STATE OF MICHIGAN

IN THE SUPREME COURT

BRIAN ZEZULA,

Plaintiff-Appellee,

v

INDEPENDENCE TOWNSHIP, a Michigan Municipal Corporation,

Defendant-Appellant,

and

NINA BROWN, DTE ENERGY COMPANY, and KALTZ EXCAVATING COMPANY, INC,

Defendants.

Supreme Court No. 168483

COA Docket No. 368261

Cir. Ct. No. 22-197937-NZ

AMICI CURIAE BRIEF OF THE MICHIGAN TOWNSHIPS ASSOCIATION AND THE MICHIGAN MUNICIPAL LEAGUE

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STATEMENT OF APPELLATE JURISDICTION

Amici Curiae, Michigan Townships Association ("MTA") and Michigan Municipal League ("MML"), adopt the Statement of Jurisdiction as contained in Defendant-Appellant Independence Township's Application for Leave to Appeal.[1]

[1] Pursuant to MCR 7.312(H)(5), MTA and MML state that counsel for a party did not author this brief in whole or in part, and no such counsel or party or any other person or entity other that MTA and MML contributed to the preparation and submission of this brief.

STATEMENT OF QUESTIONS PRESENTED

I. **WHETHER THE COURT OF APPEALS ERRED BY FINDING A BROAD EXCEPTION TO GOVERNMENTAL IMMUNITY ALLOWING CIVIL ACTIONS FOR VIOLATIONS OF THE MISS DIG ACT TO BE PURSUED AGAINST A GOVERNMENTAL AGENCY RATHER THAN THE EXCLUSIVE REMEDY OF BRINGING A COMPLAINT BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION UNDER MCL 460.732?**

AMICI CURIAE MTA and MML ANSWERS: "YES"

APPELLANT ANSWERED: "YES"

APPELLEE ANSWERED: "NO"

CIRCUIT COURT ANSWERED: "NO"

COURT OF APPEALS ANSWERED: "NO"

II. **WHETHER AN AMENDMENT TO PLAINTIFF-APPELLEE'S COMPLAINT TO ADD A SEWAGE-DISPOSAL-SYSTEM-EVENT CLAIM IS FUTILE?**

AMICI CURIAE MTA and MML ANSWERS: "YES"

APPELLANT ANSWERED: "YES"

APPELLEE ANSWERED: "NO"

CIRCUIT COURT ANSWERED: "NO"

COURT OF APPEALS ANSWERED: "NO"

INTEREST OF AMICI CURIAE

Background

The Michigan Townships Association is a Michigan non-profit corporation whose membership consists of more than 99% of Michigan's 1,240 townships joined together for the purpose of enhancing the administration of township government services. The Michigan Townships Association, established in 1953, is widely recognized for its expertise regarding municipal issues. Through its legal defense fund, the Michigan Townships Association has participated as amicus curiae in numerous state and federal cases presenting issues of statewide significance to Michigan townships.

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership comprises more than 500 Michigan local governments, of which a substantial percentage are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates its Legal Defense Fund through a board of directors.[2] The purpose of this Legal Defense Fund is to represent the member local governments in litigation of statewide significance.

The Michigan Townships Association and Michigan Municipal League have authorized this amici brief, which is being submitted pursuant to MCR 7.312(H)(1).[3]

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[2] The Board of Directors' membership includes: MML President, Don Gerrie; MML Executive Director, Daniel P. Gilmartin; MML General Counsel, Christopher Johnson; and the MML Legal Defense Fund Board of Directors; Steven D. Mann, City Attorney, Milan; Ebony L. Duff, City Attorney, Oak Park; Lauren Trible-Laucht, City Attorney, Traverse City; Nick Curcio, City Attorney, South Haven, New Buffalo, Allegan; Vincent Duckworth; Suzanne Curry Larsen, City Attorney, Marquette; Amy Lusk, City Attorney, Saginaw; Laurie Schmidt, City Attorney, St. Joseph; Thomas R. Schultz, City Attorney, Farmington, Novi; Rhonda Stowers, City Attorney, Davison.

[3] Pursuant to Michigan Court Rule 7.312(H)(2), the Michigan Townships Association and Michigan Municipal League are associations representing political subdivisions.

