

STATE OF MICHIGAN
IN THE SUPREME COURT

REBECCA KIK and ROBERT KIK, Individually
and as Co-Personal Representatives of the ESTATE
OF SHARON ANN LEELANI KIK,

Plaintiffs/Appellees.

v

JOHN-CHRISTOPHER SBRACCIA, KINROSS
CHARTER TOWNSHIP EMS, and KINROSS
CHARTER TOWNSHIP,

Defendants/Appellants.

Case No: 132849

Court of Appeals No: 256419

Lower Court File No: 04-7213-NI

Plaintiffs/Appellees' Brief On Appeal

Oral Argument Requested

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Table Of Contents

Page

Table Of Authorities..... ii

Counter-Statement of Question Presented..... iv

Statement Of The Basis Of Appellate Jurisdiction vi

Counter-Statement Of The Facts And Procedural History 1

 A. Counter-Statement Of The Facts 1

 B. Procedural History..... 2

Standard Of Review..... 4

Argument..... 5

 A. The Wrongful Death Act, Which Controls The Damages Which May Be Recovered After Liability Has Been Established And Specifically Authorizes Recovery For Non-Bodily Injuries, Such As Loss Of Society And Companionship Of The Deceased, Is Not Limited By The Waiver Of Immunity Contained In MCL 691.1405 5

 B. Because The Gross Negligence Exception To Governmental Immunity Contained In MCL 691.1407(2)(c) Does Not Contain Any Language Waiving Immunity For Only Bodily Injury And Property Damage, Loss Of Consortium Damages May Be Recovered Against A Governmental Employee 11

 C. The Special Court of Appeals Panel Properly Held That Loss Of Consortium Damages Are Available After Liability Is Established Against A Governmental Entity Under MCL 691.1405, The Negligent Operation Of A Government Vehicle Exception To Immunity 12

Relief Requested 15

Table Of Authorities

Cases

<i>Endykiewicz v State Highway Commission</i> , 414 Mich 377, 324 NW2d 755 (1982)	6
<i>Harrison v Director of Department of Corrections</i> , 194 Mich App 446, 487 NW2d 799 (1992)	5
<i>Jenkins v Patel</i> , 471 Mich 158, 165-166; 684 NW2d 346 (2004).....	9
<i>Kik v Sbraccia</i> , 268 Mich App 690; 708 NW2d 766 (2005)	v
<i>Lincoln v Detroit & MR Co</i> , 179 Mich 189, 195-196, 146 NW 405 (1914).....	7, 12
<i>Maiuri v Sinacola Construction Co</i> , 382 Mich 391, 170 NW2d 27 (1969)	7
<i>Reese v Wayne County</i> , 193 Mich App 215; 483 NW2d 671 (1992)	11
<i>Rose v Mackie</i> , 22 Mich App 463; 177 NW2d 633 (1970)	11
<i>Scheurman v Department of Transportation</i> , 434 Mich 619 (1990).....	8
<i>Taxpayers Allied for Constitutional Taxation v Wayne City</i> , 203 Mich App 537, 513 NW2d 202 (1994)	5
<i>Wesche v Mecosta Co Rd Comm</i> , 267 Mich App 274; 705 NW2d 136 (2005)	3

Statutes

MCL 600.2922	4, 5, 6, 7
MCL 691.1405	4, 11, 12
MCL 691.1407	4, 11, 12

Statutes

MSA 27A.2922(1)..... 7

Rules

MCR 7.215(J)(3)..... 3

Counter-Statement of Question Presented

1. Does MCL 691.1405, which provides that governmental agencies “shall be liable for bodily injury and property damage resulting from the negligent operation. . . of a motor vehicle” owned by a governmental agency, limit the damages recoverable in a wrongful death action, as enumerated in MCL 600.2922(6)?

Plaintiffs/appellees answer, “No,”

The circuit court answered, “No,”

The defendants/appellants answer, “Yes,”

The three judge unanimous panel in *Kik I* answered “No.”

