

# **Bond Case Briefs**

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## **NEGLIGENCE - ILLINOIS**

### **Berry v. City of Chicago**

**Appellate Court of Illinois, First District, Sixth Division - May 22, 2019 - N.E.3d - 2019 IL App (1st) 180871 - 2019 WL 2234496**

City residents filed class action complaint against city, alleging negligence and inverse condemnation based on high levels of lead in their water following replacement of water mains and service lines by city.

The Circuit Court granted city's motion to dismiss. Residents appealed.

The Appellate Court held that:

- Consuming lead-contaminated water was a present injury;
- Residents' need for medical testing and monitoring was not damages for risk of future harm;
- City was not entitled to immunity for methods used to replace water mains and service lines; and
- Residents sufficiently alleged special damages as required for inverse condemnation claim.

Consuming lead-contaminated water was a present injury, as necessary to support negligence claim brought by city residents against city for causing lead to leach into their water following replacement of water mains and service lines, even if residents had yet to develop physical ailments linked to such consumption; complaint alleged that lead accumulates in the human body over time and that it could be many years before a person develops physical ailments linked to such consumption.

City residents' need for medical testing and monitoring was a harm which flowed from the present injury of consuming lead-contaminated water, and was not damages for risk of future harm, supporting claim for damages in their negligence action against city for causing lead contamination in their water following replacement of water mains and service lines.

Methods used by city to replace water mains and service lines was not a policy decision, and thus city was not entitled to immunity under the Tort Immunity Act in negligence action brought by residents whose water was contaminated by lead as alleged result of the replacement; residents took issue with how city conducted replacement project, not with decision to modernize city's water system.

City residents sufficiently alleged special damages as required for inverse condemnation claim in action against city for lead contamination of residents' water, where residents alleged that city's replacement of water mains and meters, and partially replacement of lead service lines, caused harmful levels of lead to leach into their water, rendering their lead service lines more dangerous than other lines.