

ILLINOIS MUNICIPAL LEAGUE
Annual Conference
September 18-20, 2014
Chicago, Illinois

**Ancel
Glink**

DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

*Your Local Government
Attorneys*

MAIN OFFICE:
140 S. DEARBORN STREET, 6TH
FL.
CHICAGO, ILLINOIS 60603

PHONE: 312-782-7606
FAX: 312-782-0943
WWW.ANCELGLINK.COM

OTHER OFFICE LOCATIONS:
175 E. HAWTHORN PARKWAY
VERNON HILLS, ILLINOIS 60061
(847) 247-7400

4 E. TERRA COTTA AVENUE
CRYSTAL LAKE, ILLINOIS 60014
(815) 477-8980

1979 MILL STREET, SUITE 207
NAPERVILLE, ILLINOIS 60563
(630) 596-4610

207 NORTH JEFFERSON, SUITE
402
BLOOMINGTON, ILLINOIS 61701
(309) 828-1990

THURSDAY, SEPTEMBER 18, 2014
8:30 A.M.

**2014 YEAR IN REVIEW:
ILLINOIS TORT IMMUNITY
UPDATE**

**PRESENTER:
DARCY L. PROCTOR**

§2-107 Libel and Slander

- *Stone St. Partners, LLC v. City of Chicago Dep't of Admin. Hearings*, 2014 IL App (1st) 123654
 - o The court applied immunity to an allegation of slander of title based on the City's recording of the judgment lien against plaintiff's property. The plaintiff claimed that the City knew that the order was void at the time that the City recorded the order. The court stated the immunity provided by section 2-107 is absolute and there are no exceptions. Therefore the circuit court correctly dismissed this count.

§2-201 Discretionary Immunity

- *Robinson v. Washington Twp.*, 2012 IL App (3d) 110177
 - o A passenger sued a township after he sustained injuries while in a vehicle accident allegedly caused by a defect in the road. The court held that the township was not immune under Section 2-201 because the act of repairing the roadway was ministerial. The court elaborated that an act performed “in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official’s discretion as to the propriety of the act” is ministerial. The court also contrasted the discretion a township exercises when it selects a plan for making public improvements and the ministerial act of carrying out that plan
- *Richter v. Coll. of DuPage*, 2013 IL App (2d) 130095
 - o The court held that the college was immune where a pedestrian fell on an uneven sidewalk because the college was determining policy and exercising its discretion in when and how it was going to fix the sidewalk.
- *Pleasant Hill Cemetery Ass’n v. Morefield*, 2013 IL App (4th) 120645
 - o Discretionary immunity applied to a highway commissioner’s decision to improve culverts to alter the flow of surface water along a road.
- *Hascall v. Williams*, 2013 IL App (4th) 121131
 - o Discretionary immunity applied where a student alleged the Principal, Superintendent and School Board failed to respond appropriately to bullying incidents because the determination of whether bullying has occurred, the appropriate consequences, and the choice of remedial actions are discretionary acts even where the School Code requires each district to “create and maintain a policy on bullying.”
 - o The court in *Eilenfeldt v. United C.U.S.D. #304 Bd. of Educ.*, 2014 WL 1228521 (C.D. Ill. Mar. 25, 2014), cited to and applied *Hascall* to a similar case and found the defendants immune from the plaintiff’s state law tort claims.
- *Malinski v. Grayslake Cmty. High Sch. Dist. 127*, 2014 IL App (2d) 130685
 - o The court, in an unpublished opinion, held that a school district was entitled to discretionary immunity because implementing a bullying policy is not a ministerial act. The court explained that “a policy may afford a school district with the discretion

to determine whether bullying occurred, what consequences will result, and any appropriate remedial actions.”

