

## Legal Spotlight

A column by Sue Jeffers

### Are a city and its employees liable for the death of a person killed by guy wire strung across the sidewalk?

#### FACTS:

On May 24, 2006, at 11:00 pm, John Crnkovich died of head and neck trauma after striking a guy wire strung from a utility pole across a sidewalk and anchored on the opposite side of the sidewalk. The sidewalk was part of a sidewalk construction project in the city of Royal Oak. At the time of the accident, Crnkovich was riding a motorized scooter, without lights or a helmet, and had a blood alcohol level of 0.13. The personal representative of his estate sued DTE, the city, the city engineers involved in the design and oversight of the project, and the construction company installing the sidewalk.

The sidewalk improvement project began in 2005. Throughout construction, there were numerous discussions about the existence of DTE's guy wire and the need for DTE to move it. Ultimately, the city instructed the construction company to asphalt that portion of the sidewalk until the guy wire could be removed. Barricades and flags were used to warn of the guy wire; but over the course of the year, they were repeatedly moved by people using the sidewalk.

With respect to the city and its employees, the issue of governmental immunity is applicable. One exception to governmental immunity is the highway exception which provides that a "governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." The statute includes a sidewalk within the definition of highway but specifically excludes a utility pole. The Michigan Supreme Court has ruled that in order to show that a governmental agency has failed to maintain a highway in reasonable repair requires a plaintiff to demonstrate that a "defect" exists in the highway. The city argued that the sidewalk itself was not defective.

Governmental immunity applies to a governmental employee if the employee was acting within the scope of employment, the agency was engaged in a governmental function, and the employee's conduct did not amount to gross negligence that is the proximate cause of the injury.

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

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#### QUESTION 1:

**Is a guy wire strung across the sidewalk a "defect" exposing the city to liability and to a jury trial?**

##### Answer according to the trial court:

Yes. The claim against the city was not barred by governmental immunity and the matter could be heard by a jury.

##### Answer according to the Court of Appeals:

Yes. Though utility poles are specifically excluded from the definition of highway, the anchor and guy wire in this case were actually part of the sidewalk. According to the court, the city had a duty to rectify the defect after it decided to pave the sidewalk, incorporating the anchor and guy wire into the sidewalk.

##### Answer according to the Michigan Supreme Court:

No. There was no defect in the sidewalk as contemplated by the language of the statute. As such, the city was governmentally immune.

#### QUESTION 2:

**Did the actions of the city engineers rise to such a level that a jury could determine if they were grossly negligent and that their actions were the proximate cause of Crnkovich's injuries?**

##### Answer according to the trial court:

Yes. The claims against the employees were not barred by governmental immunity.

##### Answer according to the Court of Appeals:

Yes. The claims against the employees were not barred by governmental immunity and a jury could decide those issues.

##### Answer according to the Michigan Supreme Court:

No. The Court relied upon the dissenting opinion in the Court of Appeals' decision. The dissent stated that even though a jury might conclude that the employees were grossly negligent, their conduct could not be construed as "the proximate cause of the injury or damage."

*LaMeau v Estate of Crnkovich*, No. 141559-60 (2011).

The Michigan Municipal League's Legal Defense Fund filed a co-amicus brief with the League's Liability & Property Pool, the Public Corporation Law Section, and the Michigan Townships Association with the Michigan Supreme Court.



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