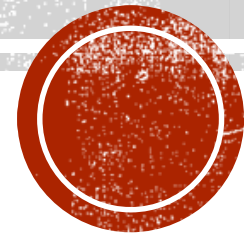


DEFENDING EMERGENCY EXCEPTION CASES UNDER THE TEXAS TORT CLAIMS ACT

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DNRBH-Z
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IMMUNITY GENERALLY

- Texas Tort Claims Act – Section 101.001 – 101.109 Texas Civil Practices and Remedies Code (TCAA).
- A governmental unit is immune from suit unless consent has been given and when the Texas Tort Claims Act expressly waives immunity.



THE EXCEPTION

SECTION 101.021 TTCA

- A governmental unit in the state is liable for:
- (1) property damage, personal injury and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of his employment if:
 - (a) the property damage, personal injury or death arises from the **operation or use of a motor-driven vehicle** or motor-driven equipment; and,
 - (b) the employee would be personally liable to the claimant according to Texas law; or
- (2) personal injury or death so caused by a condition or use of **tangible personal or real property** if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.





USE OF MOTOR VEHICLE



THE EXCEPTION TO THE EXCEPTION

SECTION 101.055(2) TTCA – EMERGENCY EXCEPTION

- This Chapter does not apply to a claim arising:
- (2) from the action of an employee while responding to an **emergency call or reacting to an emergency situation** if the action is in compliance with the laws and ordinances applicable to emergency action, or in the absence of such a law or ordinance, **if the action is not taken with conscious indifference or reckless disregard for the safety of others.**





EMERGENCY EXCEPTION

Emergency – an unexpected and usually dangerous situation that calls for immediate action.



EMERGENCY EXCEPTION

- The underlying policy of the emergency response exception is to balance the safety of the public with the need for prompt response from emergency personnel.
- Imposing liability for a mere failure in judgement could deter emergency personnel from acting decisively and from taking calculated risks.
- This would allow for the judicial second guessing of the split second and time pressured decisions emergency personnel are forced to make.

We Will Help...
ANYONE
ANYWHERE
ANYTIME
with **ANYTHING**



EMERGENCY EXCEPTION

TEXAS TRANSPORTATION CODE SECTION 546.001-.005

- Texas Transportation Code Section 545.001-.005 allows emergency vehicles to proceed past red lights, stop signs, exceed the maximum speed limits and disregard various other regulations governing the direction of movement in traffic.
- However, these privileges do not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons.
- Specifically, 546.005 Texas Transportation Code:

DUTY OF CARE. This chapter does not relieve the operator of an authorized emergency vehicle from:
(1) the duty to operate the vehicle with appropriate regard for the safety of all persons; or
(2) the consequences of reckless disregard for the safety of others.

- While the operator has a duty to drive with due regard for other by avoiding negligence behavior, liability is only imposed for reckless conduct . . .



EMERGENCY EXCEPTION GROSS NEGLIGENCE AND RECKLESSNESS

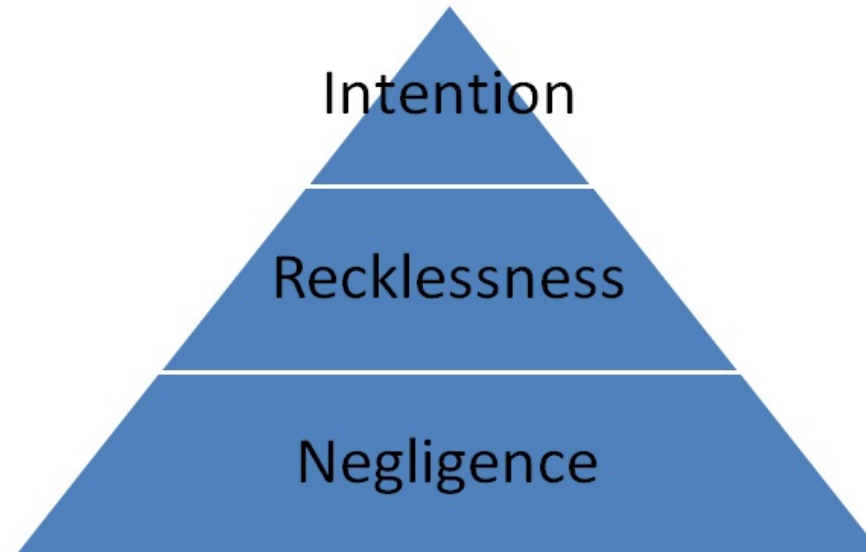
- **THUS**, a governmental entity is immune from suits to recover damages resulting from the emergency operation of an emergency vehicle unless the operator acted recklessly, that is, “committed an act that the operator knew or should have known posed a high degree of risk or serious injury.”
- A gross negligence of recklessness finding requires a showing that the operator’s conduct created *an extreme risk of harm*, and that the operator was subjectively aware of the extreme risk created by that conduct, but acted in conscious disregard of that danger.
- The plaintiff must show that the operator (defendant) *knew about the peril, but his acts or omissions demonstrated that he didn’t care.*



