GOVERNMENTAL IMMUNITIES IN MINNESOTA

2006 IMMUNITY UPDATE

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NOTE: The purpose of this presentation and the accompanying materials is to inform you of interesting and important legal developments. While current as of the date of presentation, October 13, 2006, the information given may be superseded by court decisions and legislative amendments and/or not applicable in a particular jurisdiction. We cannot render legal advice with an analysis of the facts of a particular situation. Therefore, the contents herein should not be considered legal advice. If you have questions about the application of concepts discussed in the presentation or addressed herein, you should consult your legal counsel.

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.

The State of Minnesota, counties, towns, municipalities and schools are immune from (entitled to dismissal of) various types of claims.[1] Minnesota statute sections 3.736 and 466.03 provided an itemized list of claims from which governmental entities are immune.[2] In addition, case law recognizes several immunity defenses, not otherwise provided for in statute.[3] 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.[4]

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 (4) 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] 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.

[2]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.

[3] 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.

[4] 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. The limits have been recently changed and are discussed further herein.

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 v. Larson*, 552 N.W.2d 719 (Minn. 1996).

- The placement of warning signs, barricades and guardrails. *Steinke v. City of Andover,* 525 N.W.2d 173 (Minn. 1994); *Holmquist v. State*, 425 N.W.2d 230 (Minn. 1988); *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 840 (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 840 (Minn. App. 1999), *aff'd without opinion*, 606 N.W.2d 61 (Minn. 2000). 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).

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 ½ 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. 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 v. J.P. Homes, Inc.*, 494 N.W.2d 910, 913 (Minn. App. 1993).

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 AND LEGISLATIVE UPDATE FOR 2006

A. STATUTORY IMMUNITY

Schroeder v. St. Louis County, 708 N.W.2d 497 (Minn. 2006). A road grader was grading a county road in the evening hours and collided with a vehicle. When the accident occurred, the road grader was grading while traveling against the traffic. The court held that the County was immune from the negligence claim challenging the act of grading while traveling against traffic because policy level employees debated this method of grading and decided to permit grading against traffic because of cost factors and the fact that it took longer to always grade with traffic.

Nordlie v. City of Maple Lake, 2006 WL 923649 (Minn. App. April 11, 2006) (unpublished). Following raw sewage backups, homeowners brought claims, asserting negligent design, maintenance and operation of sewer system and failure to take remedial action. Specifically, it was claimed that the city failed to upgrade the system or install a remote telemetry program which would have prevented the backups. The Court held that unlike prior cases, the city here was not entitled to statutory discretionary immunity because there was no evidence, other than conclusory statements, that the City balanced the costs and benefits of upgrading the system and then decided not to improve it.

Dawley v. Tuchek, 2006 WL 2053377 (Minn. App. Jul. 25, 2006) (unpublished). In an attempt to regain the favor of his paramour, the Lanesboro police chief set fire to his paramour's bike shop with the thought that he would extinguish the fire, save the day, and recapture his lost love. The fire got out of control and the building burned to the ground. The plaintiffs, residents of apartments in the building, filed suit alleging claims against the City of Lanesboro of negligent hiring, negligent supervision, negligent retention, and vicarious liability for the intentional and/or negligent acts of its police chief The court dismissed the claims of negligent retention and supervision based upon statutory discretionary immunity because the city council considered the type of discipline to be given to the police chief and how to supervise the chief. The court, however, refused to grant immunity on the negligent hiring claim because the City failed to comply with the regulations of the Minnesota Board of Peace Officer Standards and Training relating to psychological evaluations and background checks at the time it hired the police chief.

Hawkinson v. Anoka County, 2006 WL 2474046 (Minn. App. Aug. 29, 2006) (unpublished). Anoka County executed a search warrant at Hawkinson's home. Hawkinson exhibited disorderly conduct, was taken to the ground, handcuffed, moved to a bench and eventually a chair. Hawkinson had a medical condition; and, as a result of not having her medication, she had a seizure. The police called an ambulance, but Hawkinson refused treatment and the officers continued the search. She alleged assault, battery, negligent and intentional infliction of emotional distress, negligent supervision, training and retention and invasion of privacy as well as other federal claims. The court dismissed the claims of negligent hiring, training and supervision on statutory discretionary immunity because "as a matter of law" these acts are entitled to such immunity.

B. OFFICIAL IMMUNITY

Schroeder v. St. Louis County, 708 N.W.2d 497 (Minn. 2006). A road grader was grading a county road in the evening hours and collided with a vehicle. When the accident occurred, the road grader was grading while traveling against the traffic. In addition to claiming that the county was negligent because it permitted graders to grade against traffic, the Plaintiff claimed that the operator was negligent for failing to use the lights on the grader on a cloudy evening. There was a factual dispute as to whether the operator had been using the lights. Even if it was assumed that the lights were not used, the court held that the use of lights is not a discretionary act; it is ministerial. The court held that the County was not vicariously immune from the negligence claim challenging the failure of the road grader to turn on the road grader's lights.

