

State Notes

TOPICS OF LEGISLATIVE INTEREST

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State of Michigan Highway Negligence Litigation History
By Bill Bowerman, Associate Director and Michael Siracuse, Fiscal Analyst

Introduction

State payments resulting from highway negligence litigation have declined dramatically since fiscal year (FY) 1999-2000. The reduction in payments is mainly attributed to Michigan Supreme Court decisions regarding the State's governmental immunity law. This article provides an overview of highway negligence payments, and the case law that precipitated declining State payments in highway negligence cases.

History of State Payments

Table 1 provides a history of highway negligence payments made by the State from FY 1983-84 through FY 2015-16. The table shows payments resulting from both judgements and settlements.

Table 1
Highway Negligence Statistics

Fiscal Year	Number of Cases	Judgements	Settlements	Total Payments
1983-84	62	\$12,541,651	\$2,444,976	\$14,986,627
1984-85	55	4,399,001	4,128,751	8,527,752
1985-86	64	3,242,143	4,347,140	7,589,283
1986-87	69	22,699,603	4,151,959	26,851,562
1987-88	81	5,195,041	10,897,265	16,092,306
1988-89	90	2,869,944	12,151,689	15,021,633
1989-90	86	8,908,886	8,460,458	17,369,344
1990-91	83	10,043,560	10,353,328	20,396,888
1991-92	93	6,018,686	6,606,453	12,625,139
1992-93	70	11,290,468	8,968,167	20,258,635
1993-94	79	5,107,256	7,472,542	12,579,798
1994-95	47	1,871,956	8,010,456	9,882,412
1995-96	52	661,000	8,413,595	9,074,595
1996-97	50	1,331,974	9,679,852	11,011,826
1997-98	39	0	6,084,715	6,084,715
1998-99	33	0	4,721,422	4,721,422
1999-2000	34	2,875,000	9,461,500	12,336,500
2000-01	12	0	668,400	668,400
2001-02	14	0	1,222,240	1,222,240
2002-03	10	0	458,500	458,500
2003-04	12	0	1,521,200	1,521,200
2004-05	10	0	1,443,250	1,443,250
2005-06	9	0	614,000	614,000
2006-07	6	0	1,327,776	1,327,776
2007-08	4	0	246,000	246,000
2008-09	2	0	520,000	520,000
2009-10	1	0	2,500,000	2,500,000
2010-11	1	0	10,000	10,000
2011-12	2	0	679,000	679,000



Highway Negligence Statistics				
Fiscal Year	Number of			Total
	Cases	Judgements	Settlements	
2012-13	3	0	122,900	122,900
2013-14	0	0	0	0
2014-15	1	0	5,500	5,500
2015-16	<u>2</u>	<u>0</u>	<u>73,000</u>	<u>73,000</u>
Total	1,176	\$99,056,169	\$137,766,034	\$236,822,203
Source: Michigan Department of Transportation				

From FY 1983-84 through FY 2015-16, the State paid \$236.8 million resulting from 1,176 highway negligence cases. The majority of payments occurred from FY 1983-84 through FY 1999-2000, with payments during that time period totaling \$225.4 million in 1,087 cases. From FY 2000-01 through FY 2015-16, the State paid \$11.4 million resulting from 89 cases. Annual payments reached a high in FY 1986-87, with 69 payments totaling \$26.9 million. In FY 2013-14, there were no payments resulting from highway negligence claims. In the most recent reporting year, FY 2015-16, there were two cases that the State settled for \$18,000 and \$55,000, respectively. The \$18,000 settlement involved allegations that the plaintiff suffered serious injuries when he slipped and fell into a pothole on Woodward Avenue in Detroit. The \$55,000 settlement involved alleged serious injuries resulting from the plaintiff hitting a pothole while driving a motorcycle when he was entering an on-ramp to I-496. State payments in highway negligence cases are funded from the State Trunkline Fund, thereby reducing money available to maintain State roads. For more information on highway negligence cases see the Senate Fiscal Agency annual report on the Status of Lawsuits Involving the State of Michigan.¹

State Statute and Case Law

Michigan's governmental immunity law, Public Act 170 of 1964 (MCL 691.1401-691.1415), is designed to define and limit governmental liability. Under the Act, governmental agencies are immune from liability for negligence unless an exception applies. The highway exception stems from the requirement in Section 2 of the Act that governmental agencies having jurisdiction over a highway maintain the highway in "reasonable repair so that it is reasonably safe and convenient for public travel". In the early 1980s, then-Attorney General Frank Kelley stated that court interpretations of the State law on governmental liability had been "so liberal that almost any auto accident, regardless of driver error, can mean a windfall from the State".² Court decisions up to that time had expanded the statutory liability for maintenance of highways as provided in Section 2 of the governmental immunity law. Specifically, the courts had construed the statutory limitation that liability "shall extend only to the improved portion of the highway designed for vehicular travel" to include medians, shoulders, traffic signals, and signs. (See *Johnson v. State of Michigan*, 32 Mich App 37 (1971); *Detroit Bank & Trust Company v. Department of State Highways*, 55 Mich App 131 (1974); and *Van Liere v. State Highway Department*, 59 Mich App 133 (1975).)

