

NEWS ALERT**MUNICIPAL LAW GROUP****Bonaventure v. Town of Wilton - Scope Of Municipal Liability**

By Alfred E. Smith, Jr. | March 28, 2019

A recent Superior Court decision raises important questions about the scope of municipal liability. While the nature of the proceeding (a motion for summary judgment) and the venue (Connecticut Superior Court) limit the impact of this particular decision, it raises a number of troubling issues. Should the case proceed, it will be important for cities and towns to understand how their current practices may give rise to increased liability in providing routine services.

Bonaventure v. Town of Wilton (CV176032145) stems from the contamination of a residential drinking water well alleged to have been caused by the Town of Wilton depositing plowed snow, ice and associated road salts in the vicinity of the plaintiff's home. The plaintiffs sued under a number of common-law (negligence, negligence per se, nuisance and trespass) and environmental statutory (CGS 22a-16 and 22a-452) theories. The Town moved for summary judgment, claiming that all of the claims should be dismissed as a matter of law, citing, in part, the doctrine of municipal immunity. The court ruled that there is no legal basis for the trespass and CGS 22a-452 cost recovery claims. The court held that the other claims could proceed because they were fact-dependent and could not be resolved solely as a matter of law.

The discussion concerning the negligence claim raises the most concerns for cities and towns. Under the doctrine of municipal immunity, cities and towns will not be held liable for discretionary acts which require the exercise of judgment. However, they are potentially liable for harms caused by their failure to perform a ministerial act - i.e., one for which they have a specific legal obligation and which involves no judgment or discretion. The defendant Town claimed that its management of its roads in general and its choice of places to deposit the snow, ice and related materials in particular require the exercise of judgment and discretion- there are no specific requirements designating specific areas. The judge disagreed, stating that the Town's use of CT Department of Energy and Environmental Protection (DEEP) "Best Management Practices for the Removal of Snow" raises an issue of fact as to whether those practices preclude the use of judgment or discretion.

This is troubling in a number of respects. By its own terms, the DEEP document is a guide to beneficial snow removal practices. It does not purport to identify legally enforceable requirements. In fact, neither DEEP nor any Connecticut political subdivision can enforce any directive that has not gone through a legislative or administrative rule-making procedure. By failing to observe the critical distinction between law and policy, the court's ruling threatens to erode significant legal protections. Further, if this reasoning is followed by other courts, cities and towns will be reluctant to memorialize sound practices for fear that they will be misconstrued as creating ministerial duties, the failure of which would result in liability.

As noted at the outset, this decision currently has limited reach. However, it raises important issues which should be tracked by cities and towns and their advocates.

*For more information on this bulletin, please contact:
Alfred E. Smith, Jr. at 203.772.7722 or asmith@murthlaw.com*