

COA Opinion: Appropriate test for determining whether a road is open for public travel in a government immunity case centers on a reasonable motorist's belief that the road was open.

19. October 2011 By Kristina Araya

In *Snead v John Carlo, Inc.*, No. 298575, the Court of Appeals considered an appeal by the Michigan Department of Transportation (“MDOT”) from a trial court’s order for partial summary judgment on behalf of the plaintiff. The plaintiff was a motorist who sustained injuries after driving into a large hole in the roadbed of a highway exit lane. The plaintiff sued both the construction company and MDOT, alleging negligence because the confusing layout of traffic barrels at the scene of the accident led her (and three other motorists who crashed into the hole at roughly the same time) to believe that the highway exit lane was open and safe for travel.

As a state agency, MDOT would normally be immune from suit under the Governmental Tort Liability Act (“GTLA”); however, the highway exception to the GTLA provides that the state and its subdivisions have a duty to maintain the improved portions of the road intended for vehicular travel. In her motion for summary judgment, plaintiff argued that the highway exception to governmental immunity should apply as to MDOT. MDOT also moved for summary judgment, arguing that since the traffic barrels and the presence of construction equipment made it obvious that the highway exit lane was not actually open, the exit lane was not an improved portion of the road meant for vehicular travel at the time of the accident.

The Court of Appeals held that while the trial court was correct to dismiss MDOT’s motion for summary judgment, it erred in granting plaintiff’s motion for summary judgment, as a genuine issue of material fact existed. The Court of Appeals found that the appropriate test for determining if a road is open for public travel is whether “a reasonable motorist, under all of the circumstances, would believe that the road was open for travel.” The court determined that the state’s duty to keep the highway in

reasonable repair would be suspended when the highway was effectively closed, but that the duty would still be owed if the highway was improperly closed. Since the circumstances of the case allowed for a genuine dispute as to whether the highway exit lane was effectively closed, the court found that a genuine issue of material fact existed, and summary judgment for the plaintiff on the governmental immunity issue was improper.

Judge Talbot filed a concurring [opinion](#).