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## **BASIS OF JURISDICTION AND PROCEEDINGS BELOW**

Pursuant to MCR 7.301(A)(2), the Supreme Court may review a case after it has been decided by the Court of Appeals.

On 8/12/05, Plaintiffs-Appellants [“Plaintiffs” herein] filed their application for leave to appeal the Court of Appeals’ opinion in *Wesche v Mecosta County Road Commission*, 267 Mich App 274; 705 NW2d 136 (2005). On 7/5/05, the appellate court released for publication its per curiam Opinion, affirming (in part) dismissal of Plaintiff Beverly Wesche’s loss of consortium claim that was brought pursuant to the motor vehicle exception to governmental immunity found in MCL 691.1405. According to the Court of Appeals:

“ . . . . loss-of-consortium claims do not encompass bodily injury or property damage, but other damages deriving from the spouse’s injury. None of the damages alleged by Beverly Wesche are bodily injury or property damage. Therefore, because the governmental immunity exception provided in MCL 691.1405 does not apply to Beverly Wesche’s loss-of-consortium claim, the trial court did not err in dismissing this claim.” 267 Mich App at 279-280.

On 5/23/07, the Supreme Court issued its Order, **granting** Plaintiffs’ Application for Leave to Appeal the 7/5/05 Judgment of the Court of Appeals.

**STATEMENT OF QUESTION INVOLVED**

Pursuant to the Supreme Court's 5/23/07 Order granting Plaintiffs' Application for Leave to Appeal the 7/5/05 Judgment of the Court of Appeals, the parties shall address the following issue:

**WHETHER MCL 691.1405'S EXCEPTION TO GOVERNMENTAL IMMUNITY PERMITS THE SPOUSE OF A PERSON WHO SUSTAINS BODILY INJURY AS A RESULT OF THE NEGLIGENT OPERATION OF A MOTOR VEHICLE OWNED BY A GOVERNMENTAL AGENCY TO RECOVER DAMAGES FOR LOSS OF CONSORTIUM?**

The Defendant-Appellee said the answer is: "No."

The Trial Court said the answer is: "No."

The Court of Appeals said the answer is: "No."

Plaintiffs contend the answer is: "Yes," and request that the Supreme Court **reverse** the Trial Court Order and the Court of Appeals Judgment, reinstate Plaintiff Beverly Wesche's loss of consortium claim, and remand the case to the Trial Court for further proceedings.

## STATEMENT OF FACTS AND RELEVANT PROCEEDINGS

On 3/27/00, a Gradall motor vehicle owned by the Defendant-Appellee [“Defendant” herein] and being driven by one of its employees rear-ended Daniel John Wesche’s 1987 Toyota while Mr. Wesche was stopped for a red light on a public road [see ¶¶ 3-6 of Plaintiffs’ Complaint, found at pp. 3a-4a of Appellants’ Appendix, referred to as “AA \_\_\_” herein]. As a result of the rear-end collision, Mr. Wesche sustained serious injuries to his cervical spine (requiring him to undergo an anterior cervical fusion, wherein the damaged C4-5 and C5-6 cervical discs were removed, and the C4-5 and C5-6 vertebrae were permanently fused) [Complaint ¶¶ 7A-U, AA 4a-8a]. Mr. Wesche’s injuries also interfered with his marriage relationship to his spouse, Beverly Wesche, and both sought to recover damages against the Defendant, including claims for loss of consortium [Complaint ¶¶ 7T and 8, AA 8a].