Interest of Amici in this case

The Michigan Townships Association and the Michigan Municipal League were both involved in the legislative efforts to enact the Governmental Tort Liability Act ("GTLA"), MCL 691.1401 *et seq*. and the amendments to it regarding the MISS DIG Underground Facility Damage and Safety Act ("MISS DIG Act"), MCL 460.721 *et seq.* Due to the critical importance of governmental immunity to local governments, the Michigan Townships Association and Michigan Municipal League have a vested interest in the correct and consistent interpretation of the GTLA and the MISS DIG Act. This case is of paramount importance to cities, villages and townships across the State who have chosen to provide sewer services.

The construction, operation, and maintenance of a sewer system is a complex and costly process, but one that provides invaluable public benefits to Michigan residents. The Michigan Legislature has indicated in the Public Health Code that "[p]ublic sanitary sewer systems are essential to the health, safety, and welfare of the people of the state."[4] However, the complexity involved in the ownership and operation of a public sewer system inevitably brings with it certain risks and liabilities. Both because of its importance as a public service and its potential to create liability, our Legislature has provided that the ownership and operation of such systems is subject to governmental immunity, with few, narrow exceptions. This immunity is necessary to provide this essential governmental service without risking financial ruin.

The Michigan Townships Association and the Michigan Municipal League, through this brief, aim to highlight the Legislature's purposefully limited exceptions to governmental immunity in the provision of sewer services, its importance to local government, and the interpretive errors made by the Court of Appeals.

[4] MCL 333.12752.

STATEMENT OF FACTS

Amici Curiae adopts the Statement of Facts as contained in Defendant-Appellant Independence Township's Application for Leave to Appeal.

ARGUMENT

I. THE COURT OF APPEALS ERRED BY FINDING A BROAD EXCEPTION TO GOVERNMENTAL IMMUNITY ALLOWING CIVIL ACTIONS FOR VIOLATIONS OF THE MISS DIG ACT TO BE PURSUED AGAINST A GOVERNMENTAL AGENCY RATHER THAN THE EXCLUSIVE REMEDY OF BRINGING A COMPLAINT BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION UNDER MCL 460.732.

A. STANDARD OF REVIEW AND GENERAL RULES OF INTERPRETATION

This Court reviews questions regarding the interpretation of statutes *de novo*.[5] More specifically, "[t]he applicability of governmental immunity is a question of law that is reviewed de novo."[6]

It is alleged that Independence Township failed to mark an underground sewer lead as required by the MISS DIG Act, causing waste and sewage to flow into the Plaintiff's basement when the lead was punctured by Defendant Kaltz Excavating's boring. The Plaintiff added the Township to its Circuit Court complaint against others for the damages incurred. By a majority opinion, the Court of Appeals in *Zezula v Brown*, ____Mich App ____, 2025 WL 777587 (Mich Ct App, March 11, 2025) erroneously held that the Township was not governmentally immune from this complaint. Whether the Township has governmental immunity from this Circuit Court action is a question of law and requires interpretation of the MISS DIG Act and the GTLA.

"The primary goal of statutory interpretation is to give effect to the intent of the Legislature."[7] This Honorable Court has succinctly indicated the general rules for determining the intent of the Legislature in providing that:

> … The words used in the statute are the most reliable indicator of the Legislature's intent and should be interpreted on the basis of their ordinary meaning and the context within which they are used in the statute. In interpreting a statute, this Court avoids a construction that would render any

[5] *Wigfall v City of Detroit,* 504 Mich 330, 337; 934 NW2d 760 (2019).
[6] *Ray v Swager*, 501 Mich 52, 61; 903 NW2d 366 (2017).
[7] *In re MCI Telecom Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999).

> part of the statute surplusage or nugatory. 'As far as possible, effect should be given to every phrase, clause, and word in the statute.' Moreover, the statutory language must be read and understood in its grammatical context. When considering the correct interpretation, the statute must be read as a whole, unless something different was clearly intended. Individual words and phrases, while important, should be read in the context of the entire legislative scheme.[8]

The arguments below will refer to these general rules of interpretation to assist in demonstrating the error of the Court of Appeals interpretation.

