GOVERNMENTAL LIABILITY FOR Traffic Control Devices

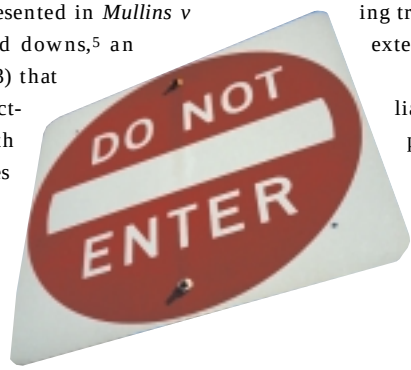
By John A. Braden

BEFORE 1964[1]

Before 1964, there were two statutes governing governmental liability for traffic control devices: MCLA 224.21, MSA 9.121 (governing counties) and MCLA 242.1 to 8 (governing municipalities). There was no statute imposing highway liability upon the state.

The first "sign case" under these statutes was *O'Hare v Detroit*.[2] Expressly reserving the question of whether the municipal liability statute requires *placement* of signs, the court stated that, once erected, a "stop sign becomes an important part of the physical appurtenances of the street," and held that the city could be liable for failure to *replace* a downed sign. This principle has been extended to cases in which a decision to place a traffic control device was not carried out before the collision.[3]

The issue reserved in *O'Hare* was expressly presented in *Mullins v Wayne County*.[4] After some procedural ups and downs,[5] an en banc panel of the court of appeals held (5 to 3) that the duty to maintain safe highways includes erecting signs and barricades and that compliance with the Manual of Uniform Traffic Control Devices does not relieve the highway authority of liability.[6]



1964 TO 2000

1964 PA 170 repealed the statute governing municipal highway liability; incorporated by reference the statute governing county highway liability; and created a new highway liability statute, applicable to municipalities, counties, and the state.

A new limitation of vital importance to cases involving traffic control devices is "The duty of the state and county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel."[7]

At first, the courts held that, since a traffic control device is part of the improved portion, road authorities remain liable for defective signs,[8] poorly placed signs,[9] absent signs,[10] or malfunctioning traffic control lights.[11] However, such liability does not extend to collisions with signs well off the travel lanes.[12]

A court-created limitation on traffic control device liability is that such devices need not be placed at points that do not involve special danger.[13] Incredibly, some panels say that intersections are not places of special danger.[14]

Cases denying liability for traffic control devices have been based on

- lack of jurisdiction[15]
- lack of proximate cause (better traffic control devices would not have avoided the collision)[16]
- the factual adequacy of the traffic control devices[17]
- the injured person's status as a pedestrian (some cases holding that the defective highway statute applies only to vehicular hazards)[18]

On the other hand, in keeping with liability in concurrent causation cases, the fact that natural accumulations concurred with inadequate signage did not preclude liability.[19]

It has been held that, since the "improved portion" limitation is limited, by its terms, to the state and counties, municipalities remain liable for signs.[20]

SINCE 2000

That leads us to *Nawrocki v Macomb CRC*,[21] consolidated cases involving an injury to a pedestrian due to a cracked road surface, and a collision at an intersection having stop signs for traffic one way.

The court first held that the duties of road authorities extends to pedestrians. This overrules *Mason v Wayne CRC* and like cases cited in footnote 18.

Overruling *Pick v Szymczak* (and like cases cited in footnotes 8–11 and 19), the court then ruled that since traffic signs no less than traffic lighting are off the portions of a highway designed for travel, they are excluded from coverage by the defective highway statute. The court buttressed its conclusion by citing (1) the unlimited liability that would otherwise result (even though liability for signage has existed in Michigan since at least 1969 without the horrendous results forecast by the court) and (2) the statutes giving road authorities discretion to place signs. This overlooks situations in which a sign has been requested by authorized authorities but not installed. In such cases, there is no discretion not to install the sign, and there are cases recognizing liability (footnote 3).

Another statute overlooked by the court is MCLA 257.668, MSA 9.2368, which expressly precludes liability for lack of signage at railroad grade crossings. If there is otherwise no liability for signage, why would such an exclusion be necessary? Although *Nawrocki* involved stop signs erected along a shoulder, in *Iovino v MDOT*[22] the court of appeals extended immunity to traffic lights suspended over a highway. *Iovino* completes the transformation of highway liability to a two-dimensional plane. By *Iovino*'s logic, a road authority could suspend an object over a highway where vehicles would collide with it, or stretch a cable across a highway, all without incurring liability.

