

JB

PLUNKETT COONEY
A CENTURY OF DISTINCTIVE SERVICE

L

July 2, 2013

Clerk of the Court
Michigan Court of Appeals
3020 W. Grand Blvd. – Suite 14-300
Detroit, MI 48202-6020

Re: Barry Morofsky v City of Lansing, et al.
COA No. 316823
L.C. Docket No: 11-358-NI
Our File No. 18566.93892

Dear Clerk:

Enclosed please find an original plus one copy of the Docketing Statement and Proof of Service on behalf of the City of Lansing.

Please file same with your Court in your usual manner and return a date-stamped copy in the enclosed self-addressed stamped envelope. Thank you for your attention to this matter.

Very truly yours,

PLUNKETT COONEY

Christine D. Oldani

Christine D. Oldani
Direct Dial (313) 983-4796

CDO/slh
Enclosures

cc: Gene Turnwald, Esq.
David K. Otis, Esq.

Open.18566.93892.13047442-1

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Michigan Court of Appeals

DOCKETING STATEMENT

Case No:

Court of Appeals: **316823**

Circuit Court: **11-358-NI**

Please read before completing form.

- MCR 7.204(H) and 7.205(D)(3) require an *appellant* in a civil action to complete and file a docketing statement within 28 days after the claim of appeal is filed or the application for leave to appeal is granted. Failure to timely file this document may lead to dismissal of the appeal. An appellee may respond by filing a separate docketing statement.
- This document will be used to screen the appeal for suitability and eligibility for the settlement conference program, and will be used to help resolve jurisdictional and transcript issues. It is important that you complete this form accurately and legibly.
- The issues identified in the docketing statement do not limit appellant's presentation of the issues in appellant's brief. Omission of an issue in the docketing statement will not provide a basis for a motion to strike appellant's brief.

1. Case Name:

Barry Morofsky ☐ Appellant
☒ Appellee
Name of first Plaintiff

Address: **2160 Hamilton Road – Ste. 100, Okemos, MI 48864**
Telephone No: **(517) 347-7700**

Attorney Name: **Gene F. Turnwald (P45466)**
Address: **2160 Hamilton Road – Ste. 100
Okemos, MI 48864**
Telephone No: **(517) 347-7700**

v City of Lansing ☐ Appellant
☐ Appellee
Name of first Defendant

Address: **c/o David K. Otis (P31627), 325 E. Grand River Ave.,
Suite 250, East Lansing, MI 48823**
Telephone No. **(517) 324-5612**

Attorney Name: **Christine D. Oldani (P25596)**
Address: **Plunkett Cooney, 535 Griswold –
Ste. 2400, Det. MI 48226**
Telephone No: **(313) 983-4796**

2. ☐ A bankruptcy or other proceeding has been filed which affects this Court's jurisdiction over this appeal.

Identify and explain.

N/A.

3. ☐ There are pending or prior appeals in the Court of Appeals or Supreme Court which arose out of the same transaction, lower court case, or between the same parties.

Specify case name, lower court number, appellate court number(s), and citation, if available.

N/A.

4. ☐ I am aware of the following pending appeals in the Court of Appeals or Supreme Court raising the same or closely related issues.

Specify case name, lower court number, appellate court number(s), and citation, if available.

N/A.

5. Identify all the lower court hearings.

Type of proceeding (i.e. motion, trial, etc.)	Dates(s) Occurred	Court Reporter
Motion	05/29/13	Melinda I. Baxter

6. Nature of case:

- a. If the lower court case number provided on page 1 does not include a suffix, please specify the circuit court case code (i.e. NI, CK, etc): _____
- b. Identify the procedural nature of the case being appealed. ☐
- ☐ arbitration ☐ bench trial ☐ post-judgment action ☐ declaratory judgment
- ☐ interlocutory matter ☐ jury trial ☒ summary disposition
- ☐ administrative proceeding (specify agency) _____
- ☐ other (i.e. default judgment) _____

7. Briefly describe the nature of the action and the result in the trial court. Conclusory statements such as "the judgment of the trial court is not supported by law" are unacceptable. Attach additional pages as needed.

