

**Winter 2023**

# **MI POOL NEWS**

**A PUBLICATION OF THE MICHIGAN TRANSIT POOL**

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**MTP**  
**MICHIGAN TRANSIT POOL**







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**MTP turned 35 on December 1, 2022.** The Liability Trust Fund was the first coverage line established while the Direct Property Damage Fund was formed in 1990. In that time, our country has gone through 7 US Presidents, seen the introduction of personal computers, cell phones, electric vehicles, boy bands, cassettes to cds to streaming services and a pandemic. Do you still have a rotary dialed phone and landline hooked up in your house?

**A big thank you** Kristy Pletzke for your service in the role of Treasurer for the last two years! We really appreciate all of your efforts during a challenging time that we all endured during these last two years.

**We would like to welcome Jim Oliver** of Gogebic County Transit to the MTP Treasurer role. We appreciate Jim's interest in taking on this role and look forward to working with him.

**Congratulations to Kelly Bales** of Greater Lapeer Transportation Authority who was elected MTP Secretary. And we would also like to welcome Carrie Thompson of Cadillac/Wexford Transit Authority as a Executive Committee member.

### *New News!*

MTP is working for you by staying responsive to the insurance market, inflation and the ever-changing landscape of vehicle upgrades, rising repair costs and vehicle values. Working feverishly down to the last minute, we are happy to report that as of December 1st, 2022, MTP was able to secure additional collision coverage above \$250,000 up to \$2.4 million per occurrence without an increase to your premium deposits or self-insured retention (SIR). This will address the introduction of alternative energy source vehicles with their higher values for those of you who have them now or will be obtaining them in the future.



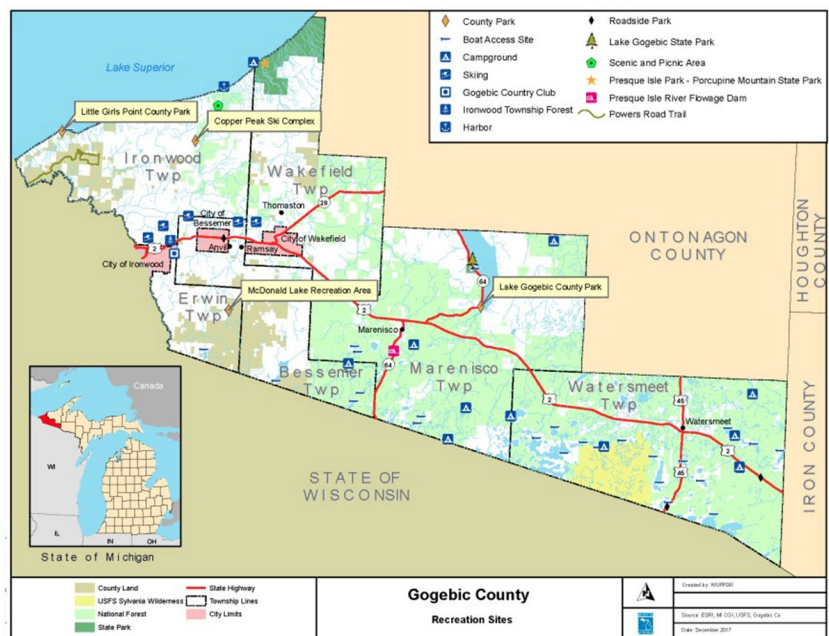
# Spotlight on:

## Gogebic County Transit

My name is Jim Oliver and I am the Director of the Gogebic County Transit. I started this position in December of 2021 and was new to the world of public transportation. Before starting this exciting new position, I had previously worked as the Director of Business and Finance for an Intermediate School District for 12 years. I have also worked as a self-employed CPA for 30 years, which I continue to do in the evenings. I am a lifelong resident of Ironwood, MI and have 4 adult children and 6 grandchildren who are also all Yoopers. We all enjoy our family gatherings and we especially enjoy our time in the summers when we go camping.

**The Gogebic County Transit** is a small rural transit in the U.P. that covers 1,500 square miles on a daily basis. We are directly on the border of Wisconsin and, therefore, are one of the few counties in Michigan on the Central Time Zone. We are in our 43rd year of operation and transport roughly 130 people a day throughout our area. New to this current fiscal year is a 5 day a week bus service to the most eastern part of our County which lies approximately 50 miles away from our Transit Office.

This area has not received consistent bus services in several years and now has a reliable service during our normal operating hours. Additionally, we are part of the "Rides to Wellness" program and provide rides to those in need with 2 to 3 vehicles in operation daily. In the last fiscal year, we provided approximately 800 rides through this program. We at the Gogebic County Transit are all happy to be able to be a part of this valuable service in our community.