EMERGENCY EXCEPTION

GROSS NEGLIGENCE AND RECKLESSNESS

- Reckless disregard for the safety of others includes essential characteristics of gross negligence indicating an entire want of care sufficient to raise the belief or presumption that the act or omission complained of was the result of conscious indifference to the rights and welfare of the persons affected.
- “Conscious indifference” and “reckless disregard” require proof that a party knew of the relevant facts but did not care about the result.



OFFICIAL IMMUNITY

- Whether the individual is sued or not. Typically will always argue official immunity.
- Under Texas law, a suit against a governmental employee in their official capacities is, in all respects, a suit against the state, thus employees sued in their official capacities are shielded by sovereign immunity.
- If the employee is immune from suit, he is not personally liable to the claimant and the governmental unit retains its immunity.
- In other words, when official immunity shields a governmental employee from liability, sovereign immunity shields the governmental employer from vicarious liability.



OFFICIAL IMMUNITY

GOOD FAITH

- A governmental employee has official immunity for the performance of:
 - (1) discretionary duties within;
 - (2) the scope of the employee's authority; provided the employee
 - (3) acts in good faith
- The test is one of objective legal reasonableness and the immunity protects all but the plainly incompetent or those who knowingly violate the law.
- Plaintiffs must do more than show that the officer was negligent or that a reasonably prudent officer could have reached a different decision. They must show that *absolutely no reasonable person in the employee's position* could have thought that the facts justified the officer's acts.



OFFICIAL IMMUNITY

GOOD FAITH

- Assessing such facts as time of day and traffic, weather and road conditions [the officer] was assessing the specific circumstances present that affected this risk.
- An officer should not be required in his affidavit to affirmatively negate the existence of all circumstances or risk that did not actually exist.
- Depositions
- Affidavits



- **1. Emergency Response**

- *4 Torres argues that the emergency exception does not apply since there is a fact issue regarding whether Officer Walker was responding to an actual emergency. Torres points to Officer Walker's following deposition testimony which she claims proves he was not responding to an emergency:

- [TORRES'S COUNSEL]: Okay. Do you agree that if you were driving your vehicle a little slower that day, that you could have prevented yourself from losing control and striking my client's vehicle?

- [WALKER]: I believe if I was driving in a safe and prudent manner that the collision would not have occurred.

- [TORRES'S COUNSEL]: Okay. Do you believe that you could have responded to the call in a safe and prudent manner and still been able to arrive at the location that you were trying to reach?

- [WALKER]: I—I don't know.

- [TORRES'S COUNSEL]: Okay. Looking back at everything, do you think that—that the best thing for you to have done at the time was to proceed in a safe and prudent manner so that you could safely and efficiently get to the intersection to lay down the strips, the spike strips?

- [WALKER]: Yes, sir.

- [TORRES'S COUNSEL]: Okay. Knowing what you know today, would you do thing differently?

- [WALKER]: Yes, sir.

- [TORRES'S COUNSEL]: Okay. How would you have done things differently?

- [WALKER]: I—I either wouldn't have tried to get to that intersection or I would have went further to a different location further off so I'd have more time to set up the spike strips.

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- [TORRES'S COUNSEL]: Do you believe that as a result of violating the rules manual you were not acting as a reasonably prudent police officer should have acted on the day of the collision?

- [WALKER]: I don't believe I was driving at [sic] a reasonable and prudent manner.

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Torres v. City of Corpus Christi, No. 13-14-00506-CV, 2016 WL 4578392, at *3-4 (Tex. App. Sept. 1, 2016)



- 3rd party POV
- Pit maneuver
- EMS
- Deposition excerpt

VIDEOS



- Policies
- Review them every so often.
 - Does it mirror current case law?
 - Specific/Vague?
 - What if your policy says “no pursuits”?
 - If employee violates policy, would they still be entitled to emergency exception (reckless? Gross negligence?).
 - EMS/Fire/Police



CITY ATTORNEY APPLICATION



CITY ATTORNEY APPLICATION

- What if policy has been violated?
- Are you Civil Service?
- Discipline
- Even if not CS, PD still has 614 Texas Government Code Requirements for terminations
- Police Reports
- Criminal Proceedings (i.e. Motion to Suppress Hrgs)
- Affidavits
- Depositions



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**REBECCA
SANCHEZ
HAYWARD**

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Thank you!