Defendant moved for summary disposition motion pursuant to MCR 2.116(C)(7), alleging (in part) that Plaintiffs’ attempts to recover “derivative” damages for loss of consortium were precluded under the motor vehicle exception to governmental immunity found in MCL 691.1405.<sup>1</sup>

On 9/15/03, hearing was held on the Defendants’ motion; at the hearing, the Trial Court granted the Defendants’ motion, agreeing with it that “bodily injury” for purposes of the motor

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<sup>1</sup>The Defendant also moved for summary disposition [pursuant to MCR 2.116(C)(7)], claiming that for purposes of the motor vehicle exception to governmental immunity, the Gradall was not a “motor vehicle” within the meaning of the statute, and that the Defendant was not the “owner” of the Gradall as defined by the statute. The Trial Court denied that part of the Defendant’s motion, which was affirmed by the Court of Appeals in *Wesche, supra*, at 276-278. Defendant applied for leave to appeal the denial of its motion. Pursuant to the Supreme Court’s 2/27/07 Order [entered in Supreme Court Case No. 129295], the Defendants’ Application was **denied**, as the Supreme Court was not persuaded that the questions presented in Defendants’ Application should be reviewed by the Court.

vehicle exception to governmental immunity does not include a claim for damages for loss of consortium [AA 54a-55a, which are excerpts from the Trial Court transcript from the 9/15/03 hearing]. On 10/16/03, the Trial Court's Order granting the Defendant's motion was entered [AA 56a].

On 10/30/03, Plaintiffs filed their claim of cross-appeal with the Court of Appeals in regard to the Trial Court's grant of summary disposition to the Defendant on Plaintiffs' claims for loss of consortium [AA 58a]. On 6/8/05, the Court of Appeals heard oral arguments. On 7/5/05, the appellate court released for publication its per curiam Opinion in *Wesche v Mecosta County Road Commission*, 267 Mich App 274; 705 NW2d 136 (2005) affirming dismissal of Beverly Wesche's loss of consortium claim [AA 114a-117a]. Plaintiffs applied for leave to appeal in August 2005.

#### **Conflict between the *Wesche* and *Kik* cases**

On 11/15/05, the Court of Appeals released for publication its Opinion in *Kik, et al v Sbraccia, et al*, 268 Mich App 690; 708 NW2d 766 (2005) (*Kik I*), wherein a unanimous panel opined that *Wesche* was incorrectly decided, and that if not obligated by MCR 7.215(J) to follow *Wesche*, it would have reached a different conclusion in regard to the loss of consortium claim.

On 12/9/05, the Court of Appeals ordered that a special panel be convened pursuant to MCR 7.215(J) to resolve the conflict between the *Wesche* and *Kik* cases [regarding the availability of damages for loss of consortium in a non-wrongful death claim brought pursuant to the motor vehicle exception to governmental immunity found in MCL 691.1405]. *Kik v Sbraccia*, 268 Mich App 801; \_\_\_ NW2d\_\_\_ (2005).

On 10/10/06, the Conflict Panel released for publication its Opinion in *Kik v Sbraccia*, 272 Mich App 388; \_\_\_ NW2d \_\_\_ (2006) (*Kik II*), resolving the issue in accordance with the Panel's Opinion in *Kik I*, as the Conflict Panel was persuaded by the reasoning in Part III of the *Kik I* Opinion, and thereby adopted its reasoning and analysis as its own [i.e., MCL 691.1405 **does not** limit the right to recover damages for loss of consortium arising out of the negligent operation of a government-owned vehicle]. The Conflict Panel also overruled Part III of the *Wesche* Opinion [which held that loss of consortium claims are not included in the motor vehicle exception to governmental immunity].

On 5/23/07, the Supreme Court issued its Order, **granting** Plaintiffs' leave application [AA 118a]. The Supreme Court further ordered that the *Wesche* case be argued and submitted to the Court together with the case of *Kik v Sbraccia* [Docket No. 132849], and that the parties shall address the issue of whether MCL 691.1405's exception to governmental immunity permits the spouse of a person who sustains bodily injury as a result of the negligent operation of a motor vehicle owned by a governmental agency to recover money damages for loss of consortium.

