

STATE OF MICHIGAN
IN THE SUPREME COURT

AUDREY WEST and RANDALL
WEST,

Plaintiff-Appellees,

vs.

Supreme Court No. 161948
Court of Appeals No. 348452
Court of Claims No. 18-236-MZ

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES, ANDREA
ALBERT, and STEVE BUTZIN,

Defendant-Appellants.

**PLAINTIFF-APPELLEE'S RESPONSE TO DEFENDANT-APPELLANT'S
SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO
APPEAL**

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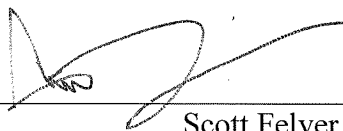
EXHIBIT 1

AFFIDAVIT OF SCOTT FELVER

I, Scott Felver I am competent to give the following declaration based on my personal knowledge, and that the following statement is true and correct to the best of my knowledge:

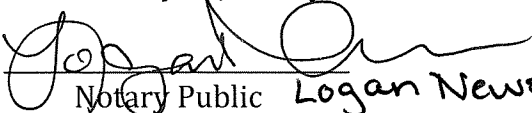
I was 1 of a group of 9 or 10 people who went snowmobiling on the date of this incident. Randy and Audrey West were also in that group. Everyone was riding the Jordan Valley road from Alba to East Jordan and we were on PennyBridge Rd. I was the lead rider of the group. As I came around the corner of a 90° turn to my left, I saw 2 snow machines heading towards me from the opposite direction at a high rate of speed. They were going extremely fast and at a speed much greater than was safe for the conditions. They were staggered in the middle of the road so they were taking up both sides of the road. I was forced completely off the groomed trail to avoid getting hit by them. When they came close I saw the machines were owned by the DNR and ridden by Conservation Officers. I waved my arms at them as they went by to tell them to "slow down" as the rest of my group was coming from behind me around the corner. They almost hit me. The DNR officers never slowed down, despite seeing me and waving my arms to tell them to slow down.

I declare that, to the best of my knowledge and belief, the information herein is true, correct and complete.



Scott Felver

Subscribed and sworn to before me
this 18th day of January 2019.



Notary Public Logan Newson
Antrim County, MI
My Commission Expires: 10-25-2022

LOGAN NEWSON
Notary Public, State of Michigan
County of Antrim
My Commission Expires 10-25-2022
Acting in the County of Antrim

EXHIBIT 2

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

AUDREY WEST, and
RANDY WEST,

Plaintiffs,

v.

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES, ANDREA
ALBERT, and STEVE BUTZIN,

Defendants.

Case No. 18-~~000234~~-MZ
Hon. Borrello

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JONATHAN R. MARKO (P72450)
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There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a Judge in this Court.

COMPLAINT

NOW COME the Plaintiffs, Audrey West and Randy West, by and through their attorneys, Marko Law, PLC, and for their Complaint against the above-named Defendants, state as follows:

COMMON ALLEGATIONS

1. At the time of the filing of this Complaint, Plaintiff Audrey West (“Audrey”) is/was a resident of the City of Grayling, County of Crawford, State of Michigan.

2. At the time of the filing of this Complaint, Plaintiff Randy West (“Randy”) is/was a resident of the City of Grayling, County of Crawford, State of Michigan.

3. That Defendant State of Michigan is a “Governmental Agency” appropriately defined by the Governmental Liability Statute, to wit: MCL § 691.1401(a) and Plaintiff in this matter is pleading facts in avoidance of governmental immunity pursuant to that statute as well as, more specifically, MCLA § 691.1405, which holds a Governmental Agency, including the Michigan Department of Natural Resources, (hereinafter, “MDNR”) liable for bodily injury and/or property damage resulting from the negligent operation of a motor vehicle of which the governmental agency is an owner by any officer, agent, or employee of the governmental agency.

4. At the time of the filing of this Complaint, Defendant Andrea Albert is/was a resident of the City of Rapid City, County of Antrim, State of Michigan, and worked as a conservation officer for Defendant MDNR.

5. At the time of the filing of this Complaint, Defendant Steve Butzin is/was a resident of the City of Hale, County of Iosco, State of Michigan, and worked as a conservation officer for Defendant MDNR.

6. The amount in controversy herein exceeds the sum of twenty-five-thousand (\$25,000.00) dollars, exclusive of costs, interest, and attorney’s fees.

7. On or about January 6, 2018, at or about 12:30pm, Plaintiffs Audrey and Randy West were riding on a snowmobile, with Randy driving the snowmobile and his daughter Audrey riding on the back, and were lawfully travelling on Pinney Bridge Road, approximately 2.8 miles east of M-66 in Chestonia Township, Antrim County, State of Michigan.

8. On or about January 6, 2018, at or about 12:30pm, Defendants Albert and Butzin, while on duty in their positions as MDNR conservation officers, were each driving Michigan Department of Natural Resources owned snowmobiles, and were driving in the wrong direction at a high rate of speed on Pinney Bridge Road, taking up Mr. West's lane.

9. As a result of Defendants' presence in Plaintiff's driving lane, Plaintiff Randy was forced to slam on his brakes so as to avoid colliding with Defendants.

10. The snowmobile carrying Plaintiffs went off the edge of the road, into the trees, and ultimately landed in the Jordan River, on top of Plaintiff Randy.

11. Plaintiff Audrey was later found unconscious, face down in the Jordan River, hung over a log.

12. Plaintiff Randy was later found trapped under his snowmobile and completely submerged under water, until a citizen was able to free him.

13. That as a result of Defendants' negligence, Plaintiffs sustained severe and serious personal injuries. Plaintiff Audrey suffered injuries including, but not limited to, a traumatic brain injury, damage to her teeth, a chipped T-6 vertebra, as well as other injuries and damages to be discovered through the course of litigation. Plaintiff Randy suffered injuries included, but not limited to, a cracked T-3 vertebra, leg injury, 40% loss of vision in his right eye, injury to his wrists, as well as other injuries and damages to be discovered through the course of litigation.

14. That at all times pertinent hereto, Defendants Albert and Butzin were servants, agents, and/or employees of Defendant MDNR acting within the scope of his employment.

15. At the above mentioned time and place, Defendant MDNR was the owner of certain snowmobiles, and had given permission, tacitly or otherwise, for Defendants Albert and Butzin, to drive the subject vehicles.

16. As owner of the above-mentioned vehicles being driven by Defendants Albert and Butzin, Defendant State of Michigan – MDNR remains liable for bodily injuries resulting from the negligent and/or grossly negligent operation of a motor vehicle by any permissive user of vehicles they own: MCL § 257.401, MCL § 691.1405, and Sections 29 and 30 of the Motor Carrier Act of 1980, 49 USC 13901, *et seq.*

17. This action is brought pursuant to the provisions of MCL § 600.6431, and MCL § 691.1405 for bodily injury resulting from the negligent operation of a motor vehicle by an employee of a governmental agency which governmental agency, SOM-MDNR, is the owner.

18. Pursuant to MCL § 600.6475, Defendants in the ownership or operation of a motor vehicle are not entitled to use the defense of “governmental function” as a defense to this negligence action.

19. That on or about May 2, 2018, Plaintiffs pursuant to MCLA 691.1406, notified Defendants by a signed Verified Notice of Intention to File a Claim of the location, the nature of the collision, the injuries sustained, that the Defendant SOM-MDNR was the known owner of the vehicle at the time, and that Defendants Albert and Butzin were the vehicle operators and governmental employees. Each Plaintiff executed and verified the claim per the statute.

COUNT I – NEGLIGENCE & GROSS NEGLIGENCE
(As to Defendants Albert and Butzin)

20. Plaintiffs incorporate by reference all aforementioned paragraphs as though fully set forth herein.

21. On or about January 6, 2018, at or about 12:30pm, Plaintiff Randy West was driving his snowmobile, with his daughter Plaintiff Audrey West riding on the back, when Defendants Butzin and Albert were driving at a high rate of speed in the opposite direction on the wrong side of the same trail as Plaintiffs, causing Plaintiffs' vehicle to leave the roadway injury Plaintiffs Audrey and Randy West.

22. At the aforementioned time and place Defendants Butzin and Albert carelessly, negligently, and recklessly drove in the wrong direction at a high rate of speed as Plaintiffs, thereby causing each Plaintiff to incur severe permanent injuries as set forth hereinafter.

23. Defendants Albert and Butzin, while operating a vehicle upon the public trail of Pinney Bridge Road in Chestonia Township, Antrim County, State of Michigan, owed certain duties and responsibilities to operate said vehicle in a lawful, careful, and prudent manner, with due diligence and regard for other vehicles and persons lawfully upon said roadways.

24. Defendants Butzin and Albert negligently, carelessly, and recklessly breached said duties and responsibilities in the following manner, including but not limited to:

- a. Operating said motor vehicle at a high rate of speed, greater than would permit Defendants to stop said vehicle within the assured, clear distance ahead, taking into consideration prevailing road, weather, traffic, and any and all other conditions then and there existing, in violation of MCL 257.627 and appropriate amendments thereto;
- b. Operating said motor vehicle at a dangerous and illegal speed so as to endanger the person and property of others upon the highway, and Plaintiff in particular, contrary to MCL 257.627 and appropriate amendments thereto;
- c. Driving without due care and caution and in a manner so as to endanger vehicles and individuals, and Plaintiff in particular, by failing to keep said vehicle under control so as to avoid a collision contrary to MCL 257.626(b);

- g. Severe physical pain and suffering;
- h. Severe shock and injury to the nervous system;
- i. Other damages and injuries to be determined through discovery.

27. As a direct and proximate result of the carelessness, negligence, and recklessness of Defendants, Plaintiff Randy West was thrown from his snowmobile, knocked unconscious, and sustained serious, permanent injuries and a permanent impairment of body function, including, but not limited to:

- a. Cracked T-3 vertebrae;
- b. Leg injury;
- c. Forty (40) percent loss of vision in his right eye;
- d. Injury to his wrists;
- e. Physical pain, chronic pain, and suffering;
- f. Severe physical pain and suffering;
- g. Severe shock and injury to the nervous system;
- h. Other damages and injuries to be determined through discovery.

28. Prior to the occurrence of this collision, each of the Plaintiffs were reasonably strong and healthy, engaged in the normal activities of life.

29. As a direct and proximate result of the negligence of Defendants, an objectively manifested impairment of an important body has affected each Plaintiff's general ability to lead their normal life.

30. As a direct and proximate result of the negligence of Defendants, Plaintiffs have suffered, and will continue to suffer in the future, pain, humiliation, permanent scarring,

disfigurement, mental anguish, embarrassment, gross indignity, and inconvenience because of the permanent nature of said injuries.

31. As a direct and proximate result of the negligence of Defendants, Plaintiffs were forced to seek care and treatment from hospitals, physicians, and specialists; Plaintiffs have expended large sums of money for said care and treatment and will continue to expend such sums in the future.

32. As a direct and proximate result of the negligence of Defendants, and the injuries sustained, Plaintiffs have suffered the loss of enjoyment of life and are unable to indulge in those normal daily and recreational activities indulged in prior to the occurrence of this incident.

33. At the time of the occurrence of this incident, Plaintiff Randy was remuneratively employed and have sustained considerable wage loss and will continue to sustain such wage loss in the future.

WHEREFORE, Plaintiffs pray this Honorable Court enter its Judgment against Defendant for whatever amount in excess of twenty-five-thousand (\$25,000.00) dollars to which Plaintiffs may be found to be entitled by the trier of fact, together with costs, interest, and attorney's fees so wrongfully incurred.

COUNT II – OWNERSHIP LAIBILITY AND VICARIOUS LIABILITY
(As to Defendant MDNR)

34. Plaintiffs incorporate by reference all aforementioned paragraphs as though fully set forth herein.

35. At all relevant times, Defendant MDNR was the owner of both snowmobiles being operated by Defendants Albert and Butzin.

36. Upon information and belief, Defendants Albert and Butzin had the express and/or implied consent and permission to use the snowmobile that he/she was driving at the time of each collision.

37. At all times relevant to this Complaint, Defendants Albert and Butzin were acting within the scope and course of their employment and, therefore, Defendant MDNR is liable for injuries and damages sustained by Plaintiffs by virtue of respondeat superior and/or vicarious liability.

38. Pursuant to Michigan law, Defendant MDNR remains liable for bodily injuries resulting from the negligent and/or grossly negligent operation of a motor vehicle by any permissive user of vehicles they own: MCL §257.401, MCL §691.1405, and Sections 29 and 30 of the Motor Carrier Act of 1980, 49 U.S.C. 13901, *et seq.*

39. That as the direct and proximate result of the ownership liability and vicarious liability of Defendants as alleged herein, Plaintiffs have sustained a variety of serious permanent injuries, including, but not limited to injuries, as stated in COUNT I above.

WHEREFORE, Plaintiffs pray this Honorable Court enter its Judgment against Defendants, for whatever amount in excess of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS to which Plaintiffs may be found to be entitled by the trier of fact, together with costs, interest and attorney fees so wrongfully incurred.

COUNT III – NEGLIGENT ENTRUSTMENT/GROSS NEGLIGENCE
(As to Defendant State of Michigan - MDNR)

40. Plaintiffs incorporate by reference all aforementioned paragraphs as though fully set forth herein.

41. Upon information and belief, Defendant, State of Michigan - MDNR, had the opportunity to train, observe and have knowledge of Defendants Albert and Butzin's driving practices and habits.

42. On January 6, 2018, Defendant State of Michigan - MDNR allowed their snowmobiles to be entrusted to Defendants Albert and Butzin, with MDNR's express or implied consent and/or knowledge.

43. At all times relevant, Defendant MDNR knew or reasonably should have known that by allowing Defendants Albert and Butzin to drive the above described snowmobiles that they would likely be involved in a traffic accident.

44. Given Defendant Butzin and Albert's driving habits, improper training, and driving history, it was foreseeable that they would cause a motor vehicle accident, and specifically would cause Plaintiffs to suffer a motor vehicle accident.

45. Defendant MDNR owed a duty to the general public and Plaintiffs not to negligently and/or grossly negligently allow their snowmobiles by Defendants Butzin and Albert without proper training, due care and caution, and not to allow said vehicle to be operated in such a manner so as to endanger the general public and, specifically, the Plaintiffs' health, life, and property, in violation of the motor vehicle codes of the State of Michigan and the common law.

46. Contrary to the duties owed to Plaintiff, Defendant MDNR negligently and/or gross negligently breached these duties by allowing the above-mentioned snowmobiles to be operated by persons who Defendant knew or should have known would operate the vehicle in a careless, reckless, or incompetent manner, in violation of the motor vehicle codes of the State of Michigan and the Common Law.

47. That as the direct and proximate result of Defendant MDNR entrustment of the above-mentioned snowmobiles to Defendants Albert and Butzin, Plaintiffs sustained a variety of serious, severe, and permanent injuries, including but not limited to the injuries more fully stated above in Count I.

WHEREFORE, Plaintiffs pray this Honorable Court enter its Judgment against Defendants, for whatever amount in excess of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS to which Plaintiffs may be found to be entitled by the trier of fact, together with costs, interest and attorney fees so wrongfully incurred.

Respectfully submitted,


Jonathan R. Marko (P72450)
Ernst & Marko Law, PLC
Attorney for Plaintiff
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Detroit, Michigan 48226
Phone: (313) 965-5555
Fax: (313) 965-5556
jon@ernstmarkolaw.com

Dated: 10/16/18

PROOF OF SERVICE

I hereby certify that on October 16, 2018, I presented the foregoing paper to the Court via U.S. Regular Mail.

