GOVERNMENTAL IMMUNITIES IN MINNESOTA

2015 IMMUNITY UPDATE

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OVERVIEW

Minnesota, through legislation and case law, affords its governmental entities protection from liability. The materials herein discuss only the most often used immunity defenses raised by governmental entities against state law tort claims.[1]

The State of Minnesota, counties, towns, municipalities and schools are immune from (entitled to dismissal of) various types of claims.[2] Minnesota statute sections 3.736 and 466.03 provide an itemized list of claims from which governmental entities are immune.[3][4] In addition, case law recognizes several immunity defenses, not otherwise provided for in statute.[5] In those cases where a governmental entity is not immune from a claim, it may still be protected by a cap or limit on liability.[6]

The rationale for protecting governmental entities is generally based upon the following concepts: (1) governmental entities are charged with making decisions for the public good that involve the weighing of multiple factors that often have both negative and positive outcomes, (2) the judicial branch through the medium of lawsuits should not second guess those political balancing decisions of governmental entities, (3) an award obtained against a governmental entity is paid out of public funds which are funded by the taxpayer, (4) public funds are better protected, and it is a better use of public funds, if a few individuals suffer as opposed to the public in general, and (5) governmental agents will perform their duties more effectively if not hampered by fear of tort liability. *Nusbaum v. Blue Earth County*, 422 N.W.2d 713, 718 (Minn. 1988); *Holmquist v. State*, 425 N.W.2d 230, 231 (Minn. 1988); *Wilson v. Ramacher*, 352 N.W.2d 389, 393 (Minn. 1984); *see generally*, Restatement (Second) Torts § 895B.

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[1] These materials do not address sovereign immunity or qualified immunity, which are two immunities with robust bodies of case law. If you would like more information on these immunities, please contact our firm.

[2] Minn. Stat. §3.732 defines the state entities that are entitled to statutory protections and Minn. Stat. § 466.01 defines the local government entities that are entitled to statutory protections.

[3] For example, Minn. Stat. §466.03 provides immunity from suits arising out of (1) the assessment and collection of taxes, (2) snow and ice, (3) acts or omissions pursuant to statutory mandates, (4) discretionary acts, (5) unimproved property, and (6) the use of recreational equipment. Minn. Stat. §3.736, subd. 3 provides for immunity from losses (1) caused by wild animals, (2) the use of recreational areas, and (3) occurring at the Minnesota Zoo. The foregoing examples are not a complete list of all immunities afforded by statute. The statutes and case law should be consulted for a complete listing of the immunities and a discussion of their application.

[4] Municipalities can also raise any immunity that is found in § 3.736, as well as immunities found in other statutes, such as § 253B.23, subd. 4 (granting immunity for voluntary admissions or civil commitments). *See Binkley v. Allina Health System*, 860 N.W.2d 707 (Minn. App. 2015).

[5] These common law immunity defenses can include, but are not limited to the following: sovereign immunity, legislative immunity, qualified immunity, prosecutorial and/or quasi-judicial immunity and official immunity.

[6] Minn. Stat. § 3.736, subd. 4 sets forth the liability cap for the State of Minnesota and its agencies. Minn. Stat. § 466.04 sets forth the liability cap for local government entities.

MOST OFTEN USED IMMUNITY DEFENSES

A. Statutory Discretionary Immunity

State agencies and municipalities are immune from tort claims challenging a discretionary decision, act or failure to act. Minn. Stat. §§ 3.736, 466.03, subd. 6. In order to be entitled to immunity under this statutory provision, the governmental entity must demonstrate that the challenged act or omission arose out of a "planning-level" (a/k/a "policy-making") decision. *Zank v. Larson*, 552 N.W.2d 719 (Minn. 1996). Planning-level or policy-making decisions are those decisions that involve the balancing of public policy objectives, including social, economic, financial, and political factors.

Statutory discretionary immunity applies not only to those losses resulting from the decisions made by elected officials, but those of staff in certain circumstances. In those cases where the challenged conduct of staff amounts to nothing more than an attack on the policy itself, it is appropriate to bar the claim under the doctrine of statutory discretionary immunity. *Watson v. Metropolitan Transit Comm.*, 533 N.W.2d 406, 413 (Minn. 1996); *Nusbaum*, 422 N.W.2d at 721-722; *Holmquist*, 425 N.W.2d at 232.

