

High Court Reverses \$11.4 Million Verdict

By **CHRISTIAN NOLAN**

The stressful job of a 911 dispatcher involves handling one emergency call after another, and often making life-and-death decisions armed only with information gathered from the caller.

It would appear from a March 10 state Supreme Court decision that overturned an \$11.4 million verdict against the town of Clinton that the majority of justices want 911 dispatchers to worry more about making good, quick decisions than about being sued for failing to ask enough questions.

"I think the impact of the decision is that it protects people who are in very high-pressured jobs like 911 dispatchers from having their minute-by-minute judgments questioned with the benefit of 20-20 hindsight and holding municipalities liable for that hindsight," said Aaron Bayer, of Wiggin and Dana in Hartford. "The kind of judgments a 911 dispatcher makes is the kind of judgments municipal immunity was designed to protect."

However, plaintiffs lawyers say the decision is another example of

the legal system granting immunity for a negligent act for which a municipality should be held responsible. "I feel particularly concerned about the future of the tort system," said Michael Stratton, of Stratton Faxon in New Haven, who handled the case at the trial level, where the jury awarded the plaintiff more than \$12 million in total damages.

"The decision disrespects a jury verdict and disrespects the value of our tort system, which has a very high and sanctified value," continued Stratton. "Holding someone immune should be done very, very carefully. It shouldn't be the norm, but it is becoming the norm."

At around 9:15 p.m. on Aug. 5, 2005, Clinton 911 dispatcher Ellen Vece received a call from volunteer firefighter Matthew Vincent, who claimed that a person driving a red Infiniti crashed into his car and drove off.

Vincent's car was still drivable, and he pursued the Infiniti while on the phone with Vece. The pursuit lasted for several miles along winding, narrow residential roads. Vincent had his blue flashing lights on during the chase, during

which the vehicles reached speeds of 40 to 50 mph.

Just as Vincent backed off his pursuit, the Infiniti crashed into a tree. Walker Hopkins, then 19, was a passenger and was ejected from the vehicle. He suffered a brain injury requiring lifelong institutional care.

The dispatcher later said she was unaware that any kind of high-speed chase was in progress or that Vincent had his flashing lights on.

Hopkins' family sued the town, alleging that the town-employed emergency dispatcher authorized the chase, thus putting Hopkins in imminent harm. The family argued that dispatchers should never use civilians to do police work.

The defense countered that the dispatcher used her discretion in handling the call, and also offered an audiotape to show she had no indication high speeds were involved. Further, the defense argued that the dispatcher effectively ended her participation once Vincent reported the location of the Infiniti and the dispatcher told him she would send a state police cruiser to stop the vehicle.

Municipal employees are generally immune from lawsuits if they

are exercising discretion within the parameters of their job. And so the town argued that it enjoyed immunity in this case. But an exception to the immunity doctrine holds that if a municipal employee's actions put an identifiable person in imminent harm, then immunity is lost. The plaintiffs argued that the actions of the 911 operator put the occupants of the pursued car in imminent harm.

Ultimately, a Waterbury Superior Court jury found in the plaintiffs' favor in 2011 and awarded damages of more than \$12 million. Plaintiffs' lawyers said the verdict would have totaled \$14 million with interest.

The town was responsible for paying 90 percent of the verdict amount. The other 10 percent was apportioned to Vincent and the person believed to be driving the Infiniti, William Cardillo. Vincent and Cardillo were dropped as defendants before the case went to trial.

The town appealed the verdict against the town and in a decision authored by Justice Peter Zarella, the justices ruled that the town wasn't liable.

Specifically, the justices ruled that while handling the 911 call in question, the dispatcher had no knowledge that the caller was speeding and had no way of knowing the occupants of the hit-and-run vehicle were at imminent risk. The justices opined that when deciding whether the imminent risk exception to the immunity doc-

trine applies, the court can consider only what was apparent to the municipal official at the time, not what she might have learned had she sought more information.

"Vincent did not indicate to [the dispatcher] during their conversation that he was attempting to apprehend the driver of the Infiniti," wrote Zarella. "Rather, the audio recording and transcript of the 911 call reveal that Vincent merely was attempting to keep the Infiniti in sight in order to identify details regarding the vehicle, including the model name, color and license plate number, and to report its location.

"Although flashing blue courtesy lights, high speed, and tailgating might have indicated to the occupants of the Infiniti that Vincent was pursuing them," continued Zarella, "Vece was not aware of these facts, and, thus, it could not have been apparent to her that a dangerous vehicular pursuit was in progress."

In a dissenting opinion, Justice Dennis Eveleigh disagreed and said he would have upheld the jury's decision. "In my opinion, a reasonable jury could have concluded that a reasonable dispatcher ... would have been aware of the inherent risks in allowing the victim of a hit-and-run to pursue the offending vehicle—at any speed," wrote Eveleigh.

Bayer, the defense lawyer at the appellate level, said there hasn't been much case law in the state thus far that has tested this exception to the immunity doctrine. He said this

case largely hinged on the definition of the word "apparent."

"This was the case to determine what the word 'apparent' means," said Bayer. "Was it apparent [to the dispatcher] that harm was imminent? There's not enough information to her during that call to conclude that there is any real risk. ... The fact some other witness saw the cars later and testified at trial is irrelevant. She couldn't have known that at the time. ... There's no sound of squealing tires, nothing."

Bayer said if the justices upheld the jury verdict, he thinks there could have been more potential claims against town employees, such as dispatchers. "If you impose liability in that situation, towns are going to face a significant problem," said Bayer. "911 dispatchers face these issues every day. They're not sitting there trying to calculate speed. ... You don't want people in those kinds of positions to be thinking about potential liability when they're making emergency decisions and exercising their judgment."

Stratton believes Eveleigh interpreted the case correctly in his dissent. Stratton added that the decision will make it even tougher for plaintiffs to bring claims against municipalities no matter how negligent their employees are. "The Legislature really needs to get in here and create a municipal liability law that makes sense," said Stratton. •