



March 30, 2023

Via federal express

Larry Royster
Chief of Staff / Clerk of the Court
Michigan Supreme Court
Lansing, MI 48909

Re: Proposed Amendment of MCR 7.202 and MCR 7.209

Dear Mr. Royster:

The City of Detroit provides the following comments on the proposed amendment.

1. The proposed rule change would be devastating to Detroit.

A federal judge who shall remain anonymous once referred to the City of Detroit, for litigation purposes, as a pinata. Working in the City law department often feels exactly that way. Indeed, since 2019 new lawsuit filings have increased from roughly 500 per year to roughly 750 per year. There currently are some 1,693 open lawsuits against the City.

Many of those lawsuits involve negligence and tort claims that implicate governmental immunity. Sadly, some involve significant injuries.

Currently, the City can immediately appeal denial of a motion to dismiss on grounds of governmental immunity, and the filing of such an appeal stays the trial

court litigation. If those rules are reversed the City will be required – absent the unlikely grant of an interlocutory appeal - to settle or try all cases in which it believes the trial court erroneously denied the City’s motion for summary disposition based on immunity.

That will be a disaster for the City. The reality is, for a variety of reasons, trial judges often default to erroneously finding a “question of fact,” or deny dismissal motions for other erroneous reasons. The other reality is that trial courts are extremely busy and judges take steps to ensure settlement of the vast majority of cases. Further, absent the ability to seek immediate appeal in serious injury cases, the City will often be coerced into settling even when it believes its immunity position is sound – because of the risk of a large verdict and uncertainty of reversal on appeal.

As a result, the City’s litigation pay-outs will inevitably rise significantly. And the rule change will incentivize lawyers to improperly push the envelope on immunity – knowing that settlement will be more likely and higher if the trial court denies dismissal.

The City of Detroit’s law department operates with limited staff. The department does not have the ability, or inclination, to file appeals except in meritorious cases. While the City does not always prevail in such appeals, it often prevails and some representative cases are identified below.

While the City has made significant progress since its exit from bankruptcy, it continues to face serious problems with public safety, transportation, blight, etc. The City has extensively investigated the insurance market. Insurance for the liability claims at issue – if available at all - would be prohibitively expensive and so limited in coverage as to be essentially worthless. Absent insurance, every dollar the City pays on a case which should have been, but was not dismissed because it is barred by immunity, is a dollar the City does not have to raise the pay of police officers or bus drivers, or demolish a dangerous blighted property, etc. The ultimate victims will be City residents – including many impoverished minorities - whose quality of life will continue to suffer as a result.

2. Representative cases.

A. Pre-rule change.

Marcella Weaver, PR of the Estate of Dennis Weaver v City of Detroit, 252 Mich App 239 (2002), was litigated before the 2002 rule change allowing immediate appeal of immunity denial. In *Weaver*, plaintiff's decedent died after being struck by a streetlight which had eroded over time. The trial court erroneously denied the City's summary disposition motion. The City elected to try the case (and lost) in 1998. The Court of Appeals reversed and held that streetlights are utility poles which are not included in the definition of "highway" in the GTLA.

The Court Rules were amended in 2002, giving a party an appeal as of right of an Order denying immunity. Had the City immediately had a right to appeal, it would not have had to try the case and appeal the \$500k + verdict which was ultimately vacated by the appeals court.

Further, as discussed above, if government immunity is not immediately appealable, the City will be coerced in some cases into settling some severe injury cases rather than risk a large jury verdict and face an uncertain appeal.

B. Post-rule change and post-bankruptcy.

The City emerged from Chapter 13 bankruptcy in December 2014. The following are representative cases in which the Court of Appeals reversed denial of the City's summary disposition motion on grounds of governmental immunity:

- *Kelly Dougherty, Ind/PR of the Estate of Kevin McGriff, Jr v Sgt Roger Harper*, 340 Mich 339 (2021). Lawsuit against Detroit fire fighter for failing to locate decedent's body at the scene of a fire.
- *Nicola Binns, by co-Guardians Jeffrey Fried & Eli Binns-Cooley v City of Detroit*, 2021 WL 5976897 (2021), lv den 509 Mich 992 (2022). Lawsuit against City and bus driver after plaintiff bus rider suffered injuries after bus encountered a manhole cover which was not secure, became dislodged and went into the air.
- *Tina Parkman v City of Detroit*, 2017 WL 6624306 (2017), lv den 503 Mich 870 (2018). In *Parkman*, as a City bus approached, Plaintiff opened the door of her rental car into the next lane of traffic, making contact with the right rear wheel well, and right rear quarter panel of the coach, and causing damage to the door of the rental vehicle. Plaintiff alleged that the contact of her door with the coach caused her to suffer injuries.
- *Jojuan Dyson v City of Detroit*, 2017 WL 2200236, (2017), lv den 501 Mich 1087 (2018). In *Dyson* the plaintiff was a passenger on a City bus when the driver suffered a medical emergency and left the roadway. The driver (Cotton) passed away. The COA held that "[f]actual issues do not exist regarding whether Cotton encountered a sudden emergency when operating the bus," and the Supreme Court denied leave.
- *Estate of Lavell Lloyd v City of Detroit*, 2019 WL 6888652 (2019). Plaintiff, the personal representative, claimed it called 911 and no emergency services were dispatched. The Court of Appeals reversed the denial of governmental immunity.
- *Kailee Abner, a minor, by her next friend, Michelle Abner v City of Detroit*, 2019 WL 691692 (2019). This case involved the highway exception to

governmental immunity, MCL 691.1402. Plaintiff's pre-suit notice did not comply with MCL 691.1404(1), but the trial court denied the City's summary disposition motion. The Court of Appeals reversed the denial of summary disposition.

- *Tearria Paton v City of Detroit*, 2016 WL 3541771 (2016). In this case alleging the highway exception to governmental immunity, the Court of Appeals reversed and remanded. The trial court based its order denying summary disposition on MCL 691.1402 and not on MCL 691.1402(a), which substantially amended the former statute for sidewalks, effective March 13, 2012 that was enacted more than two years before Plaintiff's accident.
- *Vivian Ellerbee v City of Detroit*, 2013 WL 2662525 (2013). In this highway defect exception to governmental immunity the Court of Appeals reversed because there was no evidence to show that the highway was defective or had not been maintained.

Very Truly Yours,



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