## LAW/ARGUMENT

### ISSUE I

#### **MCL 691.1405'S EXCEPTION TO GOVERNMENTAL IMMUNITY DOES PERMIT THE SPOUSE OF A PERSON WHO SUSTAINS BODILY INJURY AS A RESULT OF THE NEGLIGENT OPERATION OF A MOTOR VEHICLE OWNED BY A GOVERNMENTAL AGENCY TO RECOVER DAMAGES FOR LOSS OF CONSORTIUM.**

#### **Standards of Review**

The Defendant brought its summary disposition motion pursuant to MCR 2.116(C)(7), alleging that Plaintiffs' attempts to recover damages for loss of consortium were barred under the motor vehicle exception to governmental immunity. The Trial Court granted the Defendant's motion, and the Court of Appeals upheld summary disposition.

Decisions on summary disposition motions are reviewed *de novo*. *Fane v Detroit Library Commission*, 465 Mich 68, 74; 631 NW2d 678 (2001).

The interpretation and application of a statutory provision is a question of law that is also reviewed *de novo* by the Supreme Court. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002).

#### **Claims Against Governmental Agencies**

The Defendant is a political subdivision organized and existing under the laws of the State of Michigan, and as such it is a governmental agency for purposes of the Governmental Tort Liability Act ["GTLA" herein], MCL 691.1401 et seq.

The GTLA provides immunity from tort **liability** to governmental agencies engaged in a governmental function. *Stanton v City of Battle Creek*, 466 Mich 611, 614-615; 647 NW2d 508

(2002). However, this immunity from tort **liability** is subject to 5 narrowly drawn statutory exceptions. *Id.*

MCLA 691.1405, the “motor vehicle” exception to immunity, provides that:

“Governmental agencies **shall be liable for bodily injury** and property damage resulting from the negligent operation by any officer, agent, or employee of a governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949 [the Michigan Vehicle Code] as amended, being sections 257.1 to 257.293 of the Compiled Laws of 1948.” [Emphasis added; Ed], *Stanton, supra* at 616.

### **Statutory Construction**

The primary rule of statutory interpretation is to effect the intent of the Legislature. *Stanton, supra*, at 615. To achieve this task, the Court must first examine a statute’s language. *Id.*, at 615. If the language is clear and unambiguous, the Court assumes the Legislature intended its plain meaning, and the statute is enforced as written. *Id.*, at 615.

It is also a well-established principle of statutory construction that when the Legislature enacts legislation concerning an area of law where the appellate courts of this state have rendered opinions, the Legislature is presumed to have acted with knowledge of the court’s interpretations. *Hill v Sacka*, 256 Mich App 443, 456; 666 NW2d 282 (2003). The historical notes to MCL 691.1405 trace its history back to 1948, and the GTLA itself has undergone revisions in 1986 [1986 PA 175], 1999 [1999 PA 205] and 2001 [2001 PA 131].

However, there is no definition in MCL 691.1405 or the GTLA itself defining “**bodily injury**,” and what is encompassed by that term. Moreover, the phrase “**bodily injury**” is also found in 3 other exceptions to governmental immunity from tort **liability**, yet nowhere else is the

phrase defined [and see the “highway exception” found at MCL 691.1402, the “public building exception” found at MCL 691.1406, and the “proprietary function exception” found at MCL 691.1413].

It appears that the Court of Appeals Opinions in *Wesche, supra*, *Kik I, supra* and *Kik II, supra* [decided in 2005 and 2006] are the **first published opinions** to address the issue of whether the motor vehicle exception to governmental immunity from tort **liability** found in MCL 691.1405 permits the spouse of a person who sustains bodily injury as a result of the negligent operation of a motor vehicle owned by a governmental agency to recover damages for loss of consortium. Given the conflict between the *Wesche* and *Kik* opinions, the issue is before the Supreme Court for consideration as it affects not only Michigan’s jurisprudence, but it also impacts Michigan’s public policy and special interest in protecting marriage relationships. More specifically, the issue presented invites this Court to decide whether or not it will divide similarly injured individuals into two separate and distinct classes:

1. Married persons who are injured in a motor vehicle collision with non-governmental tort-feasors, where the spouse of a person who sustains bodily injury is permitted to recover damages for loss of consortium, and
2. Married persons [like Plaintiffs] who are injured as a result of the negligent operation of a motor vehicle owned by a governmental agency, where the spouse of a person who sustains bodily injury is prevented from recovering damages for loss of consortium.

