

MUNICIPAL LIABILITY UPDATE
CCM CONVENTION

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GOVERNMENTAL IMMUNITY

Grady v. Town of Somers, 294 Conn. 324 (2009).

- Plaintiff was disposing of a Christmas Tree at the local transfer station when he slipped on ice and was injured.
- Plaintiff sued for negligence and defendant plead governmental immunity.
- Plaintiff conceded that maintenance was discretionary, but claimed he was an identifiable victim at imminent risk of harm so governmental immunity did not apply.
- Trial court granted summary judgment on basis that the identifiable victim exception did not apply to direct claims against a municipality under Conn Gen Stat 52-557n.
- Supreme Court affirmed, but on different grounds. The Supreme Court held the identified victim exception did apply to direct actions against a municipality—but also held that the plaintiff was not an identified victim at imminent risk of harm.
- Court held that plaintiff was not a member of a foreseeable class of victims even though he had to purchase a permit to enter the transfer station—noting that he was not required to be there, the way school children are required to be at school during school hours.
- Court also held that it was not apparent to a Town employee that plaintiff was at imminent risk of harm, as no town employee saw him nearby the ice.

Bonington v. Town of Westport, 297 Conn. 297 (7-6-10)

- Plaintiff was a homeowner who was upset over changes made to adjacent property by an abutting landowner, resulting in excess runoff reaching plaintiff's property.
- Plaintiff complained to the Town's Planning and Zoning Department, however, no zoning violations were found and enforced.
- Plaintiff sued for improper inspection by zoning officials and for failure to enforce zoning regulations.
- Court granted summary judgment based on governmental immunity and Connecticut Supreme Court affirmed.
- Plaintiff claimed that inspections, reporting the results of inspections for zoning violations, and enforcing clear violations of zoning regulations are not discretionary acts.
- Court noted there was a difference between laws that imposed general duties on officials and those that mandate a particular response to specific conditions.
- Court further noted that even when a duty to respond to a

violation of law is ministerial, because a specific response is mandated, the predicate act of determining whether a violation of law exists is generally deemed to be a discretionary act.

- Court noted that actions to determine whether property conforms to regulations and codes are of a discretionary nature.
- Plaintiff also claimed to be an identified victim at imminent risk of harm, the harm being the potential flooding, erosion, and threat to the integrity of the plaintiff's septic system.
- Supreme Court held, "imminent" does not simply mean a foreseeable event at some unspecified point in the not-too-distant future. Rather, we have required plaintiffs to identify a discrete place and time period at which the harm will occur.
- Even though the Court concluded that the plaintiff's property constitutes a "discrete place," and rainfall inevitably would occur at that site at some point in the future, a significant rainfall causing excessive surface runoff necessarily would occur at an indefinite point in time.

Such harm was not deemed to be "imminent."

Hoppe v. Town of Cheshire, 2009 WL 5698084 (12-18-09).

- Plaintiff was injured when he fell on a crack in the surface of a public basketball court.
- Plaintiff sued for negligence, claiming failure to inspect, failure to maintain, failure to warn, and failure to properly train staff.
- Defense raised governmental immunity and filed summary judgment.
- Court granted summary judgment, concluding there was no policy or directive in place regarding those duties with which the Town or its employees had failed to comply.
- Plaintiff pointed to the Town's past practice of inspecting and repairing the court whenever repairs were needed, and claimed this gave rise to a ministerial duty to repair.
- Court held that most concrete and asphalt surfaces crack over time, particularly in the northeast, and the duty to repair those cracks necessarily involves discretion after viewing and evaluating their size, shape and location.

Haynes v. City of Middletown, 122 Conn. App. 72 (6-22-10)

- Plaintiff was a high school student who was pushed into a

broker locker in the men's locker room by a classmate. The locker contained a jagged metal edge which resulted in an arm wound to the plaintiff.