Mumm v. Mornson, 708 N.W.2d 475 (Minn. 2006). Minneapolis police officers responded to a call of a suicidal woman, Mornson. After a brief interview conducted by the officers, Mornson got into a car and left the scene. An officer followed and turned on the squad's emergency lights. Mornson failed to obey a stop sign and a chase ensued. The chase was called off by dispatch so the officer turned off his emergency lights, but continued following the vehicle. State Patrol had been monitoring the situation on the radio, arrived on scene, observed erratic driving, turned on their lights, and a chase ensued. The Minneapolis officer turned on his lights again and joined the pursuit. During the chase, Mornson drove so recklessly that State Patrol decided to use a Pitt maneuver, causing Mornson's vehicle to spin out of control. A pedestrian was hit in the process and brought a claim against the City. The court refused to grant official immunity holding that the officers' acts were without discretion and amounted to malice where Mornson's initial conduct was not criminal in nature; and, therefore there was no valid basis for initiating a chase in the first place.

Thompson v. City of Minneapolis, 707 N.W.2d 669 (Minn. 2006). Police officers in detox van saw an SUV go through a red light. When the detox van flashed its red lights, the SUV sped away and the van began to follow the SUV at a leisurely pace. Seven blocks later, the SUV went through a red light and struck a Pedestrian. The pedestrian filed a negligence claim against the driver of the SUV, the two police officers who were following the SUV in the van, and the city. The court held that there was a genuine issue of material fact as to whether officers initiated a "vehicular pursuit" of motorist, as defined by the city vehicle operation policy, and if so, whether the officers employed the van's emergency lights and sirens as required by the policy because the parties disagreed as to whether the lights were on during the entire duration of the pursuit.

Pahnke v. Anderson Moving and Storage, 720 N.W.2d 875 (Minn. App. 2006). Pahnke failed to pay her rent. The Houston County Sheriff executed an order to vacate the premises along with the assistance of a La Crescent police officer. When the two officers arrived Pahnke was celebrating her daughter's birthday with several others. The officers ordered her to vacate the premises immediately. Pahnke challenged the officers' conduct, asserting that she had a statutory right to a 24-hour deadline for removal. The court held that the officers

were not entitled to immunity against a claim that they violated a statutory right to a 24-hour period of notice because their acts were ministerial under that statute. The Writ directed the officers to remove Pahnke "immediately". However, they were entitled to immunity against a claim challenging their execution of the writ because they were obedient to the judicial papers (Writ).

Nordlie v. City of Maple Lake, 2006 WL 923649 (Minn. App. April 11, 2006). Following raw sewage backups, homeowners brought claims, asserting negligent design, maintenance and operation of sewer system and failure to take remedial action. The court held that the city officials acted in a discretionary manner when responding to sewage system backups. There was no policy mandating action; yet, the head of maintenance assisted residents in pumping their basements and sought assistance of other staff in handling various roles to relieve the problem, including engaging the fire department in pumping water from the city lift stations. Vicarious immunity was extended to City on the failure to remedy claim.

Gatlin v. Green, 2006 WL 1320467 (Minn. App. May 16, 2006). Officers Green and Carlson investigated the murder of a gang member. Gatlin provided information to the officers leading to the arrest and conviction of two individuals. The fact that Gatlin ratted out two individuals became known and he was murdered. Gatlin's heirs filed suit alleging various theories of relief. The court dismissed the negligence claims based upon official immunity and vicarious official immunity because the investigating officer's handling of the information, including the name of the informant was discretionary, and there was no evidence of malice. The conduct was held to be discretionary because there is no statute or Minneapolis police department policy regarding inmate mail or an informant's rights.

Dawley v. Tuchek, 2006 WL 2053377 (Minn. App. Jul. 25, 2006) (unpublished). In an attempt to regain the favor of his paramour, the Lanesboro police chief set fire to his paramour's bike shop with the thought that he would extinguish the fire, save the day, and recapture the lost love. The fire got out of control and the building burned to the ground. The plaintiffs, residents of apartments in the building, filed suit alleging claims against the City of Lanesboro of negligent hiring, negligent supervision, negligent retention, and vicarious liability for the intentional and/or negligent acts of its police chief. The court dismissed the claims of negligent retention and supervision based upon official immunity because the City Administrator used her professional judgment in investigating complaints against the police chief. The court refused to grant official immunity on the negligent hiring claim because the former police chief failed to comply with the regulations of the Minnesota Board of Peace Officer Standards and Training relating to psychological evaluations and background checks at the time of hiring the police chief.

