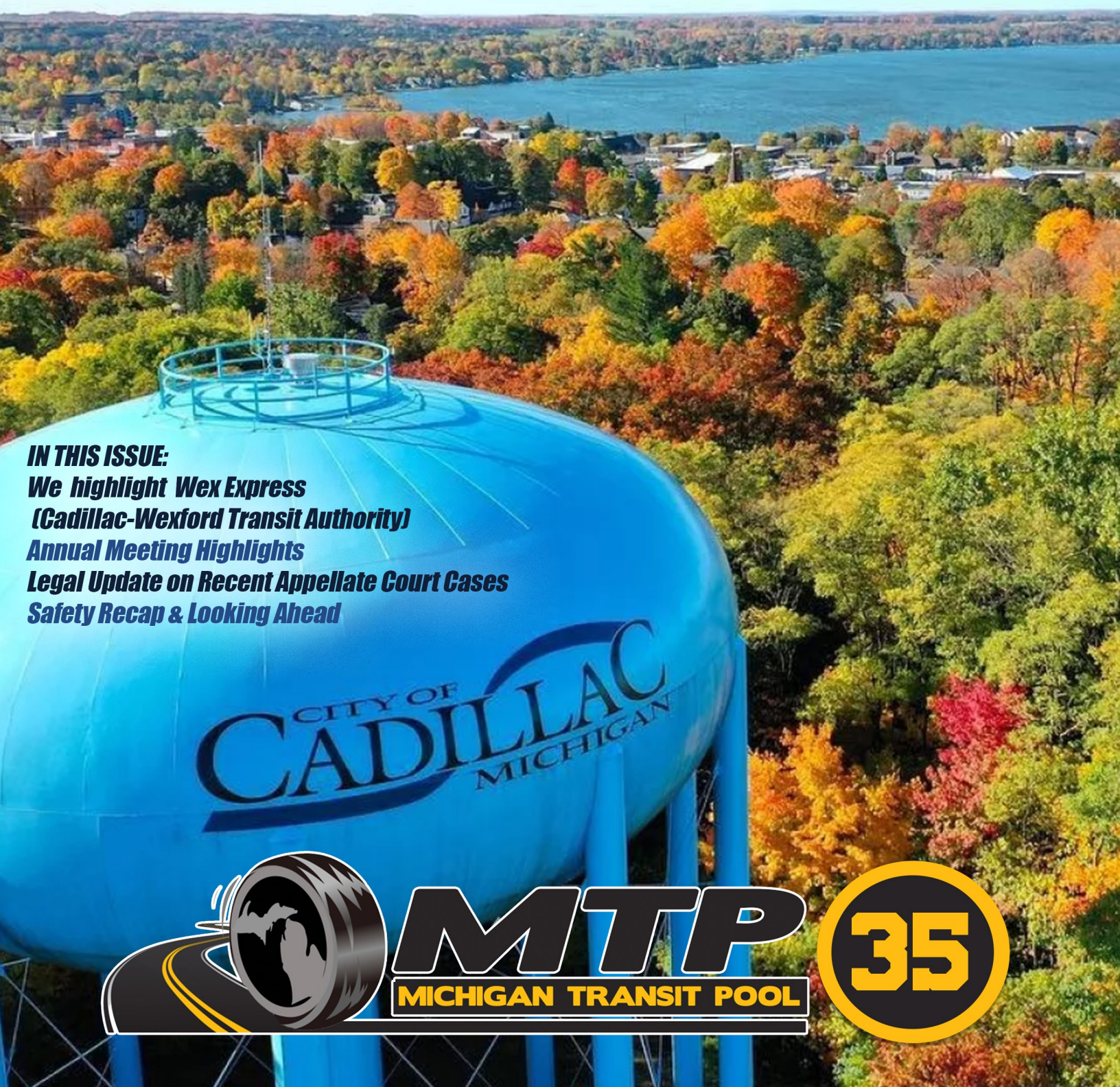


Summer 2023

MI POOL NEWS

A PUBLICATION OF THE MICHIGAN TRANSIT POOL



IN THIS ISSUE:

- We highlight Wex Express
(Cadillac-Wexford Transit Authority)**
- Annual Meeting Highlights**
- Legal Update on Recent Appellate Court Cases**
- Safety Recap & Looking Ahead**



MTP
MICHIGAN TRANSIT POOL

35



Michigan
Transit Pool
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Committee

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President

Larry Alpert
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Jim Oliver
Treasurer

Kelly Bales
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Karen Mendham

Mike Brown

Ken Jimkoski

Carrie Thompson

Joe DeKoning
TRL Liaison

Your ASU Team:
Glen Griffin

Kimberlee Hanes

Kristine Schreiber

Adam Wilberding

Greetings:

We hope this finds you all enjoying the most of what Michigan summers have to offer!

