

Immunity: As suits against government mushroom, state rethinks law

By Kathleen Moran
staff writer

You're an adult softball player who slides daringly into third base. You're safe — but you break your ankle in the process. It turns out a slight section of the base anchor was exposed and a partial cause of your injury. Should you sue the city parks and recreation for negligence?

Ten years ago, the answer would have been no. But today, with governments viewed as easy targets for litigation, the answer likely would be yes.

In fact it was yes in Troy, which has faced two lawsuits from injured softball players this year, despite the fact the players signed release forms.

The rash of lawsuits against municipalities is troublesome for public officials — and for taxpayers as well. Whereas a private business can only "pay up" until it is put out of business, governments are viewed as having unlimited potential for paying huge settlements.

Several bills are pending in the state Legislature aimed at putting some limits on lawsuits against government. But the opponents of such legislation may be more vocal — and powerful — than those who favor reinstating governmental immunity.

THE CONCEPT of immunity dates back to English common law when it was forbidden to sue the king. It was put in writing in Michigan in the mid-1960s. After two attempts, the Legislature thought it had a workable law — one which limited lawsuits to specific areas such as bad roads, defective buildings or negligent operation of municipal vehicles.

But a steady stream of court decisions has eroded the state statute bit by bit, until now there is virtually no limit on the types of lawsuits which can be filed against a city or township — and certainly no limits on how much a jury can award an aggrieved party.

To date, no area community has paid a multi-million dollar settlement. But the possibility came dramatically near in Troy when a jury awarded \$5.75 million to the parents of 23-year-old David Prior whom police mistook for a burglar and shot to death.

The verdict shocked the city. Although city officials pledged not to raise taxes to pay the sum if it was upheld on appeal, they may have had little choice at the time of reckoning. While the case was being appealed, however, an undisclosed settlement was reached which was paid by the city's insurance companies.

THE 6,600 RESIDENTS of South Tucson, Ariz., haven't been so lucky.

That suburb, which measures one square mile, recently reached a tentative agreement to pay off a huge sum awarded a Tucson police officer who was permanently disabled in the line of duty.

Officer Roy Garcia was accidentally shot by a South Tucson police officer during a joint police operation in 1978. In 1980, a Superior Court jury granted Garcia \$3.6 million.

In the four years since, the city of South Tucson was blocked from declaring bankruptcy and eventually negotiated a tentative agreement to pay Garcia \$2.6 million in cash and property by April of 1985 as well as \$400,000 spread over the 10 years starting in 1986.

The city is attempting to sell bonds to meet its obligations but has found no buyers. Thus the cost has not been reflected in the tax rates.

The number of multi-million dollar settlements in cases involving private and public businesses has skyrocketed in the last 20 years.

It is the tendency on the part of juries to award

big sums of money, as well as the proliferation of "nuisance" suits, that has municipal attorneys worried. Some argue that a new state immunity law should impose monetary limitations for damages related to specific cases, i.e. \$500,000 maximum for a negligence case which resulted in a death.

"Because the net loss ends up with the taxpayer, there's some logic in putting some restraints on 'nuisance' suits against government," said Jon Kingsepp, who represents Birmingham, Clawson and other cities. "They should be able to get something, but not the oil well."

WITHOUT limitations, a jury can try to punish a city with a huge award as happened in the Prior case, said Paul Beebow, who represents West Bloomfield and Farmington Hills. "Six people decided to punish the city of Troy for the actions of one or two people. . . I don't know if it's fair to ask all citizens to dip into their pockets."

Juries can be susceptible to "abuses" put on by flashy attorneys, Beebow said. "There's a lot of play acting that goes on." And even when testimony is totally irrelevant, it can persuade the jury to award big bucks.

But Troy's Letzmann argues against softening immunity legislation by imposing financial limits. What a city of 70,000 can afford differs dramatically from what a city of 7,000 or 1,000 could pay, he says.

Letzmann contends that the old state law should be re-enacted imposing immunity — but with more clout this time. "Let government be immune for those things it does for the greater good of people," he said, pointing to its operation of police and fire departments as well as hospitals and EMS ambulance services.

Where a city operates a hospital or emergency ambulance service, it often does so to assure that poorer residents have equal opportunity to health care. Those and other city services which the private sector wouldn't undertake should be immune, he believes.

But Troy attorney Bruce Franklin, who has represented citizens in cases against government — including the Prior case against Troy, contends that such lawsuits have a beneficial effect.

"SINCE THE removal of governmental immunity for hospitals, there has been a great improvement in the quality of care," he said.

Without the ability to sue, governments are unchecked in their operations, contends Franklin. "There's no control, nobody to keep them in line."

Not so, counters Letzmann. Public officials generally are responsible — and if they aren't there are other means for firing them. Large, punitive verdicts against a city, on the other hand, are "after-the-fact" rather than preventative, he said.

Franklin takes an even stronger position. Had the residents of Troy been forced to share in the Prior settlement, they would have taken an active interest in improving their local government, particularly the police department. He contends they would have voted for a subsequent ballot issue in which the city was seeking the ability to look outside the department for a new — and presumably better qualified — police chief. When few residents voted and the ballot issue failed, the city selected a chief from the ranks.

"There's a great element of disinterest and lack of concern on the part of the citizens of Troy about their police department," Franklin contends. "If they had been hit in the pocketbooks, they at least would have gone out and voted."