## Governmental Immunity from Tort LIABILITY — But Not From RECOVERABLE

### DAMAGES

As observed by the Court of Appeals in *Kik I, supra*, and subsequently adopted by the Conflict Panel in *Kik II, supra*:

“The fundamental flaw in *Wesche* is that it **confuses the concepts of liability and damages**. MCL 691.1405 concerns the **issue of liability** and describes one of the conditions for which the government does not enjoy immunity: when the negligent operation of a motor vehicle owned by a governmental agency causes bodily injury or property damage. **The statute does not limit or otherwise establish the types of damages that are recoverable from the government when liability is established**. For that matter, the statute does not address, in either terms of inclusion or exclusion, who may recover damages from such bodily injury. In other words, the appropriate reading of MCL 691.1405 is that the government is not immune from suit when the negligent operation of a government-owned motor vehicle results in bodily injury. Once such liability is established, the statute is silent regarding damages, meaning that the plaintiff may recover whatever damages arise from the bodily injury. One such category of those damages, as even *Wesche* acknowledges (perhaps inadvertently), is the loss of consortium, which is only recoverable as an element of damages arising out of an injury.” 268 Mich App at 709-710.

As long ago as 1922, Michigan Supreme Court recognized that a spouse has a claim for damages against a governmental agency where it causes injury to the other spouse. In *Burns v Township of VanBuren*, 218 Mich 40; 187 NW 276 (1922), Corilla Burns brought suit against VanBuren Township to recover damages for personal injury caused by a defective highway. Corilla’s husband, Richard Burns, also brought suit, and recovered a judgment against the Township for the medical bills and other expenses he incurred, and as a result of being deprived of the help and companionship of his wife while she was in the hospital. Mrs. Burns had also

received permanent injuries which made her less efficient as a housewife, and her lessened efficiency was likely to continue in the future.

In *Burns v Township of VanBuren*, 218 Mich 44; 187 NW 278 (1922), the Supreme Court **affirmed the judgment for damages** in favor of Mr. Burns, finding that it was not excessive.

Michigan's jurisprudence has long recognized loss of consortium claims in favor of spouses. See *Montgomery v Stephan*, 359 Mich 33, 35-36; 101 NW2d 227 (1960). Consortium means conjugal fellowship, and encompasses society, companionship, service, affection **and all other incidents of a marriage relationship**. *Montgomery*, *supra* at 36; *Whitson v Whitly Poultry Co*, 11 Mich App 598, 601; 162 NW2d 102 (1968).

As noted above, the GTLA provides immunity from tort liability to governmental agencies, subject to 5 narrowly drawn statutory exceptions.

MCL 691.1402 is the "highway exception" to governmental immunity [imposing liability on a governmental agency if it fails to maintain a road in reasonable repair so that it is reasonably safe and convenient for public travel]. Section 1402 allows a person who sustains "**bodily injury** or damage to his or her property" to recover damages by reason of a defective highway. As with the motor vehicle exception to immunity, the highway exception does not define the term "bodily injury" or what it encompasses.<sup>2</sup>

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<sup>2</sup>Under the Defendant's constrained analysis, **death** — the cessation of life — would not qualify as a "bodily injury," as none of the exceptions to immunity clearly and unambiguously mention the term "death," and dictionary definitions of the term "bodily injury" limit it to physical damage or harm to an injured person's body, suggesting that the term stops short of, and does not encompass, death itself. The Legislature and Michigan's appellate courts did not intend nor expect to exclude damages for death or loss of consortium that result from the negligent operation of a government-owned motor vehicle, and to argue otherwise is specious.