In the case of *Salvati v. Department of State Highways*, 92 Mich App 452 (1979), the Michigan Court of Appeals stated that the posting of two reflectorized signs that read "Watch for Ice on Bridge" was not an adequate warning to motorists of the danger of preferential icing. The Court

¹ <http://www.senate.michigan.gov/sfa/Publications/Publications.html>

² "Kelley Calls Immunity Law Vague", *Lansing State Journal*, Associated Press, July 31, 1981.

stated: "The sign language 'Watch for Ice on Bridge' hardly can be said to be meaningful when it gives no instruction to motorists as to the action or precaution to be taken if there is ice on the bridge...Lastly, the message 'Watch for Ice on Bridge' seems to be incongruous advice in view of the testimony that when ice is present on the bridge deck surface it cannot be seen."

Beginning in 2000, Michigan Supreme Court decisions relating to governmental immunity and the statutory highway exception to governmental immunity reversed precedent and strictly construed the governmental immunity law. The consolidated cases of *Nawrocki v. Macomb County Road Commission* and *Evens v. Shiawassee County Road Commission*, 463 Mich 143 (2000), (referred to below as "*Nawrocki*"), overturned previous case law and narrowly construed the highway exception to governmental immunity. The Court stated that prior decisions of the Supreme Court improperly broadened the scope of the highway exception. *Nawrocki* was injured when she, as a pedestrian, stepped on cracked and broken pavement. *Evens* was seriously injured when his vehicle collided with another at an intersection that was alleged in the complaint to be negligently maintained and unsafe due to a lack of sufficient stop signs and/or traffic signals.

In applying a narrow interpretation of the highway exception and in an effort to strictly apply the common and ordinary meaning to the statutory language of the exception, the Supreme Court held that, in regard to *Nawrocki*'s claim, the absence of a vehicular accident did not bar a plaintiff's negligence claim against a governmental agency. Discussing the language contained in MCL 691.1402(1), the Court stated:

... The phrase "designed for vehicular travel" modifies the prior phrase "improved portion of the highway" and thus defines the location to which the duty of the state and county road commissions extends...Moreover, because the state and county road commissions must "repair and maintain" their respective highways and roads so that they are "reasonably safe and convenient for public travel," and because we believe "public travel" encompasses *both* vehicular and pedestrian travel, the plain language of the highway exception cannot be construed to afford protection only when a dangerous or defective condition "of the improved portion of the highway designed for vehicular travel" affects *vehicular* travel. [Emphasis in the original.]

In regards to *Evens*'s claim, the Court overruled its previous finding in *Pick v. Szymczak*, 451 Mich 607 (1996), which held that, under the highway exception, governmental agencies had a duty to provide traffic control devices and/or warning signs at points of hazard under their jurisdiction. In overturning *Pick*, the Court found that the highway exception should apply only to the traveled portion of the roadbed designed for vehicular travel; not traffic control devices such as signage and stop lights, or even obstructing vegetation. In the *Nawrocki* opinion, the Court stated:

...*Pick* resulted in a complete abrogation of this Court's duty to *narrowly* construe exceptions to the *broad* grant of immunity...[Emphasis in the original.]

Pick failed to simply apply the plain language of the highway exception and, instead, relied on judicially invented phrases nowhere found in the statutory clause, thus thrusting upon the state and county road commissions a duty not contemplated by the Legislature...Nowhere in

this language, or anywhere else in the statutory clause, do phrases such as "known points of hazard," "points of special danger," "integral parts of the highway," or "traffic sign maintenance" appear...

Unless we construe the highway exception narrowly, as mandated by *Ross v. Consumers Power Co (On Rehearing)*, 420 Mich 567, and in accordance with the language of the statutory clause, every accident and every injury, occurring on an otherwise unexceptional highway, containing no dangerous or defective conditions in the actual roadbed itself, will become the potential basis for a lawsuit against the state or county road commissions.

Although the holding regarding Nawrocki's claim expanded the highway exception to include pedestrians, the decision on both matters significantly narrowed the scope of the exception: only negligence claims involving the portion of the highway "designed for vehicular travel" have been able to survive summary disposition motions filed by the State and county road commissions since the *Nawrocki* decision.

