

CMDA Wins Case in Michigan Court of Appeals



Gail Massad

Attorneys at CMDA have once again prevailed in the Michigan Court of Appeals, clarifying the law regarding municipal liability for sidewalks. In this recent case, the Court of Appeals held that a walkway owned by a metropolitan Detroit city did not meet the requirements of liability under the highway liability statute. The highway liability statute re-

quires each governmental agency having jurisdiction over a highway to maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. Under the statute, cities have a duty to maintain sidewalks in reasonable repair as well. Should a sidewalk not be maintained in reasonable repair and a person sustains bodily injury by reason of the city's failure to maintain the sidewalk, the individual can sue for money damages.

In this case, a construction company had removed a concrete slab from a walkway that ran between two city streets to perform work on an underground telephone box. The company covered the area with gravel and did not replace the concrete when it was finished. The end of a cut-off pipe stuck out from the ground next to the walkway. The plaintiff, a child, was riding his bicycle on the walkway when he hit the patch of gravel, lost control of his bicycle and fell. As the boy fell, he struck his leg against the end of the pipe, resulting in a large cut and leaving the child with a large scar. The child's mother sued the city on behalf of her son.

The city moved for dismissal of the action arguing that the walkway did not fall within the definition of a "sidewalk" for

purposes of the highway liability statute. Also, the plaintiff's injuries occurred from the pipe, which was not located on the walkway. The plaintiff argued that the trial court should not focus on the pipe and its location, and that the sidewalk was defective because of the missing concrete and gravel that caused the boy to fall. The trial court agreed with the plaintiff and denied the city's motion. The city appealed to the Michigan Court of Appeals.

The Court of Appeals had previously been required to define the term "sidewalk" as used in the highway liability statute, noting that the legislature failed to do so. In two previous cases, the Court of Appeals used common dictionary meanings for the term "sidewalk" in conjunction with the statutory language. In both of the prior cases, the Court had concluded that for there to be liability based on an allegedly defective sidewalk, the sidewalk must be "along the side of a road," "at the side of a roadway," or "part of a public street or highway." The Court of Appeals found "that linking the word 'sidewalk' with an **adjacent** road is in accord with the common and approved usage of the word." The walkway in one case did not run adjacent to a roadway but ran through the wooded interior of a park. In the other case, the walkway merely provided a pedestrian connection between two somewhat parallel streets, with a private building on one side of the walk and a city parking lot on the other.

Based on its earlier decisions, the Court of Appeals held that the walkway in this case was not a "sidewalk" and did not fall within the highway liability statute, stating, "[T]he legis-

continued on page 4

Attorney Joins Riverside, CA Office



Marcia M. LaCour

Marcia M. LaCour recently joined the Firm as an associate attorney in our Riverside, CA office.

She began her legal career at a firm in San Bernardino, CA handling all aspects of civil litigation defense with a focus on cases involving school and transit buses and public entity liability. Ms. LaCour next worked as house-counsel for a mid-size insurance company for eight years and was assigned to assist the Special Investigation Unit on cases where insurance fraud was suspected. Because of her ability to resolve cases expeditiously and economically, she was one of only a few attorneys nationwide given personal settlement authority of \$25K per plaintiff. Marcia spent the next seven years running a successful plaintiff personal injury and consumer law practice in Riverside, CA.

At CMDA, she concentrates her practice on Municipal Law, Personal Injury Defense Litigation, General Liability Defense and Prevention and Labor and Employment Law. Earlier this year, Ms. LaCour completed mediation training provided by the well-respected Straus Institute at Pepperdine School of Law. She volunteers as a mediator and arbitrator for the Riverside court system and also serves on that court's Bench-Bar Committee.

She has a degree in English from Middlebury College in Vermont and graduated from the University of San Diego School of Law in 1991.

Ms. LaCour can be reached by calling (951) 276-4420 or via e-mail at mlacour@cmda-law.com.

Using Third Persons to Make FOIA Requests Becoming More Common

This article is the second article in a three-part series on the Freedom of Information Act.



Anne McClorey
McLaughlin

Under the Michigan Freedom of Information Act (FOIA), a person who is a party to litigation with a public body may not obtain information through FOIA request. FOIA expressly makes exempt from disclosure "Records or information relating to a civil action in which the requesting party and the public body are parties." Therefore, if a person has ongoing issues with a public agency, he may not

use FOIA to obtain more recent documents or records created and kept after litigation has begun. Once a public body is represented by an attorney, all requests for information must go through the attorney using the procedures provided by the court rules.

In order to get around this hurdle, litigants and their lawyers have been known to employ another person as a surrogate to make a FOIA request for information the party itself may not request. This tactic is occurring with more frequency, as the Michigan courts have upheld the right of a third party to obtain information through FOIA, even if that person will turn the documents over to a party or its attorney for use in litigation with the public entity. FOIA does not permit the

public body to inquire into the intended use of the information; if the information is public and must be disclosed to one person, it must be available to the whole public, subject to express exceptions in the Act.

Under ethical rules governing lawyers' conduct, a lawyer may not employ another person to do something that the lawyer is ethically forbidden from doing himself, such as making contact with an opposing party that the attorney knows is represented by another attorney. Therefore, a lawyer may not use another person to obtain records from a public body that the lawyer and his client are forbidden from getting themselves. When a public agency becomes aware of this type of abuse of the FOIA by another party in a lawsuit, it must immediately notify its own attorney so that immediate action can be taken to prevent further abuse of both the FOIA and the litigation process.

