STATE OF MICHIGAN
IN THE SUPREME COURT

ISKANDAR MANUEL, MAGGIE MANUEL, JIMMY MANUEL, JOSEPH MANUEL, IMAD MANUEL, ADEL MANUEL
Plaintiffs-Appellants,
v
LT. TIMOTHY J. GILL, in his/her personal capacity, LT. KENNETH KNOWLTON, in his/her personal capacity, OFFICER RUSTY BANEHOFF, in his/her personal capacity, CAPT. JIMMY PATRICK, Retired, in his/her personal capacity, TRI-COUNTY METRO NARCOTICS SQUAD, a Governmental Agency, INGHAM COUNTY SHERIFF, in his/her personal capacity, EATON COUNTY SHERIFF, in his/her personal capacity, CLINTON COUNTY SHERIFF, in his/her personal capacity, INGHAM COUNTY, a Governmental Agency, EATON COUNTY, a Governmental Agency, CLINT COUNTY, a Governmental Agency, CITY OF LANSING, a Governmental Agency, LANSING CHIEF OF POLICE, in his/her personal capacity, LANSING POLICE COMMISSION, a Governmental Agency,
Defendants-Appellees,
_____/

Supreme Court No. 131103

Court of Appeals No. 258933

Ingham County Circuit Court No. 03-1944-NO

131103(50)

5/8

AG request 4795

DEFENDANTS-APPELLANTS' MOTION FOR RECONSIDERATION

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CLERK
MICHIGAN SUPREME COURT

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Introduction

Defendants-Appellants move this Court under MCR 7.313(E) to reconsider its April 4, 2007, Order denying Defendants' application for leave to appeal, and alternatively, to rescind publication of the Court of Appeals' Opinion in this case. It is palpable error to allow this decision to stand and to have precedential effect. The Court of Appeals' published Opinion holding that Tri-County Metro Narcotics Squad (TCM) is a juridical entity and a state entity is contrary to the clear and unambiguous language of the Urban Cooperation Act, MCL 124.501 *et seq*, which, in this instance, creates only an administrative agency that is, at most, a public entity. The Court's holding is also contrary to the language of the interlocal agreement governing TCM, which forms neither a juridical nor a state entity. If left standing, this holding will create confusion as to the characterization of multijurisdictional concept teams. This confusion, and the clearly erroneous interpretation of the Urban Cooperation Act, will have a potentially devastating effect on the formation, operation, and ultimately, the viability of law enforcement concept teams. The People of the State of Michigan will be significantly impacted if the Michigan State Police (MSP) do not participate in these multijurisdictional efforts because of the potential for creating a state entity and imposing liability on the State. Without the MSP, these concept teams cannot operate beyond a very limited jurisdictional area.

Arguments

I. A multijurisdictional law enforcement task force comprised of various constituent members who share governance, oversee day-to-day operations, contribute equipment, and assign and discipline their respective personnel, is not a state entity simply because the Michigan State Police exerts day-to-day control and its official orders are utilized.

The only basis the Court of Appeals articulated for concluding that TCM is "equivalent to a state agency" is that the task force is operated under the direction and supervision of the

Michigan State Police (MSP).[1] This Court's denial of leave in this case is palpable error under MCR 2.119(F)(3) because the Court of Appeals' published Opinion holding that TCM is a state entity: 1) is contrary to the Legislature's intent as expressed by the language of the Urban Cooperation Act, which indicates that interlocal task forces are joint exercises of power and, at most, public entities;[2] 2) allows the Court of Appeals to insert into the Urban Cooperation Act terms and definitions not contemplated by the Legislature; 3) is contrary to the interlocal agreement that governs TCM, which clearly indicates that the State is an equal but not superior member of TCM;[3] 4) improperly extends the jurisdiction of the Court of Claims over these issues; and, 5) is contrary to this Court's analysis in *Hanselman v Wayne Co v Killen*[4] and *League General Insurance Company v The Michigan Catastrophic Claims Association*.[5]