However, **and in light of the long-standing acknowledgment of damages for loss of consortium**, the Supreme Court has ruled that with respect to wrongful death actions arising out of highway liability cases, Plaintiffs are allowed to pursue damages for a loss of consortium.

In *Endykiewicz v State Highway Commission*, 414 Mich 377; 324 NW2d 755 (1982), the issue presented was whether Plaintiff could recover from the State, under applicable provisions of the Wrongful Death Act, damages for the loss of decedent's companionship and society, in light of MCL 691.1402, which restricts governmental tort liability for highway defects to a person who sustains bodily injury. The Supreme Court ruled in favor of the Plaintiff, finding that:

“In general, governmental immunity from liability for tort exists in recognition of the possibility that amenability to suit will impede the ability of the government to govern effectively, and will burden the government with costs that it is not prepared to meet without endangering the public fisc. In our view, neither of these policy reasons is jeopardized by permitting this plaintiff to pursue her action for damages for loss of companionship and society.

“Requiring the state to be responsible for damages for loss of companionship and society in wrongful death-highway liability cases will not erode the ability of the state to function smoothly and effectively. Because these damages are recoverable in a single wrongful death suit, the number of lawsuits to which the state must respond will not be multiplied. By consenting to suit against the state for injuries resulting from highway defects, the Legislature already has intimated that the state's capacity to govern is not impaired when it is liable for a broad range of damages. We find that this capacity to govern would not be diminished by allowance of damages for loss of companionship and society.

“Nor are we persuaded that by permitting wrongful death beneficiaries to recover damages for loss of companionship and society, state finances, which already hang in a precarious balance, would be severely drained.

“We conclude that the policy reasons usually stated in favor of governmental tort immunity are not enhanced by precluding Plaintiff from recovering damages for loss of companionship and society.” 414 Mich at 391-392.

The Supreme Court in *Endykiewicz, supra*, also observed that if the Legislature had intended to prohibit the recovery of consequential or incidental damages arising from the infliction of injury at the hands of the government, it would have affirmatively done so in specific language, utilizing express words of limitation, much as it did with respect to other restrictions on liability when it adopted the GTLA. 414 Mich at 389. Moreover, this statement is equally applicable to the motor vehicle exception as it is to the defective highway exception. *Kik I*, at 711.

When 2 statutes address the same subject, courts must endeavor to read them harmoniously, and to give both statutes a reasonable effect. *Endykiewicz, supra*, at 385. If statutes lend themselves to a construction that avoids conflict, then that construction should control. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998).

Here, the Defendant would invite this Court to ignore the application of Michigan’s No-Fault Act to a governmental agency’s liability under the motor vehicle exception to governmental immunity, and thereby create [as opposed to avoiding] conflicts between the two statutes.

In *Hardy v Oakland County*, 461 Mich 561; 607 NW 2d 718 (2000), the Supreme Court held that the threshold requirements for pursuing a tort remedy for non-economic damages under the no-fault act are applicable when the defendant is a governmental agency being sued under the motor vehicle exception to governmental immunity.

In *Hardy*, Plaintiff was injured when a patrol car driven by a sheriff's deputy negligently collided with his vehicle. Before trial, the Plaintiff filed a motion in which he argued that a plaintiff who pursues a governmental agency under the motor vehicle exception to immunity is not obliged to show a serious impairment of body function or the other threshold requirements set forth by the no-fault act. The circuit court ruled that the Plaintiff was obliged to make the threshold showings, and the Court of Appeals agreed.

In affirming the decision of the lower courts, the Supreme Court found that MCL 500.3135(2) of the no-fault act, containing the partial abolition of tort liability, opened with the introductory clause, "Notwithstanding any other provision of law . . .," thereby reflecting ". . . the Legislature's determination that the restrictions set forth in the no-fault act control the **broad statement of liability** found in the immunity statute." 461 Mich at 565 [emphasis added].

