

Bond Case Briefs

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LIABILITY - NEW YORK

Wittorf v. City of New York

Court of Appeals of New York - June 5, 2014 - N.E.3d - 2014 N.Y. Slip Op. 04037

Bicyclist brought action against city for personal injuries sustained when she hit pothole. Following jury verdict for bicyclist, the Supreme Court, New York County, granted city's motion to set aside the verdict. Bicyclist appealed. The Supreme Court, Appellate Division affirmed. Bicyclist appealed.

The Court of Appeals of New York held that city employee was acting in proprietary capacity at time of bicyclist's accident.

City employee was engaged in proprietary function at time he failed to warn bicyclist of conditions in transverse when bicyclist hit pothole, as required to hold city liable for breach of proprietary duty to keep its roads and highways in a reasonably safe condition. Employee was in park on the day of accident specifically to oversee road maintenance project in his capacity as a city department of transportation supervisor, at the time he failed to warn bicyclist, he was blocking transverse to vehicular traffic in preparation for road repair, and although maintenance work had not yet begun, employee and his crew could not have repaired roadway without having closed road to traffic.