This Court has often stated that the cardinal principle of statutory construction is that courts must give effect to the intent of the Legislature. The Legislature has clearly indicated through the text of § 505(c) of the Urban Cooperation Act that interlocal agreements are joint exercises of power: "A joint exercise of power pursuant to this act shall be made by contract or contracts in the form of an interlocal agreement."[6] The Act also indicates, in mandatory language,[7] that these joint exercises of power are public bodies: "The entity shall be a public

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[1] *Manuel v Gill*, 270 Mich App 355, 377; 716 NW2d 291 (2006).
[2] See MCL 124.504 (authorizing public agencies to jointly exercise power, privilege, or authority).
[3] TCM Interlocal agreement, Art I, § 1; Art I, § III; Art I, § VII.
[4] *Hanselman v Wayne Co v Killen*, 419 Mich 168, 186-87; 351 NW2d 544 (1984).
[5] *League Gen'l Ins Co v The Michigan Catastrophic Claims Association*, 435 Mich 338, 349-50 (1990).
[6] MCL 124.505(c); see also MCL 124.504 (authorizing public agencies to jointly exercise power, privilege, or authority).
[7] See, e.g., *Howell Twp v Rooto Corp*, 463 Mich 347, 351; 617 NW2d 533 (2000) ("shall" is mandatory).

body."[8] Since the Legislature has clearly expressed its intent through the text of the Urban Cooperation Act, no further construction is permitted.[9] Yet, contrary to this unambiguous language, the Court of Appeals has replaced TCM's joint exercise of power with state dominance, and made the term "public body" synonymous with "state agency."

Additionally, TCM's interlocal agreement clearly designates the MSP as an equal but not a superior member of the law enforcement task force. TCM has a Command Board made up of representatives from TCM's constituent members, that meets bi-monthly to set administrations and operations policy, approve expenditures, and authorize overall police operations.[10] Although an MSP Lieutenant is the Team Commander of TCM and is responsible for daily control, because TCM needs uniform supervision, operations, and reporting, the Team Commander reports to the Command Board for his direction and supervision.[11] Although TCM's constituent members agree to utilize MSP official orders to implement uniform supervision and operations, assigned personnel are still subject to discipline by their employing constituent agency. Additionally, constituent members of TCM assign, pay for, and discipline their own personnel, and contribute equipment. Non-state members of TCM also make cash contributions to TCM, unlike the Michigan State Police, which contributes no cash resources. Moreover, had TCM seen itself as a state entity and contemplated state liability in those situations where the State was not immune to suit, Article I, § VIII would have been drafted differently.

If this division of resources makes TCM a State entity, then all concept teams are subject to being state entities. At least as to state constituent members, particularly the Michigan State Police, the fear of increased liability will not only discourage them from assuming vital

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[8] MCL 124.507 (emphasis added).
[9] *Helder* v *Sruba*, 462 Mich 92, 99; 611 NW2d 309 (2000).
[10] Interlocal agreement, Art I, § II.
[11] Interlocal agreement, Art I, § VI.

leadership roles, but more importantly, dissuade them from participating at all, should the Court of Appeals' decision in this case retain precedential value. Without MSP participation, law enforcement concept teams are severely limited as to the jurisdictional area in which they can operate. Moreover, it would be highly impractical for law enforcement concept teams to attempt to function with each individual constituent member asserting day-to-day supervision or following its own policies and rules in daily police operations. Yet, based on the Court of Appeals' erroneous analysis, it is hard to imagine a scenario where any individual member of a concept team—whether a state agency such as MSP or otherwise—would want to exert necessary and vital leadership for fear of being subjected to increased liability.

Because these multijurisdictional efforts are so important and will be jeopardized by the Court of Appeals' decision, this Court must reconsider its denial of Defendants' application for leave to appeal. At a minimum, this Court needs to clarify the following questions: 1) the identity of the entity created by the interlocal agreement under the terms of the Urban Cooperation Act; and, 2) whether a task force that is a "state entity" is subject to the jurisdiction of the Court of Claims where the State agency involved is not a party to the action and where the State agency is not necessarily liable for any judgment against the task force (as, for example, in this case where the State it is neither the actual party nor the funding source). Alternatively, should this Court decline to reconsider its Order denying application for leave, Defendants urge this Court to issue an Order mandating that the Court of Appeals rescind publication of its March 24, 2006, decision in this case and issue an unpublished decision that would not be given any precedential value. A non-binding unpublished Opinion would avoid the confusion created by the Court of Appeals' erroneous statutory and contract interpretation, and its disregard for the prior case law precedent of this Court as to what constitutes a state entity.