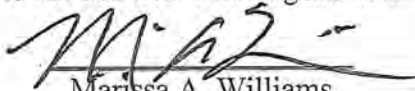

Marissa A. Williams

EXHIBIT 3

DANIEL G. LEE, Ph.D.

DANIEL LEE, Ph.D. ACCIDENT RECONSTRUCTION, INC.

5445 NORTH OKEMOS ROAD * EAST LANSING, MICHIGAN 48823

HOME OFFICE: (517) 349-7070 * MSU OFFICE (517) 355-7070 * CELLULAR: (517) 881-7070

E-MAIL: danleephd@msn.com

PROFESSIONAL RESUME

Daniel G. Lee, Ph.D., (*PhD from Michigan State University*), has over forty (40) years of professional involvement as a faculty member, researcher, trainer, course designer and developer, private and public consultant, and served as a police officer.

Faculty, Michigan State University, Civil & Environmental Engineering, Highway Traffic Safety Programs, 2857 W. Jolly Road, Okemos, Michigan 48864. Director of Accident Investigation and Motorcycle Operator Training, Research and Development. Develop and teach police traffic services courses/training programs to police officers, traffic engineers, attorneys and insurance representatives. Most frequent offerings involve teaching and administration of accident investigation, reconstruction and police and civilian motorcycle courses throughout Michigan (see attached course listing). Some courses are under contract to Michigan Office of Highway Safety Planning, Michigan Justice Training Commission and to community colleges and universities. Occasionally team-teach or guest lecture in various criminal justice and MSU Detroit College of Law. Frequently assigned to assist police departments and prosecuting attorneys to reconstruct fatal and personal injury accidents for criminal prosecution. Full time faculty member since 1974.

While I recently retired from full time service as a faculty member at Michigan State University, College of Environmental Engineering; I have maintained the same obligations and responsibilities for the past twelve (12) years, I have served and continue to serve as the Director of the Highway Traffic Safety Programs (MSU-HTSP). I have been a faculty member at Michigan State University for in excess of thirty (30) years.

Consultant to the United States Air Force to review criminal and civil cases involving military personnel at Air Force bases in the United States and foreign countries.

Instructor, Course Developer, and Training Coordinator for the North American Truck Safety Association in Alexandria, Virginia, to teach commercial vehicle accident investigation/reconstruction and safety to Motor Fleet Safety Supervisors throughout the United States. Courses are taught through the North American Institute for Motor Fleet Safety (1975 to date).

Consultant and trainer to Georgia Department of Public Safety (Georgia State Patrol and Georgia Municipal Police Academy) for traffic accident investigation and reconstruction training. (1980 to present - *as needed*). Consultant and Program Advisor to Indiana University of Pennsylvania and The Pennsylvania State University for traffic accident investigation training for police officers in the State of Pennsylvania. (1985 to present - *as needed*).

Previous full time faculty member at The Pennsylvania State University, University Park, PA. Responsible for coordination of a state wide police training program and teaching Criminal Justice credit courses (1971-1974). Police Officer, Bureau of Police, State College Regional Police Department (1968-1971). Assistant Professor, Criminal Justice Center, Mansfield State University (part-time 1969-1974). Instructor and Education Consultant, Northwestern University Traffic Institute, Field Service Division (*previous*).

EDUCATION

- B.S.** Law Enforcement and Correction, The Pennsylvania State University, 1969
- M.P.A.** Public Administration, The Pennsylvania State University, 1972
- Ph.D.** Higher Education Administration/Driver and Traffic Safety, Michigan State University, 1990.

EDUCATION – CREDIT COURSES

REQUIRED AND ELECTED COURSES TO OBTAIN THE ABOVE DEGREES INCLUDE: (1) Graduate Mathematics and Statistics, (2) Psychology of Learning, Personality and Development, (3) Traffic Communications, (4) Vehicle Administration & Control, (5) Personality Factors in Driver Education, (6) Principles of Traffic Engineering, and (7) Highway Traffic Safety Administration.

SHORT COURSES (SPECIALIZED TRAINING)

(1732 Total Hours)

1. On-scene Accident Investigation, Northwestern University Traffic Institute, 1974 - (80 hours)
2. Technical Accident Investigation, Northwestern University Traffic Institute, 1974 - (120 hours)
3. Technical Examination of Motor Vehicle Lamps, Northwestern University Traffic Institute, 1979 - (24 hours)
4. Advanced and Reconstruction Motor Fleet Accident Investigation, The Pennsylvania State University, 1980 - (40 hours)
5. Traffic Accident Reconstruction, Northwestern University Traffic Institute, 1983 - (80 hours)
6. Motorcycle Accident Reconstruction, Northwestern University Traffic Institute, 1986 - (16 hours)
7. Principles and Problems of Traffic Engineering, Michigan State University, 1979 - (40 hours)
8. Traffic Engineering Update, Michigan State University, 1981 - (60 hours)
9. Traffic Engineering Update, Michigan State University, 1982 - (60 hours)
10. Traffic Engineering Operations, Michigan State University, 1982 - (32 hours)
11. Law Enforcement Tire Dynamics Symposium, Michigan State University and Rubber Manufacturer Association, Washington, D.C. - (24 hours)
12. Forensic Pathology, Michigan State University and Sparrow Hospital - (40 hours)
13. Breathalyzer Training Operators Course, Michigan State Police, Michigan Department of Public Health, 1974 - (40 hours)
14. Alcohol Training Seminar, Michigan State University, 1974 - (40 hours)
15. Private Pilot License, Certified by the Federal Aviation Administration to pilot a single engine aircraft, 1975 (hours not included in the above total)
16. Microcomputer Application Programs for Traffic Accident Reconstruction, The Traffic Institute, Northwestern University, 1987 - (45 hours)
17. Investigation of Child Restraint and Seatbelt Injuries, Institute of Police Technology and Management, University of North Florida, 1987 - (16 hours)
18. Biomechanics and Human Tolerance, Society of Automotive Engineers, Inc. 1987 - (8 hours)

SHORT COURSES (SPECIALIZED TRAINING)

...Continued...

19. Occupant Kinematics and Injury Mechanics in Vehicle Crashes, Institute of Police Technology and Management, University of North Florida, 1988 - (24 hours)
20. Maintenance of Commercial Vehicles - Phase A, University of Delaware, July 1989 - (24 hours)
21. Investigation of Pedestrian Accidents and Human Factors, University of North Florida, 1991 - (40 hours)
22. Maintenance Management, National Committee for Motor Fleet Supervisor Training, Michigan State University, East Lansing, Michigan, 1991 - (21 hours)
23. Mechanics of Heavy-Duty Trucks and Truck Combinations, Engineering Conferences, The University of Michigan, Ann Arbor, Michigan, 1991 - (40 hours)
24. Motor Fleet Safety for Supervisors, National Committee for Motor Fleet Supervisors, Michigan State University, East Lansing, Michigan, 1991 - (24 hours)
25. Maintenance of Commercial Vehicles - Phase B, National Committee for Motor Fleet Supervisors, Michigan State University, East Lansing, Michigan, 1992 - (24 hours)
26. School Bus Transportation Safety and Supervision, National Committee for Motor Fleet Supervisors, Michigan State University, East Lansing, Michigan, 1992 - (32 hours)
27. Advanced Motor Fleet Supervisor Training, National Committee for Motor Fleet Supervisors, University of Alabama, Tuscaloosa, Alabama, 1992 - (24 hours)
28. Crash Measurements for Computer Analysis of Vehicle Impact Speed, Ann Arbor, Michigan, 1994 - (18 hours)
29. Special Problems in Traffic Accident Reconstruction, Institute of Police Technology and Management, University of North Florida, Jacksonville, Florida, 1994 - (35 hours), 2000 - (35 hours), 2006 - (35 hours)
30. Michigan/Eaton Corporation, Decision Truck Driving Program, Marshall, Michigan, 1994 - (8hrs), 2000 - (8 hours)
31. Defensive Driving Course Instructor Certification (DDC-4), National Safety Council, - (24 hours)
32. Basic and Advanced Training for Motorcycle Operation - Motorcycle Safety Foundation - (35 hours)
33. Michigan Department of State - Certification for License Examination for Automobile - (32 hours)
34. Michigan Department of State - Certification for License Examination for Motorcycle Operation, - (8 hours)
35. Northwestern University Traffic Institute & Harley Davidson-Certification for Police Motor Operator Training - (80 hours)
36. Heavy Truck Accident Reconstruction - MSU & Engineering Accident Analysis, Kent, WA, - (40 hours)
37. Instructor Certification Class, Defensive Driving Course - Professional Truck Driver, National Safety Council, - (16 hours)
38. Introduction to Traffic Signs - MSU, Highway Traffic Safety Programs, East Lansing, Michigan, - (8 hours)
39. Occupant Protection Usage and Enforcement (Instructor Class), National Highway Traffic Safety Administration, US Department of Transportation, - (24 hours)
40. REC-TEC (Reconstruction & Truck Brake) Computer-Assisted Analysis, Instructor Certification, 1987 - (40 hours); 2007 - (40 hours)

SHORT COURSES (SPECIALIZED TRAINING)

...Continued...

41. Vehicle Control with ABS Truck Brakes, Eaton Corporation, - (8 hours)
42. Dyna-Cop - Computer Aided Traffic Crash Scene Drawing, Dietech, Inc., and MSU, (24 hours)
43. Precision/Pursuit Driver Training, Ingham County Sheriff's Department, (16 hours)
44. Michigan Center for Truck Safety, Michigan Center for Decision Driving training course, (8 hours), February, 2001.
45. National Transportation Safety Board Training and research concerning accidents caused from sleep deprivation 2012 - (16 hours)
46. National Transportation Safety Board Training and Research concerning updated training presentation and teaching of subject concerning National Traffic Safety Information 2013 - (24 hours)
47. Annually attend, organize and present the Spring and Fall MATAI Conferences. 2010 - 2015 - (16 hours)
48. Video Class Room Presentations of Rec-Tec Complete Training. 2014 - (16 hours)

TEACHING, RESEARCH, AND INSTRUCTIONAL DEVELOPMENT EXPERIENCE

- Developed and taught Police Traffic Accident Investigation Instructor Training (80 hours), Atlanta, GA., under contract to Georgia State Patrol.
- Developed and taught 2-week "Traffic Accident Reconstruction" course for Georgia Police Academy; at Georgia State Patrol Training Academy, Atlanta, GA.
- Developed and taught "Seminar on Multidisciplinary Investigation of Serious Traffic Accidents" (80 hours) in San Juan, Puerto Rico, for Commonwealth of Puerto Rico Highway Traffic Safety Commission.
- Instructor and Training Coordinator, and teach throughout the United States for the American Trucking Association and National Committee for Motor Fleet Safety Supervisors, teach Motor Fleet Programs in basic, advanced accident investigation, and safety, 1975 to date.
- Conducted "Validation of Radar Training Standards" study for Michigan Law Enforcement Officers Training Council, 1984-85.
- Developed and presented accident investigation training for traffic engineers under contract to Oakland County (MI) Traffic Improvement Association and Wayne State University Dept. of Civil Engineering, 1984-85 (continuing).
- Assigned as lead field investigator for MSU's "Heavy Truck Accident Study," under contract to Michigan Office of Highway Safety Planning, Lansing, gathering on-scene data at accidents involving articulated vehicles capable of carrying loads of 50,000 pounds or more, 1982-83.
- Extensive consultation with various physicians, physicists and engineers at Michigan State University, The Pennsylvania State University, Wayne State University, University of Michigan, Northwestern University, General Motors Proving Grounds, General Electric Small Lamps Division, Uniroyal Tire Company and Rubber Manufacturers Association.

TEACHING, RESEARCH, AND INSTRUCTIONAL DEVELOPMENT EXPERIENCE

...Continued...

- Developed and taught a one-day seminar on "Improving Investigative Report Writing" presented to police officers, security personnel, fire fighters, etc., 1979 to 1985.
- Served on the MSU-HTSP Team to Research and Develop "Police Psychophysical Testing" to determine the "Low BAC" vehicle operator. 1974 - 1976
- Developed and taught a one-week seminar, "Police Alcohol Training Program" for Michigan Police Officers. 1976 - 1980
- Co-Developed the eighty (80) hour "Police Alcohol Instructor Training Program Presented to Police Officers in the United States, Canada and Puerto Rico" 1978-1982
- Accident Investigation and Reconstruction trainer and consultant for the Royal Police Force of the British West Indies, 1991, 1992.

PROFESSIONAL AFFILIATIONS

- Current Member, Society of Automotive Engineers. Previously served on two task force groups for the SAE Accident Investigation Practices Sub-committee (1986 - 1990).
 1. *Improving on-scene accident investigation procedures and devices for recording evidence.*
 2. *Establishment of communication lines for new SAE accident investigation and reconstruction procedures and information to be disseminated to police instructors of accident investigation.*
- Member, Safety and Traffic Committee for the Michigan Association of Chiefs of Police. Past Chairman for 3 years. (1976 to present).
- Member (Former), Institute of Transportation Engineers (ITE), Michigan Chapter.
- Member (Former), The National Association of Professional Accident Reconstruction Specialists, Inc.
- Member, Co-founder, and past President, Michigan Association of Traffic Accident Investigators.
- Member (Former), Michigan Safety Conference.
- Member (Former), Accident Reconstruction Specialists of England.

CURRENT / MOST RECENT: RESEARCH AND PROGRAM DEVELOPMENT

- Development of the Instruction Manual for the State of Michigan, New Official Traffic Crash Report Form and associated with the development of the Crash Report Form. 1990-1991
- Previously under contract by the Michigan Office of Highway Safety Planning to research and develop an Accident Investigation Training dealing with the investigation of collisions involving vehicles equipped with ABS (computerized) brakes.
- Technical aspects of accident reconstruction involving vehicles with 3 or less wheels; all-terrain vehicles, motorcycles, mopeds. Information to be presented in Accident Reconstruction Training Programs. *(Research Ongoing As Needed)*
- Ongoing research in night visibility factors and lighting requirements associated with nighttime vehicle collisions. Presented in a training course for police accident investigators, fleet safety personnel, traffic engineers and highway officials.
- Statewide computerized survey of judges, magistrates, prosecuting attorneys, defense attorneys and police personnel to determine problems of police officers court testimony as they relate to accident investigation. Survey conducted under contract with Michigan Office of Highway Safety Planning. Survey results presented in 1986. Training program developed in 1986 *(continuing to date in the MSU/HTSP Accident Investigation Series)*.
- Testing various roadway surfaces in the State of Michigan to update and/or validate existing coefficient of friction charts. Research is being conducted by Highway Traffic Safety Programs/Department of Civil and Environmental Engineering, Michigan State University.
- Funding from United States Department of Transportation, National Highway Traffic Safety Administration, Michigan Office of Highway Safety Planning, to develop a basic and advanced course on Kinematics of Vehicle Occupants, Cycle Riders and Pedestrians, 1987-91.
- Project coordinator, Michigan State University, Civil & Environmental Engineering, Highway Traffic Safety Programs and Leaseway Trucking, to research/test stopping ability of vehicles designed to transport vehicles (1989 - 1991).
- Previously conducted research for the development of a vehicle pedestrian collision training program for Michigan police officers funded by the Michigan Office of Highway Safety Planning. *(Research Continuing through MATAI)*
- Research and development for Lehman Trike of Canada and US to develop an operator training course for three-wheeled vehicles. *(continuing through MSU/HTSP Accident Investigation Series: AI-8 and AI-18)*.
- Research of acceleration, deceleration, and turning aspects of school buses to be used in the development of a National School Bus Safety and Accident Reconstruction Training Program. *(Research findings published in SAE Paper #: _____)*
- At the request of the Michigan State University - College of Engineering and Michigan State University Risk Management, developed and present a 4 hour classroom and 6 hour on-road operating experience to certify engineering students in the operation of a one-ton truck plus a 24ft and 36ft trailer. (2005 to date)
- Research with the Michigan Public Transportation Association and various lighting manufacturing companies to evaluate the safety of loading and unloading students at various hours of pupil pick up and drop off during the hours of darkness. (2010 to date)

SPECIAL APPOINTMENTS AND RECOGNITION

- Chairman, Ford Motor Company, Consumer Appeal Board (1990-1996).
- Member, State Committee to identify and award Michigan Police Departments that do outstanding work in the area of traffic safety. (*continuing*)
- Appointed by the Michigan Department of State to serve on the "Novice Driver Entry System Task Force" (1994-1996). Assisted in the development of the "Gradual Driver Licensing" program.
- Award Recognition by MSU Lifelong Education for Long Term Commitment.
- "Instructor of the Year" award from the American Trucking Association and the North American Institute for Motor Fleet Safety.
- "Traffic Safety Award" from the Michigan State Safety Commission.
- MSU Faculty Award for outstanding commitment to the University Mission.
- Appointed to the Michigan State University Life Long Education Committee which was evaluating the Continuing Education Program function during the initial efforts to decentralize the function and place it in each Michigan State University College.