B. GOVERNMENTAL IMMUNITY

Although this Honorable Court is no doubt familiar with many of the nuances of governmental immunity, amici believes it important to provide brief background with particular attention to public sewer systems.

Under Michigan law, governmental agencies, including townships, cities and villages, enjoy broad immunity from tort liability. The seminal case of *Ross* v *Consumers Power Co.* (On Rehearing), 420 Mich 567, 618; 363 NW 2d 641 (1984), recognized a theory of broad immunity when carrying out governmental functions with only "narrowly drawn statutory exemptions." The GTLA provides that "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function."[9]

The immunity granted to governmental agencies by the GTLA "is expressed in the broadest possible language."[10] All statutory exceptions must be clearly and explicitly stated and must be narrowly construed. As this Honorable Court has stated: "There is one basic principle that must

[8] *MDEQ v Worth Twp,* 491 Mich 227, 237-38; 814 NW2d 646 (2012) (footnotes omitted).
[9] MCL 691.1407(1).
[10] *Weaver v City of Detroit*, 252 Mich App 239, 244; 651 NW2d 482 (2002).

guide our decision today: the immunity conferred upon governmental agencies is *broad*, and the statutory exceptions thereto are to be *narrowly* construed."[11]

Although this principle is clear, it is helpful to understand the underlying purposes behind it. In *Nawrocki*, this Honorable Court, quoting *Ross,* stated:

> Governmental immunity is the public policy, derived from the traditional doctrine of sovereign immunity that limits imposition of tort liability on a governmental agency…. Under the governmental tort liability act, … governmental agencies are immune from tort liability when engaged in a governmental function. Immunity from tort liability … is expressed in the broadest possible language - it extends immunity to all governmental agencies for *all* tort liability whenever they are engaged in the exercise or discharge of a governmental function.[12]

Additionally, *Nawrocki* addressed the "clear legislative judgment that public and private tortfeasors are to be treated differently," quoting *Ross* further:

> Government cannot merely be liable as private persons are for public entities are fundamentally different from private persons. Private persons do not make laws. Private persons do not issue and revoke licenses to engage in various professions and occupations. Private persons do not quarantine sick persons and do not commit mentally disturbed persons to involuntary confinement. Private persons do not prosecute and incarcerate violators of the law or administer prison systems. Only public entities are required to build and maintain thousands of miles of streets, sidewalks and highways. Unlike many private persons, a public entity cannot often reduce its risk of potential liability by refusing to engage in a particular activity, for government must continue to govern and is required to furnish services that cannot be adequately provided by any other agency. Moreover, in our system of government, decision-making has been allocated among three branches of government - legislative, executive and judicial - and in many cases decisions made by the legislative and executive branches should not be subject to review in tort suits for damages, for this would take the ultimate decision-making authority away from those who are responsible politically for making the decisions.[13]

Nawrocki continues with a critically important point:

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[11] *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000) (emphasis in original).
[12] *Nawrocki*, 463 Mich, 155-156 (internal citations omitted).
[13] *Nawrocki*, 463 Mich, 156-157, citing *Ross*, 420 Mich, 618-619.

> Because immunity necessarily implies a "wrong" has occurred, we are cognizant that some tort claims, against a governmental agency, will inevitably go unremedied. Although governmental agencies may be under many duties, with regard to services they provide to the public, only those enumerated within the statutorily created exceptions are legally compensable if breached.[14]

This proposition is sometimes difficult to accept when harm comes at the hands of a governmental agency. But the purposes underlying governmental immunity are steadfast.

C. SEWER SYSTEMS AND GOVERNMENTAL IMMUNITY

The provision of a public sewer system falls well within the above concepts regarding governmental immunity. Our Legislature has acknowledged that:

> Public sanitary sewer systems are essential to the health, safety, and welfare of the people of the state. Septic tank disposal systems are subject to failure due to soil conditions or other reasons. Failure or potential failure of septic tank disposal systems poses a threat to the public health, safety, and welfare; presents a potential for ill health, transmission of disease, mortality, and economic blight; and constitutes a threat to the quality of surface and subsurface waters of this state. The connection to available public sanitary sewer systems at the earliest, reasonable date is a matter for the protection of the public health, safety, and welfare and necessary in the public interest which is declared as a matter of legislative determination.[15]

In most cases, the creation, ownership, and operation of public sanitary sewer systems rests entirely on cities, villages and townships. Public sewer systems can cost anywhere from tens to hundreds of millions of dollars to create. They require countless pieces of large-scale infrastructure: treatment plants, interceptors and transmission mains, lift stations, and laterals in the public right of ways.[16] Lines can stretch for miles, requiring coordination between dozens of

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[14] *Nawrocki*, 463 Mich, 157, citing *Ross*, 420 Mich, 618-619

[15] MCL 333.12752.