Hawkinson v. Anoka County, 2006 WL 2474046 (Minn. App. Aug. 29, 2006) (unpublished). Anoka County executed a search warrant at Hawkinson's home. Hawkinson exhibited disorderly conduct, was taken to the ground, handcuffed, moved to a bench and eventually a chair. Hawkinson had a medical condition; and, as a result of not having her medication, she had a seizure. The police called an ambulance, but Hawkinson refused treatment. She alleged assault, battery, negligent and intentional infliction of emotional distress, negligent

supervision, training and retention and invasion of privacy as well as other federal claims. The court dismissed the claims of assault and battery on the basis of official immunity because the officers exercised their discretion in deciding when, and how, to handcuff Hawkinson, in calling for medical assistance, and in continuing to detain Hawkinson after she refused medical treatment.

C. RECREATIONAL IMMUNITY

None. The most recent case is *Unzen v. City of Duluth,* 683 N.W.2d 875 (Minn. App. 2004). Unzen fell as he was walking down a flight of stairs at golf course clubhouse. The course was owned and maintained by the city. Steven Dornfeld, Inc. contracted with the city to operate concessions at the clubhouse, to "maintain the kitchen, toilets, and main lobby of the club house in a neat and presentable condition and according to the Health Department standards for eating establishments," and to handle "golf operations," such as ticket sales, a pro shop, and club and cart rentals. The stairs at issue, which led from the main floor to the restrooms below, were covered with a rubberized matting surface. A metal "nosing" was placed at the edge of each stair, which allegedly protruded slightly above the stair's rubber tread. Unzen tripped over the metal nosing on a stair. The court held that although the metal nosing was visible to Unzen, the dangerous condition was not open and obvious where a former supervisor employed by the city testified that "[i]t was difficult to observe that the metal edging was raised above the rubber floor tread on each step," and that he only discovered the condition after he himself tripped. And, the city should have known of the danger because during the tenure of that same employee approximately nine people had fallen, not including him. Finally, the court held that, as a matter of law, the danger of falling down a flight of stairs is likely to cause death or serious bodily harm.

This case also stands for the proposition that an independent contractor operating and/or maintaining governmental recreational facilities under a contract is not entitled to the immunity defenses conferred to a governmental entity.

D. PUBLIC DUTY DOCTRINE

None. The most recent case is *Woehrle v. City of Mankato,* 647 N.W.2d 549 (Minn. App. 2002). A fire broke out at an apartment building, the fire commander, Berghorst, positioned the firefighting equipment at the front of the building despite the Woehrles' request to fight the fire from the rear so as to protect their first-floor possessions from water damage. The third floor was destroyed, and approximately 150,000 gallons of water rained down on the first floor. The next day, the Woehrles learned that more water from burst water pipes had continued to leak onto their possessions overnight. The firefighters had not shut off the water service or warned the Woehrles to do so. Woehrles brought suit alleging various negligence theories in order to recover the value of their property damage. The court dismissed the claims refusing to

second-guess a complicated decision made during a fire because it would submit the tactical decisions of fire chiefs to the monetary and psychological threats of litigation. Such after-

the-fact scrutiny would require that courts and juries dictate firefighting strategy, the amount of equipment deployed, and services offered by municipalities. This extensive interference could undermine municipalities' willingness to provide important public services.

Furthermore, the duty to respond to a fire is a general duty, not a special duty owed to the particular person who suffers a fire.

Importantly the court reversed the holding of *Invest Cast, Inc. v. City of Blaine*, 471 N.W.2d 368, 371 (Minn. App. 1991) to the extent that "it stands for the proposition that an action may lie against a municipality for negligence in fire fighting, [which] is contrary to "over 100 years" of Minnesota cases…."

E. LEGISLATIVE UPDATE

Presently, Minnesota statute section 3.736, subdivision 4 provides:

The total liability of the state and its employees acting within the scope of their employment on any tort claim shall not exceed:

(a) $300,000 when the claim is one for death by wrongful act or omission and $300,000 to any claimant in any other case;

(b) $750,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 1998, and before January 1, 2000; or

(c) $1,000,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2000.

Minnesota statute section 466.04, subdivision 1 provides the same limits of liability of municipalities, except that it has an additional provision when hazardous substances are involved.

In 2006, the Minnesota State Legislature passed a law (Chapter 232) increasing the limits. Beginning January 1, 2008, the liability caps will increase to $400,000.00 when the claim is one for death by wrongful act or omission or to any claimant in any other case and $1,200,000.00 for any number of claims arising out of a single occurrence.

Beginning January 1, 2009, the caps increase again to $500,000.00 when the claim is one for death by wrongful act or omission or to any claimant in any other case and $1,500,000.00 for any number of claims arising out of a single occurrence.

Finally, the law amends Minnesota statue section 471.59, and now clarifies that liability limits of joint power participants cannot be "stacked" and that there is no joint liability for participating governmental units. Therefore, the case of *Reimer v. City of Crookston*, F.3d 957 (8th Cir. 2003) which permitted joint liability and stacking has been overruled.