On October 21, 2009, a vehicle driven by Barry Marofsky collided with a police vehicle operated by Officer Jillian Johnson, a Lansing police officer. Jason Giffen was a passenger in the front seat on the passenger side of the Morofsky vehicle.

Morofsky brought suit against the City of Lansing and Officer Johnson. He claimed damages including, but not limited to, "pain, suffering, scarring, disfigurement, medical bills, mental anguish, wage loss, past, present and future lost earning capacity". The City denied liability for certain of Plaintiffs' claims for damages under the motor vehicle exception to governmental immunity. Specifically, the City urged that the plain language of MCL 691.1405 provided that the City could only be held liable for bodily injury and property damage and not for any pain, suffering, mental anguish, depression, or emotional distress. In addition, the City insisted that it could not be held liable for economic loss because medical bills are the responsibility of Morofsky's no-fault insurer, or economic damages other than property damage. In short, the City urged that it was entitled to summary disposition based on governmental immunity for damages for pain, suffering, mental anguish, depression, and other non-economic damages that are not "bodily injury" and economic damage for medical bills and wage loss. Morofsky opposed the City's Motion for Partial Summary Disposition. On May 29, 2013, the circuit court entertained oral arguments on the City's Motion. The circuit court denied the City's requested relief. On May 29, 2013, the circuit court signed an Order denying the City of Lansing's Motion for Partial Summary Disposition.

8. Briefly state the issues to be raised in this appeal. Attach additional pages as needed.

Should the City have prevailed on its Motion for Partial Summary Disposition under MCL 691.1405?

9. The amount and terms of the judgment appealed are:

On May 29, 2013, the circuit entered an Order denying the City of Lansing's Motion for Partial Summary Disposition, brought under the doctrine of governmental immunity.

10. Settlement negotiations. (Check all boxes that apply.)

☐ Settlement negotiations have been conducted or are scheduled.

☒ Settlement is unlikely.

☐ Other _____

11. Proof of Service: I certify that a copy of this document and all attachments were served on all counsel of record or pro per parties by regular mail at their last known addresses.

7-2-13

Date of Service

Christine S. Adami

Signature

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

(ON APPEAL FROM THE CIRCUIT COURT FOR THE COUNTY OF INGHAM)

BARRY MOROFSKY,

COA No. 316823

Plaintiff-Appellee,

L.C. Docket No: 11-358-NI

-vs-

CITY OF LANSING,

Defendant-Appellant,

and

JULLIAN COLBY,

Defendant.

Gene F. Turnwald (P45466)
Attorney for Plaintiff
2160 Hamilton Rd, Ste 100
Okemos, MI 48864
(517) 347-7700

Christine D. Oldani (P25596)
Michael S. Bogren (P34835)
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(313) 983-4796

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

CHRISTINE D. OLDANI, says that she is a Partner in the firm of Plunkett Cooney and
on July 2, 2013, she caused to be served a copy of Defendant-Appellant, City of Lansing's
Docketing Statement and Proof of Service upon the following attorney(s) of record:

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✓ Gene F. Turnwald (P45466)
Attorney for Plaintiff
2160 Hamilton Rd, Ste 100
Okemos, MI 48864

David K. Otis (P31627)
Plunkett Cooney
Attorney for Jullian Colby
325 E. Grand River Ave., Ste 250
East Lansing, MI 48823
(517) 324-5612

by placing said document(s) in an envelope plainly and correctly addressed to the Court and said attorney(s) with postage thereon and deposited in the United States Mail.

I declare that the statements above are true to the best of my information, knowledge and belief.

Christine D. Oldani
CHRISTINE D. OLDANI

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