

# **Bond Case Briefs**

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## **LIABILITY - GEORGIA**

### **Atkinson v. City of Atlanta**

**Court of Appeals of Georgia - November 21, 2013 - S.E.2d - 2013 WL 6097941**

Homeowner whose yard, trees, shrubs, driveway, and fence were damaged by flooding caused by broken water main near his property brought nuisance action against city. The trial court granted summary judgment in favor of city. Plaintiff appealed.

The Court of Appeals held that:

- City could not be held liable in nuisance for failing to act within reasonable time to repair broken water main, absent evidence establishing how long it took the city to begin the repair work;
- Single isolated incident of flooding on plaintiff's property caused by broken water main was not continuous, repetitious, or of sufficient duration to support nuisance claim against city; and
- City did not have a duty to repair damage to plaintiff's property caused by flooding from water main break, as required to support nuisance claim against city for failure to timely repair the property.

To be held liable for maintenance of nuisance, a municipality must be chargeable with performing continuous or regularly repetitious acts, or creating continuous or regularly repetitious condition, which causes hurt, inconvenience or injury. Municipality must have knowledge or be chargeable with notice of the dangerous condition; and, if the municipality did not perform an act creating the dangerous conditions, the failure of the municipality to rectify the dangerous condition must be in violation of a duty to act.

To hold a municipality liable for creating or maintaining a nuisance, the defect or degree of misfeasance must exceed mere negligence (as distinguished from a single act). The act complained of must be of some duration and the maintenance of the act or defect must be continuous or regularly repetitious and there must be a failure of municipal action within a reasonable time after knowledge of the defect or dangerous condition.