2. Whether, in light of MCL 691.1405’s waiver of governmental immunity for bodily injury and property damage resulting from the negligent operation of a motor vehicle owned by a governmental agency and operated by an officer, agent, or employee of the governmental agency, a governmental officer, agent, or employee whose alleged gross negligence causes death or bodily injury is subject to loss of consortium pursuant to MCL 691.1407(2)(c)?

Plaintiffs/appellees answer, “Yes,”

The defendants/appellants answer, “No,”

The circuit court did not address this issue.

The unanimous three judge panel in *Kik I* answered “Yes.”

3. Does the motor vehicle exception to governmental immunity contained in *MCL 691.1405* 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?

Plaintiffs/appellees answer, “Yes,”

The circuit court answered, “Yes,”

The defendants/appellants answer, “No,”

The three judge panel in *Kik I* answered “No”, but would have said “Yes,” were they not constrained to follow *Wesche v Mecosta Co Rd Comm, 267 Mich App 274; 705 NW2d 136 (2005)*.

The Court of Appeals special panel majority answered, “Yes,”

The Court of Appeals special panel dissent answered, “No.”

Statement Of The Basis Of Appellate Jurisdiction

This matter was before the Court of Appeals on defendants-appellant's claim of appeal from the circuit court's order denying partial summary disposition. The court of appeals issued its published decision on 15 November, 2005. (Defendants-Appellants' Appendix, pp 41a-52a) Following the issuance of that decision, pursuant to MCR 7.215(J)(3), a special panel was convened by the Court of Appeals requesting briefing as to whether loss of consortium damages are available in cases brought pursuant to the motor vehicle exception contained in MCL 691.1405. The special conflict panel, in a four (4) to three (3) majority decision dated 10 October, 2006, agreed with the unanimous Court of Appeals panel in *Kik v Sbraccia*, 268 Mich App 690; 708 NW2d 766 (2005), vacated in part in 268 Mich App 801 (2005), and held that loss of consortium damages are available under the motor vehicle exception. (Defendants-Appellants' Appendix, pp 54a-56a) The defendants/appellants then filed an application for leave to appeal which was granted by this Court on 23 May, 2007.

Counter-Statement Of The Facts And Procedural History

A. Counter-Statement Of The Facts

On 1 April, 2003, Rebecca Kik, then pregnant, was being transported from War Memorial Hospital in Sault Ste. Marie, Michigan, to Sparrow Hospital in Lansing, Michigan, by Kinross Charter Township EMS ambulance. The driver of the ambulance was defendant John-Christopher Sbraccia, an emergency medical technician with Kinross Charter Township EMS. (Defendants-Appellants' Appendix, pp 9a-22a)

At approximately 1:45 a.m. on 1 April, 2003, on southbound I-75 near its intersection with 4 Mile Road, defendant Sbraccia swerved suddenly and lost control of the ambulance causing it to go into the ditch and overturn. Unrestrained in the back of the ambulance, Mrs. Kik was thrown about during the crash sequence and sustained bodily injuries.

As a result of the accident, Rebecca Kik was transported to Grayling Mercy Hospital and subsequently transferred to Sparrow Hospital in Lansing, Michigan. While at Sparrow Hospital, Mrs. Kik reported pelvic pressure. She also developed leaking of fluids and her amniotic bag broke prematurely. Mrs. Kik began labor on 12 April, 2003. On 13 April, 2003, Mrs. Kik's labor progressed and she eventually delivered Sharon Ann Leelani Kik who had a gestational age of approximately 22 4/7 weeks. Sharon Ann Leelani Kik was born alive, but as a result of respiratory failure arising out of her premature birth caused by the ambulance crash, she died on 13 April, 2003.

