is an action within the “operation” of a shuttle bus, and therefore, the plaintiff’s allegations satisfied the motor vehicle exception to governmental immunity set forth in MCL 691.1405.

Justice Corrigan issued a lengthy dissent, which was joined by Chief Justice Taylor. In her dissent, Justice Corrigan, citing *Chandler, supra*, stated that negligent maintenance is distinct from negligent operation. According to Justice Corrigan, the majority’s order does not explicate the appropriate analytic framework to distinguish between “operation” and “maintenance” of a motor vehicle. Justice Corrigan notes that the majority’s order poses more questions than it derives answers. For example, Justice Corrigan poses the following questions: “What precisely does ‘operation’ mean?” “Does the size of the vehicle in question define ‘operation’?” “Does ‘operation’ include maintenance activities?” and “How does the majority convey meaning to ‘operation’ independent of the word ‘use’ and consistent with [the Court’s] analysis in *Chandler*?” Justice Corrigan opines that the Court’s order will spawn future litigation.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48083-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

SECRET
SW
WARDLE

Copyright 2007 Secrest, Wardle, Lynch, Hampton,
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Municipal Practice Group Chair

William P. Hampton

Senior Editor

Steven P. Joppich

Editor

Erene Golematis

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for Community Watch, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at marketing@secrestwardle.com, or 248-539-2850.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice

Blueprints – Mapping legal solutions for the construction industry

Boundaries – A guide for property owners and insurers in a litigious society

Contingencies – A guide for dealing with catastrophic property loss

Fair Use – Protecting ideas in a competitive world

In the Margin – Charting legal trends affecting businesses

Industry Line – Managing the hazards of environmental toxic tort litigation

Landowners’ Alert – Defense strategies for property owners and managers

No-Fault Newsline – A road map for motor vehicle insurers and owners

On the Beat – Responding to litigation affecting law enforcement

On the Job – Tracking developments in employment law

Safeguards – Helping insurers protect their clients

State of the Art – Exploring the changing face of product liability

Structures – A framework for defending architects and engineers

Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability

Update Illionois - Current trends in Illinois law