Subsequent decisions have clarified this narrow interpretation. Under *Haliw v. City of Sterling Heights*, 464 Mich 297 (2001), governmental immunity is not compromised by a governmental agency's failure to remove ice or snow. The Supreme Court's opinion in *Hanson v. Board of County Road Commissioners of the County of Mecosta*, 465 Mich 492 (2002), followed the reasoning in *Nawrocki*, ruling that the highway exception to governmental immunity does not include a duty to design, or to correct defects arising from the original design or construction of highways. On October 11, 2002, the Michigan Court of Appeals in *Adams v. MDOT*, 253 Mich App 431, ruled that *Nawrocki* applied retroactively to pending highway negligence cases. A request for leave to appeal in that case was denied by the Michigan Supreme Court. The decision in *Adams* further reduced the State's potential liability. In *Grimes v. Dep't of Transp*, 475 Mich 72 (2006), the Michigan Supreme Court held that the improved shoulder of a highway was not designed for vehicular travel, rejecting the suggestion that the word "travel" encompassed the incremental movement that accompanies a vehicle's movement from the travel lanes onto the shoulder. Also, in *Yono v. Department of Transportation*, 499 Mich 636 (July 27, 2016), the Court determined that parallel parking spaces on M22 were not designed for vehicular travel and, likewise, were beyond the narrowing scope of the highway exception.

These opinions from the Michigan Supreme Court and Court of Appeals have provided much clarity in regard to the highway exception. As it currently stands, the exception to governmental immunity, as specified in MCL 691.1402(1), exists only between the white lines of a public roadway.

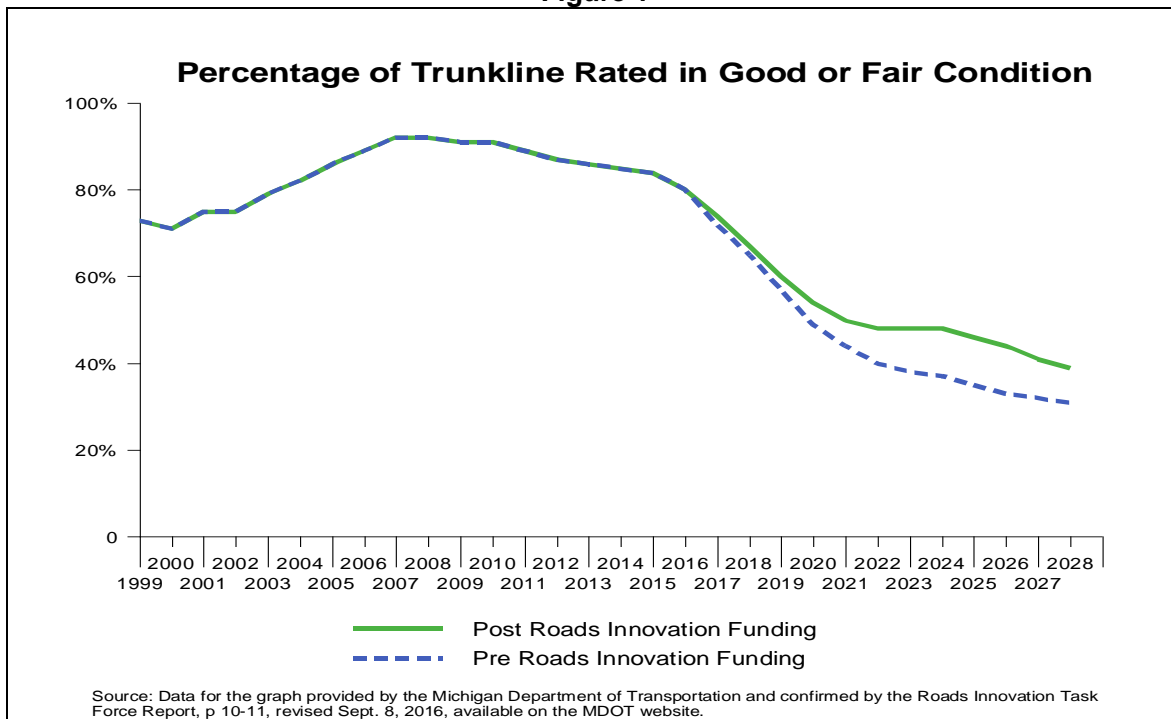
Conclusion

While court decisions have reduced State liability for highway negligence cases, there continues to be potential for liability. On December 31, 1983, there were 404 highway negligence cases pending against the State seeking damages totaling \$189,680,708. According to the Department of Attorney General, as of December 31, 2016, there were 17 highway negligence cases pending against the State seeking \$22,714,000.



The decline in State payments, however, may be reversed to some extent if roadway conditions are responsible for accidents in the future. As shown in Figure 1 below, projections indicate that trunkline road quality will deteriorate significantly in the years, and decades, to come.

Figure 1



The road conditions indicated in the graph specifically refer to the roadbed and surface condition of the trunkline system. Despite the narrow interpretations of the highway exception to governmental immunity from the judiciary since 2000, the roadbed and surface conditions still fall within the exception. If roads continue to deteriorate at the rate projected by MDOT and the Roads Innovation Task Force, one result could be an increase in injuries and plaintiffs' filings under the highway exception.