[16] There are also service leads that are located on private property and connect from the lateral in a public right of way or public easement to the building emanating the sewage. In most cases this service lead is not owned and maintained by the local governmental entity but rather is installed, owned, and maintained by the property owner. This issue may have bearing on this case if the Court of Appeals decision is not reversed as discussed herein.

government agencies and other utilities. Building or modifying a sewer system takes years of planning. In addition to this infrastructure, dozens or hundreds of public employees and contractors are required to keep the system operational for the many decades it may exist.

The complexity and expense of a public sewer project is precisely the type of essential governmental function that the Legislature and the courts have sought to protect through governmental immunity. Sewer systems are of unquestionable benefit to the public, and the government should be able to carry out this important function without fear of constant litigation and the risk of financial ruin from tort liability.

With respect to this case, the Legislature has considered these important factors and has crafted narrow exceptions to governmental immunity in the ownership and operation of public sewer systems under the GTLA and the MISS DIG Act. The Court of Appeals failed to properly, and narrowly, construe these exceptions to immunity.[17]

D. LEGISLATIVE AMENDMENTS REGARDING GOVERNMENTAL IMMUNITY AND THE MISS DIG ACT.

The MISS DIG Act has not always provided a narrow exception for governmental immunity. Under a prior version of the MISS DIG Act, the Court of Appeals was asked to consider whether governments were immune under MISS DIG. *State Farm Fire & Cas Co v Corby Energy Servs*, 271 Mich App 480; 722 NW2d 906 (2006). In *State Farm Fire*, it was alleged that the City of Detroit did not properly mark its water main as required under MISS DIG. When fiber optic line conduit was being installed underground, the contractors struck and damaged the unmarked

[17] *Nawrocki*, 463 Mich, 158.

water main.[18] The water main then flooded the home of the plaintiff.[19] The Court of Appeals determined that the operation of the City's water and sewer department was a governmental function, and the City was immune from liability under the GTLA unless an exemption applied.[20] The Court of Appeals recognized that other statutes could waive governmental immunity.[21] In its analysis of the MISS DIG legislation at that time, the Court of Appeals determined that:

> Because the immunity provided by the GTLA is broad and its exceptions are to be narrowly construed, ... we hold that the MISS-DIG act does not waive or abrogate the immunity provided by the GTLA, either expressly or by necessary inference from the statute.[22]

This case spawned extensive discussions regarding whether and to what extent local governmental immunity should apply under MISS DIG. Just a few years later, the Legislature considered the amendments now in effect as tie-barred Senate Bills 539 and 540, later enacted as Public Acts 173 and 174 of 2013.[23] Public Act 173 amended the GTLA to add a new subsection (7) to MCL 691.1407. This new subsection provides that "[t]he immunity provided by this act does not apply to liability of a governmental agency under the MISS DIG underground facility damage prevention and safety act."

Public Act 174 repealed the prior MISS DIG legislation[24] and replaced it with the new MISS DIG Act. Public Act 174, section 12 (MCL 460.732) addresses governmental liability for

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[18] *State Farm Fire & Cas Co*, 271 Mich, 482.
[19] *Id.*
[20] *Id.*, 483, 484. See also MCL 691.1407(1) providing that "[e]xcept as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function."
[21] *Id.*, 491.
[22] *Id.*
[23] "Tie-barred statutes are statutes which do not become operative until the happening of a contingency, the passage of another statute." OAG 1979-1980, No 5478, p 129 (April 4, 1979).
[24] 1974 PA 53.

violations of the MISS DIG Act. These statutes must therefore be read together, as part of a single legislative scheme.

