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**PUBLIC UTILITIES - WISCONSIN**

## Bostco LLC v. Milwaukee Metro. Sewage Dist.

**Supreme Court of Wisconsin - July 18, 2013 - N.W.2d - 2013 WI 78**

Bostco alleged that Milwaukee Metropolitan Sewerage District's (MMSD) negligent operation and maintenance of a sewerage tunnel (the Deep Tunnel) beneath Bostco's property resulted in excessive groundwater seepage into the Deep Tunnel, thereby causing significant damage to Bostco's buildings.

The court initially concluded that MMSD was not entitled to immunity. Once MMSD had notice that the private nuisance it negligently maintained was causing significant harm, immunity under Wis. Stat. § 893.80(4) was not available for MMSD. Bostco's nuisance claim was grounded in MMSD's negligent maintenance of its Deep Tunnel, which maintenance constituted a continuing private nuisance.

Because MMSD did not have immunity for its negligent maintenance of the Deep Tunnel, the court concluded that Wis. Stat. § 893.80(3)-(5) did not abrogate MMSD's duty to abate the private nuisance that MMSD caused by its negligent maintenance of the Deep Tunnel, after MMSD had notice that the nuisance was a cause of significant harm.

The court also concluded that the monetary damage cap in Wis. Stat. § 893.80(3) did not violate equal protection, either facially or as applied to Bostco. Moreover, the nature of Bostco's claim as a continuing nuisance did not render § 893.80(3)'s monetary damage cap inapplicable. Accordingly, the court affirmed the court of appeals' conclusion that the circuit court properly reduced Bostco's monetary damages to $100,000.

The court remanded for a hearing to be held to establish whether an alternate method will abate the continuing private nuisance MMSD maintains or whether lining the Deep Tunnel with concrete is required for abatement.


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