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PUBLICATIONS

(See attached listing of MSU publications related to police instruction in the areas of Basic and Technical Accident Investigation, Advanced Investigation and Reconstruction, plus Computer-Assisted Reconstruction and other Special Topics.)

1. Lee, Daniel G., "Police Traffic Accident Investigation". Final Report on the Training Course and the Field Assessment, Michigan State University Highway Traffic Safety Center, Michigan Office of Highway Safety Planning, United States Dept. of Transportation, National Highway Traffic Safety Administration, November, 1974.
2. Lee, Daniel G. & Holmes, Donald M. "Police Traffic Accident Investigation 1 (Initial Investigations) Training Manual," 114 pp, Michigan State University, E. Lansing, Michigan, 1977.
3. Lee, Daniel G. & Holmes, Donald M., "Police Traffic Accident Investigation 2 (Follow-up Investigations) Training Manual," 74 pp, Michigan State University, E. Lansing, Michigan, 1979.
4. Lee, Daniel G. & Holmes, Donald M., "Police Traffic Accident Investigation 3 (Accident Photography Training Manual)," 41 pp, Michigan State University, E. Lansing, Michigan, 1980.
5. Lee, Daniel G. & Holmes, Donald M., "Police Traffic Accident Investigation 4 (Perspective Grid Mapping of Evidence) Training Manual," 21 pp, Michigan State University, E. Lansing, Michigan, 1980.
6. Lee, Daniel G. & Holmes, Donald M., Woehrle, William, "Police Traffic Accident Investigation 5 (Tire Dynamics) Training Manual," 39 pp, Michigan State University, E. Lansing, Michigan, 1981.
7. Lee, Daniel G. & Holmes, Donald M., "Police Traffic Accident Investigation 6 (Lamp Examination) Training Manual," 38 pp, Michigan State University, East Lansing, Michigan, 1981.
8. Lee, Daniel G. & Holmes, Donald M., "Police Traffic Accident Investigation 7 (Commercial Vehicle Accident Investigation) Training Manual," Michigan State University, East Lansing, Michigan, 1983.
9. Lee, Daniel G. & Holmes, Donald M., "Police Traffic Accident Reconstruction Training Manual," 44 pp, Macomb Criminal Justice Training Center, Macomb Community College, Mt. Clemens, Michigan, 1979.
10. Lee, Daniel G. & Holmes, Donald M., "Traffic Accident Investigation and Reconstruction Aspects of Traffic Engineering," 77 pp, Wayne State University Dept. of Civil Engineering and Oakland County Traffic Improvement Association, 1984.
11. Awtrey, Robert G., Holmes, Donald M. & Lee, Daniel G., "Police Traffic Accident Investigation Instructors Manual," 112 pp, Georgia Peace Officer Standards and Training Council, Atlanta, GA, 1980.
12. Lee, Daniel G. & Holmes, Donald M. "Police Traffic Accident Investigation 9 (Traffic Accident Reconstruction) Training Manual," 100 pp, Michigan State University, E. Lansing, Michigan, 1985.
13. Price, B.R. & Lee, Daniel G., "The Executive Police Personality", presented at the InterAmerican Congress of Criminology in Caracas, Venezuela, November 19-25, 1972. Published in the Proceedings of the American Society of Criminology.

PUBLICATIONS

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14. Vanosdall, F.E., Smith, D.L., DeWitt, T., Lee, D.G., Bower, G. & VanSusteren, T., "Michigan Heavy Truck Study"; Highway Traffic Safety Programs, Michigan State University; Michigan Office of Highway Safety Planning and U.S. Department of Transportation, National Highway Safety Administration, 1982.
15. Lee, Daniel G., "Police Traffic Accident Investigation 12 (Pedestrian Accidents) Training Manual," Michigan State University, E. Lansing, Michigan 1983.
16. Lee, Daniel G. & Holmes, Donald M., "Accident Photography for Defense of roadway Civil Liability Lawsuits", Wayne State University, Department of Civil Engineering & Oakland County Traffic Improvement Association, 1985.
17. Lee, Daniel G. & Holmes, Donald M., "Improving Police Officer Court Testimony Training Manual," 28 pp, Michigan State University, Highway Traffic Safety Programs, East Lansing, Michigan, 1986.
18. Lee, Daniel G. & Holmes, Donald M., "Police Traffic Accident Investigation 8 (Motorcycle, Moped and Bicycle Accident Investigation) Training Manual," 60 pp, Michigan State University, East Lansing, Michigan, 1987.
19. Co-authored a chapter on Reconstruction of Collisions involving All-Terrain Vehicles and Cycles (ATVC), for book entitled "Winning ATVC cases", by Attorney Joseph William Moch, Grand Rapids, Michigan, 1988.
20. Lee, Daniel G. & Holmes, Donald M., "Accident Reconstruction 9 Update Training Manual," 70pp, Michigan State University, E. Lansing, Michigan, 1990.
21. Lee, Daniel G., "An Assessment of Michigan Police Officers' Cognitive Knowledge Retention of Information Presented in MSU's Accident Investigation One Training Program", Doctoral Dissertation for completion of Ph.D., Michigan State University, 1990.
22. Lee, Daniel G., Holmes, Donald M., & Vanosdall, Fred, "Police Traffic Accident Investigation 11 (Night Visibility Factors & Lighting Requirements) Training Manual," 33pp, Michigan State University, E. Lansing, Michigan, 1991.
23. Holmes, Donald M, Kenney, Andrew L., Lee, Daniel G., Instruction Manual for the "New UD-10 Official Crash Report Form", 27pp, Michigan Office of Highway Safety Planning, Michigan State Police- Motor Carrier Division, & Michigan State University, 1991.
24. Lee, Daniel G., & Jager, Joseph, "Police Traffic Accident Investigation 13 (Advanced Reconstruction) Training Manual," Michigan State University, E. Lansing, Michigan. 1993.
25. VanDam, Michael, Lee, Daniel - Accident Investigation 14 "Crush Measurements to Determine Speed Training Manual", Michigan State University, E. Lansing, Michigan. 1995
26. Lee, Daniel G. & Jager, Joseph, "Police Traffic Accident Investigation 17 (Accident Avoidance) Training Manual," Michigan State University, E. Lansing, Michigan. 1998.

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~ Continued ~

27. Lee, Daniel G., "Accident Investigation for Traffic Engineers/Technicians", 46pp, Michigan State University, Highway Traffic Safety Programs, 1998.
28. Lee, Daniel G., "Photography Techniques As An Aide to Accident Investigation, 93pp, Michigan State University, Highway Traffic Safety Programs, 1999.
29. Lee, Daniel G., Jager, Joseph "Police Traffic Accident Investigation 18 (Motorcycle Accident Reconstruction & Research) Training Manual," Michigan State University, E. Lansing, Michigan. 2001.
30. Lee, Daniel G., Jager, Joseph "Police Traffic Accident Investigation 20 (Energy Applications in Accident Reconstruction) Training Manual," Michigan State University, E. Lansing, Michigan. 2003.
31. Lee, Daniel G., Bailiff, Roy; Scarnati, William; Engineering Student Driver's Manual - "How to Safely Maintain, Operate and Drive a One Tone Truck, Pull Trailer and Fifth Wheel" Michigan State University, E. Lansing, Michigan.
32. Lee, Daniel G.; Jager, Joseph; Beill, Bruce; Howery Timothy, Accident Investigation 26 - "Reconstruction of School Bus Crashes Training Manual," Michigan State University, E. Lansing, Michigan.

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Highway Traffic Safety Programs
MICHIGAN STATE UNIVERSITY
CIVIL & ENVIRONMENTAL ENGINEERING
ENGINEERING RESEARCH FACILITY

POLICE TRAFFIC ACCIDENT INVESTIGATION TRAINING COURSES

ACCIDENT INVESTIGATION 1 -- INITIAL INVESTIGATIONS

A 5-day course to train officers to recognize and record all pertinent physical evidence at serious accident scenes. Sketching, measuring, basic photography, roadway and vehicle evaluation, plus basic speed determinations are taught.

ACCIDENT INVESTIGATION 2 -- FOLLOW-UP INVESTIGATIONS

A sequel 5-day course to AI-1 covering such follow-up functions as preparing scale drawings, mathematical calculations via formulas/equations, reaction time and distances, plus case studies.

ACCIDENT INVESTIGATION 3 -- ACCIDENT PHOTOGRAPHY

A 2-day offering that teaches officers how to take useful and comprehensive traffic accident photographs. Major topics are basic camera familiarization, daytime photography, nighttime (flash) photography and existing light photography.

ACCIDENT INVESTIGATION 4 -- PERSPECTIVE GRID MAPPING OF EVIDENCE

A 1-day course that focuses upon using a camera and perspective grid to record measurements at serious accident scenes, assembly of perspective grids and how to grid perspective photographs.

ACCIDENT INVESTIGATION 5 -- TIRE DYNAMICS AND EXAMINATION

This 1-day course helps the investigation officer to determine whether tire failure contributed to the accident and, if so, whether the failure took place before, during, or after the collision. It also covers the role of tires in vehicle handling.

ACCIDENT INVESTIGATION 6 -- LAMP EXAMINATION

A 1-day seminar to assist investigators to determine whether vehicle lamps were "on" or "off" at the time of impact. Also, covers the proper procedure for removing and storing damaged vehicle lamps.

ACCIDENT INVESTIGATION 7 -- COMMERCIAL VEHICLE ACCIDENT INVESTIGATION

A five-day course covering those aspects of truck and bus accidents that differ from ordinary passenger-car crash dynamics. This course covers such topics as weight shift, truck braking systems, heavy vehicle components, variable drag factors, truck inspection, testing, and commercial driver license (CDL) laws.

ACCIDENT INVESTIGATION 8 -- MOTORCYCLE ACCIDENT INVESTIGATION

A 3-day course focusing on the technical aspects of investigating traffic accidents involving motorcycle, moped and bicycle.

ACCIDENT INVESTIGATION 9 -- ACCIDENT RECONSTRUCTION

A 10-day seminar covering various aspects of scientific traffic accident reconstruction as acceleration, time-distance studies and the determination of vehicle speeds via kinetic energy and conservation of linear momentum.

ACCIDENT INVESTIGATION 10 -- OCCUPANT KINEMATICS

A 2-day seminar covering seat belt use, child restraint systems, basic injury patterns of vehicle occupants, dynamics of occupants in collision, and g forces in occupant kinematics.

ACCIDENT INVESTIGATION 11 -- VISION, NIGHT VISIBILITY & LIGHTING REQUIREMENTS

A 2-day course on vision, night visibility factors and lighting requirements. It is intended to assist officers with the determination of whether a driver could have and should have seen an object in sufficient time to avoid striking it. A night visibility field exercise is included.

POLICE TRAFFIC ACCIDENT INVESTIGATION TRAINING COURSES

~ Continued ~

ACCIDENT INVESTIGATION 12 - PEDESTRIAN ACCIDENTS

A 3-day course that deals with the factors unique to pedestrian collisions including determining impact points through vehicle evaluation and estimation of impact speeds based upon pedestrian movement and vehicle damage characteristics. A session with a forensic pathologist regarding pedestrian injury patterns is included.

ACCIDENT INVESTIGATION 13 - ADVANCED TRAFFIC ACCIDENT RECONSTRUCTION

A 5-day course that focuses on vector sum analysis, determination of Delta V's, principal direction of force (PDOF's), and special momentum problems.

ACCIDENT INVESTIGATION 14 - CRUSH MEASUREMENTS

A 2-day course explaining the importance of precise vehicle damage information. Actual demonstration and participation in how to take measurements and develop profiles of accident involved vehicles. The measurements can then be used with various computer reconstruction software (see Accident Investigation 15 series) to determine speed changes from damage.

ACCIDENT INVESTIGATION 15 - USING COMPUTER SOFTWARE

A series of courses of varying lengths that deal with the use of specific computer software programs to assist the traffic accident reconstructionist. Some courses will feature the course developer as the principal instructor. These courses do not need to be taken in any particular order.

AI-15A - BASIC REC-TEC - A 2-day course covering the basic operating features of REC-TEC (Reconstruction Technology) to the point where the student can use it to solve basic reconstruction problems.

AI-15B - ADVANCED REC-TEC - A 5-day course that covers in-depth the more sophisticated features and uses of REC-TEC. The software developer will instruct major portions of the course when available.

AI-15 C - RECFORMS - A 1-day course covering the operating features and use of the software program RECFORMS (Reconstruction Formulae) to solve traffic accident reconstruction problems. Each department will receive its own copy of the software. The software developer will be the major instructor when available.

AI-15D - COMPUTER-AIDED DRAWING - A 2-day course teaching the basic features of a computer-aided drawing software program to prepare scale drawings of collision scenes, crash involved vehicles and related physical evidence. The DYNACOP software package will be used. Each student or department will receive their own copy of the software.

ACCIDENT INVESTIGATION 16 - HEAVY TRUCK ACCIDENT RECONSTRUCTION

A 6-DAY COURSE THAT DEALS WITH THE INSPECTION OF HEAVY VEHICLES AND computer analysis of braking efficiency and related reconstruction formulas dealing with speed analysis

ACCIDENT INVESTIGATION 17A - ACCIDENT AVOIDANCE - A five-day course for AI-9 grads. This course will assist the investigator in determining if a traffic accident was avoidable if appropriate accident avoidance maneuvers were undertaken by the driver of an automobile, motorcycle, or commercial vehicle. The major topics that will be covered in this course are: lane change and swerve formulas, maximum speed to stop at point of impact, maximum speed a vehicle can travel and miss a vehicle that travels across its path, view obstructions (right angle and other than right angle), safe following distance, constant velocity, passing time to avoid a head on crash while passing, braking or steering avoidance, and passing with changing velocity.

POLICE TRAFFIC ACCIDENT INVESTIGATION TRAINING COURSES

~ Continued ~

ACCIDENT INVESTIGATION 18 - MOTORCYCLE ACCIDENT RECONSTRUCTION & RESEARCH

A two-day course that focuses on identification & analysis of motorcycle systems, motorcycle lighting, mechanical failures that can lead to motorcycle crashes, effects of motorcycle type and weight on braking, motorcycle accident avoidance capabilities, use of momentum involving motorcycle accidents, and motorcycle nomenclature.

