

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **IMMUNITY - TEXAS**

### **City of El Paso v. Aguilar**

**Court of Appeals of Texas, El Paso - October 9, 2020 - S.W.3d - 2020 WL 5987623**

Pedestrian brought action against city alleging that she was knocked down and run over by float during city's parade, claiming, under the Texas Tort Claims Act (TTCA), city was negligent in failing to properly oversee and control parade traffic, and also claiming that city negligent in training and supervision of employee who drove the truck that pulled the float, and that city was liable for conduct of employee either by vicarious liability or respondeat superior.

After a hearing, the District Court denied city's plea to the jurisdiction. City appealed.

The Court of Appeals held that:

- Pedestrian alleged city operated motor vehicle that caused her injury, and thus pleaded facts supporting a waiver of city's immunity under TTCA, and
- Pedestrian did not plead facts establishing city waived its immunity under TTCA's "use of tangible personal ... property" waiver of immunity.

Pedestrian pleaded, and supported with evidence, that city used or operated the motor vehicle that caused her injury by directing the driver of that motor vehicle to move it forward, and thus pleaded, and supported with evidence, jurisdictional facts supporting a waiver of city's immunity under Texas Tort Claims Act (TTCA); although pedestrian did not allege that driver of truck that allegedly caused her injury was city employee, it was sufficient she alleged driver moved truck at the direction of a city employee acting within the course and scope of his employment, pedestrian alleged parade generally, and flow of parade floats specifically, were conducted under direction and supervision of city parks department, and city did not controvert evidence of city parks department's control of parade.

Pedestrian's pleadings did not contain sufficient facts to affirmatively demonstrate city waived its immunity under the Texas Tort Claims Act's (TTCA) "condition or use of tangible personal ... property" waiver of immunity, in pedestrian's negligence action against city for injuries sustained during city parade, where pedestrian's pleadings related only to the use or operation of a motor vehicle by the city, and there was no allegation, evidence, or even mention of any tangible personal property causing pedestrian's injury, other than the motor vehicle.

Pedestrian's pleadings which alleged that city was liable for negligently failing to properly oversee and control traffic during parade, and for negligently training and supervising its employee did not contain sufficient facts to affirmatively demonstrate city waived its immunity under the Texas Tort Claims Act; neither pedestrian's pleadings nor the evidence submitted to the trial court demonstrate that these allegations fall within any waiver of immunity applicable to city.