# MTP Risk Management

## Adam Wilberding

### Simple Strategies for Avoiding Collisions

Happy New Year to all MTP members and colleagues!

At the beginning of 2023, we want to proactively present some simple strategies for avoiding vehicle-related collisions.

First, let's take a look at some statistics:

- MTP frequency and severity trends demonstrate that vehicle-related collisions (i.e., vehicle-to-vehicle, vehicle-to-fixed object, and forward and reverse motion) are a leading cause of loss for MTP members.
- The National Highway Transportation Safety Administration (NHTSA) found that somewhere between 94% and 96% of all motor vehicle accidents are caused by some type of human error [DOT HS 812 456; October 2017].
- Despite fewer people on the road, deaths from collisions increased by an estimated 8 percent in 2020, according to the National Safety Council (NSC article from March 2021). These deaths are estimated to be the highest in 13 years. An estimated 4.8 million additional roadway users were seriously injured in crashes in 2020, and the estimated cost to society was \$474 billion. As traffic dissipated, reckless driving became increasingly common across the country.

Therefore, a strong argument can be made for practicing defensive driving. Not only can it help us prevent mistakes as drivers, but it can also help us overcome the mistakes of other drivers. While you can't control what other drivers are doing, defensive driving techniques can help reduce your risk of being involved in a collision. "Defensive driving is constantly identifying potential risky situations, and responding proactively to prevent trouble," says William E. Van Tassel, manager of AAA Driver Training Programs.

Now, let's focus on the simple, yet effective, things we can do to avoid collisions. In other words, the things that are directly within our control as both transit operators and as drivers that commute to and from work. We will focus on five aspects.



# 1. Causes of Collisions

So, what are some of the causes of collisions, in your opinion? If you're not able to answer or comment, think about this for a minute. Some of the common causes for collisions are:

- Inattention
- Impairment
- Tailgating
- Weather
- Fatigue
- Roads
- Speed
- Health
- Attitude
- Inexperience
- Other Drivers
- Vehicle Condition

## 2. Maximizing Vision

We have two types of vision: peripheral and central.

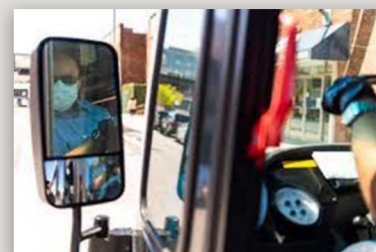
Peripheral vision makes up approximately 90 degrees in each human eye. Sometimes there is less depending upon our individual circumstances. So, combined, we all have essentially 180 degrees. We have three main things that trigger our peripheral vision: light, motion, and color. Think of the peripheral vision as our "early warning system."

Central vision is only 3 degrees in each eye. We use it to focus on objects. If we are reading road signs as we drive, then we are using our central vision. Think of the central vision as our "investigator." When the peripheral vision is triggered, then we focus our central vision on it to determine what it is... is this relevant to our driving?

*Now, how can we maximize the effectiveness of these two types of vision?*

**Look Ahead** – Try to always look at least 15 seconds ahead of where your vehicle is travelling. By using this principle, we can identify potential hazards early and have enough time to react and safely make adjustments. By looking ahead with our central vision, we force our eyesight up and out. Therefore, we can see things in our peripheral vision down and around us. If we look down with our central vision, then our peripheral vision is not helping us, and we miss potential hazards that are coming up.

**Look Around** – This means we take in the entire scene while driving. We must actively move our eyes to see everything around the vehicle. Fixed stares develop in as little as 2 seconds, which then reduces the peripheral vision and scotomas (i.e., naturally occurring blind spots) begin to manifest themselves. Also, moving our eyes helps to keep us alert and aware. Look around also means that we check our mirrors every 5 to 8 seconds to increase your range of vision. We're better able to see objects entering and exiting our vehicle's blind spots. Ensure the mirrors are properly adjusted to minimize our vehicle's blind spots.





**Remember to Rock & Roll for Turns** – The mirrors and roof pillars create cones of blindness that have led to many pedestrian fatalities. To see around these blind spots, we need to rock & roll our body to increase our areas of visibility. This is especially important in left hand turns.

**Leave Room** – Ideally, we should leave room on all six sides of our vehicle. We can maintain and monitor the space to the front by keeping an adequate following distance. Our eyes are freed up to scan. If we follow too closely, then we're not maximizing our vision... we're not able to properly look ahead 15 seconds, move our eyes at least every two seconds, and scan your mirrors every 5-8 seconds.