Southfield city attorney William Beach is one

who believes the public should be able to sue government — with financial limitations. "Government does do things that are totally ridiculous — look at Zilwaukee (bridge),"

Although he'd like to impose some restrictions, he wouldn't favor going the Canadian route — where citizens must post a bond for court costs and possible damages before they can sue. "That's a little restrictive," he said. "A lot of people couldn't afford it."

While small cities may have fewer resources to pay, larger cities may find themselves more vulnerable. Detroit's caseload was so large that assistant city attorneys had blanket approval to settle cases on their own at \$5,000 or less. But once the word was out, the number of lawsuits mushroomed — some blatantly seeking damages in the neighborhood of \$4,900.

ANOTHER FACTOR which frustrates city attorneys is dealing with insurance companies. Some bemoan the fact that they foster a "get-rich-quick" attitude. Others note that the companies can hold the power in a case where a city could pay the decedent.

Obviously the stakes are higher for the city in a case where the insurance company stands to lose a maximum of \$500,000 but plaintiffs are seeking millions. Yet the company reserves the right to select, its own attorney and mount the defense. If it sees that it could well lose the case, the company may hire a less experienced attorney in an effort to limit its expenses.

Some municipal attorneys are now negotiating some type of control into contracts with their insurers. Letzmann seeks at least veto power.

Generally speaking, insurance companies perpetuate the feeling "even if a person was totally responsible for the actions, he deserves some payment for his injuries," Beebow said.

MEANWHILE, the case of governmental immunity reads like a good novel — with suspense, plenty of political intrigue, lots of emotion, a good measure of heart-rending stories and solid arguments on either side.

Whether the legislature will come to grips with the issue has yet to be seen. The Senate Judiciary Committee has been conducting hearings on the subject and several professional organizations are studying the topic with a view toward

making recommendations to the legislature. Letzmann serves on a Michigan Municipal League committee which is trying to develop a model law.

But if a bill ever makes it to the floor of the House or Senate, the politicians will feel pressure from all sides — particularly attorneys who stand to lose a great deal of business if immunity is reinstated.

The arguments from either side will go something like this:

"I think people should put themselves in the position of the victim. They could be the ones who are the victim. They could be maimed, have nowhere to go but welfare, and the city is immune."

Letzmann counters, "I wish in one way that everybody who has been wronged could be righted." But taxpayers don't have unlimited ability to pay, South Tucson could become a ghost town, he believes, as residents move to get out from under exorbitant tax bills. The taxpayers have a financial interest in the outcome of this.

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The number of multi-million dollar verdicts has increased dramatically, from one in 1962 to 250 before the end of 1983. While this chart depicts verdicts

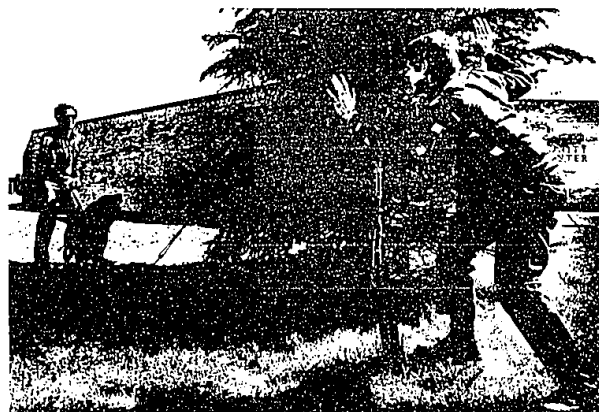
against both private and public entities, it gives municipal and state attorneys cause to worry.

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CHARLES W. WARREN



The nature of their work puts police officers under the constant threat of lawsuits for false arrest, violation of civil rights and brutality. While some believe the lawsuits

making officers think before acting, others believe it makes them reluctant to do their jobs.

'Nuisance' suits rise

In the last 20 years, judicial decisions have gradually weakened the state's immunity law, which once held government immune from most types of lawsuits.

As the law has been weakened, the number of lawsuits has risen dramatically. Though most cities can't estimate how much their costs have risen for legal fees, court costs and settlements, local municipal attorneys agree the cost to the taxpayer is substantial.

While some lawsuits raise legitimate issues, many don't. Cities and the state complain they are viewed as easy targets — with an unlimited ability to pay huge judgments.

THE FOLLOWING are examples of cases considered "nuisance suits," taken from speeches made by Detroit Mayor Coleman Young and Attorney General Frank Kelley:

• The city of Detroit was sued by a tall inmate who claimed someone ate the cookies his mother

sent him. The case is in federal court.

• A knobholer was left a quadriplegic after striking a dock on Wixom Lake. He sued the Department of Natural Resources (DNR) because it regulates construction of structures on the bottomlands of inland lakes. The dock was privately owned and maintained. The case eventually was dismissed.

• The DNR was also sued after a man dived off a dock into shallow water of an inland lake. He was left a quadriplegic. Again, the dock was privately owned. The state was sued on the theory that the DNR regulates fishing and the operation of boats in inland lakes and thus had some jurisdiction over the dock. The case was dismissed.

Police regularly are sued for false arrest, violation of civil rights and brutality. Troy City Attorney Peter Letzmann fears the net effect will be police officers who are reluctant to do their jobs and thus an increase in crime.