

# **Bond Case Briefs**

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## **LIABILITY - NEW YORK**

### **Duffina v. County of Essex**

**Supreme Court, Appellate Division, Third Department, New York - November 14, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 07531**

Truck driver employed by subcontractor brought action against county, seeking to recover damages for injuries he sustained while delivering asphalt to county roadway project. County commenced third-party action seeking contractual indemnification from asphalt supplier. The Supreme Court denied county's motion for summary judgment on complaint, and granted supplier summary judgment on county's indemnification claim. County appealed.

The Supreme Court, Appellate Division, held that:

- Driver's notice of claim sufficiently apprised county of his claims;
- County was not negligent with respect to manner in which it conducted road paving operations; but
- Fact issue existed as to whether alleged negligence of county in permitting public traffic on road, while construction was ongoing, was substantial factor in causing or exacerbating driver's injuries;
- Industrial Code provision governing brakes could be basis for county liability under Labor Law; and
- County was entitled to contractual indemnification from supplier.