



## Motor Vehicle Exception to Governmental Immunity

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The Michigan Court of Appeals has issued recent opinions on the "motor vehicle exception" to governmental immunity. These cases will be of interest to any municipality that owns vehicles.

### **PAIN AND SUFFERING NOT RECOVERABLE BECAUSE THEY ARE NOT "BODILY INJURY"**

In *Hunter v City of Flint Transportation Department, et al*, the Michigan Court of Appeals ruled that people injured by government motor vehicles driven by government employees may not recover damages for pain and suffering or emotional shock or distress. Harold Hunter's vehicle was struck by a dump truck owned and operated by the City of Flint Transportation Department. Mr. Hunter sued the Department, claiming damages for, among other things, pain and suffering as well as emotional shock and distress as a result of the accident. The Department conceded that the "motor vehicle exception" to governmental immunity permitted Mr. Hunter to recover economic damages, such as medical expenses, but argued that governmental immunity prohibited Mr. Hunter from recovering any emotional damages because they are not a "bodily injury."

In ruling in favor of the Department, the court observed that governmental agencies are generally immune from personal injury actions. However, there are several exceptions to the general rule. Among these exceptions, the "motor vehicle exception" to governmental immunity states that: "Governmental agencies shall be liable for bodily injury and property damages resulting from the negligent operation by any . . . employee of the governmental agency, of a motor vehicle of which the governmental agency is owner . . . " MCL 691.1405. The Court held that "bodily injury" has been traditionally understood to mean actual physical harm or damage to a human body. The court stated that [b]ecause "bodily injury" encompasses only "a physical or corporeal injury to the body," Mr. Hunter could not recover for damages for pain and suffering, shock and emotional damage. Other governmental agencies such as villages, townships and counties are given the same governmental immunity as

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#### **PRACTICE AREAS**

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the City of Flint under the motor vehicle exception to governmental immunity.

**LOST WAGES RECOVERABLE AS TYPE OF DAMAGE CAUSED BY "BODILY INJURY"**

The Court of Appeals in *Hannay v Department of Transportation*, ruled that a woman injured in a car accident involving a state-owned snow plow could collect wage loss damages under the motor vehicle exception to governmental immunity. Heather Hannay was injured when a MDOT snow plow ran a stop sign and hit her car. She suffered a serious shoulder injury that required several surgeries. Ms. Hannay's complaint alleged that she missed work as a result of the accident and asked for lost wages as a part of her damages.

As stated more fully above, governmental agencies are generally immune from personal injury actions, but, the "motor vehicle exception" provides that governmental agencies shall be liable for *bodily injury* and property damage resulting from the negligent operation of government vehicles driven by government employees. In this case, MDOT argued that any economic damages, including wage loss, are not "bodily injury" and therefore are not a proper element of damages against a governmental agency. The Court of Appeals – through a different panel than the one which decided the Hunter case discussed above – disagreed and held in favor of Ms. Hannay. The court stated that "damages for work loss and loss of services are not independent causes of action, but are merely *types of items or damages* that may be recovered *because of bodily injury* sustained by plaintiff." As a consequence, an injured person may recover economic damages, like wage loss, when suing a governmental agency under the motor vehicle exception to governmental immunity.

If you have any questions about how these cases apply to your municipality, please contact Karl Butterer at 616.726.2212.