

COA Opinion: City not entitled to governmental immunity from potential tort liability for breach of the duty to maintain sidewalk in reasonable repair by imbedding a telephone pole's guy wire and anchor in the sidewalk

14. July 2010 By Julie Lam

John Crnkovich died from blunt force trauma to his neck and head after colliding with an anchor and guy wire when riding his motor scooter at a high speed down a sidewalk at night without safety gear and while under the influence of alcohol and marijuana. A guy wire is a steel cable that runs from a telephone pole to an anchor in the ground. The City of Royal Oak paved the sidewalk through the anchor and under the guy wire during a sidewalk improvement project, instead of having the anchor and guy wire relocated by the utilities company or leaving a substantial distance around the guy wire unpaved as suggested by the contractor. The personal representative of Crnkovich's estate sued the City of Royal Oak, the City Engineer, and an engineering assistant, as well as the utilities company and contractor. The trial court denied the motions for summary disposition based on governmental immunity filed by the City, City Engineer, and engineering assistant. In the consolidated appeals of *Lameau v City of Royal Oak*, Nos. 290059 and 292006 (the published opinion shows a picture of the sidewalk at issue), the Court of Appeals affirmed in a 2-1 decision.

The Court of Appeals held that the City was not entitled to immunity under the governmental tort liability act (GTLA), MCL § 691.1401 *et seq*, as the highway exception to governmental immunity applied because the anchor and guy wire had become part of the sidewalk. The Court of Appeals held that the engineers were not entitled to governmental immunity because there was a clear question of fact as to whether they were grossly negligent and as to whether their conduct was the proximate cause of Crnkovich's death. Judge Talbot dissented on the grounds that the City is entitled to immunity because the guy wire is part of the utility pole, which is expressly excluded from the definition of "highway," and because the plaintiff failed to demonstrate a "defect." Judge Talbot further contended that the engineers were entitled to governmental immunity because it cannot be reasonably concluded that the engineers' conduct could be construed as "the proximate cause of the injury or damage." Read Judge Talbot's dissent [here](#).