The following are examples of decisions protected by statutory discretionary immunity:

- The issuance of building permits and the interpretation of building codes. *Snyder v. Minneapolis*, 441 N.W.2d 781 (Minn. 1989).

- The issuance of a certificate of occupancy. *Masonick v. J.P. Homes, Inc.,* 494 N.W.2d 910 (Minn. App. 1993)

- The timing of traffic control signals. *Zank*, 552 N.W.2d at 722.

- The placement of warning signs, barricades and guardrails. *Steinke v. City of Andover,* 525 N.W.2d 173 (Minn. 1994); *Holmquist*, 425 N.W.2d at 231; *Berg v. City of St. Paul*, 414 N.W.2d 204 (Minn. App. 1987); *but see Angell v. Hennepin County*, 578 N.W.2d 343 (Minn. 1998) (refusing to apply immunity); *Abbett v. St. Louis County*, 424 N.W.2d 82 (Minn. App. 1988) (same); *Johnson v. County of Nicollet*, 387 N.W2d 209 (Minn. App. 1986) (same).

- Decisions as to maintaining and/or improving a sanitary sewer system. *Christopherson v. City of Albert Lea*, 623 N.W.2d 272 (Minn. App. 2001).

- Response to, and investigation of, a complaint of sexual misconduct. *Doe v. Park Center High School*, 592 N.W.2d 131 (Minn. App. 1999).

B. Common Law Official Immunity

Common law official immunity, as opposed to statutory discretionary immunity, "involves the kind of discretion which is exercised on an operational rather than a policy-making level." *S.W. v. Spring Lake Park Sch. Dist. # 16*, 580 N.W.2d 19, 23 (Minn. 1998); *accord Pletan v. Gaines*, 494 N.W.2d 38, 40 (Minn. 1992). This immunity protects a public official who is sued individually for his or her own torts. A public official charged by law with duties calling for the exercise of judgment or discretion is immune from a tort claim for damages unless guilty of a willful or malicious wrong. *Rico v. State*, 472 N.W.2d 100 (Minn. 1991).

In defining acts protected by official immunity, courts have distinguished between discretionary duties (protected) and ministerial duties (not protected). A duty is ministerial "when it is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts." *Rico v. State*, 472 N.W.2d at 678. Whether discretion was involved, and official immunity applies, turns on the facts of each case. *Id*.

The following are examples of decisions protected by common law official immunity:

- Response to, and investigation of, an unknown adult visitor at a school. *S.W. v. Spring Lake Park School Dist No. 16*, 592 N.W.2d 870 (Minn. App. 1999), *aff'd without opinion*, 606 N.W.2d 61 (Minn. 2000).

- Decision by paramedic to disregard statute requiring one to yield the right of way to a pedestrian while responding to an emergency call. *Kari v. City of Maplewood*, 582 N.W.2d 921 (Minn. 1998); *but see Nelson v. Wrecker Services,* 622 N.W.2d 399 (Minn. App. 2001) (holding that police officer did not have discretion to disregard statute requiring one to stop at red lights).

- Decision by teacher to not use safety guard on delta table saw. *Anderson v. Anoka Hennepin Sch. Dist. No. 11,* 678 N.W.2d 651 (Minn. 2004).

- Bus driver's response to a volatile situation. *Watson by Hanson v. Metropolitan Transit Com'n,* 553 N.W.2d 406, 415 (Minn. 1996)

- Protective services plan prepared by a social worker. *Olson v. Ramsey County*, 509 N.W.2d 368 (Minn. 1993)

- Guidance Counselor's response to suicidal threats of student. *Killen v. Independent School Dist. No. 706,* 547 N.W.2d 113, 117 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996)

In most circumstances, a governmental employer is entitled to share in its employees' immunity by way of vicarious official immunity. *Olson v. Ramsey*, 509 N.W.2d 368, 372 (Minn. 1993). Vicarious official immunity can serve as a defense to a claim against a governmental employer even if a governmental employee is not named individually in the complaint.

Whether to apply vicarious official immunity is a policy question. However, as a practical matter, the courts have denied the extension of vicarious official immunity in only one case, *S.W. v. Spring Lake Park School Dist No. 16*, 592 N.W.2d at 876-877. In *Spring Lake*, the court refused to extend immunity because, given the facts of the case, granting immunity to the school would have the effect of rewarding the school for its failure to adopt a security policy which would be contrary to public policy, encouraging schools to protect children in their charge.

