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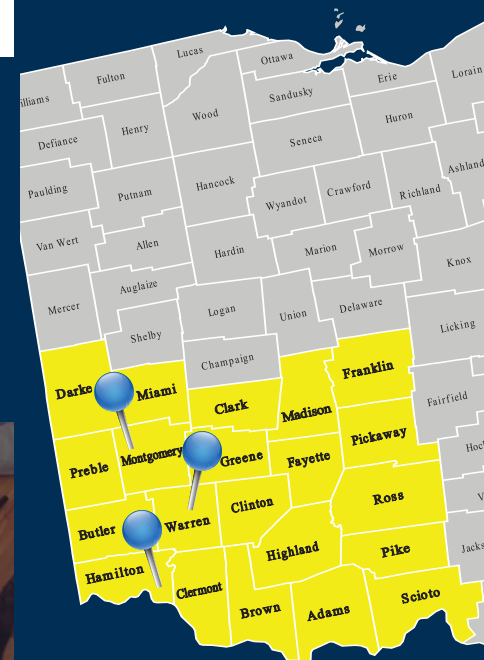
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**DIEHL & HUBBELL, LLC**

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# Digest

Diehl & Hubbell, LLC

*A note from Tom . . .*

## Government Immunity's Impact on Car Accident Claims

In this issue of the Diehl & Hubbell Digest, we dive into issues about government immunity and how that might affect car accident claims.

We also discuss a significant case we worked on that was greatly impacted by government immunity issues.

Everyday, people are injured as a result of the negligence of a government employee. For example, a government employee may be driving a state vehicle and negligently cause a motor vehicle accident, or a person may be seriously injured when he or she comes upon a dangerous condition inside a government building. Claims against a government employee or government entity, such as the State of Ohio or a township, city or county, are difficult (and sometimes impossible) to pursue due to special immunity rules.



Attorney Thomas J. Diehl

*Tom*

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**Answers to frequently asked questions regarding:**

- Car accidents
- Motorcycle accidents
- Domestic Relations
- Criminal Law

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**DID YOU  
KNOW?**

**We Handle All of These  
Types of Cases?**

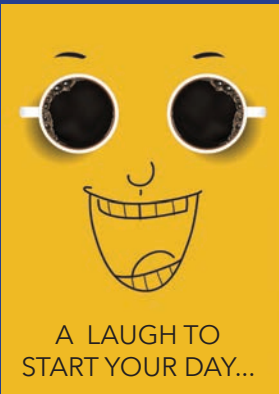
**Vehicle, Truck & Bus Accidents**  
**Motorcycle & Bicycle Accidents**  
**Pedestrian Collisions**  
**Slip & Fall Accidents**  
**Wrongful Death**



Thank  
you

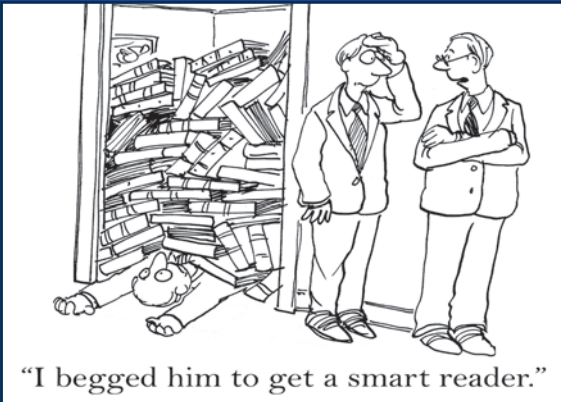
For Your  
Referrals

Most of our  
business comes  
from word of mouth.  
We are so appreciative of you  
sharing your good experience  
with the people you know!



After suffering through years of his wife’s  
awful coffee, the man spit it out and took  
the coffee maker to his lawyer. Dropping  
it on the attorney’s desk, the man snarled,  
“Here they are!”

“Here are what?” the startled lawyer  
asked. “Grounds for divorce.”



RECOVERY FROM INJURIES  
CAUSED BY NEGLIGENT  
POLICE OFFICER DRIVING

It is never pleasant to be involved in an automobile accident and it can be a life-changing ordeal when that motor vehicle accident causes a serious injury. But Ohio’s government immunity laws make accidents involving police officers much more complicated.

As a general rule, a political subdivision in Ohio is immune from liability for tortious conduct. Ohio Rev. Code §2744.02(A)(1) provides: “a political subdivision is not liable in damages in a civil action for injury, death, or loss to personal property allegedly caused

by any act or omission of the political subdivision or employee of the political subdivision.” In other words... a political subdivision (such as the State of Ohio, or a city, township, or county government) is not liable for damages caused by its negligence or the negligence of its employee (like a police officer).

There are some exceptions to this grant of immunity. One exception applies to circumstances where a government employee, in the course and scope of his employment, causes injuries by negligently causing a car accident. Ohio Rev. Code §2744.02(B)(1)(a). Someone who is injured by a government employee’s negligent operation of a motor vehicle may have a winnable claim. But, what the government giveth, it can taketh away. Ohio Rev. Code §2744.02(B)(1) (a) provides that the government and the employee are not liable if the injuries caused by the negligent operation of a motor vehicle occurred by a police officer responding to an emergency call.

