EMS Immunity Revisited

This column previously detailed the range of immunities available to local fire services in the variety of functions they perform. “Fire Service Liability and Immunity,” IDC Quarterly, Fourth Quarter, 2007, Volume 17, No. 4. In that column we addressed remedies available to governmental employees who provide emergency medical services (EMS), such as paramedics and emergency medical technicians, and the overlap between statutory protections available to them in the Illinois Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act), 745 ILCS 10/1-101, et seq., and the Emergency Medical Services Systems Act (EMS Act), 210 ILCS 50/1, et seq. That column discussed a fascinating appellate court opinion in Abruzzo v. City of Park Ridge, 374 Ill. App. 3d 743, 870 N.E.2d 1012 (1st Dist. 2007), where the court found that the paramedics who responded to an emergency call were absolutely immune under §§ 6-105 and 6-106 of the Tort Immunity Act, 745 ILCS 10/6-105 and 6-106, rather than subject to liability for willful and wanton conduct under the EMS Act. The column mentioned that at the time a petition for leave to appeal was pending in the Illinois Supreme Court. The court ultimately granted the petition for leave to appeal; and, unfortunately for those of us who defend local governments, as well as the fire service personnel who provide those difficult services, the court reversed. Abruzzo v. City of Park Ridge, Doc. No. 104935, 2008 Ill. LEXIS 1413 (October 2, 2008).

The supreme court’s opinion is a study in competing approaches to statutory interpretation. The case arose out of a call by the family of a 15-year old boy who lost consciousness from a drug overdose. The complaint alleged that paramedics and other EMS personnel responded, found the boy to be “unresponsive,” and left without rendering any assistance or even transporting him to a hospital, and that he died as a result of these willful and wanton acts and omissions.

The defense raised in a motion to dismiss was that the City of Park Ridge was immune under § 6-105 and § 6-106(a) of the Tort Immunity Act, 745 ILCS 10/6-105, 6-106(a), which together immunize local governments and their employees from liability for failing to examine or adequately examine, or diagnose or prescribe, for mental or physical conditions. The defendant, City of Park Ridge, argued that because the complaint alleged that the paramedics provided no medical service, but merely failed to examine for or diagnose a condition for which an emergency medical service might have been needed, the City was absolutely immune under the Tort Immunity Act. The plaintiff, of course, argued that the EMS Act’s willful and wanton conduct exception to blanket immunity applied. The appellate court agreed with the City, finding that § 6-105 and § 6-106(a) were more specific than the competing EMS Act immunity; and in doing so, the court painstakingly focused on the precise language of the respective statutes as though explicating a complex poem.

The supreme court took a different approach. It decided the case on legislative intent, not from the exact language used, but from the broader policy declarations behind the respective statutes. Because the Tort Immunity Act applied to a wide range of potential tortious conduct by governmental defendants, and the EMS...
Act applied only to the specific type of allegedly tortious acts at issue in the case, the Illinois Supreme Court thought the EMS Act more specific. Because the EMS Act was designed to govern the emergency services EMS personnel provide, the court’s decision suggests no immunity for willful and wanton conduct by EMS personnel during an emergency call, regardless of the nature of the conduct.

_Abruzzo_ could indicate a trend. In _Moore v. Green_, 219 Ill. 2d 470, 848 N.E.2d 1015 (2006), the Illinois Supreme Court found that the limited immunity found in the Domestic Violence Act, 750 ILCS 60/101, _et seq._, applied to a failure to protect the plaintiff from domestic violence, rather than the absolute immunities for failure to provide police protection in the Tort Immunity Act. _Moore_, like _Abruzzo_, was based on the purpose of the Domestic Violence Act.

Governmental defense counsel need to be keenly aware and resistant to any trend that waters down Tort Immunity Act protections. The Tort Immunity Act is the foundation for local governmental immunity; and as more legislative actions address specific facets of governmental conduct, the Tort Immunity Act’s protections can get diminished. Whether the legislature actually intended such a result, or whether such a result from a public policy perspective is correct, may not necessarily be decisive.

The supreme court in _Abruzzo_ made a special point that the facts as alleged there were unusual, because EMS personnel normally do not leave the scene without providing any emergency aid to the person in distress. The implication is that the limited immunity for negligence would ordinarily be sufficient to protect EMS personnel, even if not in that particular, unusual situation.

Defense counsel should also strongly challenge any effort to minimize the willful and wanton standard or to blur the distinction between negligence and willful and wanton conduct.

Fire service administrators and their lawyers know well the mounting challenges those services face. Even the popular media has found these difficulties newsworthy. See Volk, “Special Report – Can 911 Be Saved?,” _Men’s Health_, p. 138, Dec. 2008. As resources dwindle and the demands increase, stressed systems can only lead to greater potential for liability. Diminished immunity could further threaten systems millions of persons rely on for life-saving assistance.

**About the Author**

_Thomas G. DiCianni_ is a partner in the law firm of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C. He concentrates his practice in general litigation, defense of government entities and public officials, municipal law, and the representation of governmental self-insurance pools.