

# **Bond Case Briefs**

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## **IMMUNITY - VERMONT**

### **Lorman v. City of Rutland**

**Supreme Court of Vermont - June 29, 2018 - A.3d - 2018 WL 3203432 - 2018 VT 64**

After suffering sewage backups in their homes, homeowners sued city for negligent design, construction, and maintenance or repair of city's public sewer lines, and asserted nuisance, trespass, and constitutional takings claims.

The Superior Court granted city summary judgment. Homeowners appealed.

The Supreme Court of Vermont held that:

- City was immune from homeowners' negligence claim;
- City was immune from homeowners' trespass claim;
- As a matter of first impression, city was immune under discretionary-function immunity from nuisance claim; and
- Sewage backups did not amount to a taking by city.

City was immune from homeowners' claim that city was negligent in its decision to slip-line damaged clay pipes rather than replace the system entirely, in action stemming from sewage backups on homeowners' property; decision on how best to upgrade pipes once they were found to be in disrepair represented a discretionary policy judgment, rather than a ministerial maintenance decision, and required city to balance safety, cost, and environmental factors, as well as other federal and state restrictions on its actions, homeowners true complaint was that city failed to update pipes, and proper design of city's sewer system was required to be left the city.

City was immune from homeowners' trespass claim against city, stemming from sewage backup on homeowners' property after city slip-lined damaged clay pipes, since trespass claim was simply a restated version of negligence claim from which city was immune; homeowners alleged that sewage, wastewater, and water entered their properties due to city's negligence, there was no allegation that city acted intentionally, and there was no indication that any intentional trespass by the city amounted to a physical taking of property.

City was immune under discretionary-function immunity from homeowners' nuisance claim stemming from sewage backups on their property after city slip-lined damaged clay pipes; claim was essentially a restated version of homeowners' negligence claim, from which city was immune, that rested on same discretionary acts, and allowing claim to proceed would have led to same result discretionary-function immunity was designed to avoid, which was having the court second-guess city's discretionary decisions regarding the design of the sewer system.

Sewage backups on homeowners' property after city slip-lined and angled damaged clay pipes did not amount to a taking by city; sewage backups were intermittent, limited, and transient and occurred over a long period of time.