II. The Court of Appeals' characterization of TCM as a juridical entity is contrary to the clear and unambiguous language of Urban Cooperation Act, under which the law enforcement concept team had the power to decide whether it was a separate legal entity and, thus, whether it could sue or be sued in its own name.

The Court of Appeals agreed with the Trial Court that, pursuant to MCL 124.507(2) and the TCM interlocal agreement, TCM is a juridical entity. This Court committed palpable error by denying Defendants' application for leave because it has left standing a published Opinion in which the Court of Appeals held TCM to be a juridical entity by: 1) reading MCL 124.507(2) out of context with the entire Urban Cooperation Act,[12] contrary to Legislative intent and this Court's well-established rules for statutory construction, which state that provisions must be read in context; and, 2) misreading article I, § VIII of TCM's interlocal agreement.

Although § 507(2)'s plain language indeed states that "[t]he entity may sue and be sued in its own name," it does not so provide in every situation. As the plain language of MCL 124.505(c) clearly indicates, the interlocal agreement "*may* provide for: . . . the precise organization, composition, and nature of any separate legal or administrative entity created in the local agreement with the powers designated to that entity."[13] As supported by this Court's well-established rules of statutory construction,[14] § 507(2) must be read in the context of the Act as a whole, including § 505(c), under which formation of a juridical entity is optional and must be expressed by affirmative language. This Court must correct the Court of Appeals' erroneous statutory analysis.

The Court of Appeals also misread article I, § VIII of the agreement. Although as the Court recognized, article I, § VIII "expressly addresses liability insurance and legal

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[12] *Manuel,* 270 Mich App at 377.
[13] MCL 124.505(c) (emphasis added).
[14] See *Weems v Chrysler Corp*, 448 Mich 679, 699-700; 533 NW2d 287 (1995) overruled in part on other grounds by *Lesner v Liquid Disposal*, 466 Mich 95 (2002) (statutory provisions are to be read within the context of the entire statute to produce an harmonious whole).

representation for civil suits 'arising out of activities performed by TCM' and how any resultant judgments are to be handled,"[15] this provision does not pertain to suits directly against TCM as a separate legal entity. As the instant lawsuit demonstrates, each constituent member or its assigned employees may be sued in civil suits arising out of TCM's activities. Article I, § VIII addresses only this eventuality.

If, contrary to the express language of the Urban Cooperation Act,[16] a cooperative task force may be a juridical entity even when its interlocal agreement has not specified that it holds this common power and where the plain language of the interlocal agreement has contemplated civil suits only against assigned personnel and/or individual participating agencies, it is now unclear: 1) what attributes of a particular task force would lead a court to conclude that it is a juridical entity absent express language in the interlocal agreement; and, 2) what kind of language, if any, in an interlocal agreement would prevent an interjurisdictional concept team from being characterized as a juridical entity, despite the Legislature's clear intent that this decision be under the control of each individual concept team.

Because the Court of Appeals' erroneous analysis creates uncertainty with regard to the formation of all multijurisdictional concept teams, this Court must reconsider its denial of Defendants' application for leave to appeal in order to preserve the Legislature's intent that concept teams have the power to elect whether to be a juridical entity,[17] and to clarify what would be required for a concept team to be a non-juridical entity under the Urban Cooperation Act. Alternatively, if this Court chooses not to reconsider its denial, Defendants ask this Court to

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[15] *Manuel*, 270 Mich App at 377.
[16] MCL 124.507(2).
[17] *Morales v Auto-Owners Ins Co*, 469 Mich 487, 490; 672 NW2d 849 (2003) (cardinal principle of statutory construction is that courts must give effect to legislative intent).

issue an Order mandating that the Court of Appeals rescind publication of its March 24, 2006, Opinion and issue an unpublished decision that would not be given any precedential value.

