

# MICHIGAN LAWYERS WEEKLY

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## Letters

### Legal loophole lets SMART off the hook

To the Editor:

Talk about putting form over substance.

That's exactly what SMART (Suburban Mobility Authority for Regional Transport) did to escape responsibility for causing serious, debilitating personal injuries to two of its passengers (one of whom was wheelchair-bound) and one unsuspecting driver in three separate crashes involving SMART buses.

In all three instances, defendant SMART got lawsuits thrown out of court by insisting it didn't have proper "notice" of the victims' injuries -- even though SMART knew about both the bus accidents and the serious nature of the injuries.

You see, under our law, Michigan residents are severely punished if they don't run to a lawyer right away after they've been injured in a bus accident. And they are punished in the most drastic way possible -- they lose any right to sue for their injuries.

That is because of a legal loophole that has been interpreted as requiring accident victims to provide transportation authorities, such as SMART, with notice of their injuries within 60 days of a bus accident. No exceptions. No room for common sense. No regard for public policy or reaching a just and fair result. And no case better illustrates this absurdity than what happened to Eugene Rose after his bus accident.

### Winning every time

In April 2006, Rose, who was in a three-wheel, motorized wheelchair, rode as a passenger on a SMART bus. When the bus took too sharp a turn, it caused Rose's unsecured wheelchair to tip over, throwing him to the floor. Rose suffered a fractured hip and left femur fracture. He was rushed to the hospital by ambulance from the scene.

SMART certainly knew instantly all about Mr. Rose and his injuries. It was a SMART bus that caused the accident, and the bus was being driven by a SMART employee. Reports were filled out at the scene. In fact, SMART received incident reports, as well as a police report, presumably, from both its own bus driver and from the property owner on whose property the accident occurred.

Nevertheless, to avoid responsibility for the serious injuries it inflicted, SMART argued Rose shouldn't be able to sue because he hadn't personally told SMART about his bus accident-related injuries within 60 days of the accident.

Sounds ludicrous, right? But what's even more ludicrous is it was enough to get SMART off the hook.

SMART is escaping liability by blaming its own accident victims for not telling SMART what it clearly already knows within 60 days. And they are winning every time.

In the other two cases, SMART escaped all responsibility for causing injuries to bus accident victims Loren Roberts and Paska Nuculovic. In Roberts' case, where he was injured when the SMART bus he was riding took off too fast, SMART did receive formal notice of the accident from telephone conversations Roberts had with both the SMART bus driver and a SMART representative.

And in Nuculovic's case, where she was injured when a SMART bus failed to yield the right of way and crashed into her car, SMART knew about her injuries from a police report and two accident reports, one from the SMART bus driver and one from the driver's supervisor.

### **Judges bound by unfair law**

The Michigan Court of Appeals judges who ruled that the lawsuits had to be dismissed cannot be blamed for the injustice SMART has caused Rose, Roberts and Nuculovic.

Blame lies with SMART and with a dumb law that SMART is exploiting to escape responsibility to the innocent people it hurt. The public policy behind this 60-day written notice could not be worse for Michigan residents and all people who ride buses or depend upon public transportation.

Sadly, the appellate judges in all three cases felt bound to SMART's "form over substance" argument that "notice" law for transportation authorities protects negligent bus operators like SMART at the expense of innocent, powerless, legally unsophisticated public transportation passengers.

Again, the law, [MCL 124.419](#), says that any public transportation authority must have "written notice of any claim based upon injury to persons or property" and that it "shall be served upon the [transportational] authority no later than 60 days from the occurrence through which such injury is sustained ..."

That was enough for the judges in *Rose v. SMART*, *Roberts v. SMART*, and *Nuculovic v. SMART*.

And that was the end of the trip for SMART's seriously injured, completely innocent accident victims.

The Court of Appeals judges in Rose's case summed up the absurdity of Michigan's "notice" law by stating: "That SMART was provided an incident report by its own employee, and by the shopping center where the injury occurred, does not suffice to meet [the statutory notice] requirement."

Consequently, Michigan's "notice" law will protect SMART from ever being held accountable for the serious, debilitating injuries its negligence caused Rose, Roberts, and Nuculovic to suffer.

And to me, that's just dumb.

**Steven M. Gursten, Southfield, April 26, 2010**