B. Procedural History

Robert and Rebecca Kik, individually and as Co-Personal Representatives of the Estate of Sharon Ann Lelani Kik, filed this suit against the defendants alleging claims pursuant to MCL 691.1405 and MCL 691.1407(2). The complaint alleges a claim on behalf of Robert Kik in his individual capacity for the alleged loss of consortium associated with his wife Rebecca Kik's injuries arising out of the accident.

In addition, both Robert and Rebecca Kik seek damages for the loss of society and companionship associated with their daughter Sharon's wrongful death. In addition, both Rebecca Kik (individually) and the estate brought gross negligence claims against defendant John-Chrisopher Sbraccia seeking loss of consortium damages from defendant Sbraccia for his alleged gross negligence. Defendants then moved for partial summary disposition claiming MCL 691.1405 does not allow loss of consortium claims for either the individual or wrongful death causes of action. The defendants also contended that the gross negligence claims must be dismissed as well. The Circuit Court denied that motion in a written Opinion and Order. (Defendants-Appellants' Appendix, pp 35a-40a) Defendants then appealed as of right.

After oral argument, a Court of Appeals panel consisting of Judge O'Connell, Judge Sawyer and Judge Murphy issued a unanimous published decision concluding that damages for loss of society and companionship (and similar type claims) are available in actions limited by the motor vehicle and gross negligence exceptions to governmental immunity under MCL 691.1405 and 691.1407(2)(c), both generally and specifically in the context of wrongful death actions. In addition, the Court of Appeals held that Robert Kik's claim for loss of consortium of his wife's

individual claim was barred based on published precedent in *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274; 705 NW2d 136 (2005). However, the panel noted that if free to decide the issue differently, they would reach a different conclusion. In explaining its position, the panel indicated that *Wesche* was incorrectly decided and stated as follows:

[t]he 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 the governmental agency causes bodily injury or property damage. This statute does not limit or otherwise establish the types of damages which are recoverable against 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 arising 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 as to 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).

On 9 December, 2005, the Court of Appeals ordered that a special panel be convened pursuant to MCR 7.215(J)(3) to resolve the conflict between the present case and *Wesche*. In *Wesche*, the court of appeals held that a wife's claim for loss of consortium based on her husband being physically injured in a motor vehicle accident was outside the scope of the motor vehicle exception to governmental immunity under MCL 691.1405 because loss of consortium claims did "not encompass bodily injury or property damage, but rather, other damages deriving from the spouse's injury." *Id* at 279. The Court of Appeals' special panel, in a four (4) to three (3)

majority decision, held that *Wesche* was wrongly decided and found that the motor vehicle exception does not bar loss of consortium claims when liability has been established under the exception. (Defendants-Appellants' Appendix, pp 35a-40a)

On 23 May, 2007, this Court granted the defendants' application for leave to appeal and requested briefing on the following issues: (1) 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; (2) whether MCL 691.1405, providing that governmental agencies "shall be liable for bodily injury and property damage resulting from the negligent operation ... of a motor vehicle" owned by a governmental agency, limits the damages recoverable in a wrongful death action, as enumerated in MCL 600.2922(6); and (3) in light of MCL 691.1405's waiver of governmental immunity for bodily injury and property damage resulting from the negligent operation of a motor vehicle owned by a governmental agency and operated by an officer, agent, or employee of the governmental agency, is a governmental officer, agent, or employee whose alleged gross negligence causes death or bodily injury subject to personal liability for loss of consortium pursuant to MCL 691.1407(2)(c).

Standard Of Review

When a party moves for summary disposition pursuant to MCR 2.116(C)(7), the court reviews the validity of the movant's claim by considering any affidavits, pleadings, depositions, admissions and documentary evidence then filed or submitted by the parties. If there is no factual dispute, the

question of whether the claim is statutorily barred is one of law for the court to decide. *Taxpayers Allied for Constitutional Taxation v Wayne City*, 203 Mich App 537, 513 NW2d 202 (1994). Summary disposition pursuant to MCR 2.116(C)(7) should not be granted unless no factual development could provide a basis for recovery. *Harrison v Director of Department of Corrections*, 194 Mich App 446, 487 NW2d 799 (1992).