§2-202 Execution or Enforcement of the Law

- *Davis v. City of Chicago*, 2014 IL App (1st) 122427
 - o In a case involving a wrongful death claim arising out of a fatal police shooting, the court found that the plaintiff was required to prove that the officer acted without legal justification. The court reasoned that this “harmonized [the] plaintiff’s burden of proof on her battery claim to prove the contact was unauthorized, the affirmative defense of immunity ... and the plaintiff’s burden to prove willful and wanton conduct, while accounting for self-defense or legal justification as a legally authorized contact.”
 - o *Wilson v. City of Chicago*, 2014 WL 3397697 (7th Cir. July 14, 2014). In *Wilson* the Seventh Circuit decided the same issue - which party bears the burden of proof on an immunity defense asserted under the Immunity Act. The court agreed with *Davis* and explained that “to hold otherwise would ignore the requirement that a plaintiff asserting a battery claim—whether directly or as the basis of a wrongful death claim—must prove all of the elements of that claim, including that an unauthorized touching occurred.”

- *Robles v. City of Chicago*, 2014 IL App (1st) 131599
 - o The court applied section 2-202 and not 2-201 where officers chased and fatally shot a driver. The city argued that section 2-201 applied because the officers were exercising their discretion. However, the court was skeptical of this argument since “under the City’s construction of the Act, section 2–202 can never apply to any situation, since the broader immunities of section 2–201 will always prevail over the lesser immunity the legislature granted for execution or enforcement of the law in section 2–202.”

§2-210 Negligent Misrepresentation; Provision of Information

- *Jane Doe-3 v. McLean Cnty. Unit Dist. No. 5 Bd. Of Directors*, 2012 IL 112479
 - o Illinois Supreme Court held that while a school district did not have an affirmative duty to warn another school district of sexual abuse allegations against a teacher, there was a duty to provide accurate information regarding that teacher’s employment history. Therefore, school administrators, who allegedly provided false information on employment verification, were not protected under Section 2-210.

§3-102(a) Intended and Permitted Users of Property

- *Warning v. City of Joliet*, 2012 IL App (3d) 110309
 - o The court held that a municipality has no common law duty to provide streetlights and no duty to maintain streetlights it does not own.

- *Ballog v. City of Chicago*, 2012 IL App (1st) 112429
 - o The court held that a gap between the sidewalk and street was an open and obvious condition where the plaintiff had safely traveled over a similar gap on the opposite side of the street and was familiar with the road construction that caused the gap.

- *Berz v. City of Evanston*, 2013 IL App (1st) 123763
 - o The court concluded that the city was not liable to a bicyclist injured in an alley because, while the bicyclist was permitted to use the alley, he was not an intended user of the alley.

- *Harden v. City of Chicago*, 2013 IL App (1st) 120846
 - o The court found that even when snow renders the crosswalk invisible pedestrians walking outside of the crosswalk are not intended and permitted users.

- *Dunet v. Simmons*, 2013 IL App (1st) 120603
 - o The court held that the defendants did not have a duty to a pedestrian crossing an intersection outside of a crosswalk because she was not an intended user of the street.

- *Zameer v. City of Chicago*, 2013 IL App (1st) 120198
 - o The court held that prior complaints about the general condition of a sidewalk area were insufficient to establish actual or constructive notice of the defect the plaintiff tripped over.

- *DeMambro v. City of Springfield*, 2013 IL App (4th) 120957
 - o The court held that the city was not immune where plaintiff fell into a pothole and was injured when walking around her vehicle lawfully parked near the curb.

- *Perfetti v. Marion Cnty.*, 2013 IL App (5th) 110489
 - o The court held that a county was immune where the plaintiff failed to present evidence that the county had actual notice of the defective condition of the roadway or that the defective condition of the roadway was apparent for such a length of time or was so conspicuous or plainly visible that the county should have known of its existence by exercising reasonable care and diligence.

