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Brace Yourself: Bus Driver May Take Off Before Passengers Are Seated

By Tera A. Watson **January 17, 2024**

In *Johnson v SMART*, unpublished opinion of the Court of Appeals, issued November 16, 2023 (Docket No. 363891), the Court of Appeals addressed whether a negligence claim resulting from "sudden jerks and jolts" of a vehicle are barred under the usual-incidents-of-travel doctrine. The Court of Appeals overturned the trial court's denial in part of Defendant SMART's Motion for Summary Disposition, finding that it is normal for public transportation to begin before passengers are seated and there was no special reason the bus driver was required to wait for Plaintiff to sit in this instance.

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The *Johnson* decision highlights that a public bus driver does not have a duty to wait for passengers to be seated to begin driving unless there is "some special and apparent reason" the driver should know a passenger is incapable of protecting himself or herself from injury. Ultimately, Plaintiff was unable to show any evidence indicating that the bus driver should have known to wait for Plaintiff to be seated to begin driving.

After standing to speak to the bus driver while the bus was stopped, Plaintiff let go of the pole to which she had been holding to sit down. Before she was able to sit, the bus accelerated allegedly causing her to fall and sustain injuries. Plaintiff filed suit against SMART alleging: (1) Defendant was vicariously liable for negligence by the bus driver under the doctrines of respondeat superior and owner's liability, (2) Defendant was negligent in its hiring, training, and supervision, and (3) Defendant's liability for payment of PIP benefits arising from Plaintiff's injury.[1]

Defendant moved for summary disposition arguing that Plaintiff's negligence claims were barred by the "usual-incidents-of-travel doctrine" because, under Michigan law, a sudden start or stop does not constitute negligence. Plaintiff argued that, under the doctrine, the bus driver still possessed the duty to exercise ordinary care and breached said duty by making an "unnecessarily sudden" start. The trial court denied the motion with respect to the usual-incidents-of-travel doctrine finding that a reasonable juror could find that the bus driver was negligent. This appeal followed.

[1] Plaintiff eventually conceded that her claims for negligent hiring, training and supervision were barred by governmental immunity and abandoned her claims on the theory of respondeat superior. Plaintiff further conceded that she could not recover PIP benefits barred by the one-year-back rule.

Unless there is "some special and apparent reason," a public transportation operator does not have a duty to wait for passengers to be seated to accelerate. *Ottinger v Detroit United R*, 166 Mich 106, 107 (1911). Plaintiff argued that because the bus driver knew she was standing and trying to sit down, there was a special reason the bus driver could not accelerate the bus. The Court of Appeals disagreed, finding a special or apparent reason exists when a passenger's physical appearance would indicate to the driver that the passenger is "frail, weak, infirm or in any wise disabled or in need of assistance." *Getz v Detroit*, 372 Mich 98, 100 (1963). The Court of Appeals further agreed that Plaintiff could not show that the bus driver made an unnecessarily sudden or violent start to exclude the incident from being barred under the usual-incidents-of-travel doctrine.

As such, the Court of Appeals reversed the trial court's decision and remanded for entry of an order granting summary disposition in favor of Defendant.

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Motor Vehicle Litigation Practice Group Chairs
Anthony A. Randazzo | arandazzo@secrestwardle.com or 248-539-2812
Renee T. Townsend | rtownsend@secrestwardle.com or 248-539-2859

For questions pertaining to this article
Tera A. Watson | twatson@secrestwardle.com or 248-539-2836

Website LinkedIn Twitter YouTube Email

SECREST SW WARDLE

Troy | 248-851-9500
Grand Rapids | 616-285-0143
www.secrestwardle.com

Contributors

Motor Vehicle Litigation Practice Group

Chairs
Anthony A. Randazzo
Renee T. Townsend

Editors
Sandie Vertel
Sue Willcock
Brenna Scyzoryk

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