Argument

A. The Wrongful Death Act, Which Controls The Damages Which May Be Recovered After Liability Has Been Established And Specifically Authorizes Recovery For Non-Bodily Injuries, Such As Loss Of Society And Companionship Of The Deceased, Is Not Limited By The Waiver Of Immunity Contained In MCL 691.1405

In this action, both Robert and Rebecca Kik seek loss of society and companionship damages arising out of their daughter Sharon's wrongful death under Michigan's wrongful death statute. The scope of the wrongful death act is described in MCL 600.2922(1):

Whenever the death of a person or injuries resulting in death shall be caused by wrongful act, neglect, or fault of another, and the act, neglect, or fault is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, the person who or the corporation that would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances that constitute a felony.

The wrongful death act applies when the decedent would have had an action had the injuries not proved fatal, but does in fact die as a result of those injuries. Once the wrongful death act applies,

by its clear and unambiguous terms, MCL 600.2922(6) provides for the recovery of damages as follows:

In every action under this section, the court or jury may award damages as the court or jury shall consider fair and equitable, under all the circumstances including reasonable medical, hospital, funeral, and burial expenses for which the estate is liable; reasonable compensation for the pain and suffering, while conscious, undergone by the deceased during the period intervening between the time of the injury and death; and damages for the loss of financial support and the **loss of the society and companionship of the deceased**. [Emphasis added.]

In *Endykiewicz v State Highway Commission*, 414 Mich 377, 324 NW2d 755 (1982), the Supreme Court decided that in a case brought under the highway exception to governmental immunity, a plaintiff could recover damages for losses for society and companionship. The identical argument espoused by the defendants in this case was rejected by the court in *Endykiewicz*. Specifically, the Supreme Court stated:

Given plaintiff's unique status as one who has not suffered actual injury, but who nevertheless has the right to maintain a suit to remedy wrongs occasioned by highway defects, it is reasonable to permit plaintiff to recover those damages, including damages for loss of companionship and society, which are authorized by the wrongful death act. Although some of the damages permitted for wrongful death are not, in one sense of the phrase, damages suffered by the person who actually was injured (the decedent), they are damages "suffered" or sustained by the individuals for whose benefit the personal representative, the person allowed to bring suit in the place of the decedent, maintains a wrongful death action. Moreover, these damages arise as a direct consequence of the bodily injury for which relief is sought in this case. The decedent (any person) is in no position to collect damages for injuries suffered by him. If the statute is read literally, the state's liability would cease upon a decedent's death. Therefore, it is important to

remember that in this case we are not confronted with the highway liability statute in a vacuum. **The wrongful death act, which applies “[w]henver the death of a person or injuries resulting in death shall be caused by wrongful act * * *and the act * * *is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages”, MCL 600.2922(1); MSA 27A.2922(1)** (emphasis added), also must be considered. An action for wrongful death exists not as “a cause of action which survives” the decedent, but as “a new action * * * which can be brought, not for the benefit of the estate, but solely for the benefit of the beneficiaries names in the statute”. *Lincoln v Detroit & MR Co*, 179 Mich 189, 195-196, 146 NW 405 (1914); see also *Maiuri v Sinacola Construction Co*, 382 Mich 391, 170 NW2d 27 (1969). Although the deceased person, had he lived, would have been able to maintain an action for damages for the injuries received, damages different from those which the decedent himself might have received are recoverable in the wrongful death action. *Lincoln, supra*. **In addition, the wrongful death act stands as the exclusive remedy for injuries resulting in death, MCL 600.2922(1); MSA 27A.2922(1).**

Defendant would have us segregate the procedural aspects of the wrongful death act – those which permit the personal representative to maintain an action to recover for injuries resulting from death – from the substantive portions of the act pertaining to damages. We decline to view the wrongful death provisions in such a bifurcated manner. This exclusive remedy, which recognizes an enlargement of damages occasioned by death, must be applied in its entirety. Thus, once it is recognized that the wrongful death act is the exclusive vehicle for recovery from a governmental agency in the event of death, it is appropriate to conclude that the provision for damages contained in the same act also pertains.

