

## ***MDEQ Held Immune From Tort Liability***

The Michigan Court of Claims has dismissed a negligence claim brought by homeowners against the Michigan Department of Environmental Quality (MDEQ) and its Director, Russell J. Harding, because those parties are immune from liability under Michigan law. The claim against MDEQ and Harding arose from their alleged inaction with respect to groundwater contamination beneath a Rochester Hills subdivision.

Scott and Loriann Reiss, together with their two minor children, lived on residential property near School Road in Rochester Hills, Michigan. Contamination leaking from a nearby landfill had contaminated the groundwater in the area, causing spontaneous fires in the Reiss' basement, putrid smells, and indoor air contamination. Further, Reiss claimed that, as a direct result of the contamination, for years his family had suffered nausea, sleepiness, forgetfulness, and irritability, among other mental and physical ailments. The concentration of the contamination near Reiss' house was so high that, in March 2000, explosive levels of contaminants collected in the basement drain of a neighboring house, causing that structure to "explode with catastrophic force, demolishing the house."

Reiss claimed that MDEQ and, in particular, Harding, had been aware of the "near fatal levels of contamination" since the 1980s, yet "sat silently for over ten years and failed to give a single, solitary bit of information to the residents that the soil under their feet, the groundwater, or the water they had previously been drinking was saturated with dangerous and toxic levels of hazardous substances." Accordingly, Reiss sued MDEQ and Harding, claiming that they were negligent by failing to properly carry out their responsibilities under the Natural Resources and Environmental Protection Act.

MDEQ and Harding moved to have the lawsuit dismissed without a trial because they cannot be liable for negligence under the Governmental Immunity Act, and the court agreed. The Governmental Immunity Act provides that “a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.” The Michigan Supreme Court has held that, under the Governmental Immunity Act, governmental agencies are generally immune from all tort liability unless the government’s activities falls within one of the narrowly defined exceptions to immunity created by the Legislature.

Reiss argued that MDEQ and Harding should not be immune from tort liability because Harding and other MDEQ employees “acted in a grossly negligent manner so as to show deliberate indifference to the health and safety of the public.” The court rejected this argument as to MDEQ because the “gross negligence exception” to governmental immunity applies only to officers, employees, members or volunteers of the agency, and not to the agency itself. Therefore, the court held that MDEQ could not be liable for Harding’s or any other MDEQ employee’s gross negligence.

The court also rejected Reiss’ argument with respect to Harding because the court found that he had not acted with gross negligence. The court defined gross negligence as “conduct so reckless as to demonstrate a *substantial* lack of concern for whether an injury results.” In this case, the court noted that, when MDEQ first became aware of the situation, it had ordered the public well-water system quarantined and had bottled water brought in for area residents. Further, after the explosion, MDEQ temporarily removed the residents from their homes and installed a contamination collection system to reduce

the potential for future explosions. Thus, the court held that, once Harding and other MDEQ employees became aware of the problem, they took prompt action.

Accordingly, the court dismissed the lawsuit against MDEQ and Harding because they were immune from liability under the Governmental Immunity Act.

*Reiss v. MDEQ*, No. 00-17799-CM, April 26, 2001

Jeffrey L. Woolstrum