



CASE ALERT



Gill vs. Armstrong, 102 Mass. App. Ct. 733 (2023).

This summer, the Massachusetts Appeals Court issued new wrongful death precedent, [Gill v. Armstrong](#), addressing the scope of the often-litigated Massachusetts Tort Claims Act (“MTCA”). The MTCA, Chapter 258 of Massachusetts General Laws, waives the government’s sovereign immunity from suit, but in limited fashion. Specifically, Section 10 shields certain categories of government action from liability.

Gill held that M.G. L. c. 258, § 10(j) barred a plaintiff from bringing claims against the Town of Marshfield arising out of an incident where the decedent was injured on municipal property. The Section 10(j) exemption provides immunity from “any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer or any other person acting on behalf of the public employer.” The decision in *Gill* clarifies the application of 10(j) in a manner that is favorable to municipalities on the “original cause” exception.

The *Gill* case arose from a 2020 accident in which the decedent, Anthony Gill, was riding his ATV when he struck a wire cable hanging between two trees. The cable was on property owned by the Town of Marshfield on which the co-defendant, Peter Armstrong, had a right of way. The decedent suffered “severe head and neck injuries,” and was transported to the hospital where he was pronounced dead. The plaintiff’s estate alleged that Armstrong’s “placement and maintenance of the wire cable across the [r]ight of [w]ay used by ATV riders constitute[d] a failure to maintain the property in a reasonably safe condition and warn against known dangers” and caused the decedent’s death. The plaintiff further alleged that the Town failed to maintain the right of way in a reasonably safe condition, failed to “warn visitors of any unreasonable dangers known or reasonably knowable,” and “permitt[ed] a wire cable across the right of way to be installed and maintained.”

Like many Section 10 cases, the issue of municipal liability hinged on whether the Town was the “original cause” of the harm. The Appeals Court held that the placing of a wire cable between two trees by a private property owner, regardless of it being on Town property, was not “originally caused” by Marshfield. The plaintiff attempted to avoid 10(j) immunity by arguing that it does not apply to negligent *maintenance of public* property, which the Town actively undertook. However, the Appeals Court rejected the proposed carveout for active municipal maintenance of public property where the Town could not be shown to have originally caused the actual defect. ■

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