Annual Meeting:

We are proud to say the Michigan Transit Pool is celebrating its 35th Anniversary this year and that was the central theme of the Annual Meeting held in Port Huron. We were honored to be able to celebrate with alumni folks some of whom helped form the pool 35 years ago, or had long standing significant roles with the management and direction of MTP over those years. Turnout was great and we were able to show appreciation to attendees with anniversary promotional items. We had record participation in both the golf and euchre tournaments that resulted in a fun day and evening for all involved. We thank all of you that attended and we encourage the rest of our members to consider attending next year to benefit from the meeting topics and enjoy the social events.

Next year's meeting location is yet to be determined. If you have a location you would like to be considered, please contact Glen Griffin.

Finally, MTP received accolades from the State of Michigan for 35 years in business in the form of a Tribute plaque signed by Governor Whitmer. Also, AGRiP honored Transit RE (of which MTP is a partner with OTRP and NAIPTA) for achieving advisory member status with AGRiP. Congratulations, MTP!

Highlights from the business meeting:

The MTP Board voted to accept the changes to the MTP Bylaws to remove the Claims Committee per the Plan of Compliance to the Department of Insurance and Financial Services (DIFS).

Our vendors and service providers provided their annual presentations. Members can find the presentations online at MTPOnline.org under the Member Only Materials.

Elections:

Dave McElroy - Blue Water, **Larry Alpert** - Shiawassee and **Jim Oliver** - Gogebic were re-elected to their current respective Offices of President, Vice-President and Treasurer for three-year terms.



MTP

MICHIGAN TRANSIT POOL

Celebrating 35 Years!



*Thank You
for being a
Part of it!*





Spotlight on:

Wex Express

By Carrie Thompson

Cadillac/Wexford Transit Authority (WexExpress) is a door-to-door rural transit that serves all of Wexford County, which includes the City of Cadillac and parts of Missaukee County. We also provide daily regional service to Missaukee and Grand Traverse County. WexExpress has 32 vehicles and provides approximately 150,000 rides per year. Work has been our number one trip purpose among riders for the last several years. This milestone was a huge accomplishment for the transit and showcased our ability to collaborate with area businesses and large manufacturing firms to get their employees to work.

Over the last several years, we have expanded our demand response service to include evenings and weekend service. In 2018 we launched a volunteer driver program using New Freedom funds to transport seniors, veterans, and people with disabilities all over the State of Michigan. This program has been an enormous success for us and allows us to partner with groups like Area Agency on Aging, COA, County Veterans, Northern Healthcare Management, DHHS, and more.

Our **15** volunteers transport approximately **400-500** passengers monthly to NEMT appointments throughout the State. It allows our partners to bridge the transportation gap for their clients and access specialist like U of M and large Veteran Clinics at a fraction of the price of a private carrier. Due to the overwhelming need for NEMT, we also launched a Rides to Wellness Program that provides premium one-on-one service in minivans for local Wexford and Missaukee County trips—allowing us to keep our volunteers on longer trips across the State and still provide access to locals wanting specialized transportation to area clinics.

This year WexExpress led the State's first joint procurement for dispatch software. Our existing software was experiencing significant issues, and seven transits came together to procure new software. We knew together that we could leverage more buying power to benefit all of us. The software procured will move all of us forward technologically. This fall, we will launch our new software with a modern app branded for our transit. Passengers can book rides in the app, manage existing rides, cancel trips, receive notifications on when the bus will arrive, see the bus on the route, and many other passenger-focused features. This technology will allow us to run faster and lighter at night and on weekends as well as give some relief to our dispatch staff. We are excited about the ability of passengers to "self-serve" if they choose to do so. We have been working on a large marketing push to promote this service and keep the transit relevant for many years to come.

