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The Michigan Supreme Court declined to adopt the “aiding in accomplishing” exception to the general rule that an employer is not liable for the tortious acts of employees committed outside the scope of employment.

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Summary:

The Michigan Supreme Court declines to adopt the "aiding in accomplishing" exception to the general rule that an employer is not liable for the tortious acts of employees committed outside the scope of employment.

In a recent opinion, the Michigan Supreme Court clarified that an employer cannot be liable for the torts of an employee acting beyond the scope her employment, even if the employee is 'aided in accomplishing' the tort by virtue of his or her agency relationship with the employer. *Zsigo v Hurley*

Medical Center, ___ Mich ___ (2006).

The Court rejected the notion it adopted this exception to employer non-liability in its prior rulings, and further clarified that this exception is not applicable law in Michigan.

In *Zsigo*, the plaintiff alleged that she was sexually assaulted by a Hurley Medical Center nursing assistant while quartered in an emergency room on July 9, 1998. The plaintiff suffered from a manic depressive episode and was brought to defendant's emergency room by police. Because of the severity of her episode and her belligerence, she was placed in restraints in order for treatment to be administered. A nursing assistant was left alone in the room with the plaintiff. In an effort to be released, the plaintiff made sexually explicit remarks to the assistant, tempting the

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assistant to engage in sexual activity with the plaintiff. After engaging in such activity with the plaintiff, the assistant left the room, but did not release the plaintiff from the restraints. The plaintiff sued the defendant, contending that the defendant could be held liable for the assistant's conduct because the employment relationship "aided in accomplishing" the tort.

Our Supreme Court began its analysis by reciting the general rule of agency law: in an employer-employee-relationship, an employer will not be held liable for the torts intentionally or recklessly committed by an employee if those torts are outside the scope of the employer's business. However, in some jurisdictions, an employer may be deemed liable for those acts if they were committed by an

employee who was aided in the accomplishment of the tort by virtue of the employer-employee relationship.

The Michigan Supreme Court expressly declined to adopt this exception in Michigan, noting that "the exception swallows the rule and amounts to an imposition of strict liability upon employers." The court recognized that it would be difficult to conceive of a scenario where the exception would not apply.¹ Thus, Michigan law does not recognize the "aided in accomplishing" exception to the general rule that an employer will not be held liable for the torts intentionally or recklessly committed by an employee outside the scope of employment.

¹ The Court did note that employers will continue to be liable for their negligence in hiring, training, and supervising employees.