In *Rusinek v Schultz, Snyder and Steele Lumber Company*, 411 Mich 502; 309 NW 2d 163 (1981), the Supreme Court concluded that Michigan's no-fault act **must be construed as retaining common-law claims for loss of consortium.**

In *Rusinek*, the Plaintiffs were a husband and wife who brought suit for damages arising out of an automobile accident. The husband claimed he sustained personal injuries to his neck, back and elbow amounting to a serious impairment of body function within the meaning of MCL 500.3135. His wife, who was not involved in the accident, claimed a loss of consortium arising out of her husband's injuries.

The trial court denied a motion to dismiss the consortium claim, and following a jury trial, the jury returned a verdict in favor of the wife. On appeal, the Court of Appeals reversed,

holding that Michigan's No-Fault Act had abolished the right of a spouse to recover in tort for loss of consortium.

In reversing the Court of Appeals, a unanimous Supreme Court concluded that:

“ . . . the no-fault act must be construed as retaining the common-law action for loss of consortium. The common-law action for loss of consortium in Michigan is not expressly abolished by the language of § 3135. If this section abolishes this common-law right it must be found to do so by implication. There is nothing, however, in the language of the act or its legislative purposes that require such a construction. Since it is derived from the injured spouse's action, a claim of loss of consortium does not create a new case, nor does it contribute significantly to the problems the act was intended to alleviate.” 411 Mich at 508.

Since the threshold requirements for pursuing a tort remedy for non-economic damages under the no-fault act are applicable when the defendant is a governmental agency being sued under the motor vehicle exception to immunity, and because the no-fault act did not abolish common-law claims for loss of consortium, the Plaintiffs' claims for loss of consortium against the Defendant are not barred by governmental immunity. Moreover, there is nothing in the language of MCL 691.1405 that requires such a construction.

In addition to the above, and in cases involving the motor vehicle exception to governmental immunity, the appellate courts have implicitly recognized the existence of loss of consortium claims. In Footnote No. 1 found at page 613 of the Supreme Court's opinion in *Stanton, supra*, the Court noted Plaintiff Joy Stanton's derivative claim for loss of consortium. In *Regan v Washtenaw County Board of Road Commissioners* (On Remand), 257 Mich App 39; 667 NW 2d 57 (2003), lv app den, 471 Mich 937 (2004), Plaintiffs Donna and Brian Regan brought an action against the Road Commission, and in Footnote No. 1 found at page 51 of

Judge Wilder's dissenting opinion, it was noted that Plaintiff Brian Regan's claim was for a loss of consortium.

If the Legislature had intended to prohibit a recovery for the loss of consortium under the motor vehicle exception to governmental immunity, it could have affirmatively done so by amending the governmental immunity act and/or no-fault act, especially in light of the Supreme Court's holdings in the above-cited opinions.

The same analysis the Supreme Court applied in *Endykiewicz, supra*, that allows a plaintiff to pursue a loss of consortium in a wrongful death - highway liability case, applies with equal force to Plaintiffs' loss of consortium claims against the Defendant under the motor vehicle exception to immunity. Such damages have long been recognized in Michigan's jurisprudence, and something that the Legislature was well aware of when it adopted the GTLA.

### **Public Policy Surrounding, and Special Interest In, the Marriage Relationship**

Marriage has occupied a special place in this state's legislative history and jurisprudence since its inception.

As set forth in MCL 551.1:

“Marriage is inherently a unique relationship between a man and a woman. **As a matter of public policy, this state has a special interest in** encouraging, supporting, and **protecting that unique relationship** in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between those individuals of the same sex is invalid in this state.”  
[emphasis added]

As a reflection of this state's public policy and special interest in marriage, Michigan's Constitution was amended in 2004. Const 1963, Art 1, §25, approved on 11/2/04 and effective 12/18/04, provides that:

“To secure and preserve **the benefits of marriage for our society** and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.” [Emphasis added.]

Allowing the Trial Court and Court of Appeals opinions to stand would run counter to Michigan’s public policy and special interest in protecting the “unique relationship” of marriage, and ignore the long-recognized claim for loss of consortium in favor of spouses.