MTP Risk Management

Adam Wilberding

Safety Recap and Looking Ahead

Happy Summer to all MTP members and colleagues!

We hope all of you are benefiting from the wonderful summer weather and are able to take some time to enjoy it. As we pass the midpoint of the year, let's recap some past activities.

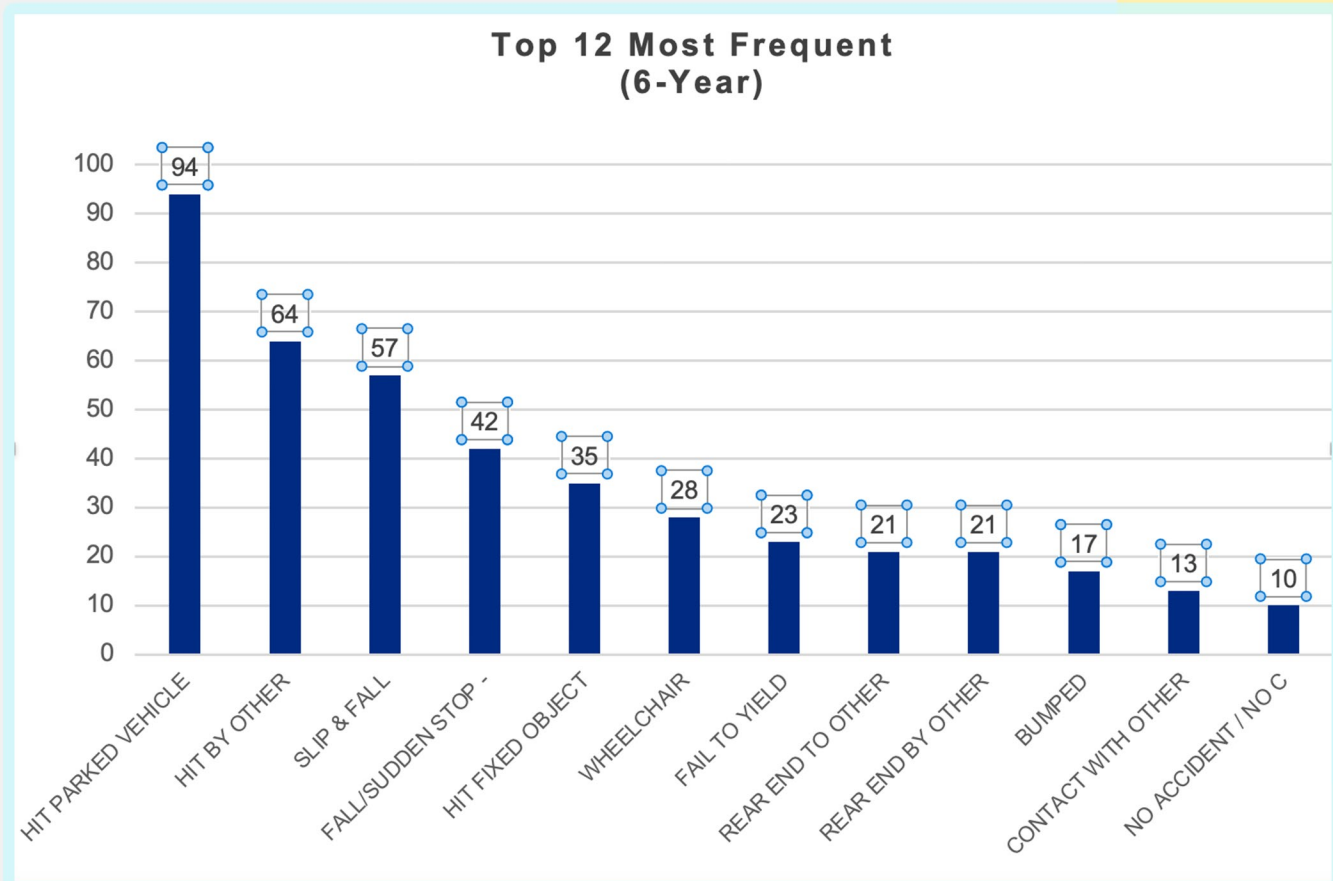
MTP Annual Meeting

The Annual Michigan Transit Pool Meeting in Port Huron was a great opportunity to get together to visit and to conduct MTP business. For all who attended and those who were unable, we offer the following points of recap.

