

# **Bond Case Briefs**

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## **LIABILITY - TEXAS**

### **City of Houston v. Owens**

**Court of Appeals of Texas, Houston (14th Dist.) - September 24, 2013 - S.W.3d - 2013 WL 5324015**

Driver sued police officer and city, alleging that officer in unmarked police vehicle hit her vehicle.

The City moved to dismiss the employee under section 101.106(e) of the Civil Practice and Remedies Code, which provides: "If a suit is filed under this chapter against both a governmental unit and any of its employees, the employees shall immediately be dismissed on the filing of a motion by the governmental unit." Tex. Civ. Prac. & Rem.Code Ann. § 101.106(e) (West 2012). The trial court granted the motion and dismissed the employee.

The City then filed a plea to the jurisdiction seeking its own dismissal pursuant to section 101.106(b), which provides: "The filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against the governmental unit regarding the same subject matter unless the governmental unit consents." Id. § 101.106(b). The City argued that by suing the employee as well as the City, Driver had irrevocably elected to sue only the employee.

The appeals court concluded that although 101.106(b) may "immediately and forever bar any suit against the governmental unit," this bar does not apply if "the governmental unit consents." "Consent" as used in 101.106(b) includes the express waiver of municipal immunity in section 101.021 of the Civil Practice and Remedies Code. Under that section, a governmental unit is liable for certain damages arising from the operation or use of a motor-driven vehicle.