

# **Bond Case Briefs**

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## **NEGLIGENCE - NEW YORK**

### **Koerner v. City of New York**

**Supreme Court, Appellate Division, First Department, New York - November 12, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 07410**

Worker brought action against city and its board of education, seeking to recover damages for injuries he allegedly sustained while working at school, as result of presence at school of fungal pathogen that caused his eye infection.

The Supreme Court, Appellate Division, held that:

- There was insufficient evidence that board was on notice of dangerous condition alleged, and
- There was no evidence that board exercised supervision and control over work performed by worker.

A general awareness that a dangerous condition may be present is legally insufficient to charge a defendant with constructive notice.

Awareness of unsanitary conditions at school was insufficient evidence that city's board of education was on notice of presence of fungal pathogen that allegedly caused worker's eye infection, as would support worker's statutory and common law negligence claims against board, absent any evidence that the fungus existed at the school at all, other than speculation based on worker's unusual infection.

There was no evidence that city board of education exercised supervision and control over work being performed by worker who allegedly sustained injury while working at school, as result of presence at school of fungal pathogen that caused his eye infection, so as to impart liability pursuant to statute imposing general duty to protect the health and safety of employees.