

REGULAR MONTHLY MEETING MINUTES

via Zoom

A meeting of the Government Law Section was called to order by Vice Chair Mithani on April 2, 2022, at 10:0 a.m.

I. ATTENDANCE and EXCUSED ABSENCES

Present: Bluhm, Fisher, Forsyth, Joppich, King, Kolb, McGee, Mithani, Mullhaupt, Sluggett, So, Tamm, Walling, Williams
Also Present: Tom McGraw and Gus Morris
Absent: Brown, Forbush, Mills, Nettleton, Watza, Zeits

Motion to Excuse Absences: Fisher **Support: Mullhaupt**
Council approved by unanimous vote

II. APPROVAL OF AGENDA

Motion to the amended Agenda so as discuss the *Jacobson* case (Action Item/New Business) right after the Treasurers report, and to add a discussion of filing a supplemental brief in the *Petersen Financial LLC v City of Kentwood* case: Rosati
Support: Walling
Council approved by unanimous vote

III. APPROVAL OF MINUTES

Motion to Approve Minutes of the March 2022 Regular Monthly Meeting
Bluhm **Support: Sluggett**
Council approved by unanimous vote

IV. TREASURER'S REPORT

Vice Chair Mithani reported that the financial position of GLS remains positive. The Section continues to have a healthy and large fund balance.

V. BRIEFLY UPDATE

None provided

VI. AMICUS COMMITTEE REPORT

a. *Jacobson v Hornbeck*: Tom McGraw and Gus Morris gave Council members an overview of the case and its importance to GLS. McGraw and Morris started the discussion by noting a concern that Plaintiff's counsel filed an amicus brief on behalf of the State Bar Negligence Law Section (NLS) without disclosing a conflict of interest, and also without formally getting authorization from the NLS governing council. They advised that the amicus brief is contrary to NLS' interests and also the

interest of GLS. Both also explained the importance of this case and the NLS amicus brief, which argues for the repudiation of the public duty doctrine and overturning of case law regarding “the” proximate cause in negligence cases. Since the case involves a police chase, the Michigan Association of Police Chiefs may file a response brief to be prepared by Mary Massaron Ross. Members discussed filing a response brief or at a minimum, a response stating concurrence to the Police Chiefs’ brief. Consensus of members is that the GLS should file some type of response and file a response soon. Tamm and others indicated that as to “the” proximate cause issue, there is concern that this case could overrule long standing precedent. Forsyth raised the ethical concerns related to the conflict not being properly disclosed, and NLS council not being fully aware or authorizing the filing of the amicus brief. Rosati and Williams both offered to review the amicus brief filed by NLS and provide input as to whether GLS should address both issues raised in the brief.

Motion was made to file a response brief to the Negligence Law Section’s Amicus Brief in the case of *Jacobson v Hornbeck* Tamm **Support: Bluhm**
Council approved unanimously by the following members present: Bluhm, Fisher, Forsyth, Joppich, King, Kolb, McGee, Mithani, Mullhaupt, Sluggett, So, Tamm, Walling, Williams

Members indicated that this matter will have to come back to the GLS council for further action.

- b. ***Township of Fraser v Haney***: Fisher indicated that the order entered in this case speaks for itself and GLS helped make this point. No further questions or comments from members.
- c. **Amicus Curiae Guidelines** – Williams indicated that the guidelines are for council consideration, review, comments, and edits. But there is no action needed at this time.
- d. ***Petersen Financial LLC v City of Kentwood*** – Fisher asked the members to consider filing a supplemental brief in the Supreme Court given the importance of the case. The Court of Appeals held that a city cannot recover in tax foreclosure on property located and assessed in a special assessment district. This holding could negatively impact local units of government.

Motion was made to file a supplement brief, in the case of *Petersen Financial LLC v City of Kentwood*, and the cost to prepare such brief shall not exceed \$10,000. Walling **Support: Forsyth**

Motion approved by the following members present: Bluhm, Forsyth, Joppich, King, Kolb, McGee, Mithani, Mullhaupt, So, Tamm, Walling, Williams Abstain: Fisher and Sluggett

VII. OLD BUSINESS:

- a. **Amicus Curiae Guidelines:** Covered above under Amicus Committee Report
- b. **2022 Joint Summer Conference** – Mithani reviewed with members the proposed contract offered by Professor Jerry Kang, the guest presenter who would replace

Kimberly Papillon. Members agreed that Kang was well qualified and should give a great presentation at the Conference.

Motion was approve the contract proposed by Jerry Kang who will serve as the guest presenter at the 2022 Joint Summer Conference Bluhm Support:

Walling.

Motion approved by the following members present: Bluhm, Fisher, Forsyth, Joppich, King, Kolb, McGee, Mithani, Mullhaupt, Sluggett, So, Tamm, Walling, Williams

Forsyth left the meeting at 11:10 a.m.

VIII. NEW BUSINESS

b. Local control concerns: Professor Fisher expressed concern over the legislature's continuing intrusion into local control and the need for more broadly shared information about and response to such proposals. Considerable discussion followed. It was agreed that an ad hoc working group chaired by Prof. Fisher would be established for the purpose of examining how the Council might assist the traditional governmental lobbying groups (MML, MTA, MAC etc) as well as private lobbying organizations in a more effective effort to resist such intrusions.

c. May 7 meeting format: Zoom was agreed to.

IX. CORRESPONDENCE: A report on correspondence attached to the agenda was given by acting Chair Mithani.

X. COUNCIL COMMENTS: The issue of the Kickham Hanley firm apparently looking at municipal electric utilities for possible Headlee lawsuits was discussed. Coldwater, among others, apparently has been identified as a possible defendant.

The meeting was adjourned at 11:38 am.

Minutes taken by Forsyth and McGee (starting at New Business)