1.) Frequency and Severity Trends

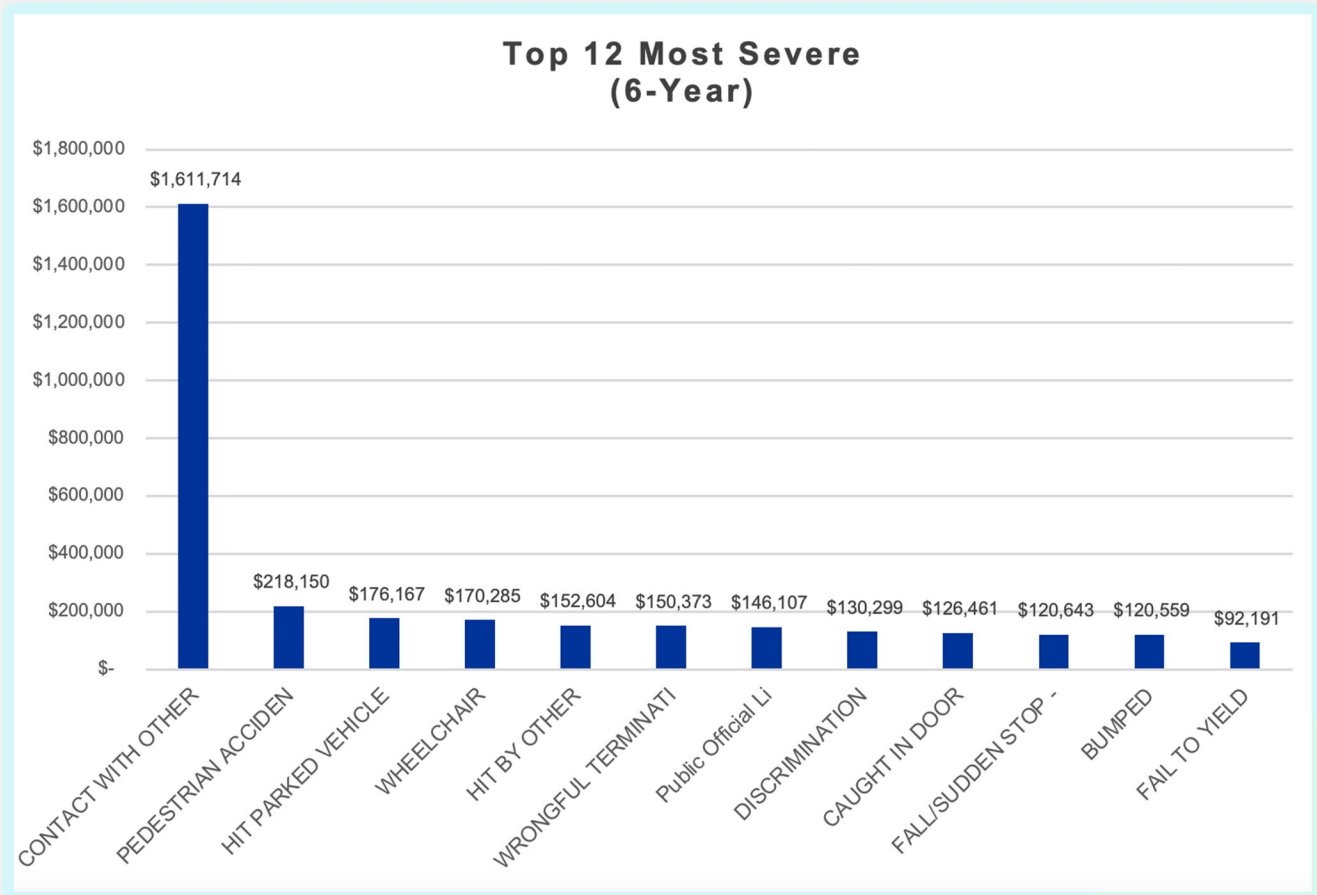
As insurance underwriters say, "frequency breeds severity" and we find that is mostly true. At times, severe claims can come out of nowhere and impact organizations, and no doubt we have experienced that as well. But, if we keep our eyes focused on preventing frequency, we can usually see a direct correlation with a reduction in severity. So, let's take a look at our data. The first graph (Figure 1) represents the MTP Fund's most frequent (i.e., number) types of claims over the past six years. These categories represent 87% of the total claim frequency, which is the vast majority and the areas we will need to focus prevention efforts.