- A jury returned a verdict for the plaintiff, however, the Court set the verdict aside based on the City's governmental immunity defense.
- The Court noted there were no policies or procedures specifically mandating inspection or maintenance of the lockers, thus, the actions were deemed discretionary.
- Plaintiff never pled either in the Complaint or in a Reply to Special Defense that plaintiff was an identified victim at imminent risk of harm.

Appellate Court found this to be fatal and judgment entered for the City based on governmental immunity

NUISANCE CLAIMS

Picco v. Town of Voluntown, 295 Conn. 141 (3-16-10).

- Plaintiff was the mother of an elementary school student who was watching a soccer game at the elementary school when she was struck by a falling tree branch.
- The subject tree was old and had a "history of failure," and contained "numerous structural defects, including bark inclusions, trunk cracks, and major decay."
- Plaintiff sued Town of Voluntown and Voluntown Board of Education for creation of a nuisance.
- Court struck the nuisance claim, holding that before a municipality may be liable for public nuisance, plaintiff must prove the allegedly dangerous condition resulted from an affirmative act of the municipality.
- No matter how egregious the failure to act may be, the Supreme Court is unanimous that there will be no nuisance liability absent an affirmative act by the municipality that caused the tree to rot or to otherwise cause the branch to fall.

Maddalena v. Town of Southington, 2010 WL 367763 (1-6-10).

- Plaintiff injured when she fell on a crack in the basketball court at Panthorn Park.
- Plaintiff brought a cause of action in nuisance, apparently aware that a negligence claim would be barred by governmental immunity.
- Plaintiff alleged the positive act by the municipality which supported her nuisance claim was: The Town acted positively

when they attempted to fill in the cracks with sealant; when it opened the park to the public; and when it chose not to erect barricades or signs at the basketball court.

Plaintiff, as a member of the public using a public basketball court, is not an identified victim at imminent risk of harm.

- Court held this was not evidence from which a jury could reasonably conclude that the alleged dangerous condition was created by a positive act of the defendants.
 - Negligently repairing or curing a known defect is not the same as positively creating that defect in the first instance.

DEFECTIVE HIGHWAY

Nikiel v. Turner, 119 Conn. App. 724 (3-9-10).

- Plaintiff was injured while walking on the road when she stepped into a pothole.
- Plaintiff could have walked on the sidewalk parallel to the roadway, but chose not to do so.
- Court charged jury that pursuant to Conn. Gen. Stat. §14-300c, "No pedestrian shall walk along and upon a roadway where a sidewalk adjacent to such roadway is provided and the use thereof is practicable."
- Jury returned a verdict for the defendant and plaintiff appealed.
- Appellate Court held, "A finding that the plaintiff failed to comply with the mandate of Conn. Gen. Stat. §14-300c cannot be reconciled with a determination that she is free from contributory negligence."
- Court noted whether you call it negligence per se, or a presumption of negligence, or a prima facie case of negligence, or evidence of negligence, suffice it to say that failure to comply with 14-300c demonstrates negligence on the part of the plaintiff.

POLICE LIABILITY

Merritt v. Bethel Police Department, 120 Conn. App. 806

(5-4-10)

- Plaintiff's decedent left a party at approximately 1:41 a.m. and encountered members of a gang.
- One of the gang members shot and killed plaintiff's decedent with a handgun.
- Bethel Police Department had information that prior criminal activity had occurred at the party shortly before the shooting.
- Police Department also knew that gang members were at the party.
- Two Bethel police officers were stationed in an adjacent parking lot, monitoring activities taking place at the Temple when they heard the gunshots.
- Trial Court struck the plaintiff's negligence claims based on governmental immunity and Appellate Court affirmed.
- Court found the decision of the Police Department to be discretionary, and further found that plaintiff was never identified to the Bethel Police Department as being at imminent risk of harm.
- Court noted that the foreseeable class of victims exception has only been extended to schoolchildren, statutorily mandated to attend school, injured during school hours.