E. THE COURT OF APPEALS MISINTERPRETED THE EXCEPTION TO GOVERNMENTAL IMMUNITY IN THE GTLA AND THE LIABILITY UNDER THE MISS DIG ACT.

The Court of Appeals plainly erred in its broad interpretation of the exception to governmental immunity in the GTLA and the liability of a governmental agency under the MISS DIG Act. The Court began its analysis with the added exception to the GTLA, which provides: "The immunity provided by this act does not apply to liability of a governmental agency under the MISS DIG underground facility damage prevention and safety act."[25]

Thus is the beginning, and largely the end, of the Court of Appeals' core analysis, as the Court states that its "statutory interpretation need not go further--the GTLA has a broad exception to immunity for violations of MISS DIG."[26] The Court discards, without reference, the core principle that "immunity conferred upon governmental agencies is *broad*, and the statutory exceptions thereto are to be *narrowly* construed."[27] Furthermore, the specific language of the GTLA requires that the court extend its analysis at least to the MISS DIG Act.

The tie barred GTLA amendment and the MISS DIG Act must be read together to determine the intended legislative scheme. The GTLA amendment was not drafted in a vacuum, as the Court of Appeals seemingly interprets. Instead, it was tie-barred to the amended MISS DIG Act, and limited the exception to be only for liability under the MISS DIG Act. In other words, only to the extent that the MISS DIG Act explicitly waives that immunity.

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[25] MCL 691.1407(7); added by 2013 PA 173.
[26] *Zezula*, *4.
[27] *Nawrocki,* 463 Mich, 158 (emphasis in original).

Although the Court of Appeals looks very briefly at the MISS DIG Act to support its conclusion, it again misconstrues plainly stated statutory language evidencing legislative intent.

The exception to immunity in MCL 691.1407(7) of the GTLA applies only to liability of a governmental agency under the MISS DIG Act. This liability (legal responsibility) is specifically addressed within the MISS DIG Act, in a section entitled "Governmental liability," MCL 460.732. Most importantly, this section on governmental liability begins with a limiting sentence that provides: "Except as provided in this section, this act [MISS DIG] does not affect the liability of a governmental agency for damages for tort or the application of 1964 PA 170, MCL 691.1401 to 691.1419." (emphasis added).

Reading MCL 691.1407(7) and this section together, it is clear that the broad grant of governmental immunity is only waived to the extent described in MCL 460.732. Except as provided in MCL 460.732, the broad grant of governmental immunity, specifically "for damages for tort," continues to apply. Stated another way, MCL 691.1407(7) only waives immunity for a governmental agency's liability under the MISS DIG Act, and the MISS DIG Act does not affect tort liability or the GTLA except for as provided in MCL 460.732. The Legislature's common understanding of governmental liability and past interpretations by this Court all require exceptions to immunity to be "*narrowly* construed."[28] This is also in line with the Legislative history of the two amendments, which were tie-barred. The Legislature did not want one to take effect without the other, as that would defeat the purpose behind both amendments. They must therefore be read together, as a common scheme.

[28] *Nawrocki, 463* Mich, 158.

MCL 460.732(2) goes on to describe the sole exception to governmental immunity contemplated by the MISS DIG Act: "A facility owner or a facility operator may file a complaint with the commission seeking a civil fine and, if applicable, damages from a governmental agency under this section for any violation of this act."

The remainder of the section provides a measured approach to a governmental agency's liability for violations of the MISS DIG Act. Unlike the Court of Appeals approach, which allows for virtually limitless liability under the MISS DIG Act, MCL 460.732(3) provides an incremental penalty system for violations:

> (3) After notice and a hearing on a complaint under subsection (2), the commission may order the following, as applicable:
>
> (a) If the commission has not issued an order against the governmental agency under this section within the preceding 12 months, a civil fine of not more than $5,000.00. In determining the amount of the fine, the commission shall consider the factors in section 11(2).
>
> (b) If the commission has issued an order under subdivision (a) against the governmental agency within the preceding 12 months, both of the following:
>
> (i) A civil fine of not more than $10,000.00. In determining the amount of the fine, the commission shall consider the factors in section 11(2).
>
> (ii) That the governmental agency provide at its expense underground facility safety training to all its personnel involved in underground utility work or excavating.
>
> (c) If the commission has issued an order under subdivision (b) against the governmental agency within the preceding 12 months, both of the following:
>
> (i) A civil fine of not more than $15,000.00. In determining the amount of the fine, the commission shall consider the factors in section 11(2).
>
> (ii) If the violation of this act by the governmental agency caused damage to the facilities of the facility owner or facility operator, that the governmental agency pay to the owner or operator the cost of repair of the facilities.

