

# The ‘Gross Negligence’ standard in Michigan.

*Requiring criminal intent to hold bad actors accountable?*

**Impossible standard.** The Michigan Supreme Court’s interpretation of the term “gross negligence” has created a nearly impossible hurdle that injured parties need to overcome to hold wrongdoers accountable.

**Gross negligence now requires *intent*, like committing a crime.** The original definition of gross negligence as listed in the governmental immunity statute defines it as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” This definition was intended to limit liability for defendants whose actions showed even a below average amount of caution, but not so little as to appear reckless or careless.

However, Michigan’s activist Supreme Court created a much different definition of the term “gross negligence” that requires “*almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks. It is as though, if an objective observer watched the actor, he could conclude, reasonably, that the actor simply did not care about the safety or welfare of those in his charge.*” [*Tarlea v Crabtree*, 263 Mich App 80, 90 (2004), lv den, 472 Mich 891 (2005).]

*Tarlea* involved football coaches who were supervising a conditioning program when a player died. Using the new gross negligence standard, the COA found no possibility of gross negligence using the new standards that require “willful disregard” “singular disregard,” and “simply did not care about the safety or welfare of those in his charge”)

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## Michigan Civil Jury Instructions

### **M Civ JI 14.10 Gross Negligence—Definition**

Gross negligence means conduct or a failure to act that is so reckless that it demonstrates a substantial lack of concern for whether an injury will result.

### **M Civ JI 14.11 Wanton Misconduct—Definition**

Wanton misconduct means conduct or a failure to act that shows such indifference to whether harm will result as to be equal to a willingness that harm will result.

### **M Civ JI 14.12 Willful Misconduct—Definition**

Willful misconduct means conduct or a failure to act that was intended to harm the plaintiff.