Note that since the "improved portion" limitation is limited, by its terms, to the liability of the state and counties, the literal reading mandated by *Nawrocki* leaves municipalities liable for traffic control devices within their jurisdiction. ✦

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Footnotes

1. Although most attorneys want to know what the law is now, the current court's willingness to overthrow prior decisions means that its own decisions are likely to be followed only until the composition of the court changes. Since, in short, currently overruled authority may again become the law, the overruled authority is also discussed.
2. 362 Mich 19 (1960).
3. *Tuttle v MDSH*, 397 Mich 44, 52, fn 5 (1976), rev'g 60 Mich App 642 (1975); *Grof v Michigan*, 126 Mich App 427, 434 (1983).
4. 16 Mich App 365 (1969), lv den 382 Mich 791 (1969).
5. The court of appeals ruled for defendant at 4 Mich App 359. The Supreme Court at first affirmed by an evenly divided court (380 Mich 151 (1968)), but then remanded for en banc decision.
6. At 16 Mich App 380. Accord, *Tuttle v MDSH*, 397 Mich 44, 52, fn 5 (1976), rev'g 60 Mich App 642 (1975); *Fraley v Flint*, 54 Mich 570, 574 (1974) (traffic control light cycled too quickly).
7. MCLA 691.1402, MSA 3.996(102).
8. *Lynes v St. Joseph CRC*, 29 Mich App 51, 59 (1970) (nonreflectorized stop sign); *Salvati v MSHD*, 92 Mich App 452, 459 (1979), aff'd by evenly divided court, 415 Mich 708 (1982) ("watch for ice on bridge" sign); *Sweetman v MSHD*, 137 Mich App 14 (1984); *Pate v MDOT*, 127 Mich App 130 (1983) (stake remaining from removed sign; dissent would apply the "improved portion" limitation).
9. *Gorelick v MDSH*, 127 Mich App 324, 329 (1983) ("pass with care").
10. *Pick v Szymczak*, 451 Mich 607 (1996), rev'g 203 Mich App 138 (1993) (uncontrolled intersection); *Soule v Macomb CRC*, 196 Mich App 235, 238 (1992) lv den 442 Mich 859 (1993) (no speed limit sign; dissent); *Young v MSHD*, Ct App No 145219 (March 18, 1993) (no warning of ice splashing and freezing on road); *Smith v Wayne County*, Ct App No ___ (1997) (uncontrolled intersection; fact issue whether a special point of danger).
11. *Williams v MDSH*, 44 Mich App 51, 61–62 (1972), lv den 389 Mich 780 (1973).
12. *Stack v MDOT*, Ct App No ___ (1994).
13. *Mason v Wayne CRC*, 447 Mich 130 (1994).
14. *Wechsler v Wayne CRC*, 215 Mich App 579 (1996), rem'd 455 Mich 863 (1997) (the remand deprives the case of controlling authority); *Hemus v MDOT*, Ct App No 206576 (Oct. 26, 1999); *Duram v MDOT*, Ct App No ___ (1999). Apart from being contrary to common sense, such cases overlook legislative recognition that intersections are dangerous places, evidenced by statutes regarding right of way, traffic control devices at intersections, passing at intersections, etc.
15. *Austin v Romulus*, 101 Mich App 662 (1980), lv den 411 Mich 955 (1981).
16. *Colovos v MDOT*, 450 Mich 861 (1995), aff'g (on other grounds) 205 Mich App 524 (1994); *NBD v MDSH*, 51 Mich App 415 (1974), lv den 392 Mich 761 (1974); *Gadwell v Livingston CRC*, Ct App No ___ (1988); *Owca v Berrien CRC*, Ct App No ___ (1989) (no yield sign); *Marquez v Oakland CRC*, Ct App No ___ (1992) (no left-turn signal); *Ivan v Lenawee CRC*, Ct App No ___ (1998) (90-degree curve); *Soule v Macomb CRC*, Ct App No ___ (1996) (lack of speed limit signs).
17. *Comerica Bank v MDOT*, 168 Mich App 84 (1987) (blinking lights instead of four-way stop); *Millbrook v MDOT*, Ct App No ___ (1991) (four-way stop not required).
18. *Mason v Wayne CRC*, 447 Mich 130 (1994); *Tibor v MSHD*, 126 Mich App 159 (1983); *Palmer v Wayne State University*, 224 Mich App 139 (1997), lv den 460 Mich 869 (1999). These cases are absurd, given that the statute expressly recognizes municipal liability for defective sidewalks, which by definition are designed for pedestrian travel; and there is authority contra. *Pate v MDOT*, 127 Mich App 130 (1983).
19. *Greenleaf v MDSHT*, 90 Mich App 277 (1979).
20. *Cox v Dearborn Heights*, 210 Mich App 389 (1995) (no four-way stop).
21. 463 Mich 143 (July 28, 2000).
22. 244 Mich App 711 (2001).