More simply stated, the MISS DIG Act provides a civil fine system that incrementally increases with each violation within a year, and after the third complaint, the governmental agency may be liable for tort damages in an amount necessary to repair the damage the agency caused to

other facilities. The complaint-based process to the Michigan Public Service Commission contained in MCL 460.732 is the sole remedy to bring a claim for governmental liability as permitted in the amendment to the GTLA. MCL 691.1407(7).

There is scarcely an implication of a waiver of general tort liability, let alone any explicit waiver that would generally be required for an abrogation to the extent contemplated by the Court of Appeals. The imposition of general tort liability for all MISS DIG violations would completely undermine not only the plain Legislative language of the two amendments, but also the underlying purposes behind governmental immunity. The potential liability and risk for a local government in its public sewer operations would be detrimental to the successful operation of the system. Indeed, it may result in municipalities rejecting proposals for public sewer systems, despite their obvious public health benefits.

Consider also that there is already a carefully drafted and measured approach to sewer backup liability under MCL 691.1416-.1419.[29] This narrow exception, like that contained in MCL 460.732, establishes a Legislative intent to create limited exceptions to immunity as it relates to sewer systems, and even where an exception is made, a careful process is established to ensure that municipalities can continue to provide these services.

The Court of Appeals points to MCL 460.731(3) as proof that the commission-complaint process is not the exclusive remedy against a governmental agency. MCL 460.731(3) provides that "[a] complaint filed under subsection (2) does not limit a person's right to bring a civil action to recover damages that person incurred arising out of a violation of the requirements of this act." However, the Court of Appeals failed to recognize an important part of that immediately preceding subsection (2), which states that "a person, other than a governmental agency, who violates any of

[29] See Section II below for further discussion of this provision.

the provisions of this act may be ordered to pay a civil fine…" MCL 460.731(2). MCL 460.731, as a whole, is plainly intended to discuss and apply to private, non-governmental actors who commit violations of the MISS DIG Act. Hence the inclusion in the statute of MCL 460.732, immediately following 460.731, which is titled "Governmental liability" and describes the exclusive remedy of commission-complaint. Had the Legislature intended to also allow civil tort actions against governmental entities, it could have easily included that language in MCL 460.732, as it had done for all other entities in MCL 460.731. But such was not the Legislature's intent, and instead the Legislature provided that "[e]xcept as provided in [MCL 460.732], this act does not affect the liability of a governmental agency for damages for tort or the application of [the GTLA]." MCL 460.732(1).

II. AN AMENDMENT TO THE COMPLAINT TO ADD A CLAIM UNDER THE SEWAGE DISPOSAL EVENT EXCEPTION WOULD BE FUTILE.

Finally, the Court of Appeals erred in holding that that the Plaintiff-Appellant could amend its complaint to add a claim against Independence Township under the sewage disposal event exception to governmental immunity, MCL 691.1416-.1419. The sewage disposal event exception does not apply in this case, and this Honorable Court should reject the futile amendment to the complaint on this basis.

As discussed thoroughly above, exceptions to governmental immunity should be construed narrowly.[30] MCL 691.1417 does provide a narrow exception to governmental immunity for a "sewage disposal system event" by an "appropriate governmental agency" when appropriate procedures are used to make a claim. MCL 691.1417 also states that it "...provide[s] the sole

[30] *Nawrocki*, 463 Mich, 158.

remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory."

The "appropriate governmental agency" is defined as "a governmental agency that, at the time of a sewage disposal system event, owned or operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage or physical injury." MCL 691.1416. This language requires ownership or control over the portion of the sewage disposal system that allegedly caused the damage. A governmental agency cannot be liable for any portion of the sewage disposal system that it does not control.