In other words, if a police officer is responding to an emergency, and in the course of scope of responding to that emergency, negligently causes a motor vehicle accident, neither the police officer nor his employer will be responsible for the damages. This rule is not always objectionable. After all, there is a public policy encouraging police officers to respond to emergencies without fear that in so doing they expose themselves to liability for causing a motor vehicle accident. But, it is the application of this rule that is especially troubling, because the Ohio Supreme Court has defined an emergency to be any activity performed by the officer in the “call of duty.” The Ohio Supreme Court has determined that a police officer is not liable for his negligent operation of a vehicle when he causes a motor vehicle accident while observing potential suspects walking about a downtown area, when the police officer is patrolling in a high crime area, or even if a police officer causes an accident while transporting a prisoner from one jail to another.



We worked on a case in which our client went to a municipal parking lot for the purpose of going inside the building to make a utility payment. While walking through the parking lot, our client was struck by an on-duty deputy who was going to the Courthouse because he was called to testify as a witness in a traffic ticket case. The officer was driving into the sun and was partially blinded and as a result he unintentionally but negligently collided with our pedestrian client. Our client sustained a fairly significant lower leg injury. We brought a claim against the negligent police officer and the Sheriff’s office for the damages and injuries sustained. Even though the police officer was merely driving to the Courthouse to appear as a witness, and did not have emergency lights on, the police officer and the Sheriff argued that they should be immune from liability, by claiming that they were responding to an “emergency” as that term is used in the governed immunity statute.

It took a while. It went all the way to the Ohio Supreme Court, but we were able to convince the Court that the facts of the case did not qualify as an emergency and, therefore, immunity should not apply. The case is published in Ohio and is captioned Burnell v. Dulle, 169 Ohio App3d 792.

Motor Vehicle Accidents - What to do - Tip #6  
MAKE SURE THE RELEASE THE INSURANCE COMPANY WANTS YOU TO SIGN DOES  
NOT CONTAIN A CONFIDENTIALITY CLAUSE – AVOID BIG TAX CONSEQUENCES.

As a general rule, personal injury settlements are not taxable to the injured party. 26 U.S.C. §104(a)(2). However, the IRS will treat that portion of proceeds received in consideration of an executed confidentiality agreement as taxable income. See *Amos v. Commissioner of Internal Revenue* (December 1, 2003), No. 13391-01.

Fans of NBA basketball may recall, back in 1997, watching clips of Chicago Bulls forward Dennis Rodman (often referred to as “The Worm”) stumbling into a courtside camera pit and kicking, in the groin, a cameraman who had the temerity of being courtside. The cameraman was carried off in a stretcher. The cameraman sued Dennis Rodman and the Chicago Bulls. Eventually the parties agreed to an out of court settlement negotiated a pretrial settlement with the cameraman getting \$200,000. The settlement agreement the cameraman signed had standard settlement release language as well as a rather complicated confidentiality clause. The IRS treatment of that confidentiality clause should give concern to the personal injury practitioner.

The cameraman did not declare any of the settlement moneys as taxable income, taking the position that the recovery was based upon an injury claim and exempt under §104(a)(2). That code section requires that in order for moneys received from the settlement to be exempt

from taxation, the settlement must be based on physical injury or sickness. The IRS determined that \$80,000 of the award was not compensation for physical injuries, but, instead, was tendered in exchange for the confidentiality agreement, which included an agreement to refrain from defaming Dennis Rodman or otherwise discussing the settlement. (How the IRS determined that \$80,000 of the \$200,000 was paid in exchange for the confidentiality agreement is a mystery.)

In light of this, consider the following when finalizing a personal injury action:

- 1) Do not permit confidentiality or anti-defamation language to be included in the settlement/release agreement;
- 2) If the defendant insists upon a confidentiality clause, require specific language in the release, which sets forth the exact amount of consideration received in exchange for the confidentiality clause, or insist upon a statement in the settlement documents that no consideration was received in exchange for the confidentiality clause.

Taxation is tricky. Each case is different. Always carefully review with your tax advisor the taxability of any injury award or settlement.

Summer Corn & Cilantro Salsa

- INGREDIENTS
- 6 ears of grilled corn  
(or) 2 cans of corn if short on time  
1/2 cup diced red onion  
1 small pepper, diced (green or red)  
1/4 cup cilantro, chopped

2 Tbsp. avocado or olive oil  
1 tsp. salt  
1 tsp. pepper  
1 Tbsp. lime juice  
3 tsp. chili powder  
2 tsp. cumin powder



**DIRECTIONS**  
If you are using grilled corn, shuck the corn and grill on all sides until it begins to blacken. Carefully cut the kernels from the cobs. Chop the vegetables. Add grilled corn or canned corn and all ingredients to a bowl and mix well. Garnish with jalapeños and serve with your favorite tortilla chips or crackers. *Contributed by Karen Kress.*