Anne McClorey McLaughlin

Ms. McLaughlin is a Partner in our Livonia office where she concentrates her practice on Municipal Law, General Liability Defense and Prevention, Insurance Coverage, Analysis and Litigation and Appellate Law. She can be reached by calling (734) 261-2400 or via e-mail at atamclaughlin@cmda-law.com.

Attorney Joins Firm and Brings New Practice Area



Brandon M. Bolling

CMDA is proud to announce that Brandon Bolling has joined the Firm as an associate attorney in our Livonia office. He brings with him a wealth of experience in Military Law. CMDA is pleased to incorporate this new practice area into our Firm repertoire, and we look forward to providing legal assistance to those seeking an attorney specializing in Military Law.

Military personnel need an experienced attorney fighting to protect their careers, reputations, rights and freedom, whether they are facing administrative separation, urinalysis failure or more serious charges. Attorney Brandon Bolling is a former active duty Marine Judge Advocate who understands the peculiarities of military law. As a highly experienced litigator, Mr. Bolling knows how best to present cases and to protect his clients' interests. With countless military and civilian trials behind him, he has handled both high profile cases and those requiring utmost discretion.

Mr. Bolling has served all over the globe with members of all military branches. He is a sought after military law expert whose cases have garnered national media attention, one recounted in a best selling novel. He has defended individuals on the Naval Criminal Investigative Service's Ten Most Wanted List and an individual featured on America's Most Wanted television program.

Mr. Bolling's active duty military assignments include:

- Evidence Division Officer, Naval Justice School, Newport, Rhode Island
- Military Justice Instructor, Naval Justice School, Newport, Rhode Island

- Assistant Senior Defense Counsel, Camp Lejeune, North Carolina
- Defense Counsel, Camp Lejeune, North Carolina
- Chief Trial Counsel/Prosecutor, Camp Lejeune, North Carolina
- Trial Counsel/Prosecutor, Okinawa, Japan
- Officer in Charge, Detention Operations, Combined/Joint Task Force-7682
- Brigade Judge Advocate, Task Force Guardian, Combined/Joint Task Force-7682
- Deputy Staff Judge Advocate, Combined/Joint Task Force-Horn of Africa
- Senior Marine Representative, Naval Justice School, Newport, Rhode Island
- Legal Assistance Officer, Okinawa, Japan

CMDA is presently creating a Website that will address specific ways in which we are able to assist clients who are in need of a military law attorney. As soon as it is complete, we will pass the link along to you to check out.



In addition to Military Law, Mr. Bolling concentrates his practice on Municipal Law, Labor and Employment Law, Criminal Law and Constitutional Torts/Civil Rights. He can be reached by calling (734) 261-2400 or via e-mail at bbolling@cmda-law.com.

CMDA Wins Case in Michigan Court of Appeals (cont.)

lature chose not to impose liability for injuries sustained on all paved walkways, but rather used the specific term 'sidewalk.'" The walkway where the plaintiff fell in this case ran between two city streets that took pedestrians in the subdivision across the two streets. Therefore the walkway was not adjacent to or alongside a highway under the jurisdiction of the city.

The Court of Appeals reversed the trial court's decision and directed the trial court to enter an order granting the City's motion and dismissing it from the case. CMDA attorney Gregory Roberts handled the case in the circuit court, while appellate attorney Gail Massad briefed and argued the case before the Court of Appeals.

CUMMINGS, McCLOREY, DAVIS & ACHO Office Locations



MICHIGAN

Livonia

33900 Schoolcraft Road
Livonia, MI 48150
Telephone: 734.261.2400
Facsimile: 734.261.4510

Grand Rapids

2851 Charlevoix Drive, S.E.
Suite 327
Grand Rapids, MI 49546
Telephone: 616.975.7470
Facsimile: 616.975.7471

Sterling Heights

43409 Schoenherr Road
Sterling Heights, MI
48313
Telephone: 586.731.5000
Facsimile: 586.803.1034

Traverse City

125 Park Street
Suite 415
Traverse City, MI 49684
Telephone: 231.922.1888
Facsimile: 231.922.9888

CALIFORNIA

Riverside

3801 University Avenue
Suite 560
Riverside, CA 92501
Telephone: 951.276.4420
Facsimile: 951.276.4405

GHANA

Accra, Ghana

P.O. Box 12556
Accra, Ghana
Telephone: +223-21-224260
Facsimile: +233-21-232262

Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

ONLAW is a monthly publication from CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features or comments to the editor should be addressed to the attention of Jennifer Sherman.

CMDA- ONLAW

33900 Schoolcraft Road
Livonia, Michigan 48150
1-800-865-7222 ext. 1223
www.cmda-law.com
E-Mail: jsherman@cmda-law.com

Editor-in-Chief/Graphic Designer:
Jennifer L. Sherman

ONLAW is intended for informational purposes only and should not be used as a substitute for individual legal advice. Please consult an attorney regarding your particular situation.

Would you like to reference previous issues of ONLAW?
View them on-line at www.cmda-law.com.

PRSRPT STD
US POSTAGE
PAID
PERMIT NO. 63
SOUTHFIELD, MI

Livonia, Michigan 48150
33900 Schoolcraft Road



