



**PURSUING THE PURSUERS:
RECOVERING FOR DAMAGES
RESULTING FROM A POLICE CHASE**

by LAWRENCE SAVELL

You've seen it often. You're driving in the city or on a highway, and you hear the shrill sound of a police siren pierce the air as a patrol car streaks by. Or, maybe it was a fire engine speeding to extinguish a blaze. Countless times each day, emergency vehicles operated by various governmental units rush by motorists. But what would happen if such a speeding vehicle went out of control and struck our automobile, causing injury to person and property? Could we sue the town, city, state, or even the federal government whose employees operated such an emergency vehicle? What if we were struck, not by a pursuing governmental vehicle, but by a car which the authorities were pursuing? Could we sue the government in that case as well? Such circumstances as these unfortunately occur more frequently than one might think, and the answers to these questions may prove equally surprising.

GOVERNMENTAL IMMUNITY

The initial and main obstacle blocking a suit by an unjured

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motorist against a governmental entity is the so-called doctrine of "governmental immunity." Governmental immunity is a relic of the law. It is, in essence, a descendant of the maxim that "the King can do no wrong," and thus it would be inappropriate to let him be sued in his own courts. Although popular concepts of government have evolved over the years, the idea of sovereign immunity has been perpetuated in many jurisdictions. In its modern-day form, it means that the federal, state, and local governments are not vulnerable to actions for the wrongs of its employees, officers, and agents, except in those cases where such governments have consented to be sued.

The government's immunity may be waived by a statute or court decision. Indeed, the modern trend is in favor of liability. Nevertheless, any such waiver must be clearly expressed, and will generally be read very narrowly.

LIABILITY OF THE FEDERAL GOVERNMENT

In 1946, the Federal Tort Claims Act was enacted, under which the federal government waived its immunity in certain cases "in the same manner and to the same extent as a private individual under like circumstances." The Act preserves the government's immunity with respect to liability for traditional intentional wrongs, as well as with respect to acts or omissions which fall within the "discretionary functions or duty" of any federal agency or employee. In other words, the federal government will only be liable where the governmental employee involved was acting within the scope of his or her office, employment, or authority at the time, and the circumstances of the accident were such that if the United States were a private party, it would be liable to the plaintiff under the laws of the jurisdiction where the wrong occurred.

Thus, if an operator of a governmental unit's vehicle was not an employee or officer of that entity, or if the operator was using the vehicle for an exclusively private purpose without authority, the injured motorist could not bring a suit against the government.

LIABILITY OF STATE AND LOCAL GOVERNMENTS

Below the federal level, the general rule is that state and local governments and agencies are similarly protected from liability for injuries resulting from the operation of a motor vehicle, even if the vehicle was used in the performance of a governmental function, unless such immunity has been waived by statute. Most states have, to varying degrees, waived their immunity from suit. Many state statutes make the state liable for damages caused by the negligent operation of a motor vehicle by its officers, agents, or employees when they are acting within the scope of their office, agency, or employ.

A governmental unit may also be held liable for damages

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caused by the negligent driving of its officer if such unit has adopted the doctrine of "respondeat superior." This doctrine, which means "let the master answer," provides that an employer or principal is responsible in certain circumstances for the wrongful acts of his or her employee or agent.

OTHER CONSIDERATIONS

Even in jurisdictions where the doctrine of governmental immunity does not exist as an obstacle, an injured motorist must be aware of other potential problems. Generally, in most jurisdictions, police and other emergency vehicles are granted a special status, exempting them from certain traffic regulations. Therefore, such an officer (or the entity for whom he or she works) will not automatically be found liable merely because they violated such regulations.

Nevertheless, such an officer may be under an obligation to utilize special warning signals such as sirens and flashing lights in such situations. The failure to use such devices may subject the officer to liability.

Additionally, such officer must have had justification (e.g., the existence of an emergency) for proceeding in a manner violating the regulations.

Even if an officer is exempt from certain regulations, he is not relieved from the obligation to exercise and demonstrate due regard for the safety of other users of the roads. He must use due care, and, depending on local law, will not be relieved from liability for the consequences of his negligent, careless, or wanton operation of the vehicle.

COLLISION WITH A PURSUED VEHICLE

It is not surprising that a number of cases have involved the situation where a motorist has been injured by a fleeing felon who crashed into him while attempting to evade the authorities. As opposed to the situation where a pursuing governmental vehicle is the offending collider, the situation of a crash with the pursued seems more likely based on the presumed lower level of driving skill and expertise as well as the increased level of stress of the wrongdoer.