ACCIDENT INVESTIGATION 19 - CRASH DATA RETRIEVAL (CDR) SYSTEM TRAINING

A two-day course covering both the retrieval and interpretation of a vehicle's air bag module-stored pre-crash and crash data. This data is obtainable now from most late-model GM cars, and will be from Ford vehicles by late 2002.

ACCIDENT INVESTIGATION 20 - Energy APPLICATIONS IN ACCIDENT RECONSTRUCTION

A five-day advanced course for AI-9 and AI-13 graduates. The course focuses on using kinetic energy analysis to solve for speeds from crush. Calculating EBS (Equivalent Barrier Speeds) and using A, B, and G stiffness coefficients are included. The determination of co-linear speeds in head-on, rear-end, and oblique angle crashes using energy and momentum, is a major subject.

ACCIDENT INVESTIGATION 22 - EMERGENCY VEHICLE ACCIDENT INVESTIGATIONS

A three-day course that focuses on topics such as the legal aspects of emergency vehicle operations. Model policies for emergency responses, pursuit driving and investigation protocol. In addition, this course will cover proper accident investigation techniques as well as the effectiveness of lights and sirens. Case studies will be included. It is recommended that each agency send their primary accident investigator and command incident manager.

ACCIDENT INVESTIGATION 23 - MICHIGAN TRAFFIC LAW FOR THE ACCIDENT INVESTIGATOR

A one-day course designed to provide accident investigators and re-constructionists with a working knowledge of Michigan traffic law as it relates to crash investigation and subsequent prosecution. The Michigan Vehicle Code, Michigan Manual of Uniform Traffic Control Devices, and the Uniform Traffic Code for Cities, Townships and Villages will be covered as well as relevant court decisions and Attorney General Opinions.

ACCIDENT INVESTIGATION - 24 B - SCHOOL BUS ACCIDENT RECONSTRUCTION

This three day seminar covers various scientific and engineering traffic crash reconstruction principles related to school buses. Familiarize the crash investigator with school bus speed determination via kinetic energy, momentum, force balance, and delta V's. Extensive braking, turning and acceleration testing/research will be conducted, in addition to discussion of physical configuration, terminology and operating systems associated with school buses.

INVESTIGATOR MUST BE AN AI-9 GRADUATE OR EQUIVALENT TO PARTICIPATE IN THIS COURSE.

EVENT DATA RECORDER (EDR)

In this five-day course, attendees will learn about the EDR "black box" module found in cars and trucks. You will learn its purpose, history, strengths, limitations and anomalies. Also covered in class will be how the different auto manufacturers have implemented the EDR across different vehicle lines, what events are captured, under what conditions are the events stored, what the laws are governing its use, spoliation issues, who the EDR data belongs to, and how it assists the process of accident reconstruction. Additionally, we will also touch on the Power Control Modules (PCM) that record events in semi-tractors and how this Event Data is used in accident reconstruction. This is a hands-on course where attendees will have the opportunity to view actual EDR devices and case studies and will also perform EDR downloads using current software tools, which will prepare them for classes geared towards attaining their technician certification. Attendees will receive a binder with the necessary materials showing what manufacturers and vehicles have airbag modules and the information they store during an event that can be downloaded and more.

INVESTIGATOR MUST BE AN AI-9 GRADUATE OR EQUIVALENT TO PARTICIPATE IN THIS COURSE.

SUPPLEMENTAL COURSES

ACCIDENT INVESTIGATION 1 UPDATE: A 1-day course to refresh and update the skills of AI-1 graduates.

ACCIDENT INVESTIGATION 2 UPDATE: A 1-day course to refresh and update the skills of AI-2 graduates.

AI-9 UPDATE

A two-day update for AI-9 graduates. Subjects covered include momentum and kinetic energy Speed determinations, time-distance-speed analysis, and selected case studies. Current Controversial issues in traffic accident reconstruction are covered as needed.

POLICE MOTORCYCLE TRAINING

POLICE MOTORCYCLE OPERATOR TRAINING – This is an 80-hour MSU Police Motorcycle training class held Monday through Friday for two consecutive weeks. The first four hours of the class are classroom instruction (i.e., lecture, slides, and video). The remaining 76 hours are field instruction, which includes 34 topics, skill exercises each preceded by lecture, demonstration and followed by student participation.

POLICE MOTORCYCLE OPERATOR-RECERTIFICATION TRAINING – This is a standard 24-hour MSU Police Motorcycle Recertification training class held on three consecutive weekdays and consists of field instruction covering all topics covered in the MSU Police Motorcycle Operator Training. Each activity is preceded by lecture, demonstration and followed by student participation.

ADVANCED POLICE MOTORCYCLE OPERATOR TRAINING PROGRAM - This is a 24-hour course held on three consecutive week days. Students attending must be certified Police Motor Officers and have a current calendar year recertification. Students must provide a fully marked and fully operational police motor for this training.

POLICE MOTORCYCLE INSTRUCTOR TRAINING PROGRAM - This is a 120-hour course held 5 consecutive days for 3 weeks in a row. The first week (40 hours) participants learn how to select course locations, set-up training facility, teaching methods & procedures, practice lecturing & field demonstrations. Hone skills to instructor level. Second & third weeks (80 hours) students/instructors teach the 80 hour police motorcycle operator class under direct supervision of certified instructors.

POLICE MOTORCADE – This is an 8-hour course. This course tracks proper procedures for conducting motorcade escorts of dignitaries and other persons subject to U.S. Secret Service protection. This training teaches officers how to work together to accomplish this goal as a single highway trained unit all using the same techniques and procedures.

CIVILIAN MOTORCYCLE TRAINING

PRIMARY MOTORCYCLE TRAINING FOR A CIVILIAN RIDER - This is a basic 32-hour course that covers each subject listed, but is geared more for the beginner rider with little to no riding experience. The student must have a minimum of a valid temporary instructional permit to attend. The class consists of four hours of in-classroom activities on the evening of the first day, then 28 hours of range activities on the 2nd, 3rd, 4th & 5th days.

ADVANCED MOTORCYCLE TRAINING FOR A CIVILIAN RIDER - This is an ADVANCED 40-hour course that focuses more intensely on each subject listed and is geared for experienced riders.

TWO-UP MOTORCYCLE TRAINING FOR CIVILIAN RIDER - This is an advanced 16-hour course designed for riders who carry or plan to carry passengers on their motorcycle. This course consists of both classroom and practical exercises that involve riding with both a crash dummy and a real person and focuses on teaching the rider and the passenger the fundamentals of what to do and not to do while riding two-up on a motorcycle

SAFE NIGHTTIME OPERATION OF MOTORCYCLES - This is an 8-hour program conducted during the hours of darkness for the civilian rider. Topics include nighttime speed reduction, visibility factors as related to contrast sensitivity, head lamp type, and motorcycle loading.

FOR FURTHER INFORMATION REGARDING THESE TRAINING PROGRAMS CONTACT:

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EXHIBIT 4

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June 12, 2018

Law Office of Thomas J. Seger
409 East 8th Street
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RE: RANDY WEST

Dear Attorney Seger:

You asked me to review a single vehicle snowmobile crash that occurred January 6, 2018 at approximately 12:29. The crash occurred on snowmobile trail Penney Bridge about 2.8 miles east of M-66. The westbound snowmobile was operated by Randall West with passenger Audrey West. The Randall West vehicle traveled to the north side of Penney Bridge Road, down an embankment and came to rest in the Jordan River with passenger and operator under water. Both Randall and daughter Audrey West received severe injuries and both were in a near death situation. The primary question this report addresses is why the West snowmobile traveled from the road down a steep embankment with operator, passenger and snowmobile coming to rest in the Jordan River.

BASIS OF REPORT

1. State of Michigan Traffic Crash Report prepared by Michigan DNR Officers Albert and Butzin
2. MSP reconstructionist J. Hilborn's partial reconstruction report of the incident
3. Statement/information provided by Randall West in addition to pictures and video of the crash scene
4. Information from witness Scott Felver
5. Photographs and a measurement provided by DNR
6. Site visit to observe, evaluate, measure and photograph the single vehicle crash location
7. Mathematical and computer analysis of scene information, report and statements of the involved to evaluate speed, time and distance and response of operators involved; Mr. West and Officers Albert and Butzin

(2)

8. Evaluation of DNR protocol concerning snowmobile operation and related “traffic” stops

FINDINGS AND OPINIONS

- 1. The primary issue to address in the evaluation of this single vehicle incident is how and why it occurred. The DNR Officers Albert and Butzin state that Mr. West was traveling towards them at a high rate of speed based upon their observation. MSP investigation by Trooper Hilborn agrees with DNR officers that Mr. West was traveling too fast to safely negotiate the trail. Trooper Hilborn reported his fall speed calculation of 19 miles per hour to arrive at his opinion that Mr. West was traveling too fast to negotiate the trail. I assume that other information from MSP will be provided.**

Mr. West told officers he was traveling 35 to 40 MPH. The snowmobile traveling with and ahead of Mr. West, operated by Mr. Scott Felver, states that he was traveling close to 40 MPH and that West was following him. Based upon my calculation Mr. West was not in excess of 35 to 40 MPH. Based upon my measurements the curve in the trail where the incident occurred can be safely negotiated at speeds in excess of 40 MPH.

- 2. Mr. West describes the two DNR sleds traveling in the opposite direction were not traveling side by side but in a fashion that most of the 15 foot wide trail was occupied by the 2 DNR sleds. MSP and DNR measured 160 foot distance from where the West sled started to leave the groomed trail to its' final rest in the Jordan River. If Mr. West was traveling 35 MPH or 51 FPS and used up to 2 seconds of perception and reaction time to move out of the way of the DNR sleds he would have traveled on the groomed trail for approximately 50 feet and another 50 feet on the snow covered edge of the trail. During his attempt to move away from oncoming sleds, his normal reaction would be to move over, stopping or slowing would not be the first priority. This movement places the West sled at the edge of the drop off after perception and reaction sliding towards the River. Slowing or stopping would be impossible going down the embankment - striking trees, brush and snow slowed him to the fall speed determined by MSP Hilborn of 19 MPH.**
- 3. DNR Officer Albert describes the incident developing because Mr. West was too fast for the trail. DNR officer Albert reported West was too fast and in her lane and a quick turn to the right was needed by her to avoid the West sled. In supplemental reports she had West traveling at a very high rate of speed. I am requesting her speed analysis to see how she went from too fast to very high rate of speed. The speed on this section of the trail is somewhat controlled by the single curve that is sharper at the west end than at the east end. This is called a critical curve speed and it is based upon the degree of sharpness of the curve. The West snowmobile traveled off of the roadway prior to the west end curve which has the lower critical speed. Mr. West was not close to exceeding the**

(3)

critical speed. Critical speed is a speed which can not be exceeded without side slipping./

- 4. Officer Albert described her reaction to the West sled; normal protocol for Albert and Butzin should have been to activate the emergency lights on their police equipped snowmobiles. Snowmobile operators being licensed in Michigan know you do not drive past a police vehicle with emergency lights being operated. Turning on emergency lighting in the existing situation as soon as the decision was made that the snowmobile was too fast would be an expected normal police reaction.**
- 5. Officer Butzin was following behind Officer Albert at an unknown distance. Mr. West stated they were traveling close together and near side by side. West claims the positioning of the DNR sleds forced him to move right and eventually off of the trail. Based upon the speed of the West sled and the curves' critical curve speed on the trail, excessive speed did not cause Mr. West to drive off of the trail's groomed area. Officer Butzin observed the sled operated by Scott Felver who was the lead sled traveling with Mr. West and others. Scott Felver signaled Officers Albert and Butzin that there were other snowmobiles behind his unit and also signaled that they should slow down. Felver stated he did not know the two sleds were DNR officers when he gave the signal.**
- 6. Officer Butzin was entering the straighter area of the long curve and was aware that other sleds were following Scott Felver. Despite the advanced notice and slightly curved area, Officer Butzin stated he observed the West sled with the back of the sled traveling into the snow embankment and possible excessive speed. Officer Butzin, like Officer Albert, failed to turn on his sleds emergency lighting to alert or attempt to control the speed and movement of the West sled.**
- 7. During the DNR interview of Mr. West at the hospital he stated he slowed from 40 MPH which was the speed he was following Scott Felver. He told the DNR Officer he slowed because two snowmobiles were coming at him taking up his lane. He said he hit his brakes and his unit went off the edge of the bank into the trees. Mr. West was not aware that the two snowmobiles that forced him off the trail were being operated by two Conservation Officers. Scott Felver advised Mr. West that the only sleds that passed by him prior to the incident were being operated by Conservation Officers who were riding two abreast.**
- 8. Witness Scott Felver told DNR Officer Albert during her interview of him that he did not want to be involved. Felver advised he did not know the sleds that passed him were DNR officers until the second one was past. Officer Albert stated she saw Mr. Felver with his hand up giving a signal. Mr. Felver stated to DNR Albert that the officer behind her was in the center of the trail and his (Felver) hand was up telling him to slow down. Felver further stated that due to the two DNR sleds going too fast and into his lane of travel he (Felver) had to travel to the right into the fresh snow. He further stated he was not far from the stumps on**

(4)

the side of the trail and the second rider was about a foot away as they passed. His statement seems to be quite truthful and reflect the events that preceded the incident being reconstructed.

To my surprise, during Mr. Felver's statement and description of his observation on the operations of the DNR sleds, Officer Albert continued to interject her opinions on what Mr. West did wrong to cause the off trail incident of his sled.

SUMMARY AND CONCLUSIONS

My Findings and Opinions are based upon my review of the information I have listed plus evaluating other snowmobile crashes, my experience of riding on many trails, fields and mountain two tracks in the State of Pennsylvania. Mathematical and computer calculations were made based upon my evaluation of the incident location and evaluation of statements in the report as to their validity based upon my reconstruction.

- 1. The speed or operation of the West snowmobile was not the cause of this incident**
- 2. Mr. West, based upon the approach position of the DNR snowmobiles, condition of the trail in terms of width, curve and the terrain to each side of the trail, was not afforded the opportunity to avoid this incident. He was forced off the trail.**
- 3. The speed of the West sled was described in the report as being excessive, very high rate, etc. are incorrect terms used to describe the movement of the West sled. My calculations of speed did not fit their statements and/or estimates and lack of any physical evidence to support the statements.**
- 4. Some descriptions of the West sled movement are based upon assumptions and not actual correct visualization of the movement.**
- 5. Officer Albert may not have been totally aware of the position of the sled operated by Officer Butzin in terms of how far back he was positioned or where he was positioned left and right sides on the trail. His sled was positioned near the middle or opposite side of the trail.**
- 6. Scott Felters' reported observation of the speed and position of the DNR sleds as they passed by him appear not to have changed as they approached Mr. West. This is despite the warning to slow down and sleds ahead given by Mr. Felver.**
- 7. Based upon information reviewed to date, I am of the opinion that the speed, operation, position and spacing of the snowmobiles operated by Officers Albert**

(5)

and Butzin were the cause of this incident leading to the injuries of Mr. West and his daughter, Audrey West.

- 8. Based upon the totality of the circumstances, the DNR officers' actions rise to the level of gross negligence.**

The above opinions are based upon a reasonable degree of scientific certainty. I am of the opinion that MSP has additional measurements and maps. DNR and MSP also most likely have more and better detailed photographs than I have been provided to date.

If additional information becomes available, I reserve the right to evaluate that information and adjust my Findings and Opinions, if needed.

**Daniel Lee PhD
Accident Reconstruction and Analysis
of Vehicle Safe Operation**

sent via email: tjs_attorney_at_law@yahoo.com

EXHIBIT 5

STATE OF MICHIGAN
COURT OF CLAIMS

AUDREY WEST and RANDY WEST,

Plaintiffs,

v

DEPARTMENT OF NATURAL RESOURCES,
ANDREW ALBERT, and STEVE BUTZIN,

Defendants.