*Space allows us time to properly use our eyesight... to gather information allowing us to make better decisions.*

### 3. Managing Space

The space around our vehicle provides a "cushion." Simple physics tells us that when two objectives try to occupy the same space at the same time, a collision results. So, space is essential for avoiding collisions.

**Space to our front is the most important...** not only to see properly, but also to have adequate room to stop or make a lane change. Over 30% of all accidents are rear end collisions and these are the easiest accidents to avoid. We control the gas pedal, we control the brake, and we control the space in front of us. In order to do this, we need at least four seconds of following distance in good dry weather. If raining, increase this to five seconds. If snowing, increase to six seconds and, if icy, increase to seven seconds. We need to adjust for weather conditions. The weather does not cause accidents, it is how we react to the weather that causes accidents.

Space to the sides and rears are also important in order to cushion our vehicle. We can't always leave room to the sides, but when we're on the highway, it's our responsibility to adjust our speed when someone is driving next to us at the same speed. Sometimes to maintain room in the rear, we have to slow down to motivate an impatient tailgater to move to another lane or to back off.

Space above and below is also important. Be on the lookout for low overhead clearances, and remember, they're not always marked with a warning sign. Keep an eye out for road conditions that could cause the vehicle to bottom out or for debris on the road.



## 4. Overcoming Other's Mistakes

We need to communicate with other drivers on the road to make sure they know we're there and what we're going to do next.

We can use the headlights, brake lights, and turn signals to communicate our intentions. Be sure to properly use turn signals before turning or changing lanes by always allowing at least four flashes before taking any action. A friendly tap of the horn is a good way to get someone's attention and, if possible, we should try to make eye contact. Hand signals, such as palm of the hand or thumbs up, may also be used.



However, remember that these methods of communicate to seek eye contact must be used properly. If we use them improperly to vent emotion, then we increase our accident potential and create conditions that may lead to road rage. In all cases, maintain professional communication.

## 5. Power of Habit

Habit is defined in the Merriam-Webster dictionary as "a settled tendency or usual manner of behavior." There is no truer evidence of the habits we established than when we are in a rush or on auto-pilot. Whatever behaviors we've repeated for a period of time will result on our habits. No doubt, we have some that are good, and some that are bad. It's part of being human. Our challenge is to recognize the areas we need to improve. We should consistently exercise behaviors that help us to maintain good, successful habits.

*One final item to consider the importance and power of habit...*

### The Habit Poem

I am your constant companion. I am your greatest helper or heaviest burden.

I will push you onward or drag you down to failure.

I am completely at your command. Half of the things you do you might as well turn over to me and I will do them - quickly and correctly.

I am easily managed - you must be firm with me. Show me exactly how you want something done and after a few lessons, I will do it automatically.

I am the servant of great people, and alas, of all failures as well. Those who are great, I have made great. Those who are failures, I have made failures.

I am not a machine though I work with the precision of a machine plus the intelligence of a person. You may run me for profit or run me for ruin - it makes no difference to me.

Take me, train me, be firm with me, and I will place the world at your feet.

Be easy with me and I will destroy you.

Who am I? I am Habit.





# Legal Update on Recent Appellate Court Cases

## by David Klevorn

### Murphy & Spagnuolo, P.C.

**As part of our firms' practice** in the area of No Fault first and third-party defense, we regularly survey the lay of the land in recent appellate cases – both published and unpublished. This helps guide defense strategies moving forward to see the trends in arguments that plaintiffs' attorneys are making and how those are interpreted and ruled upon by the judiciary.

While 2022 was a fairly quiet year in the No-Fault / auto liability realm for any landmark decisions, there are still a few cases worth highlighting from which transit authorities can draw some conclusions moving forward.

#### **Holt v Detroit Dep't of Transp. et al**

Decided August 18, 2022, Docket No. 357329;  
prior history in Wayne Circuit, LC No. 20-006299-NI.

This is a case in which the plaintiff was a passenger in a car that was turning left at a T-intersection in the road. Plaintiff's vehicle had to turn left in front of several lanes of oncoming traffic (including the bus with which it collided), and both the plaintiff and the bus driver testified they had a full green light to proceed through the intersection. The bus driver's account was that he was "simply driving straight through the intersection at a green light" and therefore he had the right of way with plaintiff's vehicle failing to yield when making a left turn.

