

GOVERNMENT DEFENSE GROUP GETS POSITIVE RESULTS

JANUARY, 2002

Cummings, McClorey, Davis & Acho's Government Defense Group is comprised of a talented group of highly-skilled attorneys. They keep busy by representing many cities, townships and counties and their police officers and other employees.

Government Dismissed as a Party to Trespass-Nuisance Lawsuit

In a recent case defended by Joe Seward and Karie Boylan, the Plaintiffs' home was located on the shores of an all-sports lake. The couple sued the local municipality and several other individuals claiming their house and personal property had been damaged by storm water that had seeped into their home. The couple claimed damages in excess of \$300,000.

The Plaintiffs' theory of recovery against the municipality was that the flooding was caused, in whole or in part, by the insufficient number and size of storm water drains in the area. On behalf of the municipality, Karie Boylan filed several notices naming potential non-parties at fault. This resulted in the Plaintiffs filing an Amended Complaint naming the non-parties as defendants. A Motion for Summary Judgment was filed early in litigation, however, the court adjourned oral argument to take place three months later.

While awaiting oral argument on the motions, Karie Boylan deposed the Plaintiffs. Their testimony established conclusively that the facts that formed the basis for their lawsuit against the municipality failed to satisfy any exception to governmental immunity. Therefore, the Plaintiffs' attorney was forced to admit that Plaintiffs' complaint failed to state a claim upon which relief could be granted. One week later, and before oral argument on the motion, the couple stipulated to dismiss the municipality as a party to the lawsuit. Therefore, the municipality paid nothing to put an end to the lawsuit.

City and Police Officer Dismissed as a Party to a Civil Rights Lawsuit

In another recent case handled by Joe Seward, Pat Moritz and Karie Boylan, the Plaintiffs, a husband and wife, initiated their lawsuit after the husband was found drinking beer in a car parked in the street. The incident, giving rise to litigation, occurred on a "borderline" street, therefore officers from various jurisdictions were involved. All involved officers and police departments were named as defendants in this lawsuit alleging various theories of recovery including false arrest, false imprisonment, malicious prosecution and deprivation of rights secured by the United States Constitution.

The Plaintiffs' specific allegation against the city and police officer represented by CMDA attorneys was that the police officer pushed the husband, for no reason, while he was being arrested and kicked the husband, for no reason, while he was

being escorted to his jail cell. At the close of discovery, Karie Boylan filed a Motion for Summary Judgment arguing that the Plaintiffs' claims for false arrest, false imprisonment and malicious prosecution were barred because probable cause existed for the arrest, and that there was insufficient evidence to sustain the claim of a civil rights violation. Shortly after receiving the Motion for Summary Judgment, and before oral argument on the motion, the Plaintiffs stipulated to dismiss the CMDA defendants as parties to the lawsuit. Again, the CMDA clients paid nothing to put an end to that litigation.

City and Police Officer Dismissed as a Party to a Civil Rights Lawsuit

Joe Seward, Karie Boylan and Joseph Nimako recently defended a metropolitan Detroit city and its police officers. The Plaintiff was arrested for drunk driving after a car accident in the middle of the afternoon. She was taken to a nearby hospital for emergency medical treatment and arrested after she refused a police officer's request to submit to Field Sobriety Tests, including a preliminary breath test. Shortly after she was arrested, the Plaintiff claimed that her outer clothing was removed by the hospital doctor and nurse so a urine sample for medical treatment purposes could be obtained. The Plaintiff testified at her deposition that she asked the officer to leave the room while the urine sample was obtained and he refused. Because he refused to leave, the officer was left in a position to see her genitalia as the urine sample was being obtained.

The Plaintiff initiated a lawsuit against the police officer and the city alleging that they were liable for false arrest, false imprisonment, malicious prosecution, abuse of process, invasion of privacy and various civil rights violations, not limited to violation of the Plaintiff's right to privacy. With the defendant's first responsive pleading, Joe Seward filed a Motion for Summary Judgment on the city's behalf. This motion was granted, and the city was dismissed as a defendant early in the litigation.

After the Plaintiff was deposed, Joseph Nimako and Karie Boylan filed a Motion for Summary Judgment arguing that the officer's conduct had to be measured by the Fourth Amendment's standard of reasonableness and, under these facts, the police officer's conduct was objectively reasonable. Furthermore, CMDA attorneys argued that the Plaintiff's claims arising out of the arrest and incarceration were barred by res judicata based on Plaintiff's conviction of driving while impaired. The Plaintiff vigorously opposed the motion, which was subsequently granted by the Judge without the benefit of oral argument.

In closing, as a new year is upon us, we wish all our clients and friends best wishes for a happy, healthy and prosperous 2002.

