

# **Bond Case Briefs**

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## **IMMUNITY - ILLINOIS**

### **Nichols v. City of Chicago Heights**

**Appellate Court of Illinois, First District, Fourth Division - April 30, 2015 - N.E.3d - 2015 IL App (1st) 122994**

Homeowners brought negligence action against city for flood damage to their homes. The Circuit Court granted summary judgment in favor of city. Homeowners appealed.

The Appellate Court held that:

- City was immune from liability under Local Governmental and Governmental Employees Tort Immunity Act;
- City was not negligent under doctrine of res ipsa loquitur; and
- Alderman's affidavit satisfied rule governing affidavits in support of summary judgment.

City was immune from liability, under the Local Governmental and Governmental Employees Tort Immunity Act, for purported negligence in homeowners' action arising from flood damage to their homes. Decisions made regarding maintenance and improvement of city's sewer system were discretionary in nature and required deliberation and exercise of judgment, rather than merely executed a set task, as evidenced by letters from mayor that included specific plans for sewer system and engineering invoices for flow monitoring, preparing proposal for sewer cleaning, reviewing sewer cleaning proposals, and meeting with city staff and sanitary district, letter from mayor showed how mayor and city council made policy determination when they recognized that problem with sewer system existed and attempted to find a solution within its budgetary constraints, and, even if city were negligent in maintenance of sewer, it would still be immune from liability under the Act.

City was not negligent under doctrine of res ipsa loquitur for flood damage done to homes. According to homeowners' expert, while city's alleged failure to perform maintenance added to sewer system's existing problems and played a significant role in flooding of homes, there were also many other avenues, such as inflow entering the system from other connections to the system, ground water entering system from defects in main line and private lateral lines owned by homeowners, or any defect causing stoppage in the flow of water in sewer pipe, from which water could have infiltrated the system, resulting in the system to be overwhelmed and eventually causing surcharge into homeowners' basements.