CONCLUSION

For the reasons stated in this motion, Defendants respectfully request that this Honorable Court reconsider its denial of Defendants' application for leave to appeal in order to correct its palpable error by clarify the confusion created by the Court of Appeals' erroneous statutory interpretation, and its analysis regarding the characterization of multijurisdictional task forces and the liability of a constituent member that agrees to assert day-to-day control of the task force's operations. Alternatively, Defendants urge this Court to issue an Order mandating that the Court of Appeals rescind publication of its March 24, 2006, decision and issue an unpublished decision in its place.

Respectfully submitted,

Michael A. Cox
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Dated: April 25, 2007

Order

Michigan Supreme Court
Lansing, Michigan

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

April 4, 2007

131103

ISKANDAR MANUEL, MAGGIE MANUEL, JIMMY MANUEL, JOSEPH MANUEL, IMAD MANUEL, and ADEL MANUEL,
Plaintiffs-Appellees,

v

SC: 131103
COA: 258933
Ingham CC: 03-001944-NO

TIMOTHY J. GILL, COUNTY OF CLINTON, COUNTY OF EATON, RUSTY BANEHOFF, COUNTY OF INGHAM, EATON COUNTY SHERIFF, CLINTON COUNTY SHERIFF, KENNETH KNOWLTON, LANSING CHIEF OF POLICE, CITY OF LANSING, LANSING POLICE COMMISSION, JIMMY PATRICK, and INGHAM COUNTY SHERIFF,
Defendants-Appellees

and

TRI-COUNTY METRO NARCOTICS SQUAD,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal the March 23, 2006 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 4, 2007

Corbin R. Davis
Clerk

t0328

Department of Attorney General
Request for Electronic Payment to the Court of Appeals

Cover Sheet

Request #:	795	Request Date:	04/25/2007	Amount:	$75.00

Payable For: Motion for Reconsideration

AG Case #: 2003025126C Secretary: Denise R. Richards

Case Name: ISKANDAR MANUEL, MAGGIE MANUEL, JIMMY MANUEL, JOSEPH MANUEL, IMAD MANUEL, ADEL MANUEL vs LT. TIMOTHY J. GILL, LT. KENNETH KNOWLTON, OFFICER RUSTY BANEHOFF, CAPT. JIMMY PATRICK, TRI-COUNTY METRO NARCOTICS SQUAD, INGHAM COUNTY SHERIFF, EATON COUNTY SHERIFF, CLINTON COUNTY SHERIFF, INGHAM COUNTY, EATON COUNTY, CLINTON COUNTY, CITY OF LANSING, LANSING CHIEF OF POLICE, LANSING POLICE COMMISSION

Bar #: P35400 Attorney: Farrell, James T.

Division: Public Employment, Elections & Tort

Submitted to Fiscal Management on 04/25/2007

PLEASE MAINTAIN WITH THE CASE FILE

STATE OF MICHIGAN
IN THE SUPREME COURT

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Defendants-Appellees,
_____/

Supreme Court No. 131103

Court of Appeals No. 258933

Ingham County Circuit Court
No. 03-1944-NO

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendants-Appellants' Motion for Reconsideration will be brought on for hearing before this Honorable Court on Tuesday, May 8, 2007.

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Dated: April 25, 2007

STATE OF MICHIGAN
IN THE SUPREME COURT

ISKANDAR MANUEL, MAGGIE MANUEL, JIMMY MANUEL, JOSEPH MANUEL, IMAD MANUEL, ADEL MANUEL

Plaintiffs-Appellants,

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Defendants-Appellees,

_____/

Supreme Court No. 131103

Court of Appeals No. 258933

Ingham County Circuit Court
No. 03-1944-NO

PROOF OF SERVICE

Denise Richards, being duly sworn, deposes and says that on April 25, 2007, she did serve a copy of Defendant/Appellant's Motion for Reconsideration and Notice of Hearing, upon counsel of record by first class mail addressed with their respective last known addresses:

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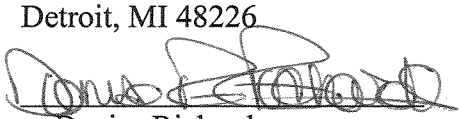

Denise Richards