TO: Mayor and Members of City Council
FROM: Lori Grigg Bluhm, City Attorney
Christopher J. Forsyth, Assistant City Attorney
DATE: May 9, 2006
SUBJECT: Carrie Zanoni v. City of Troy, Officer Jones , & Sgt. Stout

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Enclosed please find a copy of the Order dismissing the City of Troy from the lawsuit filed by Carrie Zanoni against the City of Troy and Police Officer Joshua Jones and Sgt. Christopher Stout. This order was entered after a hearing on our Motion for Summary Disposition, which was entered on May 3, 2006 by Judge John McDonald.

This lawsuit was initially filed as an auto negligence case against co-Defendant Rebecca Ann Roose, who hit Zanoni with her car on August 17, 2003. The accident occurred on Livernois at Woodslee, and resulted in serious injuries to Plaintiff, who was a pedestrian. After discovery had commenced in the case, Plaintiff asked for permission to amend the complaint to add the City of Troy and its police officers and the City of Clawson and its police officers as co-defendants. This request was granted on November 25, 2005. In the amended complaint, Plaintiff argued that the municipalities and their police officers were at least partially at fault for her injuries, since they had contact with her prior to her accident, and knew that she had been drinking, and therefore was likely to have been involved in an accident. She argued that the police officers were obligated to take her into custody or otherwise take some action to prevent the accident, even though she was not driving at the time of her contact with the Troy police officers, and was not incapacitated.

In our motion for summary disposition, we argued that the City and its officers are immune from liability in this case. Under state statute, municipalities are provided with tort immunity, since they undertake to provide services that private entities are hesitant to provide, due to risk management concerns. Examples of these services include providing and servicing roads, sidewalks and recreational facilities, and providing police protection. This immunity is not absolute, however, and may be pierced. One exception to the broad grant of governmental immunity is where a municipality's agent is carrying out his or her duties in a grossly negligent manner, and this gross negligence is the proximate cause of an injury. State statute defines gross negligence as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results. The Michigan Supreme Court has defined proximate cause as the most immediate, efficient, and direct cause of the injury or damage.

The Court determined that Plaintiff had not established an exception to governmental immunity, and therefore dismissal of the City and the officers was appropriate. Judge McDonald first opined that Officer Jones and Sgt. Stout's contact with Plaintiff was carried out in a professional manner, which did not rise to the level of gross negligence. In addition, the Court also determined that Plaintiff did not establish the required proximate cause element. In the Court's opinion, the City and/or the officers were not the most direct, immediate and efficient cause of Ms. Zanoni's injuries. The injuries were instead a direct result of Ms. Roose striking Plaintiff with her car.

If you have any questions, please let us know.

STATE OF MICHIGAN

OAKLAND COUNTY CIRCUIT COURT :

CARRIE ZANONI, a mentally
Incompetent person, by her Legal Guardian,
Mitchell Dittman,

Plaintiff,

v

REBECCA ANN ROOSE aka
REBECCA ANN RENAUD,
CITY OF TROY (TROY POLICE DEPARTMENT),
TROY POLICE OFFICER J. JONES,
TROY POLICE OFFICER, SGT. STOUT,
CITY OF CLAWSON (CLAWSON POLICE DEPARTMENT),
CLAWSON POLICE OFFICER, BIGELOW AND
CLAWSON POLICE OFFICER, WESTON,
Jointly and Severally,

Defendants.

_____/

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ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in
the Courthouse in the City of Pontiac,
Oakland County, MI
on: MAY 03 2006

PRESENT: HONORABLE JOHN J. McDONALD

This matter came before this Court on a motion filed by Defendants, City of Troy, Police Officer Jones, and Sgt. Stout seeking summary disposition pursuant to MCR 2.116(C)(7) and (10); the Court having been fully advised of the premises;

IT IS:

ORDERED that Defendant's motion is GRANTED;

ORDERED that this case as to above Defendants is dismissed WITH PREJUDICE for the reasons stated on the record.

JOHN J. McDONALD

Circuit Court Judge

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk - Register of Deeds
By: _____
Deputy