In addition, the Supreme Court in *Endykiewicz* likewise stated that had the Legislature intended to prohibit the recovery of consequential or incidental damages which arise directly from the infliction of injury to person or property 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 contained within the governmental immunity act. Thus, under *Endykiewicz*, the Supreme Court has found that a plaintiff is entitled to seek

derivative damages in a wrongful death action when one of the exceptions to governmental immunity is specifically plead.

The unanimous Court of Appeals panel in *Kik I*, stated that while the liability to an injured person may have been limited by statute, once that injured person dies and the action becomes an action under the wrongful death act, the wrongful death act controls the damages which may be recovered. (*Kik I, supra* at 700) The Court of Appeals in *Kik I* also pointed out that the wrongful death act specifically authorized the recovery of damages for “the loss of society and companionship of the deceased.” (*Id, supra* at 701) The Court of Appeals in *Kik I* then found that the *Wesche* decision did not apply to wrongful death cases, and where the accident victim dies, the measure of damages are then controlled by the wrongful death act. (*Id, supra* at 700-701)

In their brief, the defendant argues that *Endykiewicz* was overruled in *Scheurman v Department of Transportation*, 434 Mich 619 (1990). The Court of Appeals in *Kik I* disagreed and concluded that *Endykiewicz* remained controlling precedent and the Court of Appeals was obligated to follow that decision. In *Scheurman*, this Court was faced with a decision as to what the standard of liability imposed on a governmental unit was with regard to signage in the highway exception. In this case, there is no dispute that the exceptions apply. Thus, as with the case in *Scheurman*, the dispositive issue in the present case centered on the amount of damages after liability had attached. As the Court in *Scheurman* set forth:

Endykiewicz interprets the damage sentence of the statute which provides, “[a]ny person sustaining bodily injury or damage to his

property . . . may recover the damages suffered by him . . .”. The Court said that this sentence was ambiguous, therefore, it should not be interpreted to limit a plaintiffs’ damages. **Thus, the dispositive issue in the case centered on the amount of damages after liability had attached.** It offers no insight as to the interpretation of the standard of liability imposed on a governmental unit . . . At the time of the Governmental Immunity Act became effective, the State was still shielded by sovereign immunity. Thus, the Court should have strictly construed the Immunity Act. **To this limited extent, we modify *Endykiewicz*.** [Emphasis added.]

Thus, the issues are not the same in the present action. *Scheurman* does not stand for the proposition that loss of society and companionship is not a compensable claim for a wrongful death action. Instead, *Scheurman* stands for the proposition that in trying to establish liability, the statute is to be strictly construed. It is only to that limited extent that *Endykiewicz* was modified, and the defendants’ argument to the contrary is unfounded and unsubstantiated.

The Court of Appeals in *Kik I* agreed with this analysis and found that *Scheurman* dealt with establishing liability and was not authoritative on the issue of damages. The Court of Appeals in *Kik I* also rejected the defendants’ argument that this Court’s decision in *Jenkins v Patel*, 471 Mich 158, 165-166; 684 NW2d 346 (2004) supports the proposition that any limitation on the recovery of damages under the governmental immunity statute must control over any grant of damages under the wrongful death act. The defense argues that under *Jenkins*, because the wrongful death act is not the only act that applies to a wrongful death case, the wrongful death act, “merely expends the cause of an action to allow the plaintiff to recovery the damages that could otherwise have been recovered only by the decedent had he or she survived.” The Court of Appeal in *Kik I* indicated that, if anything, *Jenkins* supports the conclusion that they reached in their decision that the wrongful death act acts to “expend the elements of damage available.”