C. Recreational Immunity

The parks and recreation immunity conferred under Minnesota Statute § 466.03 subd. 6e grants governmental entities immunity from "[a]ny claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services .... Minn. Stat. § 466.03 subd. 6e.

Minn. Stat. § 466.03, subd. 6e, is substantially similar to the immunity conferred to the State of Minnesota under Minn. Stat. § 3.736, subd. 3h. Therefore, courts may look to decisions under both Minn. Stat. § 466.03, subd. 6e and Minn. Stat. § 3.736, subd. 3h when considering whether a governmental entity is entitled to recreational immunity. *See Johnson v. Washington County*, 506 N.W.2d 632 (Minn. App. 1993), *aff'd*, 518 N.W.2d 594, 599 (Minn. 1994). Further, in 2011, the Minnesota legislature added additional protections specifically for schools, granting them immunity for "Any claim for a loss or injury arising from the use of school property or a school facility made available for public recreational activity." Minn. Stat. § 466.03, subd. 23.

The only exception to recreational immunity provides that governmental entities are still liable for conduct that would entitle a trespasser to damages against a private person. Minnesota courts have adopted the Restatement (Second) of Torts standard as the standard of care owed to a trespasser. *See, e.g., Green-Glo Turf Farms v. State*, 347 N.W.2d 491, 494 (Minn. 1984). The Restatement (Second) of Torts provides for two trespasser standards of care—one for adults and another for children.

However, case law indicates that only the adult trespasser standard of care should be used to analyze the applicability of the recreational immunity defense.

See Sirek v. State, DNR, 496 N.W.2d 807 (1993). The adult trespasser standard of care is found in Restatement (Second) of Torts, § 335 and provides:

A possessor of land, who knows, or from facts within his knowledge should know, that trespassers constantly intrude upon a limited area of the land, is subject to liability for bodily harm caused to them by an artificial condition on the land, if:

1. The condition:
   a: is one which the possessor has created or maintained, and
   b: is, to his knowledge, likely to cause death or serious bodily harm to such trespassers, and
   c: is of such a nature that he has reason to believe that such trespassers will not discover it, and
2. The possessor has failed to exercise reasonable care to warn such trespassers of the condition and the risk involved.

Restatement (Second) of Torts § 335 (1965). Under this standard, a governmental entity will be liable only for failing to exercise reasonable care to warn trespassers about hidden, artificial dangers knowingly created or maintained by it. *Sirek*, 496 N.W.2d at 813.

The following are examples of cases where recreational immunity has been applied:

- Accidents involving children climbing on, or falling from, playground equipment. *Sorensen v. City of Brooklyn Center*, 1994 WL 272452 (Minn. App. June 21, 1994); *Peterson v. City of Blooming Prairie*, 1998 WL 217200 (Minn. App. May 05, 1998); *Noble v. City of Eagan*, 1996 WL 162617 (Minn. App. April 09, 1996).

- Collisions with a snow fence at a sliding hill. *Mertz v. City of Eden Prairie*, 1997 WL 435881 (Minn. App. 1997).

- A claim for injuries resulting from loose railings that were not secured to floor. *Martinez v. Minnesota Zoological Gardens*, 526 N.W.2d 416, 418 (Minn. App. 1995).

- A 4 1/2 year old fell from a dock into a lake and drowned. *Lee v. State, Dep't of Natural Resources*, 478 N.W.2d 237 (Minn. App. 1991), *review denied* (Minn. Feb. 10, 1992).

D. Snow and Ice Immunity

Under Minn. Stat. § 466.03, subd. 4(a) a municipality and its employees are not liable for any "claim based on snow or ice conditions on any highway…except when the condition is affirmatively caused by the negligent acts of the municipality." The plaintiff must show that the municipality employee acted either willfully or with malfeasance. *In re Alexandria*, 561 N.W.2d 543, 549 (Minn. App. 1997).