Given Michigan’s public policy and special interest in protecting the marriage relationship, and that Michigan has long recognized a claim for loss of consortium in favor of spouses, how can it be said that the Legislature did not intend to afford such recognition and protection when it enacted the GTLA, and more specifically, the “motor vehicle” exception to governmental immunity?

Did the Legislature intend to ignore MCL 551.1 when it enacted the motor vehicle exception to governmental immunity? According to the statute’s history, Michigan’s recognition of marriage dates back to 1846. Should the appellate courts ignore the constitutionality-protected status a marriage relationship enjoys in Michigan by failing to afford a remedy when that relationship is damaged as a result of the negligent operation of a government-owned vehicle?

The sole basis for the Defendant’s argument and the Court of Appeals opinion regarding Plaintiffs’ loss of consortium claim is a narrow construction of the term “bodily injury” found in MCL 691.1405. However, such an interpretation affords no rational basis for dividing similarly injured individuals into two separate and distinct classes.

In *Brown v Manistee County Road Commission*, 452 Mich 354, 358-364; 550 NW2d 215 (1996), it was held that the distinction between individuals injured on a defective road controlled by a county road commission, who had a 60 day period to give notice to bring an action, and

those injured on a defective road controlled by other governmental agencies, who had a 120 day period to give notice to bring an action, was not supported by a rational basis, such that the 60 day notice provision was unconstitutional in violation of equal protection guarantees.

Given Michigan's long-standing public policy and special interest in protecting marriage, and the time-honored recognition of claims for a loss of consortium, if the Legislature had intended to prohibit the recovery of such damages arising out of a collision involving a government-owned vehicle [or in a highway defect case, or where a public building defect was involved] it could have affirmatively done so in specific language, utilizing express words of limitation; to date, **none** of the 5 statutory exceptions to governmental immunity have been amended to expressly preclude a loss of consortium claim.

Had Plaintiffs been injured by a private tortfeasor, there is no question that they would be entitled to recover damages for their loss of consortium. There is no authority to suggest that a loss of consortium claim will impede the government's ability to govern effectively, or that such claims will burden the government with costs that it is not prepared to meet. By consenting to suit against governmental agencies for injuries resulting from the negligent operation of government-owned vehicles, the Legislature has already intimated that a governmental agency's ability to govern is not impaired when it is liable for damages.

As a matter of public policy, Michigan has a special interest in protecting marriage relationships, enough so that same is embodied in law and now in the state's Constitution. The Legislature did not intend to ignore and preclude married couples from advancing claims for loss of consortium where one party to the marriage has been injured by the negligent operation of a government-owned vehicle.

**CONCLUSION AND RELIEF REQUESTED**

Interpreting the term “bodily injury” found within the motor vehicle exception to governmental immunity as requested by the Defendant would in effect be telling the public that although a governmental agency is liable for the negligent operation of a motor vehicle owned by it, the Defendant can escape liability for the damages that follow. Put another way, the Defendant not only wants to knock a person down by causing a bodily injury, but by virtue of its interpretation of the statute, it would also like to kick that same person and his or her spouse while they are down by denying damages for a loss of consortium. Is that what the Legislature intended when it enacted MCL 691.1405, imposing liability for the negligent operation of government-owned motor vehicles? Is that the outcome that was envisioned by the recent amendment to Michigan’s Constitution, enacted to secure and preserve the benefits of marriage for our society? Will the Defendant’s concepts of liability and damages become the state of the law in Michigan in 2007? 2008 and beyond?

**WHEREFORE**, Plaintiffs ask that this Court:

- A. **REVERSE** the Trial Court’s order and Court of Appeals judgment,
- B. Re-instate Plaintiffs’ loss of consortium claim,
- C. Allow Plaintiffs to tax costs pursuant to MCR 7.318, and
- D. Remand the case to the Trial Court for further proceedings consistent with this Court’s opinion.

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Dated: \_\_\_\_\_

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