Timothy Young, Managing Partner

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EMPLOYEES HAVE A GREAT TIME AT OUR ANNUAL HOLIDAY CELEBRATION

Attorneys, support staff and their guests had a wonderful time at our firm's annual Holiday Celebration, which was held on December 15, 2001. Employees and their guests traveled from our Battle Creek, Roseville, Farmington Hills and Livonia office to celebrate the holiday season with one another. After dinner, guests were treated to an hour performance by the talented Steve Acho, son of Dee Acho in our accounting department and nephew of Ronald Acho.



Robin Thomas, Accounting Administrator, and her husband Norm (far right) enjoy the company of Reverend Ron Browne



Lois and Eugene Pyatenko, Jim and Kathy Ueberroth and Julie Callahan visit with one another at the party. Gene is a partner, Kathy is a secretary and Julie is a paralegal at our Livonia office



Steve Acho provided our after-dinner entertainment by playing the piano and singing popular songs

CMDA CHILDREN AND GRANDCHILDREN ENJOY VISITING WITH SANTA

For over a decade, the children and grandchildren of CMDA employees and their families have been invited to our annual Breakfast with Santa. This year was one of our largest turnouts with 33 children, their parents and grandparents attending. Children participated in a craft project, had breakfast with Santa, sang Christmas songs and unwrapped a handpicked gift from Santa.



Andrew, grandson of Owen Cummings, accepts his present from Santa



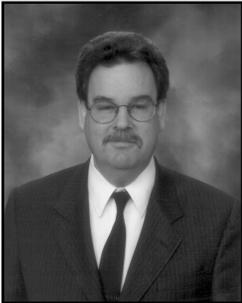
The children enjoy making crafts



Ronald Acho's granddaughter, Anne, enjoys sitting on Santa's lap

Attorney Profile

Gregory A. Roberts



Gregory, a partner in our Livonia office, concentrates his practice on Employment Law, Personal Injury Defense, Class Action Litigation Defense, Specialized Trial Defense and General Business Consultation. He received his Juris Doctorate degree, *Cum Laude*, from the Detroit College of Law in 1982. While attending law school, he was a recipient of the *American Juris Prudence Book Award* for studies in Constitutional Law and the *Harold Norris Book Award* for studies in Criminal Law. Greg was a senior trial attorney for a major railroad corporation until 1993, and since that time has expanded his litigation practice while at CMDA.

Greg is very active in the community and is a member of the State Bar of Michigan, the Livonia Chamber of Commerce and the Livonia Business Education Alliance.

He received his Bachelor of Science degree in Public Administration from Eastern Michigan University in 1978. Greg can be reached at groberts@cmda-law.com or by calling our Livonia office at (734) 261-2400.

ATTORNEYS ACTIVE IN COMMUNITY EDUCATION ISSUES

As part of our firm's ongoing commitment to community education, Gregory Roberts, a partner in our Livonia office, is an active member of the Livonia Business Education Alliance. This select group is a multi disciplinary think-tank developed under the auspices of the Livonia Board of Education and the Livonia Chamber of Commerce. Its goal is to explore and develop programs that can make better use of business resources to coordinate and promote business issues and educational goals in the public school system. The committee members consist of large and small employers in the manufacturing, service and governmental industry.

A very successful program that has been implemented by the committee is the Business-Teacher Connection, which teams a local business person with a teacher from the Livonia school district. The two professionals swap careers and spend a day at the other person's work site. The program gives participants a chance to observe the day-to-day rewards and challenges in both the business and academic fields firsthand, and it establishes a lasting bond and learning experience for the participants.

The newest endeavor of the Livonia Business Education Alliance committee is a problem-based learning program called Get Real with Business. The focus of this program is

to make high school education more relevant to the students' future roles in work and society. Business professionals are placed into high school classes and, together with the teacher, show students how to develop management and team skills. Students are able to confront actual complex business and governmental issues with broad latitude in selecting and presenting solutions.

In addition to Greg's involvement with the Livonia Business Education Alliance, attorneys from all of our offices are active throughout their communities participating in charitable, educational and voluntary efforts. "Giving something back to society in return for the opportunity and privilege of practicing law is one of the most enjoyable parts of a lawyer's responsibilities," Ronald Acho recently said.

CMDA attorneys are also involved in provision of legal services to the area's less fortunate and serve as trainers and volunteer teachers at police academies, government and non-profit groups. Our firm regularly provides personnel, organizational and financial support to numerous charitable groups as diverse as the St. Anne's Historical Society and the Michigan Humane Society. The work, however, is not limited to our attorneys, and we are proud to have the active support of our entire firm in these efforts.

Gregory A. Roberts

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Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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DAVIS & ACHO, P.L.C.

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