OPINION AND ORDER

Case No. 18-000236-MZ

Hon. Stephen L. Borrello

_____ /

Pending before the Court is defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). Also pending before the Court is defendants' March 1, 2019 motion to strike, as well as defendants' March 5, 2019 and March 12, 2019 motions to quash and to hold discovery in abeyance. For the reasons stated herein, defendants' motion for summary disposition is GRANTED in part and DENIED in part. The motion to strike is DENIED. Furthermore, the Court accepts for filing plaintiffs' first amended complaint, and will afford defendant 14 days from the issuance of this opinion and order to file an answer to the first amended complaint. Finally, the motions to quash and to hold discovery in abeyance are DENIED.

I. BACKGROUND

According to the allegations in the complaint, plaintiff Randy West was driving a snowmobile on Piney Bridge Road in Chestonia Township on or about January 6, 2018. Plaintiff

Audrey West was riding on the back passenger seat of the snowmobile. The complaint alleges that defendants Andrew Albert and Steve Butzin, while in the course of their employment as conservation officers employed by defendant Department of Natural Resources (DNR), were driving snowmobiles owned by the DNR at the same time. The complaint alleges that Albert and Butzin were traveling towards plaintiffs and were driving in the wrong direction, obstructing the oncoming lane in which plaintiffs were riding, "at a high rate of speed" on Pinney Bridge Road.

The complaint alleges that Albert and Butzin's presence in the wrong lane forced Randy to slam on his breaks. This maneuver caused plaintiffs' snowmobile to swerve off the road and crash into nearby trees. Audrey was thrown from the snowmobile into a river. The complaint alleges that she landed with such force so as to render her unconscious. Randy was later found, according to the complaint, trapped under the snowmobile, in the river. The complaint alleges that plaintiffs suffered serious personal injuries, including but not limited to traumatic brain injury, broken bones, and, in the case of Randy, the loss of approximately 40% of the vision in his right eye.

In May 2018, plaintiffs filed a notice of intent (NOI) to file a claim in this Court against defendants. The NOI identifies the time and location of the incident, as well as the nature of plaintiffs' alleged injuries and damages. In addition, the NOI is signed by plaintiffs and it is verified by a notary public.

In November 2018, plaintiffs filed a complaint against defendants in this Court. Count I alleges negligence and gross negligence against Albert and Butzin. Plaintiffs allege that Albert and Butzin "carelessly, negligently, and recklessly drove in the wrong direction at a high rate of

speed as Plaintiffs, thereby causing each Plaintiff to incur severe permanent injuries” Count I continues, asserting that Albert and Butzin operated their snowmobiles at an illegal rate of speed and that they acted without regard for other vehicles or persons lawfully present on the roadway. In particular, they allege that Albert and Butzin drove in the wrong lane of traffic despite having an obstructed view of the oncoming lane. Plaintiffs allege injuries that occurred, according to ¶ 26 of the complaint, “As a direct and proximate result” of Albert and Butzin’s operation of their snowmobiles.

Count II of plaintiffs’ complaint¹ alleges that the DNR is liable under the motor vehicle exception to governmental immunity, MCL 691.1405, for Albert and Butzin’s use of the DNR-owned snowmobiles. Count III alleges a claim of negligent entrustment/gross negligence against the DNR for its decision to entrust Albert and Butzin with snowmobiles, alleging that the DNR should have known the conservation officers were likely to be involved in an accident.

II. SUMMARY DISPOSITION

The matter is before the Court on defendants’ motion for summary disposition filed pursuant to MCR 2.116(C)(7). Defendants argue that plaintiff has failed to plead facts in avoidance of governmental immunity. First, defendants argue that a snowmobile is not a “motor vehicle” under the motor-vehicle exception to governmental immunity, MCL 691.1405, and that plaintiffs’ claims against it must be dismissed as a result. Second, defendants argue that, assuming snowmobiles are “motor vehicles,” Count III—negligent entrustment—should be

¹ Plaintiffs filed an amended complaint in January 2019 that re-numbered the second and third counts of their complaint. This opinion references the counts as they have been numbered in the amended complaint. Previously, plaintiff alleged that the DNR was liable under MCL 257.401, the owners’ liability statute. Plaintiffs have since withdrawn that claim.

dismissed because entrustment of a vehicle is not the “operation” of a motor vehicle within the plain language of MCL 691.1405. Third, Albert and Butzin argue that they are entitled to immunity with respect to plaintiffs’ claims against them because: (1) they are immune from claims of ordinary negligence; (2) plaintiffs failed to allege that Albert and Butzin’s conduct was *the*—as opposed to “a”—proximate cause of their injuries. Finally, defendants argue that plaintiffs’ initial failure to file a verified complaint² requires dismissal of this action.

Summary disposition is warranted under MCR 2.116(C)(7) if dismissal is appropriate because of immunity granted by law. “In determining whether a plaintiff’s claim is barred because of immunity granted by law, the reviewing court will accept the allegations stated in the plaintiff’s complaint as true unless contradicted by documentary evidence.” *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2010).³ “[A] governmental entity is immune unless the Legislature has pulled back the veil of immunity and allowed suit by citizens against the government.” *Mack v Detroit*, 467 Mich 186, 195; 649 NW2d 47 (2002). In general, governmental immunity is to be construed broadly, while exceptions thereto must be construed narrowly. *Stanton v City of Battle Creek*, 466 Mich 611, 615; 647 NW2d 508 (2002). In the Governmental Tort Liability Act (GTLA), MCL 691.1401 *et seq.*, the Legislature has enumerated certain exceptions to immunity. A plaintiff must plead in avoidance of immunity, which is a task that can be accomplished by “stating a claim that fits within a statutory exception

² The amended complaint contains a verification page.

³ In this case, defendants contend that summary disposition is warranted on the pleadings alone. And while defendants have attached documentary evidence to their briefing, they have failed to identify with any precision the pertinent pages of that documentary evidence. The Court will not scour the record for evidence to support defendants’ contentions. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 377; 775 NW2d 618 (2009).

or by pleading facts that demonstrate that the alleged tort occurred during the exercise or discharge of a nongovernmental or proprietary function.” *Mack*, 467 Mich at 204.

A. COUNT II OF PLAINTIFFS’ COMPLAINT—MOTOR VEHICLE EXCEPTION

Turning first to plaintiffs’ claim against the DNR, plaintiffs have pled that the DNR is liable under the motor-vehicle exception, MCL 691.1405. That exception 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 the 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, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948. [MCL 691.1405.]

The DNR argues that the exception is inapplicable because a snowmobile is not a “motor vehicle.” The term “motor vehicle” is not defined in the statute, so resort to a dictionary definition is warranted. *Yoches v City of Dearborn*, 320 Mich App 461, 470; 904 NW2d 887 (2017). In *Stanton v City of Battle Creek*, 466 Mich 611, 618; 647 NW2d 508 (2002), the Michigan Supreme Court, by reference to what it characterized as a narrow definition of the term “motor vehicle,” defined “motor vehicle” as an automobile, truck, bus, or similar motor-driven conveyance[.]” In *Stanton*, the Supreme Court held that a forklift was a piece of industrial equipment, and not a “motor-driven conveyance” that was similar to an automobile. *Id.*

In the instant case, it is apparent from the pleadings that the snowmobiles at issue are not automobiles, trucks, or buses; thus, application of the exception hinges on whether they are a “similar motor-driven conveyance.” For clarity as to what constitutes a “similar motor-driven conveyance,” the Court finds useful published decisions applying the term. For instance, in *Regan v Washtenaw Co Rd Comm’rs (On Remand)*, 257 Mich App 39, 47-48; 667 NW2d 57 (2003), a “broom tractor” and a “tractor mower” were motor vehicles. The *Regan* Court

explained that “[b]oth vehicles are clearly motor-driven conveyances, in that they are motorized and carry or transport operators over the road, or alongside the road, while the operators are performing governmental duties.” *Id.* at 47. The “principal function” of the vehicles as tractors was not dispositive; rather, the fact that they were both being driven on the road and carrying operators over the road at the time of the incident was significant. *Id.* at 47-48.

In another case involving a tractor, *Yoches*, 320 Mich App at 474, the Court of Appeals held that a tractor towing a hay wagon on the road was a motor vehicle under the GTLA. The tractor and hay wagon were “invariably connected to the roadway itself” because they were being “used to carry numerous passengers on a roadway[.]” *Id.* (citation and quotation marks omitted). In addition to tractors, the Court of Appeals has held that a “Gradall hydraulic excavator” was a motor vehicle for purposes of the exception. *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 278; 705 NW2d 136 (2005). In that case, the Court of Appeals explained that:

when the Gradall is not being used for excavation, it can be driven along the roadways just like a truck and transports both its attached excavation unit and the driver. At the time of the accident in this case, the driver was returning the Gradall to defendant’s garage from the project site. The Gradall was being driven on a public roadway when it struck the rear of Daniel Wesche’s vehicle. Under these circumstances, we conclude that the trial court did not err in ruling that the Gradall is a motor vehicle for the purposes of MCL 691.1405. [*Id.* (emphasis added).]

With those authorities as a guide, the Court concludes that the snowmobiles at issue, according to the allegations contained in plaintiffs’ complaint, were “motor vehicles” as that term is used in the GTLA. There has been no dispute whether the snowmobiles were “motor-driven conveyances.” In addition, the allegations in this case compel the conclusion that the snowmobiles were “similar” to automobiles, trucks, or cars. The complaint alleges that the

snowmobiles at issue were being driven on a public roadway. Moreover, the vehicles were, by all accounts, being used to transport Albert and Butzin on the travel lanes of the roadway and to assist them in their duties as DNR employees. As a result, the Court concludes that the snowmobiles are similar to the tractors and excavators in the cases noted above. See, e.g., *Yoches*, 320 Mich App at 474. Cf. *Overall v Howard*, 480 Mich 896; 738 NW2d 760 (2007) (adopting Judge Jansen’s partial concurrence/dissent, which reasoned that a golf cart being driven near a concession stand on the grounds of a high school football stadium was not a “motor vehicle” under MCL 691.1405). And contrary to defendants’ contentions, the design of the snowmobiles or other, possible uses of the snowmobiles is not a controlling factor. See *Wesche*, 267 Mich App at 278 (focusing on the use *at the time* of the incident); *Regan (On Remand)*, 257 Mich App at 48 (rejecting a “principal function” analysis). As a result, summary disposition is not warranted on plaintiffs’ claim asserted under MCL 691.1405.

B. COUNT III—NEGLIGENT ENTRUSTMENT

However, the Court agrees with defendants that Count III of the complaint, which asserts a claim of negligent entrustment, does not fit within the confines of the motor vehicle exception. See *Regan (On Remand)*, 257 Mich App at 51 n 13 (explaining that a claim of negligent entrustment was “not directly associated with the driving of a motor vehicle” and that such a claim “cannot survive.”). As noted, plaintiffs have the duty of pleading in avoidance of immunity. *Mack*, 467 Mich at 204. A claim shall only lie under MCL 691.1405 for the “negligent operation” of a motor vehicle. Our Supreme Court has explained that, in the context of the motor-vehicle exception, the term “operation” “refers to the ordinary use of the vehicle *as* a motor vehicle, namely, driving the vehicle.” *Chandler v Muskegon Co*, 467 Mich 315, 321-322; 652 NW2d 224 (2002). As recognized by the Court of Appeals in *Regan (On Remand)*, 257

Mich App at 51 n 13, plaintiffs' negligent entrustment claim is "not directly associated with the driving of a motor vehicle[.]"⁴ The Court agrees with defendants that Count III must be dismissed.

C. COUNT I—CLAIMS AGAINST ALBERT & BUTZIN

Turning to defendants' next contention, the Court disagrees that Count I should be dismissed, at least to the extent it concerns allegations of gross negligence. In Count I, plaintiffs assert a tort claim against Albert and Butzin, two governmental employees. "MCL 691.1407(2) provides immunity for governmental employees, but MCL 691.1407(2)(c) provides an exception to that immunity when the employee's conduct constitutes gross negligence." *Yoches*, 320 Mich App at 476. A claim of ordinary negligence cannot lie against governmental employees, however. *Id.* See also MCL 691.1407(2). Instead, plaintiffs must prove gross negligence against the governmental employees and that the employees' gross negligence was "the proximate cause of the injury or damage." MCL 691.1407(2)(c). Thus, to the extent Count I asserts a claim of ordinary negligence, that aspect of the claim must be dismissed.

Turning to the claim that Albert and Butzin acted with gross negligence, defendants ask the Court to dismiss the same for the reason that plaintiffs have failed to allege that Albert and Butzin's conduct was "the" proximate cause of their injuries, as opposed to "a" proximate cause. See *Robinson v Detroit*, 462 Mich 439, 468; 613 NW2d 307 (2000); *Curtis*, 253 Mich App at 563. Here, a review of the totality of plaintiffs' complaint reveals that plaintiffs have alleged that

⁴ The Court notes the unpublished Court of Appeals decision cited in plaintiffs' brief that suggests a contrary result; however, the Court concludes that it is bound by the published decision in *Regan (On Remand)*, 257 Mich 39.

Albert and Butzin were “the one most immediate, efficient, and direct cause” of their injuries. See *Robinson*, 462 Mich at 459. Indeed, they allege that Albert and Butzin’s actions were the only cause of their injuries; any focus by defendants on the complaint’s use of the phrase “a proximate cause” is an elevation of form over substance.

D. VERIFICATION OF THE COMPLAINT

Finally, the Court rejects defendants’ contention that this matter should be dismissed for the lack of verification in plaintiffs’ initial complaint. Instead, the amended complaint can cure any deficiency that arose. As noted above, plaintiffs’ initial complaint was not verified; however, the amended complaint contains a verification page. MCL 600.6434 imposes several requirements on a party’s pleadings in actions filed in this Court. In pertinent part, § 6434(2) specifies that “[t]he complaint *shall be verified*.” (Emphasis added). However, contrary to defendants’ suggestions, § 6434(2)’s verification requirement is distinct from the verification required of a notice or claim in MCL 600.6431(1). Unlike §6431(1), which specifies that “No claim may be maintained” absent compliance with the statute, §6434(2) does not does not specifically preclude a claim from being maintained against the state for noncompliance with its provisions. In addition, unlike §6431(1), which specifies that verification must occur “before an officer authorized to administer oaths,” §6434(2) merely specifies that the complaint be “verified.” As a result, defendants’ caselaw, which cites § 6431(1), is inapplicable, and the Court concludes that amendment of the complaint in this case was permissible in order for plaintiffs to achieve compliance with § 6434(2). Indeed, plaintiffs’ NOI in this case satisfied § 6431(1), and the “bar-to-claims” language in § 6431(1) has not been implicated. Cf. *Progress Mich v Attorney General*, 324 Mich App 659, 671; 922 NW2d 654 (2018) (discussing § 6431).

Moreover, the Court of Appeals has already held that the failure to comply with § 6434(2) does not require dismissal of a complaint, or that any failure to comply can be cured by amendment. *Arnold v Dep't of Transp*, 235 Mich App 341, 346; 597 NW2d 261 (1999);⁵ *Gilliland Constr Co v State Highway Dep't*, 4 Mich App 618, 620-621; 145 NW2d 384 (1966). As a result, the Court accepts the amended complaint, and the verification page therein satisfies § 6434(2).

