

# **Bond Case Briefs**

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## **LIABILITY - NEW YORK**

### **Austin v. Town of Southampton**

**Supreme Court, Appellate Division, Second Department, New York - January 22, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 00315**

Operator of street paving truck brought action against town and homeowners' association, seeking damages for injuries he sustained when low-hanging tree branch struck his head. Defendants moved for summary judgment. The Supreme Court, Suffolk County, granted motions. Operator appealed.

The Supreme Court, Appellate Division, held that:

- Genuine issue of material fact existed as to whether town had actual or constructive notice of low-hanging tree branches, and
- Homeowners' association did not have actual or constructive notice of defect, and thus was not liable.

A municipality has a duty to maintain its roadways in a reasonably safe condition, and this duty extends to trees adjacent to the road which could pose a danger to travelers. However, the municipality will not be held liable unless it had actual or constructive notice of the dangerous condition.