Snow and ice immunity typically only applies to conditions allegedly caused by a negligent act. *See Hennes v. Patterson*, 443 N.W.2d 198, 203 (Minn. App. 1989) (snow and ice immunity barred claim arising from accident caused by snowbank created by MNDOT snowplow); *In re Alexandria*, 561 N.W.2d at 549 (claim that snowplow created whiteout conditions barred by snow and ice immunity). But it can also apply when snow or ice is merely a factor as opposed to the sole cause of an accident. *Fernow v. Gould*, 2010 WL 3463694 at *3-4 (Minn. App. Sept. 10, 2010) (collecting snow and ice immunity cases where the snow and ice was merely a factor that contributed to an accident).

The following are examples of cases where snow and ice immunity has been applied:

- Claims that a county failed to properly trim trees, sand or salt road, or warn motorists that a certain stretch of road was susceptible to ice. *Koen v. Tschida*, 493 N.W.2d 126 (Minn. App. 1992).

- Claim that a county properly failed to salt a road, leading to a fatal accident. *In re Heirs of Jones*, 419 N.W.2d 839 (Minn. App. 1988).

- Accident between a snowplow and van resulting in seven deaths, where the plaintiffs alleged that the snowplow created "whiteout" conditions. *In re Alexandria*, 561 N.W.2d at 549.

E. Public Duty Doctrine

The public duty doctrine is not an immunity defense per se. However, when this defense is asserted, it has the effect of an immunity defense in that the claim against the governmental entity is barred.

A public duty is one an official owes to everyone, where as, a private or a special duty is one owed to a particular individual. *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801, 806 (Minn. 1979). In order to maintain a negligence action against a public official, a plaintiff must demonstrate that the governmental entity owed the claimant a "special duty," and not merely a general duty that is owed to the public as a whole.

The mere enactment of a general ordinance, however, does not create a special duty. *Cracraft*, 279 N.W.2d at 804. Nor, does a governmental entity have a special duty to assure that third parties comply with local ordinances. *Id.*

Rather, there must be some additional indicia that the governmental entity has undertaken the responsibility of protecting not only itself (general/public duty), but also a particular class of persons from risks associated with violations of the applicable code (special/private duty). *Cracraft* delineated four factors to consider in determining whether a special duty exists:

1. Actual knowledge by the governmental entity of a dangerous condition;

2. Reasonable reliance by persons on the governmental entity's specific actions or representations, which cause the persons to forego other alternatives of protecting themselves;

3. An ordinance or statute setting forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole; and

4. The governmental entity used due care to avoid increasing the risk of harm.

This doctrine typically arises in cases where the plaintiff claims that the city's building official negligently inspected a building. Inspections are done to ensure compliance under the State Building Code, not to reveal every possible defect in the building. Therefore, courts have repeatedly held that inspections and the issuance of building permits and/or a certificate of occupancy do not guarantee problem-free constructions. *Hoffert v. Owatonna Inn Towne Motel, Inc.*, 293 Minn. 220, 223, 199 N.W.2d 158, 160 (1972); *Masonick*, 494 N.W.2d at 913.

Even if an inspector was aware of a problem in a building, his or her awareness is not enough to create a special duty. Rather, there must be a representation made by the inspector to the owner and evidence that the owner acted or failed to act based upon that representation. *Dahlheimer v. City of Dayton*, 441 N.W.2d 534, 538 (Minn. App. 1989) (city was aware of the fire and concomitant damages, but no representations were made to the property owner).

STATE CASE LAW UPDATE FOR 2015

A. STATUTORY IMMUNITY

Blaine v. City of Sartell, 865 N.W.2d 723 (Minn. App. 2015). A property owner suffered water damage to his home following flooding. Among other claims, he sued the township, the city and the county for negligent maintenance, operation or inspection of the ditch benefitting his property, and also for trespass and nuisance. The Court held that statutory immunity did not bar plaintiff's claims because the county's challenged conduct was in violation of state statute. Further, the plaintiff could not be charged with the knowledge that the county was ignoring its duties to regularly inspect and maintain the ditch.

Schmitz v. Rowekamp, 2014 WL 2013439 (Minn. App. May 19, 2014). Plaintiff was paralyzed from the waist down after her car struck a cow on I-90. She claimed that the state was negligent for maintaining the right-of-way fence along the highway. The Court of Appeals held that the state was entitled to statutory immunity because MnDOT made a policy decision that maintaining the driving surface, shoulders, drainage, and signage had a much greater positive impact on the safety of drivers than maintaining a right-of-way fence. The court also held that it was immaterial whether the state knew that the fence at issue was down, because a decision to forgo repair of the fence would amount to an attack on the policy itself, and that claim would also be barred.