Figure 1 – MTP Claims Frequency – 6-Year



This second graph (Figure 2) presents the MTP Fund's most severe (i.e., total incurred dollars) types of claims over the past six years. These categories represent 85% of the total claim severity.

Figure 2 – MTP Claims Severity – 6-Year



We will continue to focus on our frequency and severity trends through prevention efforts.

2.) MTP Risk Management Committee

The Risk Management Committee continues to meet both onsite at The ASU Group offices in Okemos and simultaneously online using ZOOM. Members find benefits from both in-person and virtual formats. The meetings start at 9:00am and end by 10:30am, and so these 90-minute sessions provide the ability to help steer our risk management efforts and share experiences to collectively benefit all members. We appreciate the great participation thus far and look forward to the addition of new members this Summer. Previous meetings in the first and second quarters of the year occurred on January 16, March 6, and May 1. The remaining meetings for this year are scheduled for July 17, September 18, and November 6, which all will begin at 9:00am.

If you are interested in attending, then please email mtplosscontrol@asugroup.com to request virtual meeting link or confirm your plans to attend in-person. Also, please feel free to share any concerns, ideas, or lessons learned with us, which are beneficial to all members.

3.) Reasonable Suspicion Training for Supervisors

As we know, FTA requirements, specifically under §655.14(b)(2), requires that supervisors receive training for making reasonable suspicion determinations. Three training events for supervisors took place during January, May, and June of this year. A total of 31 supervisors across 8 MTP members were trained to make reasonable suspicion determinations. The course curriculum, produced by attorney Bill Judge, Esq., has been used for well over a decade to train supervisors of DOT-regulated employees in FTA (Public Transit), FAA (Aviation), FMCSA (Trucking/Private Transportation), FRA (Railroad), and PHMSA (Pipeline) on reasonable suspicion duties, on the physical, behavioral, and performance indicators of probable drug use, and on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Inevitably, supervisors gain the confidence and tools needed to make reasonable suspicion determinations. On behalf of MTP, we congratulate all who completed the training and appreciate their commitment to the public transit industry.

If interested in holding and/or hosting a Reasonable Suspicion Training, then please email mtplosscontrol@asugroup.com.

Regulatory Update



***** U.S. DOT Approves Oral Fluid Testing for Drug Testing *****

The final rule amends the U.S. Department of Transportation's regulated industry drug testing program adopted in November 1988 to include oral fluid testing. This additional methodology for drug testing will give employers a choice that will help combat employee cheating on urine drug tests and provide a less intrusive means of achieving the safety goals of the program. In order for an employer to implement oral fluid testing under the Department's regulation, the U.S. Department of Health and Human Services will need to certify at least two laboratories for oral fluid testing, which has not yet been done. The final rule includes other provisions to update the Department's regulation and to harmonize, as needed, with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid established by the U.S. Department of Health and Human Services. In addition, this rule amends the FAA, FMCSA, FRA, and FTA regulations to ensure consistency within the Department of Transportation and by removing or adjusting references to the word "urine" and/or add references to oral fluid, as well as removing or amending some definitions for conformity and to make other miscellaneous technical changes or corrections.

It is noted in the Federal Register, Vol. 88, No. 84/Tuesday, May 2, 2023 – Page 27597, that "while the science supporting oral fluid testing did not meet the standards of HHS in 2004, science and research studies have now reached the point where HHS has been able to determine that oral fluid testing is an appropriate alternate testing method for identifying illicit drug use in the Federal workplace. The scientific viability of oral fluid testing has greatly advanced since 2004 to the point where HHS determined, in 2019, that the methodology is accurate and appropriate for Federal employee testing."