While the trial court agreed with the bus driver and dismissed the case, the Court of Appeals reversed, finding there was evidence presented that the bus was passing vehicles on the right (vehicles which were stopped at the red light before it changed to green with the bus approaching the intersection). The Court cited MCL 257.637 which states the circumstances in which drivers may pass on the right:

(1) The driver of a vehicle may overtake and pass upon the right of another vehicle only if 1 or more of the following conditions exist:

- a. When the vehicle overtaken is making or about to make a left turn.
- b. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for 2 or more lines of moving vehicles in each direction and when the vehicles are moving in substantially continuous lanes of traffic.
- c. Upon a 1-way street, or upon a roadway on which traffic is restricted to 1 direction of movement, where the roadway is free from obstructions and of sufficient width for 2 or more lines of moving vehicles and when the vehicles are moving in substantially continuous lanes of traffic.





## Legal Update on Recent Appellate Court Cases by David Klevorn Murphy & Spagnuolo, P.C.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting the overtaking and passing in safety. The driver of a vehicle shall not overtake and pass another vehicle upon the right by driving off the pavement or main-traveled portion of the roadway.

So despite the bus driver proceeding through a green light after he had apparently seen plaintiff's vehicle waiting to turn left, the Court of Appeals still held that a jury could find this bus driver more than 50% at fault, despite being a "favored" driver with the right-of-way in this matter, stating:

"It is clear, at the one extreme, that the favored driver is not permitted to lower his head, close his eyes, and charge blindly through intersections on the theory that such is his 'right' simply because he is the favored driver."

Rather, the Court in Holt and elsewhere under Michigan law imposes a duty on drivers (even "favored" drivers with the presumed right-of-way) to take steps to avoid a collision, as well as make "continuing observations" of the road to exercise reasonable care and caution.

Overall, Holt serves as a word of caution (and expensive headache to see a dismissed case revived) to MTP member's bus drivers to exercise the above reasonable care and caution and familiarize themselves with when passing on the right maneuvers can and cannot be made.

### **Anderson v Transdev Services, Inc, et al**

Decided May 12, 2022, Docket No. 356541;  
prior history in Wayne Circuit, LC No. 19-013288-NI..

This case involved a plaintiff's third-party negligence lawsuit against the QLine streetcar in Detroit. This is a unanimous, published decision authored by Judge Markey, in which the Court of Appeals affirmed the trial court's summary disposition order dismissing the plaintiff's case.

The Court of Appeals held that bus drivers are not required to wait until an onboarding passenger completes a ticket-related transaction at the front of the bus (or to wait on until all passengers are seated) to accelerate from a stop. The Court also held that there mere fact that the passenger fell during the acceleration was not, by itself, sufficient evidence to create a question of fact as to the bus driver's negligence.

This published appellate opinion is a strengthening and reaffirmation of the "Normal Incidents of Travel" doctrine that helps protect transit authorities from lawsuits arising from sudden jerks or jolts in the stopping and starting of a bus – which must be expected by passengers. Bus drivers are only potentially liable under Michigan law if the jolt is "unnecessarily sudden or violent."





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While certainly a good opinion for the defense of transit authorities in the litigation context – it still is prudent to ensure drivers are properly trained for the loading and unloading of passengers, as the court in *Anderson* discussed that there may be cases in which a bus driver may need to wait to accelerate until all his or her passengers are seated if there is a “special and apparent reason” to do so. The historical “special and apparent” reasons to delay taking off from a stop until a passenger is seated is if the driver knows the passenger has frailty, weakness, or some sort of disability that requires assistance for the passenger to reach their seat. See *Wells v Flint Trolley Coach, Inc*, 352 Mich 35; 88 NW2d 285 (1958).

## Conclusion

Our office encourages transit entities to monitor the changes and updates in Michigan law and continue to educate and train their drivers accordingly.

The general information provided in the above article in no way constitutes legal advice as every situation is different. MTP members should consult with their attorneys for specific guidance.

*As such, these rules put the burden on each employer of a new employee to make sure the driver is qualified for the specific job he or she is being hired to do at that transit entity. My suspicion is that the more stringent federal regulations on training will actually help to protect the training entities. With the training being provided by a federally certified trainer, it would be harder to argue that someone negligently or improperly trained a driver. Further, for those entities which are protected by governmental immunity, it has long been Michigan law that negligent training and supervision is barred by governmental immunity and usually is quickly dismissed. In short, at this time I do not see these new rules posing additional risk for entities training drivers, and so long as each entity follows the rules, they may provide some additional protection.*



Since it's inception in 1987, the Michigan Transit Pool has grown and become an integral part of many successful transit companies.

It is our honor and privilege to serve our members as we look forward to another thirty five years.

Thank you for being a part of our family.

