

Bond Case Briefs

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LIABILITY - MISSOURI

Walton v. City of Seneca

Missouri Court of Appeals, Southern District, Division Two - October 7, 2013 - S.W.3d - 2013 WL 5524828

Plaintiff appealed the judgment entered in accordance with a jury verdict in favor of City of Seneca on Plaintiff's personal injury suit for damages she alleged she suffered when she stepped into a City "water meter hole" that was located in a restaurant parking lot. Plaintiff claimed the "hole," a water meter vault, was City's property and that it constituted a dangerous condition, thereby qualifying as a statutory exception to the general rule that all money damages claims against municipalities are barred by sovereign immunity.

Plaintiff's contended the trial court erred in giving the affirmative converse jury instruction because its definition of property was that over which City "had exclusive control, possession, authority and the ability to oversee, monitor and to exclude unauthorized persons."

The Court of Appeals held that:

- Patron's trial objection to affirmative converse jury instruction was not vague or different from objection on appeal;
- Patron was not required to offer substitute jury instruction;
- Patron made submissible case on theory of liability;
- Accurate definition of property would include property actually owned by city; and
- Substantial showing of prejudice existed as a result of instruction.

"Because we agree that the affirmative converse instruction misdirected the jury and there is a substantial indication that it resulted in prejudice to Plaintiff, we must reverse the judgment and remand the case for a new trial."