

COA Opinion: The State retains sovereign immunity from trespass-nuisance claims

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Salt hurts blueberry bushes. Based on this fact, a number of blueberry farms sued the Michigan Department of Transportation (MDOT), arguing that road salt that sprayed from highways and county roads onto their blueberry bushes, which were located on properties adjacent to those roads, hurt their blueberry production. The blueberry farms alleged that the State had committed trespass nuisance, which is “a trespass or interference with the use of or enjoyment of land by way of a physical intrusion that the government sets in motion and that results in personal or property damage.” In *Blue Harvest, Inc. v. Department of Transportation*, No. 281595 (published Apr. 29, 2010), the Court of Appeals held that sovereign immunity precluded the suit against MDOT because the state had not waived its sovereign immunity. No statutory exception applied, so the Court turned to the harder question of determining whether the common law governing sovereign immunity as it existed before July 1, 1965 (when MCL § 691.1407 was enacted to reinstate sovereign immunity after it was temporarily abolished) provided an exception for trespass nuisance. Concluding that it did not, the Court reversed the trial’s denial of MDOT’s motion for summary disposition based on sovereign immunity. Turning to a second issue, the Court affirmed the trial court’s dismissal of the blueberry farms’ claims for inverse condemnation, because the injury they suffered was not peculiar or unique, but rather was the same kind (though worse in degree) of injury that all properties adjacent to the roads suffered. The majority opinion by Judge Meter is available [here](#), and the concurring opinion by Judge Beckering, who analyzed the common-law history in greater detail, is available [here](#).