III. DEFENDANTS' MOTION TO STRIKE

As it concerns the amended complaint,⁶ the Court next turns its attention to defendants' March 1, 2019 motion to strike. Therein, defendants allege that they were not served with plaintiffs' first amended complaint or with plaintiffs' response to their motion for summary disposition. Proofs of service filed with this Court, as well as e-mails attached to plaintiffs' response to defendants' motion to strike, appear to indicate otherwise. Moreover, even assuming the same were not received, the Court declines to exercise its authority under MCR 2.115 to grant the motion to strike. Instead, the Court will permit defendants 14 days to file an answer to the amended complaint.

⁵ The Court's holding in *Arnold* concerned compliance with § 6434(2). The *Arnold* panel also, in dicta, discussed the doctrine of substantial compliance in the context of § 6431(1). Although the dicta in *Arnold* is at odds with recent caselaw discussing § 6431(1), see *Fairley*, 497 Mich 290; 871 NW2d 129 (2015), that dicta does not affect the validity of *Arnold*'s holding with respect to § 6432(2).

⁶ The Court agrees with plaintiff that the amended complaint was by right in this case. Moreover, even if it were not by right, the Court would grant leave in this case.

EXHIBIT 6

STATE OF MICHIGAN
COURT OF APPEALS

AUDREY WEST and RANDY WEST,

Plaintiffs-Appellees,

v

DEPARTMENT OF NATURAL RESOURCES,
ANDREA ALBERT, and STEVE BUTZIN,

Defendants-Appellants.

FOR PUBLICATION

August 6, 2020

9:00 a.m.

No. 348452

Court of Claims

LC No. 18-000236-MZ

Before: RIORDAN, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J.

In this personal-injury action, defendants, the Department of Natural Resources (DNR) and two of its conservation officers appeal as of right the order of the Court of Claims denying the DNR’s motion for summary disposition premised upon governmental immunity. The only issue in this appeal is whether the DNR-owned snowmobiles involved in the accident underlying this case met the definition of “motor vehicle” for purposes of the exception to governmental immunity set forth in MCL 691.1405. The trial court ruled that they did, and thus denied the motion. For the reasons discussed below, we affirm.

I. FACTS

Plaintiffs, a father and daughter, were driving a snowmobile on Pinney Bridge Road in Chestonia Township when they allegedly encountered the defendant conservation officers, acting in the course of their employment with the DNR, driving DNR-owned snowmobiles on the same road in the wrong direction. Although defendants primarily attempt to characterize Pinney Bridge Road as a mere snowmobile trail, as opposed to a roadway proper, they also describe it as “an unpaved, country road.” Plaintiffs assert that they were forced to swerve off the road. As a result, plaintiffs’ snowmobile crashed, the daughter was thrown into a nearby river, and the father was pinned underneath the snowmobile.

Plaintiffs commenced action in the Court of Claims, arguing, in relevant part, that under MCL 691.1405, the DNR was liable for their alleged injuries on the ground that they were caused by motor vehicles owned by the DNR and operated by its employees in the course of their

employment. Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(7), arguing in relevant part that snowmobiles are not motor vehicles, so MCL 691.1405 did not defeat the DNR's immunity.

The Court of Claims considered the motion without oral argument, and it issued a written opinion and order denying the DNR's motion for summary disposition. The court analyzed several cases that held that such vehicles other than cars or trucks as tractors and mowers constituted "motor vehicles" for purposes of MCL 691.1405. Reasoning that snowmobiles were similar to such conveyances, and noting that the ones in question were being driven on a public roadway by the DNR's employees "to assist them in their duties," the Court of Claims ruled that the snowmobiles in this case were motor vehicles triggering the exception to governmental immunity under MCL 691.1405. This appeal followed.

II. ANALYSIS

A trial court's decisions on motions for summary disposition, and also on questions of statutory interpretation, are reviewed *de novo*. See *McCahan v Brennan*, 492 Mich 730, 735-736; 822 NW2d 747 (2012). So long as issues are brought to the trial court's attention, they are preserved for our review irrespective of whether the trial court rules on, or even recognizes, them. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). We may address questions of law where "the facts necessary for [their] resolution have been presented." See *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002). We note that defendants chose to file a motion for summary disposition in lieu of an answer and before discovery, and thus any insufficiency in the record would make summary disposition at least premature. See *Hoffman v Warden*, 184 Mich App 328, 337; 457 NW2d 367 (1990).

Under the governmental tort liability act, MCL 691.1401 *et seq.*, governmental agencies in this state are generally immune from tort liability for actions taken in furtherance of governmental functions. MCL 691.1407(1). "It is well established that governmental immunity is not an affirmative defense, but is instead a characteristic of government." *Fairley v Dep't of Corrections*, 497 Mich 290, 298; 871 NW2d 129 (2015), citing *Mack v Detroit*, 467 Mich 186, 198; 649 NW2d 47 (2002). It is a plaintiff's burden to plead and prove facts establishing an exception to governmental immunity. *Fairley*, 497 Mich at 298, 300; *Mack*, 467 Mich at 198. "The Legislature has provided six exceptions to this broad grant of immunity, which courts must narrowly construe." *Yono v Dep't of Transp*, 499 Mich 636, 646; 885 NW2d 445 (2016) (quotation marks and citation omitted).

One such statutory exception is the so-called motor-vehicle exception, which provides that governmental agencies remain "liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner . . ." MCL 691.1405.

MCL 691.1405 does not define "motor vehicle." The Michigan Vehicle Code, MCL 257.1 *et seq.*, provides a definition of both "owner," MCL 257.37, and "motor vehicle," MCL 257.33. However, our Supreme Court has explained that MCL 691.1405 only refers to the Vehicle Code's definition of "owner," and it does *not* rely on the Vehicle Code's definition of "motor vehicle." *Stanton v Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002). Reasoning that the rule

requiring narrow construction of statutory exceptions to immunity called for “a narrow definition to the undefined term ‘motor vehicle,’ ” the Court held that “motor vehicle” for purposes of the motor-vehicle exception is “an automobile, truck, bus, or similar motor-driven conveyance.” *Id.* at 618. The Court concluded that forklifts do not meet the definition of “motor vehicle” because a forklift is a piece of industrial equipment not similar to a car, truck, or bus. *Id.* As our dissenting colleague aptly notes, it has proved difficult to apply the concept of a “similar motor-driven conveyance,” but courts may not rely on the easily-applied definition in MCL 257.33, so courts have generally considered a proposed motor vehicle’s physical characteristics, design and intended use, and actual use.

The Court expanded that analysis in its order in *Overall v Howard*, 480 Mich 896; 738 NW2d 760 (2007), in which it reversed this Court’s unpublished decision holding that a golf cart met the definition of “motor vehicle” and expressly adopted the contrary reasoning of the partial dissent. Supreme Court orders are binding precedent “to the extent they can theoretically be understood, even if doing so requires one to seek out other opinions . . . ” *Woodring v Phoenix Ins Co*, 325 Mich App 108, 115; 923 NW2d 607 (2018). Accordingly, the reasoning in the unpublished partial dissent from this Court is now binding precedent, expanding upon *Stanton*’s “similar motor-driven conveyance” analysis to include consideration of whether the conveyances at issue were designed for operation on or along the roadway:

[T]he vehicles at issue in [other cases applying MCL 691.1405] were motor-vehicle-like conveyances that were designed for operation on or alongside the roadway, and each of these conveyances generally resembled an automobile or truck. In contrast, the forklift at issue in *Stanton* was not similar to an automobile, bus, or truck, and was not designed for operation on or alongside the roadway. [*Overall v Howard*, unpublished opinion per curiam of the Court of Appeals, issued April 26, 2007 (Docket No. 274588) (JANSEN, J., concurring in part and dissenting in pertinent part), partial dissent at 1.]

The dissent, and thus our Supreme Court, held that a golf cart, like a forklift, is not intended to be operated on or alongside a roadway. *Id.*

This Court has held that such conveyances as a Gradall hydraulic excavator, *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 278; 705 NW2d 136 (2005), aff’d 480 Mich 75 (2008), a “broom tractor” and a “tractor mower” performing roadside maintenance, *Regan v Washtenaw Co Rd Comm’s (On Remand)*, 257 Mich App 39, 47-48; 667 NW2d 57 (2003), and a tractor pulling a wagon with passengers for hayrides, *Yoches v Dearborn*, 320 Mich App 461, 474; 904 NW2d 887 (2017), are “motor vehicles” for purposes of MCL 691.1405. In the latter case, this Court rejected the municipal defendant’s argument that tractors and hay wagons were most typically found on farms and not roadways, emphasizing that “binding caselaw is quite clear that the ‘primary function’ of a vehicle does not control the analysis.” *Yoches*, 320 Mich App at 474. We note that it is a matter of common, everyday experience in farming and rural communities that tractors *are* commonly, if perhaps seasonally and not necessarily daily, found on roadways.

There is no dispute that snowmobiles are motor-driven. There is also no contention that snowmobiles are automobiles, trucks, or buses. The question is whether they are “similar motor-driven conveyances.” Applying the above principles, we must consider whether a snowmobile is

more like a tractor or an excavator, which would make it a motor vehicle triggering the immunity exception, or more like a golf cart or forklift, which would not. There is no doubt snowmobiles are physically capable of operating on roads; moreover, they are capable of travelling extended distances like tractors, the excavator at issue in *Wesche*, and conventional automobiles—and in contrast to much more limited machinery like golf carts and forklifts. Thus, snowmobiles are physically more analogous to automobiles than not.¹

Defendants argue that snowmobiles neither typically, nor usually legally, travel on public roadways as part of normal operations. However, as noted, a conveyance’s primary intended purpose does not determine whether it is a motor vehicle for purposes of the motor-vehicle exception to governmental immunity. Similarly, defendants argue that snowmobiles are not meant to operate on public roadways. We are doubtful that this is accurate.² In any event, whether snowmobiles are intended to operate *on* roadways ignores a critical part of the requisite analysis. As discussed in the now-precedential partial dissent from this Court’s opinion in *Overall*, the question is whether the conveyance is intended to operate on *or alongside* the roadway.

Defendants cite MCL 324.82119(1), which prohibits the use of snowmobiles on public highways, but which also sets forth exceptions. Some of those exceptions only permit snowmobiles to cross roads. However, under MCL 324.82119(1)(a) and (b), snowmobiles are explicitly permitted to travel within highway right-of-ways unless explicitly and specifically prohibited by the DNR or the Michigan Department of Transportation. Thus, snowmobiles are clearly expected to operate *alongside* roadways. Under subsection (1)(c), snowmobiles may operate on the roadway itself in order to cross bridges or culverts; and under subsection (1)(h), they may be operated on roadways for special events. Finally, subsection (1)(f) specifically permits snowmobiles to be operated on the shoulders of roads under some circumstances, with the

¹ We agree with our dissenting colleague’s observation that snowmobiles generally lack many of the safety features now legally mandated in automobiles; but given the facts (1) that tractors also generally lack many of those safety features, and (2) that most modern “complex safety systems” like airbags and seatbelts were either not mandatory or not even available when MCL 691.1405 was enacted in 1964, we find complex safety features an irrelevant distinction. In contrast, our dissenting colleague also observes that snowmobiles typically use skis and treads instead of tires. We agree that is a noteworthy distinction, but we think it less important than the transportational similarities between snowmobiles and automobiles.

² We also note that there is considerable state-by-state variation as to whether or when snowmobiles may be driven on roads. See < <http://www.snowmobilers.org/snowmobiling-laws-and-rules.aspx> >. This implies that, as with tractors, snowmobiles might be more or less commonly found on roadways depending on region and season. Defendants rely on *McDaniel v Allstate Ins Co*, 145 Mich App 603; 378 NW2d 488 (1985), which observed that under a now-repealed part of the Motor Vehicle Code, snowmobiles were definitionally “not designed for primary use on public highways.” *McDaniel*, 145 Mich App at 608, citing former MCL 257.1501(e). This holding in *McDaniel* is clearly no longer applicable, and in any event, given the practical realities, we seriously doubt snowmobile manufacturers do not design snowmobiles for use on public highways. As discussed, a conveyance’s primary use is not controlling.

obvious expectation that such use will actually occur. Clearly, therefore, snowmobiles are capable of more than incidental operation on roadways. Conversely, the golf cart operating near a concession stand at a football game in *Overall* might be physically capable of driving on a road, but golf carts are either specifically designed *not* to be used on roads or are designed as merely a convenient alternative to walking.³

Defendants finally argue that Pinney Bridge Road is not, in fact, a road, because it is listed as a “Designated Snowmobile Trail” by the Department of Natural Resources. We do not think that designation is dispositive. We are unaware of evidence, nor have defendants cited to any such evidence, that Pinney Bridge Road is *never* accessible to automobiles. The low-quality scanned images attached to defendants’ motion are of no value to this question. Insofar as we can determine, defendants rely solely on Pinney Ridge Road having been designated as a snowmobile trail. Notably, MCL 324.82119(1)(f) provides that “a highway in a county road system” may, under some circumstances, be “designated and marked for snowmobile use.” This includes roads that are actually snowplowed and, therefore, implicitly accessible to conventional automobile traffic. Even presuming Pinney Ridge Road was, in fact, either *de facto* or *de jure* not traversable by any vehicles other than snowmobiles, the record does not establish that a “designated snowmobile trail” is necessarily not a roadway.

Furthermore, we note that under the Vehicle Code, a “[r]oadway]” means that portion of a highway improved, designed, or ordinarily used for vehicular travel.” MCL 257.55. A “vehicle” includes “every device in, upon, or by which any person or property is or may be transported or drawn upon a highway.” MCL 257.79. Although the Vehicle Code may not be binding, we do not think it irrelevant that a snowmobile would certainly constitute a “vehicle” and thus a snowmobile trail would constitute a “roadway” under the Vehicle Code’s definitions.⁴ Furthermore, automobiles are not-uncommonly used off-road, and many of them are capable of some degree of off-road usage with no aftermarket modifications. In any event, MCL 691.1405 requires a motor vehicle to be operated, but not necessarily on a roadway. Thus, how a proposed motor vehicle is being used at the time of the injury is one of several relevant considerations when determining whether it is a “motor vehicle.” Even if Pinney Bridge Road is not a “roadway,” that fact would be relevant but not dispositive.⁵ We think it far more relevant that, at the time of the injury, the snowmobiles were being used for a combination of transportational and recreational purposes more akin to automobiles—albeit, perhaps, off-road automobiles—than limited equipment like a golf cart or forklift. Irrespective of the nature of Pinney Ridge Road, we would

³ See < https://en.wikipedia.org/wiki/Golf_cart >.

⁴ Further suggesting that the Vehicle Code is not irrelevant, our Supreme Court has explained that “because snowmobiles, albeit under limited circumstances, may be operated on highways,” it is proper to charge a person under the OUIL provision of the Vehicle Code for operating a snowmobile on a highway while intoxicated. *People v Rogers*, 438 Mich 602, 607-608; 475 NW2d 717 (1991). Our Supreme Court thus explicitly recognized that snowmobiles do operate on roadways, which indirectly supports the conclusion that they are motor vehicles.

⁵ We agree with our dissenting colleague that the trial court erred by considering only the actual use of the snowmobiles at the time of the injury.

find that the physical, design, and expected use characteristics of snowmobiles reveal them to be “similar motor-driven conveyances” irrespective of whether Pinney Bridge Road was a public roadway.

Because the snowmobiles owned by the DNR and operated by its conservation officers in the course of their governmental duties were motor-driven conveyances that could be expected to be operated, under certain circumstances, on or alongside a roadway, we agree with plaintiffs and the Court of Claims that they qualified as motor vehicles for purposes of the motor-vehicle exception to governmental immunity under MCL 691.1405. We respectfully disagree with our dissenting colleague that the above analysis ignores any of the requisite factors or considerations, and we find nothing in the record to suggest that further fact-finding in the trial court would alter our conclusion.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Douglas B. Shapiro

EXHIBIT 7

Yousif v. City of Sterling Heights, Not Reported in N.W.2d (2009)

2009 WL 3491704

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Helin YOUSIF, as Next Friend of Richard
Joseph Yousif, a Minor, Plaintiff-Appellee,

v.