Kuntz v. Minneapolis Park and Recreation Bd., 2015 WL 4393477 (Minn. App. July 20, 2015). In June 2013, several severe thunderstorms passed through Minneapolis, damaging 3,000 trees. Although the Park Board did not have a written policy, it quickly developed an informal policy of prioritizing trees that blocked emergency routes and rights-of-way and trees that fell on houses. A tree had been damaged such that it was leaning over Plaintiff's house, but had not actually fallen, meaning it fell in the lowest-priority category. A foreman inspected the tree and felt it would fall soon, and directed a crew to take care of it as soon as possible. However, that crew had a policy of clearing all the trees on one block, and by the time they made it to the plaintiff's house more thunderstorms were rolling in and the crew decided to wait until the next day. But later that day the tree fell on Plaintiff's house. The Court of Appeals held that underlying all of Plaintiff's claims was an attack on the Park Board's system of prioritizing certain trees for removal, which was a planning decision protected by statutory immunity. Further, any claims that Park Board employees negligently implemented the tree removal priority system amounted to an attack on the policy itself; and, therefore, such claims would also be barred by statutory immunity.

B. OFFICIAL IMMUNITY

There have been a few recent official immunity cases dealing with police department policies. In one of them, *Vassallo*, the Supreme Court held that the policy imposed a discretionary duty. In another, *Kian*, the parties stipulated that the duty imposed was discretionary. In a third, *Briggs*, the Court of Appeals held that the policy imposed a ministerial duty.

Vassallo ex rel. Brown v. Majeski, 842 N.W.2d 456 (Minn. 2014). Majeski was a Hennepin County Sheriff's Deputy who was responding to an emergency call. After being dispatched, he activated both his siren and lights. He did not want to alert the suspects as he approached the scene, so he turned off his siren left the lights activated. As he went through a stop sign, going 54 mph in a 50 mph speed zone, Deputy Majeski's vehicle collided with Vassallo's. Plaintiff argued that a department policy ("use of both red lights and siren is required when responding to an emergency") imposed a ministerial duty. But the Supreme Court stated that this policy did not require the emergency lights and siren to be used continuously, leaving it up to the discretion of the officer. The Supreme Court held that Vassallo's claims were barred by official immunity because Deputy Majeski did not violate any ministerial duties, nor acted willfully or maliciously when performing any discretionary duties. Hennepin County was also entitled to vicarious official immunity.

Kian v. City of Minnetonka, 2015 WL 3649183 (Minn. App. June 15, 2015). An officer responding to an emergency was driving well in excess of the speed limit. He went through a red light, striking a car driven by Kian. Minnetonka had a policy that when responding to an emergency situation, officers "must" always act so that the safety of others will not be jeopardized and driving over the speed limit "must" be done with the utmost caution. Kian argued that the use of "must" created a "discretionary yet mandatory" duty. But, the parties had stipulated that the officer was performing a discretionary duty. The court also relied on caselaw that an officer's decision concerning driving speed was a textbook discretionary duty. Granting official immunity, the court said that the officer's conduct was not willful or malicious, and likened the officer's decision to drive in excess of the speed limit to engaging in a high speed chase.

Briggs v. Rasicot, ---N.W.2d---, 2015 WL 4379836 (Minn. App. June 29, 2015). In response to a call about a suspect, an Officer parked his squad car outside a bar in which he saw the suspect enter. He left the squad car to enter the bar, but left the car running with the doors unlocked. The Officer tased the suspect, but he escaped from the bar. The suspect entered the unlocked squad car and sped off, and crashed into a car occupied by the plaintiff and her husband. The court held that the officer violated a ministerial duty because 1) a city ordinance required citizens to lock vehicles that were left unattended with their engine running, and 2) there was a police department policy requiring squad vehicles to be used in a lawful manner.

There have also been several other recent non-police cases involving official immunity, as described below.

