

# Bond Case Briefs

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## **MUNICIPAL LIABILITY - LOUISIANA**

### **Broussard v. State ex rel. Office of State Bldgs., Under Div. of Admin.**

**Supreme Court of Louisiana - April 5, 2013 - So.3d - 2012-1238 (La. 4/5/13)**

*Supreme Court of Louisiana holds that defective condition - misaligned elevator in a state building - is more properly considered an unreasonably dangerous condition where comparative fault is applicable, rather than an open and obvious hazard where no duty is owed.*

Delivery driver, who sustained back injury while pulling loaded dolly into misaligned elevator in state building, brought premises-liability action against state. A jury returned a verdict in driver's favor. The appeals court held the jury's factual determination that the elevator's defective condition presented an unreasonable risk of harm was manifestly erroneous because the defect was open and obvious, and reversed.

The supreme court granted driver's writ to further examine, under the manifest error doctrine, whether a defective condition is more properly considered an open and obvious hazard where no duty is owed, rather than an unreasonably dangerous condition where comparative fault is applicable.

The Supreme Court of Louisiana held that:

- Elevators were part of state building, for purposes of state's liability under civil code article governing damage caused by ruin of building;
- Evidence supported jury's finding that one and one-half to three inch offset between floor of elevator and floor of state building's lobby presented unreasonable risk of harm; and
- Evidence supported jury's finding that elevator's defective condition was not open and obvious to all.

The state, therefore, breached its duty of care by failing to remedy the defect or warn of its existence until the defect could be remedied.

Although the elevator served a valuable societal function, and although no prior injuries had been reported, the evidence indicated that the public did not ordinarily anticipate offsets between floors of elevators and buildings. Numerous individuals had tripped due to building's misaligned elevators and inexpensive steps could have been taken to warn employees and visitors of hazard posed by elevator.