That is, more types of damages may be available under the wrongful death act than would be available to the decedent had he or she survived. The Court of Appeals in *Kik I* concluded that both *Patel* and *Endykiewicz* recognize that the Legislature may expressly enact a limitation on the damages which would otherwise be recoverable under the wrongful death act. However, as the Court concluded in *Endykiewicz*, the establishment of liability for bodily injury and property damage under the governmental immunity act does not operate to create such a limitation.

Finally, the defendants/appellants argue that if the wrongful death act is read as waiving governmental immunity, such a provision would violate the Title-Object Clause of the Michigan Constitution, which requires that the object of every law be expressed in its title. The defendants/appellants argue that because the wrongful death act is part of the Revised Judicature Act (RJA), and the title to the RJA includes no provision for dealing with governmental immunity, the wrongful death act cannot modify the immunity established under the GTLA. However, the Court of Appeals in *Kik I* properly recognized that MCL 691.1405 controls *when* the government is liable: whenever the negligent operation of a government-owned motor vehicle causes bodily injury or property damage. The wrongful death merely describes those damages which may be recovered when that bodily injury for which the government is liable results in death. The Court of Appeals in *Kik I* thus properly concluded that establishing damages which a jury may award in a civil action does come within the title of the RJA.

Thus, after unanimously rejecting all of the defense arguments, the Court of Appeals in *Kik I* held that, where the injured person died as a result of the injuries sustained in the motor vehicle accident, and the case becomes one brought under the wrongful death act, the full range of

damages provided for under the wrongful death act are not limited by the provisions of MCL 691.1405 that establish the government's liability for bodily injury and property damage resulting from a motor vehicle accident. The plaintiffs/appellants respectfully request that this Court uphold and affirm that decision.

B. Because The Gross Negligence Exception To Governmental Immunity Contained In MCL 691.1407(2)(c) Does Not Contain Any Language Waiving Immunity For Only Bodily Injury And Property Damage, Loss Of Consortium Damages May Be Recovered Against A Governmental Employee

MCL 691.1407(2)(c) provides there is no immunity for individual acts of gross negligence without regard to the nature of injuries inflicted. Thus, the plaintiffs/appellees contend that the motor vehicle exception to immunity contained in MCL 691.1405 is inapplicable to claims against individuals because the individual immunity statute provides that there is no immunity at all if the employee engaged in grossly negligent conduct.

The defendants/appellants argue that an individual governmental employee cannot be liable where the governmental entity itself is protected by immunity, relying upon the decisions in *Reese v Wayne County*, 193 Mich App 215; 483 NW2d 671 (1992) and *Rose v Mackie*, 22 Mich App 463; 177 NW2d 633 (1970). The Court of Appeals in *Kik I* rejected the defendants' arguments and found that neither *Reese* nor *Mackie* were applicable to the present case. The Court of Appeals indicated that *Reese* does not stand for the proposition that a governmental employee is immune if the governmental entity is immune. Rather, the Court of Appeals in *Kik I* found that if the governmental entity, Wayne County, had no duty to remove a natural accumulation of ice and snow, then it follows that its employee had no such duty either. Thus, while the issue of

immunity was present in *Reese*, the resolution of the issue of liability of the individual employee involved a question of duty, not immunity.

As the Court of Appeals in *Kik I* found, the Legislature set forth when a governmental entity is immune and when it is liable in tort. Similarly, the Legislature set forth when individual governmental employees are immune and when they are liable in tort. The Legislature chose to use different standard to determine the immunity of the governmental entities and the governmental employee. Thus, the language of the statute contained in MCL 691.1407(2) provides for individual liability irrespective of whether the governmental entity enjoys immunity. Therefore, the Court of Appeals in *Kik I* properly held that the gross negligence exception to governmental immunity is an available claim irrespective of whether the governmental entity has immunity, and the plaintiffs/appellees respectfully request that this Court uphold the unanimous Court of Appeals' decision on this issue.