CITY OF STERLING HEIGHTS,
Defendant-Appellant.

Docket No. 288302.

|
Oct. 29, 2009.

Macomb Circuit Court; LC No. 07-002624-NI.

Before: [MURRAY](#), P.J., and [MARKEY](#) and [BORRELLO](#), JJ.

Opinion

PER CURIAM.

*1 Defendant appeals by right the trial court's order denying its motion for summary disposition based on the motor vehicle exception to governmental immunity, [MCL 691.1405](#). We affirm. This appeal has been decided without oral argument pursuant to [MCR 7.214\(E\)](#).

At issue in this case is whether the vehicle involved, a “Gator” utility tractor, is a “motor vehicle” within the scope of the statutory exception:

Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the 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, as amended, being sections 257.1 to

257.923 of the Compiled Laws of 1948 [the Michigan Vehicle Code]. [[MCL 691.1405](#).]

In [Stanton v. Battle Creek](#), 466 Mich. 611, 616; 647 NW2d 508 (2002), our Supreme Court held that the exception's reference to the definitions provided in the Michigan Vehicle Code, [MCL 257.1 et seq.](#) applied only to the word “owner,” and did not provide for a statutory definition of “motor vehicle.” Instead, the Court consulted dictionaries and applied “an automobile, truck, bus, or similar motor-driven conveyance” as the proper definition, noting that a narrow definition provided the correct interpretation of an exception to governmental immunity. *Id.* at 618. Although the Court noted some dictionaries' definitions included phrases such as “for use on streets or highways,” it did not include this limitation in crafting its definition. In addition, *Stanton* Court's analysis did not mention that the vehicle, a forklift, was not being driven on a street or highway at the time of the accident, nor that it was not designed to travel on streets. Instead, the Court simply concluded the forklift was “a piece of industrial construction equipment” and was “not similar to an automobile, truck, or bus.” *Id.* (emphasis in original). After *Stanton*, this Court held that a broom tractor, a tractor mower, and a hydraulic grader are all motor vehicles subject to the exception. [Regan v. Washtenaw Co Bd of Co Rd Comm'rs \(On Remand\)](#), 257 Mich.App 39; 667 NW2d 57 (2003); [Wesche v. Mecosta Co Rd Comm](#), 267 Mich.App 274; 705 NW2d 136 (2005), overruled in part on other grds [Kik v. Sbraccia](#), 272 Mich.App 388; 726 NW2d 450 (2006) (conflict panel), rev'd in part, aff 'd in part [Wesche v. Mecosta Co Rd Comm](#), 480 Mich. 75; 746 NW2d 847 (2008) (affirming *Wesche*). But, when this Court held that a golf cart driven by an athletic trainer at a football game was a motor vehicle in *Overall v. Howard*, unpublished opinion per curiam of the Court of Appeals, issued April 26, 2007 (Docket No. 274588) (“*Overall I*”), our Supreme Court reversed “for the reasons stated in the Court of Appeals dissenting opinion.” [Overall v. Howard](#), 480 Mich. 896 (2007) (“*Overall II*”). That dissenting opinion noted the exception is to be construed narrowly, and then stated:

*2 [T]he vehicles at issue in *Wesche* and *Regan* were motor-vehicle-like

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conveyances that were designed for operation on or alongside the roadway, and each of these conveyances generally resembled an automobile or truck. In contrast, the forklift at issue in *Stanton* was not similar to an automobile, bus, or truck, and was not designed for operation on or alongside the roadway. I conclude that the golf cart in the instant case more closely resembled the forklift at issue in *Stanton* than it did the conveyances at issue in *Wesche* and *Regan*. [*Overall I*, slip op at pp 1-2, Jansen, J, dissenting.]

In the present case, defendant argues that the Gator utility tractor is like the golf cart in *Overall*, while plaintiff argues it is more like the vehicles in *Regan* and *Wesche*. The Gator was being used as a trailer shuttle to transport festivalgoers visiting downtown Sterling Heights. The streets were closed off, and people would use the shuttle to get from the parking area to the festival area via public roads that had been closed to public traffic for the festival. Plaintiff fell off the passenger trailer and was injured when the driver allegedly turned too sharply. Defendant argues that the Gator is similar in size and appearance to a golf cart, is not required to be registered with the Secretary of State (like a golf cart), has a top speed of 18 miles per hour that precludes it from being driven in high-speed traffic, and was being used in the same way defendant was also using golf carts to transport passengers. These shuttle vehicles were not driven to the festival when the roads were open; they were transported on another vehicle. Defendant further argues that the trial court erroneously ignored the holding in *Overall*, stating that, “the Supreme Court, by virtue of adopting the Court of Appeals' dissent, held that a golf cart is not a motor vehicle for purposes of the exception to governmental immunity.” The Gator was not designed for use on public roadways and cannot travel at speeds comparable to other motor vehicles. This was not a motor vehicle accident, defendant argues, and the Gator's operation did not endanger a motorist on the public highway, unlike the situations in *Regan* and *Wesche*. In response, plaintiff reiterates the argument that the Gator was driven and operated in a way identical to that

of a car, bus, or truck. It was not being used like a piece of equipment like a forklift.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v. Dep't of Transportation*, 456 Mich. 331, 337; 572 NW2d 201 (1998). Statutory interpretation is a question of law that we also consider de novo on appeal. *Detroit v. Ambassador Bridge Co*, 481 Mich. 29, 35; 748 NW2d 221 (2008).

We agree with plaintiff that the Gator in this case is a motor vehicle falling within the statutory exception. Binding case law has applied the exception fairly consistently, precluding liability where the vehicle was being used more as a piece of equipment than as a means of transportation. Indeed, the *Stanton* definition emphasizes the vehicle's transportational purpose rather than where it is being operated, and although *Stanton* quoted dictionary definitions that mentioned use on highways, in the end, the Court stated:

*3 The definition of a “motor vehicle” as “an automobile, truck, bus, or similar motor-driven conveyance” is the narrower of the two common dictionary definitions. Therefore, we apply it to the present case. A forklift—which is a piece of industrial construction *equipment*—is not similar to an automobile, truck, or bus. Thus, the motor vehicle exception should not be construed to remove the broad veil of governmental immunity for the negligent operation of a forklift. [*Stanton, supra* at 618, emphasis in original.]

Nothing in the statute or in *Stanton* or later cases indicates that the vehicle's top speed, size, appearance, or powertrain are of significance when applying the statute.

Under our binding case law, the Gator is a motor vehicle. It was transporting passengers from one location to another, just like a shuttle bus. Although it was smaller and less powerful than a regular bus, nothing in the statute indicates that such considerations are controlling.

We affirm. As the prevailing party, plaintiff may tax costs pursuant to [MCR 7.219](#).

[MURRAY](#), P.J. (dissenting).

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*3 With all due respect to my esteemed colleagues, I dissent from their opinion affirming the circuit court's order denying defendant's motion for summary disposition. In my view, the Gator involved in the accident is not a motor vehicle for purposes of the motor vehicle exception to statutory governmental immunity, [MCL 691.1405](#). In reviewing the exhibits attached to the appellate briefs, the Gator much more resembles a golf cart that was found not to be a motor vehicle in [Overall v. Howard](#), 480 Mich. 896; 738 NW2d 760 (2007), than it does a motor vehicle. Consistent with the definition of motor vehicle adopted by the Court in [Stanton v. City of Battle Creek](#), 466 Mich. 611, 618; 647 NW2d 508 (2002), the Gator

is not an automobile, truck, bus, or similar motor vehicle but is instead more like a golf cart that is not intended to be driven on a roadway and has many of the same limitations in size, capacity, and engineering that a golf cart has.¹ In an attempt to be consistent with existing precedent, I would reverse the trial court's order on the basis of *Overall* and remand for entry of an order granting defendant's motion for summary disposition.

All Citations

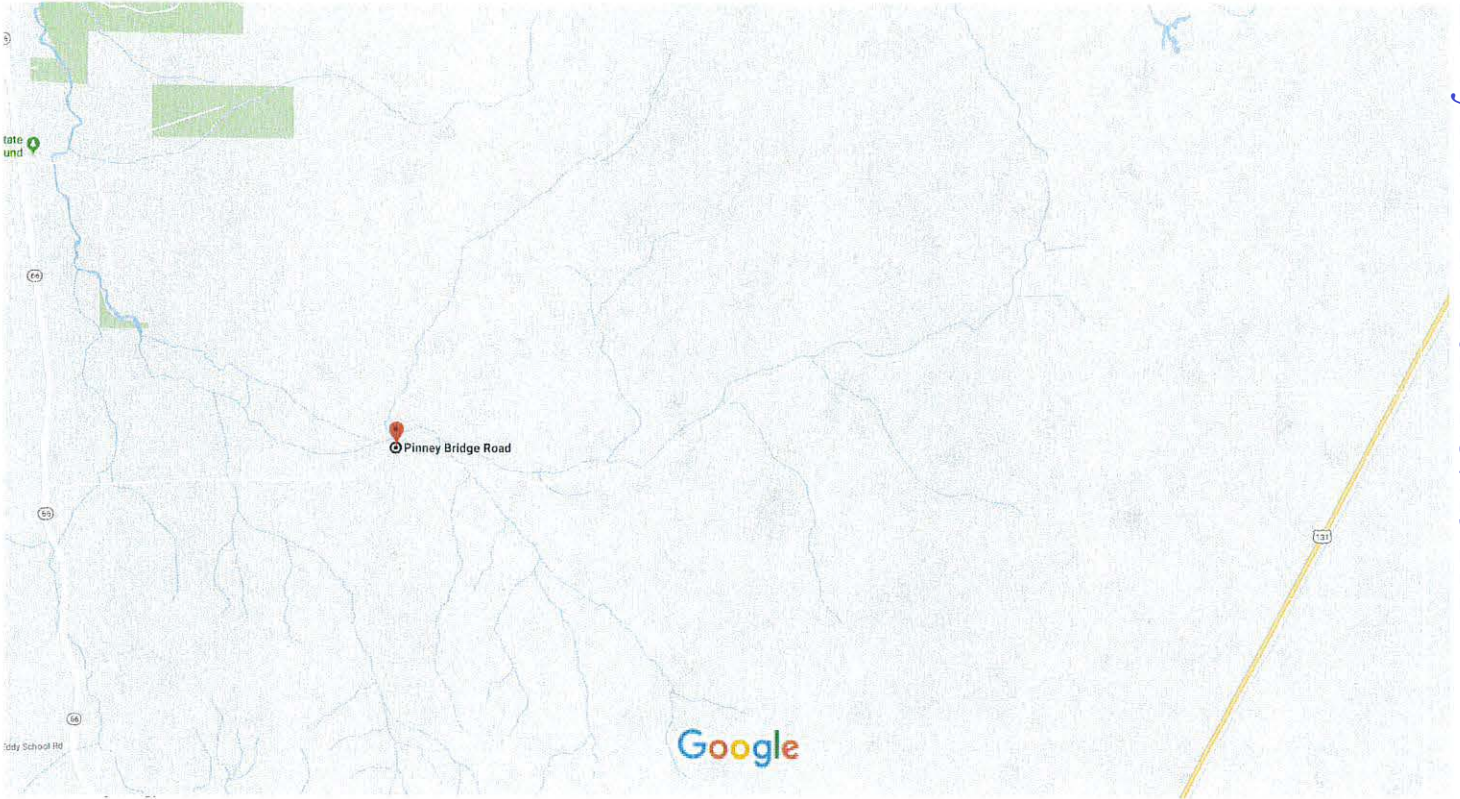
Not Reported in N.W.2d, 2009 WL 3491704

Footnotes

¹ The unrefuted evidence shows that the Gator has a maximum speed of 18 miles per hour, does not need to be registered with the Secretary of State, and was not intended for use on or along a roadway.

EXHIBIT 8

Google Maps



Map data ©2019 2000 ft

DELAYS

Light traffic in this area

No known road disruptions. Traffic incidents will show up here.

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EXHIBIT 9

STATE OF MICHIGAN
COURT OF CLAIMS

AUDREY WEST, and
RANDY WEST,

Plaintiffs,

v

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES, ANDREA
ALBERT, and STEVE BUTZIN,

Defendants.

No. 18-000236-MZ

HON. STEPHEN L. BORRELLO

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**BRIEF IN SUPPORT OF DEFENDANTS' JANUARY 4, 2019 MOTION FOR
SUMMARY DISPOSITION BASED ON GOVERNMENT IMMUNITY**

I. STATEMENT OF FACTS

This lawsuit arises out of a January 6, 2018 incident where plaintiffs, 51-year-old Randy West and his 19-year-old daughter Audrey West, were injured when the snowmobile Mr. West was driving, with his daughter as a passenger, ran off a snowmobile trail and crashed into the Jordan River. Plaintiffs have filed a three-count complaint against the Michigan Department of Natural Resources ("DNR") and two DNR Conservation Officers, Andrea Albert and Steven Butzin ("the COs").

A copy of the Complaint is attached hereto as Exhibit "A." For purposes of this Motion, the relevant factual allegations in plaintiffs' Complaint are these:

¶21. On or about January 6, 2018, at or about 12:30 pm, Plaintiff Randy West was driving his snowmobile, with his daughter Plaintiff Audrey West riding on the back, when Defendants Butzin and Albert were driving at a high rate of speed in the opposite direction on the wrong side of the same trail as Plaintiffs, causing Plaintiffs' vehicle to leave the roadway injury (sic) Plaintiffs Audrey and Rand West.

¶22. At the aforementioned time and place Defendants Butzin and Albert carelessly, negligently, and recklessly drove in the wrong direction at a high rate of speed as (sic) Plaintiffs, thereby causing each Plaintiff to incur severe permanent injuries as set forth hereinafter.

¶27. As a direct and proximate result of the carelessness, negligence, and recklessness of Defendants, Plaintiff Randy West was thrown from his snowmobile, knocked unconscious, and sustained serious, permanent injuries and permanent impairment of body function...[plaintiffs had previously alleged, in ¶13, that Audrey West suffered injuries "as a result of Defendants' negligence"].

Plaintiffs then assert the following legal conclusions. Count I: the COs are liable for negligent and grossly negligent operation of the State-owned snowmobiles they were operating near where Randy West ran his snowmobile off the trail. Count II: the DNR is vicariously liable for the negligent and grossly negligent operation of

State-owned snowmobiles by the COs. Count III: the DNR is liable under a theory of negligent and grossly negligent entrustment of the snowmobiles to the COs who, plaintiffs claim, the DNR knew were incapable of operating the snowmobiles in a safe manner due to improper training and driving habits.

The defendants deny these allegations, and contend that it was actually Randy West's sole negligence that resulted in him crashing his snowmobile thereby injuring himself and his daughter. Attached hereto as Exhibit "B" are relevant portions of the official reports of this incident prepared by DNR and Michigan State Police personnel. Note that Randy West was charged with reckless operation of a snowmobile causing injury. COs Albert and Butzin were given lifesaving awards for their actions in rescuing the plaintiffs from the Jordan River. But regardless of the plaintiffs' claims and the defendants' denials, the allegations in the Complaint fail to plead a cause of action against the DNR in avoidance of the DNR's immunity. The Complaint also fails to plead a claim of gross negligence against the COs outside of the COs government-employee immunity. Finally, plaintiffs did not file a verified complaint, which is required by the Court of Claims' rules of pleading, which is another reason plaintiffs' Complaint needs to be dismissed.