Kariniemi v. City of Rockford, 863 N.W.2d 430 (Minn. App. 2015), *review granted* (Minn. Aug. 11, 2015). A family suffered flood damage to their home after a storm. They sued the city, alleging that it had been negligent in designing, approving, and constructing a storm drainage system, which created a nuisance on the property. The city engineer responsible for the functions at issue was employed by a private company that contracted with the city to act as the city engineer. The issue became whether a private entity could viably claim official immunity. The Court of Appeals held that it can. Plaintiffs' claims against the engineer and the city were, thus, barred because a municipality should not be deprived of official immunity solely because it outsources some of its functions. The court said that to hold otherwise would especially affect smaller municipalities.

Miller v. Marosok, 2015 WL 2341518 (Minn. App. May 18, 2015). Two teachers combined their gym classes in order to play capture-the-flag, a "transitional activity," and a student was injured during the game. She sued the school district, alleging in part that it was negligent in allowing the teachers to combine classes and in failing to limit the use of "transitional activities." She also alleged that the teachers were negligent in selecting capture-the-flag and failing to adequately supervise the class. The district court dismissed the claims concerning the school district's conduct on the basis of statutory immunity, and dismissed the claims concerning combining the classes and choosing to play capture-the-flag on the basis of official immunity. But, the court held that the duty to adequately supervise was ministerial, and, therefore, not subject to official immunity. The Court of Appeals reversed, stating that the school district did not have an official protocol prescribing how to supervise their classes. Further, teachers had the ability to choose transitional activities. Therefore, the teachers had implicit discretion to choose how to supervise those activities.

Shariss v. City of Bloomington, 852 N.W.2d 278 (Minn. App. 2014). A snowplow was waiting in a line of snowplows to have its cargo hold filled with snow, whereupon it would drive to a designated dump site, unload the snow, and return to collect more snow. At one point, while in line, the snowplow driver, a City employee, thought he was blocking the path of a school bus so he reversed the snowplow to allow the bus to pass. At the same time, Shariss exited a parking lot in his van, and the two vehicles collided while the snowplow was reversing. The Court of Appeals had that official immunity did not apply to the plaintiff's claims because the snowplow driver was performing a ministerial act. He was not actively engaged in snowplow operations and was merely reversing his vehicle. Therefore, the driver had a duty to exercise due care.

Spargur v. Freeborn County, 2014 WL 5314683 (Minn. App. Oct. 20, 2014). A county road maintenance crew closed a portion of a county road for a one-day

maintenance project. They placed a "road closed" sign barricade in the middle of the road at each end of the closure. Plaintiff alleged that she did not see the barricade in time due to a truck and sudden rain, and had to swerve to avoid the barricade and rolled over into a ditch. Plaintiff sued the county, claiming the county was negligent for failing to post an advance warning sign of the road closure. The court held that the county's policy of placing adequate signage was the result of a discretionary function. Further, that the county engineer had evaluated several factors, including possible traffic disruption, duration of the signage and department resources. Therefore, Plaintiff's claims were barred by official immunity.

RECREATIONAL IMMUNITY

Kaloustian v. Dakota Fence Co., 2015 WL 46479 (Minn. App. Jan. 5, 2015). A 19-year old woman fell from an allegedly defective chinning bar at a school's playground. Two relatives of the plaintiff filed affidavits claiming they attended the school in question, were familiar with the playground equipment, and had told school staff that the chinning bar was defective. The court held that the affidavits were sufficient to create a cquestion of fact relating to the immunity exception. First, there was a question as to whether the school had actual knowledge by virtue of the claimed reports. Second, there were fact issues concerning whether the chinning bar's allegedly defective condition was inherently dangerous such that it was likely to cause death or serious harm.

Ariola v. City of Stillwater, 2014 WL 5419809 (Minn. App. Oct. 27, 2014). A 9 year old boy died after being infected with a bacteria strain while using a lake in Stillwater. The boy's father brought a wrongful death action, asserting various negligence claims. The district court dismissed the City on the basis of recreational immunity. The Court of Appeals reversed, holding that there were fact issues, including whether changes the City had made to the lake constituted an "artificial condition" that would negate recreational immunity.

C. PUBLIC DUTY DOCTRINE

Blaine v. City of Sartell, 865 N.W.2d 723 (Minn. App. 2015). A property owner suffered water damage to his home following flooding. Among other claims, he sued the township, the city and the county for negligent maintenance, operation or inspection of the ditch benefitting his property, and also for trespass and nuisance. The Court held that the public duty doctrine did not apply because for purposes of maintaining the ditch system, the county was a landowner with a duty to use reasonable care.