The case of *West v. United States*, decided on September 23, 1985 by the United States District Court for the Central District of California, provides such a situation. On January 19, 1983, immigration agents working a checkpoint in San Clemente stopped for questioning an individual suspected of smuggling. The suspect sped away in his automobile; two of the agents took off in pursuit. Approximately ten miles down the highway, the pursued car, while making "a dangerous lane change," struck several automobiles, including that of the plaintiff, Martha C. West. Ms. West brought an action against the United States under the Federal Tort Claims Act on the theory

that the agents' pursuit of the suspect was reckless and created a danger to other motorists. This Ms. West asserted, constituted a breach of the agents' legal obligation to drive with due regard for the safety of all persons using the highway.

THE EXISTENCE OF A LEGAL DUTY

The court first addressed the question of whether a public entity could be held liable for damages resulting from the collision of a pursued suspect's vehicle with that of an innocent motorist. The court noted that, under California legislation, a public entity could be held liable for injuries proximately caused by its employees who negligently operate a motor vehicle in the course of their employment. The statutes additionally provided that drivers of authorized emergency vehicles, in addition to sounding a siren and displaying a red lighted signal, have a further legal duty to drive with due regard for the safety of all persons using the highway and in a manner that does not impose an unreasonable risk or harm. According to the court, when this duty is breached, the public entity will be held responsible, even if it was the pursued motorist who collided with the victim.

The court set forth two reasons for imposing such liability on the governmental unit. First, the officers had created "a foreseeable risk of harm." Prior cases involving police chases had noted the rule that one who creates a foreseeable peril has a legal duty to protect and/or warn innocent third persons regarding the misconduct of another. Thus, in circumstances where the police engaged in a chase of a suspect, they created the danger of the suspect's fleeing at illegally high speeds and violating other traffic regulations to avoid capture. In such a situation, the officers had an obligation to sound their siren and activate their warning lights immediately to warn other motorists of such impending danger.

The second reason for imposing liability was to follow the policy set forth in the California statute: to hold public entities financially responsible for their wrongs of their employees committed within the scope of their employment.

Thus, in Ms. West's case, the court ruled that the United States was not immune from liability merely because it was the fleeing suspect who collided with her. The court asserted that the Border Patrol agents may have created the dangerous situation of the suspect's high-speed and reckless flight. Although the suspect may have begun his dangerous driving by speeding away from the checkpoint, his subsequent decisions to overtake motorists using the median strip and make a dangerous lane change were at least arguably the result of the chase.

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BREACH OF THE LEGAL DUTY

Having found that a legal duty existed, the court then addressed the question of whether the agents had breached their duty of care by failing to discontinue their high-speed chase. As the court noted, two competing public policies were involved. On the one hand, there is a strong policy favoring the apprehension of fleeing criminals, which should not be thwarted by imposing undue safety measures on law enforcement officers. On the other hand, however, is the equally compelling policy of holding public entities financially accountable when, in the course of such a pursuit, police officers do not show due regard for the safety of all persons using the highway.

Although observing that, under certain circumstances, the conduct of pursuing officers could support a finding of negligence attributable to their employer from a high-speed chase, the court ruled that, under the facts of Ms. West's case, the United States would not be liable. The court emphasized several facts, including the operating officer's special training and experience in pursuit driving, the officer's use of his vehicle's flashing lights and siren, the moderate level of traffic, the clear weather conditions, the fact that the chase occurred on a highway as opposed to streets containing stop signals and intersections, and the lack of any observed erratic driving by the suspect until just prior to the collision which would have warned the officers that a continuation of the chase would create a danger to others.

The court set forth the rule that, since law enforcement

officers are often charged with the duty of pursuing the automobile of a suspect, liability should not automatically be found as a result of the carrying out of such a duty as long as the officers do not act recklessly and as long as it reasonably appears to them that the chase can result in the apprehension of the suspect without creating undue risks to others. Clearly, any other rule would seriously hamper law enforcement and encourage suspects to speed away from officers knowing that the wrongdoers would not be pursued. Moreover, as the court noted, the mere discontinuance of a chase is no guarantee of safety, since a chase having been commenced, a suspect who knows he is being pursued may not immediately know if or when such chase has been abandoned so as to let him reduce his excessive speed (assuming such knowledge would cause him to do so).

STEER AWAY FROM TROUBLE

All drivers know that it is good driving sense, as well as often a requirement of traffic laws, to make every reasonable effort to let emergency vehicles safely pass by. This article points out a further rationale for such conduct (assuming one is necessary): in the unfortunate event of a collision the governmental entity or officers involved may be immune from liability. It should further be clear that a prudent driver should not delay his response to the sound of the siren or flash of the warning lights of a governmental vehicle until the time the vehicle is right upon him, for it may be that ahead of such vehicle is the speeding unmarked automobile of a fleeing suspect.