- *Swain v. City of Chicago*, 2014 IL App (1st) 122769
 - o The court found the city immune under section 3-102 where the plaintiff was injured after stepping on the edge of a pothole about five inches outside the crosswalk. The plaintiff argued that the City should not be immune because he was partially within the crosswalk at the time of his injury. But, the court explained, that it was “of no consequence that plaintiff was partially within the crosswalk at the time of his injury because it is undisputed that he was injured while stepping into a pothole that was located outside of the crosswalk.” Therefore, “since plaintiff was injured stepping into an area that the City clearly had not intended for pedestrian use, the City did not owe plaintiff any duty pursuant to section 3–102 of the Tort Immunity Act.”

§3-104 Traffic Signs and Signals

- *Sexton v. City of Chicago*, 2012 IL App (1st) 100010
 - o The city was immune because it had no duty to install additional warning devices at a railroad crossing simply because it had already erected traffic lights at the intersection.
- *Martinelli v. City of Chicago*, 2013 IL App (1st) 113040
 - o The court held that the city was not immune from liability where a telecommunications worker was injured on a city water department work site because the city had initially provided traffic control devices but removed the devices when some of the workers went on a lunch break.

§3-106 Recreational Property

- *Moore v. Chicago Park Dist.*, 2012 IL 112788
 - o The park district was immune from liability under Section 3-106 where a woman died from injuries she sustained when she fell on an unnatural accumulation of snow. The accumulation resulted from plowing the parking lot. The court explained that whether snow and ice accumulated naturally or unnaturally is irrelevant to immunity pursuant to Section 3-106 because Section 3-106 does not incorporate the natural accumulation rule.
- *Bielema v. River Bend Cmty. Unit Sch. Dist. No. 2*, 2013 IL App (3d) 120808
 - o The court held that the school district was not liable for injuries caused by a slip and fall at a high school gymnasium during a pep rally without evidence of willful and wanton conduct by the school.
- *Abrams v. Oak Lawn-Hometown Middle Sch.*, 2014 IL App (1st) 132987
 - o The court concluded that a combined cafeteria and auditorium was not property intended and permitted to be used for recreational purposes where the property was used for lunch, student assemblies, club meetings, and band or choir programs.

§3-108 Supervision Immunity

- *Brooks v. McLean Cnty. Dist. Unit No. 5*, 2014 IL App (4th) 130503
 - o The district was afforded immunity where a student died after playing “body shots” because its employees did not willfully fail to supervise students. “Body shots” was a game, played in the school bathroom, where the students punched each other in the torso. The court explained that the complaint alleged no facts which “would permit the inference that the district’s conduct was willful and wanton, as opposed to possibly merely negligent.” Had the district’s conduct been willful and wanton Section 3-108 immunity likely would not have applied.

§4-102 Police Protection Services

- *Prough v. Madison Cnty.*, 2013 IL App (5th) 110146
 - o The court held that Section 4-102 and Section 4-107 immunized the county, state, and sheriff's department for their alleged failure to provide adequate police protection by releasing an individual who was subject to a detention order and not preventing the commission of that individual's later crime.

- *Fenton v. City of Chicago*, 2013 IL App (1st) 111596
 - o The court held that the city was liable for the willful and wanton actions of two police officers where the officers failed to take reasonable steps to prevent further abuse after being summoned multiple times to a domestic disturbance.

- *Payne v. City of Chicago*, 2014 IL App (1st) 123010
 - o The court found that officers were immune under §4-102 when they used a TASER, while responding to a call for emergency assistance, on a man who was hallucinating while on crack cocaine. The court explained that the officers were not responding to a call that a crime was committed. Rather, the officers were providing police assistance to subdue the man.

§8-101 Statute of Limitation

- *Snyder v. Vill. of Midlothian*, 2014 WL 3882547 (N.D. Ill. Aug. 7, 2014)
 - o The court applied the one year statute of limitations to several state law claims that arose when a deputy police chief allegedly beat the plaintiff with a baton without provocation. The court explained that "since the original complaint was filed one year and 361 days after the alleged incident, the three counts against the village were clearly time-barred." Additionally, the court held that the one-year statute of limitations applied equally to the individual capacity claims.