This method of testing will help resolve the privacy concerns associated with urine collections and especially those tests requiring direct observation. According to some Federal Register comments, oral fluid testing is generally less expensive than urine testing. An oral fluid test can cost between \$10 to \$20 less than a urine test (e.g., about \$50 for a typical urine testing process, vs. about \$35 for an oral fluid testing process). Also, oral fluid testing is expected to offer other unquantifiable benefits such as “eliminating the costs of shy bladder evaluations; alleviating the burden on individuals who cannot produce a sufficient urine specimen due to a psychological and/or physical medical condition; opening transportation safety-sensitive employment possibilities to many who have disabilities rendering them unable to produce an adequate urine specimen; and the thwarting of cheating.”

In my opinion, and after 20 years of using oral fluid testing for non-DOT employees, this change should prove to be beneficial for the public transit industry. Oral fluid testing has been noted for its ease of use, its ability to thwart adulteration, and its accuracy.

Until next time, stay focused and stay safe!

Adam





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.

The following are a few cases worth highlighting from which transit authorities can draw some conclusions moving forward.

Saucillo v City of Detroit, 2023 Mich. App. LEXIS 434 (2023)

DOI: October 17, 2019

LC: Wayne Circuit Court. LC No. 20-013696-NI.

COA: No. 360352 (decided Jan. 19, 2023)

In an appellate case just decided in January 2023, the Court of Appeals rejected a “sudden emergency” defense for a City of Detroit bus that came to a sharp stop that threw one of its passengers out of their seat.

Despite the fact that the bus was stopping to avoid a collision with a vehicle that pulled out in front of it, the trial court initially found, and Court of Appeals affirmed, that a “question of fact” remained for trial that precluded the case being dismissed.

Normally, one might expect that Courts would not find negligence in sudden stops and starts and avoiding accidents with other vehicles. However, the main testimony that sunk the City of Detroit bus in this case and prevented the case from being dismissed was the fact that the plaintiff testified the bus driver was observed to be “turning his head, looking in the mirrors at his passengers, and attempting to join their conversation [H]ad the driver been paying attention[,] he would have noticed upcoming traffic and stopped.”

The main takeaway?

It is absolutely imperative to curb distracted driving – had the bus driver not been documented as paying so much attention to his passengers' conversations inside the bus rather than the traffic conditions, I would have fully expected the case to be dismissed.



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

Davis v Suburban Mobility Auth, 2022 Mich Cir LEXIS 306
(Sixth Circuit Court of Michigan, Oakland County, August 30, 2022).
LC: 2020-182950-NF

A recent circuit court case dismissal of a personal injury case highlights the great benefit that having working video cameras on bus systems can provide.

In this case the plaintiff was a passenger on a SMART bus that was sideswiped by another vehicle. Both vehicles were stopped at a traffic light, and the car attempted to merge into the same lane as the bus and impacted the bus in the side in what was described as a “very minor impact.” The entire incident was captured on video recordings. The videos showed the plaintiff did not move significantly in the impact, and she was not thrown to the forward or side, but did request to be taken to the hospital via ambulance where she was diagnosed with a strain.

Of note relative to the importance of video cameras, the plaintiff testified in a manner completely contradictory to what was depicted on the video. In what would have been likely a classic “he said, she said” dispute over how the accident happened that would have precluded summary judgment and a dismissal (like the Saucillo case summarized above), the trial court judge was able to completely disregard plaintiff’s self-serving and contradictory testimony and medical records because it was “blatantly contradicted” by the video evidence in the record.

While trial court judges normally cannot make credibility determinations and have to view motions to dismiss in a light most favorable to the party that did not file a motion to dismiss; objective evidence like video camera footage permits judges to ignore such subjective and unsupported evidence under certain circumstances and recent developments in Michigan case law under *Fuhr v Trinity Health Corp*, 495 Mich 869; 837 NW2d (2013) and its progeny.

The main takeaway? Operable, functioning video camera surveillance systems on busses help provide objective evidence that can permit judges to ignore the subjective, self-serving testimony and medical records of plaintiffs who might normally survive summary disposition dismissal if their evidence is wholly non-credible and blatantly contradicted by the objective video.

Conclusion

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

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.