C. The Special Court of Appeals Panel Properly Held That Loss Of Consortium Damages Are Available After Liability Is Established Against A Governmental Entity Under MCL 691.1405, The Negligent Operation Of A Government Vehicle Exception To Immunity

In this action, the special conflict panel addressed the question whether damages for derivative claims such as loss of consortium are available in actions brought pursuant to the motor vehicle exception under MCL 691.1405. In a four (4) to three (3) majority decision, the Court of Appeals' special panel adopted Part III of the *Kik I* opinion and found that damages for derivative claims such as loss of consortium are available under MCL 691.1405.

In *Kik I*, the three member unanimous panel was not convinced that the *Wesche* decision was correctly decided. In *Wesche*, the court held that loss of consortium damages did not constitute bodily injury and property damage and therefore not recoverable under MCL 691.1405. The unanimous panel in the present action set forth its disagreement with the *Wesche* court analysis as follows:

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 condition for which the government does not enjoy immunity: when the negligent operation of a motor vehicle owned by the governmental agency causes bodily injury or property damage. The statute does not limit or otherwise establish the types of damages which are recoverable against 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 arising 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 as to damages, meaning that the plaintiff may recover whatever damages arise from the bodily injury. Once 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).

The defendants/appellants also mistakenly assert that the present panel's analysis creates a threshold of bodily injury for the motor vehicle exception to apply. However, that analysis is flawed as the bodily injury language contained within MCL 691.1405 only applies in the setting of attempting to establish liability against a governmental agency under this specific immunity provision. Once that liability is established (a governmental vehicle was negligently operated), all elements of damages, including loss of consortium, are available. To otherwise hold would read

more into the language of MCL 691.1405 than is contained and would impermissibly limit the types of damages to which plaintiff's are entitled to recover once liability has been established against a governmental agency.

The unanimous Court of Appeals panel in *Kik*, in language that the majority of the special Court of Appeals panel adopted, stated:

To summarize, MCL 691.1405 establishes when the government is liable: whenever the negligent operation of a motor vehicle owned by it causes bodily injury (or property damage). The statute does not limit the recovery of any type of damages which arise out of that bodily injury. Plaintiffs allege in the case at bar that Rebecca Kik was injured due to the negligent operation of a motor vehicle owned by a governmental entity. If that allegation is proven, then the governmental entity is liable under MCL 691.1405. And we believe, it is liable under that statute for any damages which arise from that bodily injury. If Robert Kik proves a loss of consortium, that would be one such type of damage arising from his wife's bodily injury sustained in the motor vehicle accident. Therefore, we conclude that MCL 691.1405 does not limit his right to recover those damages.

In addition, the plaintiffs/appellees incorporate by reference the arguments submitted by the plaintiffs/appellants in the *Wesche* case which is being heard at the same time as the present action. The plaintiffs/appellees respectfully request that this Court uphold the majority decision of the Court of Appeals special panel which adopted Part III of the *Kik I* opinion and allows plaintiffs to seek loss of consortium damage for personal injury actions after liability has been established under MCL 691.1405.

Relief Requested

Wherefore, for the foregoing reasons, the plaintiffs/appellees respectfully request that this Court uphold the majority decision of the special Court of Appeals panel which held that loss of consortium, society, and companionship claims are recoverable after liability has been established pursuant to MCL 691.1405. In addition, the plaintiffs/appellees respectfully request that this Court uphold the Court of Appeals' decision in *Kik I* which held that loss of society, companionship, and consortium damages are permissible as an element of damages under Michigan's wrongful death statute. Finally, the plaintiffs/appellees respectfully request that this Court uphold the unanimous Court of Appeals' decision in *Kik I* which held that consortium damages are allowable in claims brought under the gross negligence exception to governmental immunity for governmental employees or agents under MCL 691.1407(2)(c).

Dated: August 21, 2007

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