Independence Township's Sewer Ordinance provides in relevant part that "[a]ll new sanitary sewer systems, except individual building sewers, […] shall be owned, operated and maintained by the governing community."[31] Independence Township's Ordinance 48-53 defines the "building sewer" as "the extension from the building drain to the public sewer or other place of disposal. Also called house connection."[32]

The portion of line at issue in this case was an individual building sewer, precisely the type of line the Township does not own, operate, or maintain. Independence Township's sewer ordinance is not unusual in this way: the majority of sewer systems in the State of Michigan follow this division of ownership and maintenance obligations.[33] The municipality constructs the main portions of the sewer system underneath public roadways or public easements. It is the property

[31] Independence Township's APPX_89-102 (emphasis added).
[32] *Id.*
[33] See for example: City of Grand Rapids Code of Ordinances, Title II, Chapter 27, Article 11, Sec 2.109: "The property owner shall maintain, at his/her expense, the sewer lateral to insure continuous flow of sewage from the structure to the local collector, trunk or interceptor sewer, and shall be responsible for replacement of lateral sections existing between the structure and the property line or public easement boundary. The City shall be responsible only for the replacement of lateral sewers existing within the street right-of-way or public easement."

owners' responsibility to connect their own home (or other building) to that public sewer system. This connection from the home to the street can also be referred to as the "building sewer," or in the case of the GTLA, a "service lead."[34]

In other words, the ownership of the underground sewer aligns with the owner of the property onto which that sewer line is placed. The municipality is responsible for lines it constructed underneath and adjacent to public rights of way or public easements, and the property owner is responsible for lines they installed on their own property. The GTLA's exception to governmental immunity follows this track, providing that a sewage disposal system means:

> ... all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, and includes a storm water drain system under the jurisdiction and control of a governmental agency.[35]

Further the GTLA defines the service lead as: "an instrumentality that connects an affected property, including a structure, fixture, or improvement on the property, to the sewage disposal system and that is neither owned nor maintained by a governmental agency.[36]

The service lead in the present case is not part of the public sewage disposal system. It is located entirely on the plaintiff's property, was installed at the plaintiff's expense and by the plaintiff's contractor, and is not maintained by the Township. The portion of the system owned by the Township did not cause any property damage. Instead, the contractor drilled though the plaintiff's sewer lead causing the sewer backup damage into the plaintiff's basement. Exceptions to governmental immunity are to be narrowly drawn. The Legislature's language in the sewage

[34] "Service lead means an instrumentality that connects an affected property, including a structure, fixture, or improvement on the property, to the sewage disposal system and that is neither owned nor maintained by a governmental agency." MCL 691.1416(i).
[35] MCL 691.1416(j).
[36] MCL 691.1416(i).

disposal system event exception does not indicate an intention to hold municipalities responsible for defects in a service lead.

Another provision of the GTLA further precludes liability. Liability under the GTLA for a sewer back up can only occur if the sewage disposal system had a defect.[37] A defect is defined as "a construction, design, maintenance, operation, or repair defect."[38] In this case, the Township did not and could not cause a maintenance or operational defect on a portion of the service line that it does not own, operate, or control. The marking of the location of the service line is not maintenance or operation defect, because it has no bearing on the physical line itself. The "defect" in this case was the hole in the service line which was inflicted by the drilling contractor. It was not a failure by the Township to maintain or operate its system.

CONCLUSION

Exceptions to governmental immunity are to be narrowly drawn. The Court of Appeals read the GTLA and the MISS DIG Act in the opposite manner: creating a broad waiver of immunity where none was intended. For these reasons, we ask this Honorable Court to grant leave and reverse the decision of the Court of Appeals.

Respectfully submitted,

BAUCKHAM, THALL, SEEBER,
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Dated: September 22, 2025

By: /s/*Robert E. Thall*
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[37] MCL 691.1417(3)(b).
[38] MCL 691.1416(e).

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in MCR 7.212. I certify that this document contains 5,208 countable words as calculated by the word process program used in its creation. The document is set in Times New Roman, and the text is 12-point 2.0 spaced type.

Respectfully submitted,

By: /s/ *Robert E. Thall*

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