II. STANDARD OF REVIEW

The question of whether the DNR is entitled to government immunity (see section III.A. below) should be decided under MCR 2.116(C)(7). *Maiden v Rozwood*, 461 Mich 109, 146 (1999). The question of whether the COs are entitled to

government-employee immunity (see section III.B. below) should also be decided under MCR 2.116(C)(7). See *Odom v Wayne County*, 482 Mich 459, 466 (2008). The question whether plaintiffs' case should be dismissed for not filing a verified complaint (see section III.C. below) should also be reviewed under the standard set forth in MCR 2.116(C)(7). *Progress Michigan v Attorney General*, 2018 Mich App LEXIS 2640; 2018 WL 3039871.

In *Maiden*, 461 Mich at 119-20, the Supreme Court stated the legal standards applicable to motions brought under MCR 2.116(C)(7):

A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. If such material is submitted, it must be considered. MCR 2.116(G)(5). Moreover, the substance or content of the supporting proofs must be admissible in evidence. Unlike a motion under subsection (C)(10), a movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant. *Patterson v Kleiman*, 447 Mich. 429, 434, n 6; 526 N.W.2d 879 (1994).

III. ARGUMENT

A. Plaintiffs have failed to plead facts in avoidance of the DNR's immunity.

1. Plaintiffs' injuries did not "result from the negligent operation ... of a motor vehicle" for purposes of the motor vehicle exception to government immunity, and, hence, the DNR is immune from liability regardless of whether the Conservation Officers were negligent or grossly negligent in the operation of the State-owned snowmobiles.

Plaintiffs allege that CO Albert and CO Butzin's negligent and grossly negligent operation of State-owned snowmobiles expose the DNR to liability under

the motor vehicle exception to government immunity. See MCL 691.1405. This is not correct. Even if the allegations of negligence and gross negligence are true, the DNR would still be immune from tort liability because the snowmobiles that the COs were operating were not “motor vehicle[s]” within the meaning of the motor vehicle exception to government immunity.

The government tort liability act, MCL 691.1401 et seq., provides immunity from tort liability to government agencies engaged in a governmental function. MCL 691.1407(1). The legislative immunity granted to government agencies is broad and broadly construed, and subject to narrowly drawn and narrowly construed statutory exceptions. *Ross v Consumers Power* (On Rehearing), 420 Mich 567, 593-595, 622 (1984); *Kerbersky v Northern Michigan University*, 458 Mich. 525, 529 (1998); *Chandler v County of Muskegon*, 467 Mich 315, 321 (2002).

Plaintiffs contend in their Complaint that they may recover from the DNR for their injuries resulting from the negligent and grossly negligent operation of the State-owned snowmobiles by DNR employees under the motor vehicle exception to government immunity, MCL 691.1405. This presents an issue of statutory construction since the Court must determine whether the snowmobiles that the COs were operating were “motor vehicle[s]” as that term is used in MCL 691.1405. See *Stanton v City of Battle Creek*, 466 Mich 611, 615 (2002).

When presented with the question whether a forklift constitutes a “motor vehicle” for purposes of the exception, the Supreme Court in *Stanton* viewed the issue as one of statutory interpretation. The motor vehicle exception states:

Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in [the Michigan Vehicle Code], as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948.

The *Stanton* Court ruled that a forklift is not a “motor vehicle” under the exception. It reasoned as follows. The motor vehicle exception does not define “motor vehicle.” Furthermore, the statute does not refer to the Michigan Vehicle Code, MCL 257.1 et seq., for the definition.

Grammatically, the final clause of § 1405 sends the reader to the Michigan Vehicle Code only for the definition of “owner.” The “last antecedent” rule of statutory construction provides that a modifying or restrictive word or clause contained in a statute is confined solely to the immediately preceding clause or last antecedent, unless something in the statute requires a different interpretation. *Sun Valley Foods Co v Ward*, 460 Mich. 230, 237; 596 N.W.2d 119 (1999). Applying this rule, the reference to §§ 257.1 to 257.923 in § 1405 defines “owner,” not “motor vehicle,” and nothing in the statute demands a different interpretation. *Haveman v Kent Co Rd Comm'rs*, 356 Mich. 11, 18-22; 96 N.W.2d 153 (1959). *Stanton*, 466 Mich at 616.

The Court then determined the “plain and ordinary meaning” of “motor vehicle.” Looking to various dictionary definitions, the *Stanton* majority looked to find a narrow definition of the undefined term “motor vehicle” since precedent required the Court to broadly construe the State’s immunity and narrowly construe the exceptions. The Court settled on the definition of “motor vehicle” as “an automobile, truck, bus, or similar motor-driven conveyance” because it “is the narrower of the two common dictionary definitions [that the Court reviewed]. Therefore, we apply it to the present case. A forklift--which is a piece of industrial construction equipment--is not similar to an automobile, truck, or bus. Thus, the

motor vehicle exception should not be construed to remove the broad veil of governmental immunity for the negligent operation of a forklift.” *Id.*, at 618.

The Supreme Court followed *Stanton* when it ruled that a golf cart was not a “motor vehicle” in the context of the Michigan government immunity statute. *Overall v Howard*, 480 Mich 896 (2007) (adopting Judge Jansen’s dissenting opinion in *Overall v Howard*, 2007 Mich App LEXIS 1182, *8-11; 2007 WL 1229447).

The Court of Appeals has held that devices such as a hydraulic excavator, a tractor mower, a broom tractor, and a tractor pulling a hay wagon are motor vehicles for purposes of MCL 691.1405. See *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 277-278 (2005)(reversed in part, sub nom., on other grounds, at *Kik v Sbraccia*, 272 Mich App 388 (2006); *Regan v Washtenaw County Board of Road Commissioners (On Remand)*, 257 Mich App 39, 47-51 (2003); *Yoches v City of Dearborn*, 320 Mich App 461, 474-75 (2017). However, the vehicles at issue in *Wesche*, *Regan*, and *Yoches* were motor-vehicle-like conveyances that generally resembled an automobile or truck, that were designed for operation on or alongside the roadway, and each of these conveyances were, in fact, being operated on or alongside a public road at the time the injury giving rise to the lawsuit occurred. In contrast, the snowmobiles at issue, like the golf cart in *Overall*, are not similar to an automobile, bus, or truck; they were not designed for operation on a public road; and, they were not being used on or alongside the roadway at the time of the injury giving rise to this lawsuit.

The snowmobiles in the instant case more closely resemble the forklift at issue in *Stanton* and the golf cart in *Overall* than they do the conveyances at issue in *Wesche*, *Regan*, and *Yoches*. Under the reasoning of *Stanton*, the snowmobiles do not meet the definition of a motor vehicle. Thus, the motor vehicle exception of MCL 691.1405 should not be applied in this case, and the DNR should be granted summary disposition.

2. **Plaintiffs' theory of recovery against the DNR based on negligent or grossly negligent entrustment of the snowmobiles to the Conservation Officers fails to plead a cause of action in avoidance of the DNR's immunity.**

Assuming, arguendo, that the Court finds that snowmobiles are “motor vehicle[s]” within the meaning of the exception, plaintiffs’ claim of negligent and grossly negligent entrustment still fails because “entrustment” of a motor vehicle to another person is not “the operation of a motor vehicle.” See *Regan*, 257 Mich App at 51 n 13 (“plaintiffs’ allegations of negligent conduct [that] are not directly associated with the driving of a motor vehicle, e.g., negligent entrustment . . . , cannot survive.”)

In *Chandler*, the Supreme Court concluded that that “operation of a motor vehicle’ means that the motor vehicle is being operated as a motor vehicle.” *Chandler*, 467 Mich at 320. “Operation,” the Court said, has a narrower meaning than the term “use,” which “may include a range of activity unrelated to actual driving. *Id.*, at 320 n 7. “Operation of a motor vehicle,” however, “encompasses

activities that are directly associated with the driving of a motor vehicle.” *Id.*, at 321.

In *Robinson*, the Supreme Court held that a police officer’s decision to give chase to a fleeing motorist is not “the operation of a motor vehicle,” just as an inebriated person’s decision to drive drunk is not a crime. “Only when the decision is translated into driving can there be the operation of a motor vehicle or the commission of the crime of driving while under the influence of alcohol.” *Robinson*, 462 Mich at 457 n 15.

Here, plaintiffs allege that the DNR negligently entrusted the snowmobiles to the COs despite knowledge that the COs were incapable of operating the snowmobiles in a safe manner due to improper training and driving habits. ¶¶ 42-46 of the Complaint. Notwithstanding the fact that these allegations have no basis in fact and are simply made up, claims of negligent or grossly negligent entrustment are not directly associated with the operation of a motor vehicle. Moreover, it’s not possible for the DNR to operate a motor vehicle—people operate motor vehicles, not departments of State government. Thus, in addition to finding that the snowmobiles are not “motor vehicle[s],” the DNR asks the Court to find that its alleged negligent and grossly negligent entrustment of the snowmobiles to COs Albert and Butzin does not constitute “the operation of a motor vehicle” within the meaning of the exception and, for both reasons, government immunity is not avoided under the motor vehicle exception found in MCL 691.1405.

3. The Owners' Civil Liability Act does not apply to the DNR.

Plaintiffs assert that the DNR is vicariously liable for its employees' negligent operation of State-owned snowmobiles under the Owners' Civil Liability Act, MCL 257.401(1). However, it is well-established law that the Owners' Civil Liability Act cannot be used to impose liability on the State. See *Alex v Wildfong*, 460 Mich 10, 21-22 (1999); *Haberl v Rose*, 225 Mich App 254, 270 (1997) (J. Saad's dissent) ("[T]he provisions of the immunity statute must prevail over the provisions of the civil liability statute."). Hence, plaintiffs' assertion that MCL 257.401 is a basis for DNR liability is incorrect, and, hence, plaintiffs have not pleaded a claim outside of the DNR's immunity under MCL 691.1407(1).

4. Financial Responsibility Laws Relating to Interstate Motor Carriers do not apply to the DNR.

Plaintiffs also contend that federal legislation concerning commercial motor carriers can be a basis for liability against the DNR. ¶138 of the Complaint states, in part, "Pursuant to Michigan law, Defendant MDNR remains liable for bodily injuries resulting from the negligent and/or grossly negligent operation of a motor vehicle by any permissive user of vehicles they own: MCL §257.401, MCL §691.1405, and Sections 29 and 30 of the Motor Carrier Act of 1980, 49 U.S.C. 13901, et seq." This citation to federal legislation appears to be a non sequitur since it does not follow from plaintiffs' citation of state law that there is an avenue around the DNR's immunity under the alleged facts.

Congress empowered the Secretary of Transportation to prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts covering public liability, property damage, and environmental restoration for the transportation of passengers and property by motor carrier. 49 USC §§ 31138 and 31139. The two nearly identical statutes both prescribe minimum financial responsibility to third parties for an insured who is engaged in certain types of transportation: section 31138 applies to transportation of passengers; section 31139 applies to transportation of property. The regulations promulgated pursuant to this legislation apply to for-hire motor carriers operating motor vehicles transporting passengers and property in interstate or foreign commerce. 49 CFR 387.1, 387.25.

In the present case, there is no allegation that either the DNR or the COs were acting as for-hire motor carriers involved in the transportation of passengers or property at the time of the accident. The cited federal statutes have no relevance to the DNR or DNR-employed conservation officers who were operating snowmobiles on snowmobile trails in Northern Michigan.

B. Conservation Officers Albert and Butzin are entitled to dismissal of plaintiffs' claims based on their government-employee immunity.

Generally, individual State employees have immunity for their employment-related conduct that does not amount to gross negligence that was the proximate cause of plaintiffs' injuries. MCL 691.1407(2). See *Robinson v City of Detroit*, 462 Mich 439 (2000). The plain language of the governmental immunity

statute indicates that the Legislature limited employee liability to situations where the contested conduct was substantially more than negligent. *Maiden v Rozwood*, 461at 109, 121 (1999). Gross negligence is defined by statute as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” MCL 691.1407(8)(a).

Thus, plaintiffs’ ordinary negligence claim is barred by the COs’ government-employee immunity. Moreover, the negligent operation of a snowmobile is not actionable under Michigan law. MCL 324.73301(1)-(2). And while plaintiffs plead in the alternative that the COs conduct amounted to gross negligence, plaintiffs fail to allege that the COs’ conduct was “the” proximate cause of their injuries—plaintiffs allege the COs’ conduct was “a” proximate cause of plaintiffs’ injuries—thus failing to state a claim outside of the COs’ immunity because the COs were not “the” proximate cause of plaintiffs’ injuries. MCL 691.1407(2). See *Robinson v City of Detroit*, 462 Mich at 458-59 (2000).

C. Plaintiff’s failure to file a verified complaint subjects this case to summary dismissal.

Plaintiff did not file a verified complaint in this case. See Exhibit A. The Court of Claims Act, MCL 600.6401 et seq., requires that complaints filed in the Court of Claims be verified. MCL 600.6437(2). A Court of Claims complaint that is not verified lacks “legal validity from its inception”; it is “a nullity.” *Progress Michigan v Attorney General*, 2018 Mich App LEXIS 2649, *15; 2018 WL 3039871. A plaintiff who files an unverified complaint cannot amend the complaint, but must dismiss the case and refile. *Id.*, *15-16 (“Because plaintiff’s complaint was invalid

from its inception, there was nothing pending which could be amended. Thus, any attempt by plaintiff to amend under MCR 2.118 was ineffectual.”).

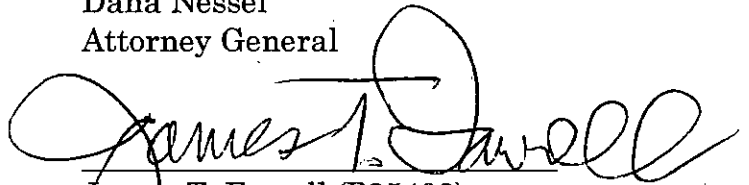
Given this law, plaintiffs’ unverified Complaint should be dismissed.

IV. CONCLUSION

Based on the foregoing, the Michigan Department of Natural Resources and Conservation Officers Albert and Butzin are entitled to dismissal of this case based on government immunity.

Respectfully submitted,

Dana Nessel
Attorney General



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Date: January 4, 2019

CERTIFICATE OF SERVICE

The undersigned certifies that on the date indicated a copy of **BRIEF IN SUPPORT OF DEFENDANTS’ JANUARY 4, 2019 MOTION FOR SUMMARY DISPOSITION BASED ON GOVERNMENT IMMUNITY** was served on counsel of record by first-class mail.

Date: 1-4-2019

Terri J. Davis
Terri J. Davis

EXHIBIT 10



Antrim County

MICHIGAN

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Jordan River Scenic Drive

Add This to Your Itinerary!

Controlling Authority
State of Michigan

Special Collections
Trails

Township
Chestonia Township
Star Township
Warner Township

Available at this location:

Fishing

Nature Trails

This scenic drive includes connecting seasonal County Roads that travel through the Jordan River Valley. They include Pinney Bridge Road, Cascade Road, the South and North Jordan River Roads as well as the Big Marsh Road. Together they travel 20 +/- miles through the Valley connecting M66 to M32 with outlets to Alba Highway to the South and M 32 to the North.

State of Michigan, Mackinaw State Forest, Jordan River Valley.



GPS Coordinates:
45° 0' 48.744" N, 85° 1' 47.964" W
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This page last updated on 10/13/2014.

Physical address for the Antrim County Building - 203 E. Cayuga St., Bellaire, MI 49615

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