

NEWS ALERT

MUNICIPAL



Will Your Municipality Be Liable For Its Failure To Conduct Mandatory Property Inspections?

By Joseph B. Schwartz and Sarah Gruber | January 11, 2018

The Connecticut Supreme Court recently issued a decision which opens the door for municipalities to be held liable for failing to conduct mandatory property inspections. In Williams v. Housing Authority of Bridgeport, 327 Conn. 338 (2017), the administratrix of the estates of four victims of an apartment fire sued the City of Bridgeport for failing to conduct a statutorily mandated inspection of the apartment. Under Conn. Gen. Stat. § 29-305(b), “[e]ach local fire marshal shall inspect or cause to be inspected, at least once each calendar year . . ., in the interests of public safety, all buildings and facilities of public service and all occupancies regulated by the Fire Safety Code within the local fire marshal’s jurisdiction . . .” (emphasis added). In this case, the City admitted that it failed to perform its annual inspection of the apartment because of a “lack of resources.”

The City argued that its governmental immunity under Conn. Gen. Stat. § 52-557n(b)(8) protected it from liability in this lawsuit as a matter of law. Under Conn. Gen. Stat. § 52-557n(b)(8), a municipality “shall not be liable for damages to person or property resulting from . . . failure to make an inspection or making an inadequate or negligent inspection of any property . . . unless the [municipality] had notice of such a violation of law or such a hazard or unless such failure to inspect or such inadequate or negligent inspection constitutes a reckless disregard for health or safety under all the relevant circumstances.” (emphasis added).

The trial court agreed with the City. It found that the City’s failure to perform its mandatory annual inspection of the apartment did not rise to the level of recklessness – and thus, the City could invoke its governmental immunity under Conn. Gen. Stat. § 52-557n(b)(8). As a result, the trial court granted summary judgment in favor of the City. The Appellate Court reversed this decision, which was affirmed by the Supreme Court.

The main question before the Supreme Court was whether the City’s failure to perform its annual inspection of the apartment – which was required by Conn. Gen. Stat. § 29-305(b) – could constitute a “reckless disregard for health or safety” under Conn. Gen. Stat. § 52-557n(b)(8)? If the answer were yes, the City could be precluded from invoking its governmental immunity and could be liable for damages stemming from the fire.

Municipalities should consider reviewing their inspection policies and consider consulting their town attorney about the reach of this new decision in abrogating governmental immunity.

The Supreme Court's decision falls short of embracing a per se rule of recklessness with respect to a municipality's failure to perform mandated health or safety inspections. Instead, the Court acknowledged numerous factors that a jury *may* consider in assessing whether any particular failure to carry out a statutory mandated inspection demonstrates a "reckless disregard for health or safety under all relevant circumstances." These factors include:

- whether the inspection is mandated by statute or regulation;
- how frequently inspections are required to be conducted;
- the nature and severity of the threat to health or safety that the inspection is intended to identify or thwart;
- whether, and how frequently, threats of that sort have come to pass in the past, either at the location in question or at similar locations;
- whether the premises involved featured any unique or atypical susceptibilities to risk;
- the reasons why the inspection was not conducted;
- whether the failure to inspect was an isolated event or part of a policy or pattern;
- the number of properties or locations that went without inspection;
- whether other municipalities or jurisdictions routinely neglect to carry out inspections of the type at issue;
- the availability and adequacy of alternative means of identifying and thwarting the threats at issue; and
- whether the municipal officials involved were aware or should have been aware of the answers to each of these questions.

The Supreme Court held that a jury could find that the City had demonstrated a reckless disregard for public health or safety under the circumstances in this case. It therefore concluded that the City was not entitled to summary judgment based upon the defense of governmental immunity, and it remanded the case back to the trial court so that a jury could make this determination.

In light of the Supreme Court's decision in Williams, municipalities should consider reviewing their inspection policies and consider consulting their town attorney about the reach of this new decision in abrogating governmental immunity. Ignoring the ramifications of this case may subject your municipality to significant liability.

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