

# **Bond Case Briefs**

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## **MUNICIPAL IMMUNITY - IDAHO**

### **Grabicki v. City of Lewiston**

**Supreme Court of Idaho, Coeur D'Alene, April 2013 Term - May 23, 2013 - P.3d - 2013 WL 2249259**

Property owner brought action against city, alleging city negligently designed and installed a storm-water drain system on a city street adjacent to owner's property, which caused storm water runoff to flow onto owner's property and damage it. The Second Judicial District Court entered summary judgment in favor of city. Owner appealed.

The Supreme Court of Idaho held that:

- Owner stated claim for negligence against city;
- Discretionary function exception of the Idaho Tort Claims Act (ITCA) did not apply to claim that city negligently designed storm-water drain system; and
- Fact question regarding application of ITCA's design exception precluded summary judgment in favor of city.

Property owner's allegations, that city, through its employee, affirmatively acted by designing and constructing a storm water drain system, that the new system was negligently designed, and that the city's negligence was the proximate cause of damage to owner's property, stated a cause of action against city for negligence.

ITCA was enacted to provide relief to those suffering injury from the negligence of government employees. To accomplish that purpose, the ITCA is to be construed liberally, and liability is the rule and immunity is the exception.

Discretionary function exception of the ITCA may provide a governmental entity with immunity from liability for having exercised its discretion by deciding, or not deciding, to make a plan or design for the highway in question in the first place. However, once that entity has made the decision to plan and design the highway, it must comply with the ITCA's design exception in order to be immune from any suit arising out of that plan or design.