PUBLIC ENTITY LIABILITY UPDATE

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Howd & Ludorf, LLC

Attorneys at Law

100 Great Meadow Road, Suite 201
Wethersfield, CT 06109
(860) 249-1361
tgerarde@hl-law.com
krule@hl-law.com
adembiczak@hl-law.com

PUBLIC ENTITY CASELAW UPDATE

Doe v Plainville, 234 Conn. App. 182 (2025)

--In 7 consolidated suits, each entitled Jane Doe v Kyle Fasold et al. the Town of Plainville was sued for negligence and negligent supervision after a volunteer for an area swim team that used the Town pool was arrested for invasion of privacy and sexual exploitation by the taking of photographs of girls in stages of undress in the women's locker room and bathroom.

--Specifically, Kyle Fasold, a volunteer for the Plainville Blue Dolphins swim club was accused of taking photographs into the girl's locker room through a window in a wall that was common with a storage area. The window was covered with a cardboard/oak tag material, that Fasold allegedly was able to tamper with, so that an iPhone camera could take photo and video.

--The Town of Plainville's Recreation Department's involvement was it allowed the Blue Dolphins to use the high school pool, it provided lifeguards during Blue Dolphins practices, and it provided coaches for the Blue Dolphins swimmers. The Town had no involvement in the approval or assignment of Blue Dolphin volunteers.

--The Town defended all 7 suits by claiming entitlement to discretionary act immunity, advancing the argument that the inspection, maintenance and supervision of the Blue Dolphins use of the pool, was up to the judgment and discretion of the Town's recreation and custodial staff, and that none of the plaintiffs was identifiable as being at risk of imminent harm; and, finally, that the Town had no liability for the actions of a non-town employee (Fasold); and, regardless, had immunity for the intentional criminal acts of Fasold.

--The trial court granted summary judgment for Plainville in all seven suits. The seven plaintiffs appealed, and looked to defeat the Town's discretionary act immunity by claiming the Town had a mandatory obligation to put a solid barrier over the window through which Fasold was able to take his photos and videos.

--The plaintiffs pointed to a "work order" prepared by a custodial supervisor and delivered to a custodial staff member calling for the placement of an opaque piece of plexiglass over the subject window, and claimed this created a ministerial duty that defeated the Town's governmental immunity. The Appellate Court disagreed and held that the Town was entitled to immunity in all 7 suits.

--The Appellate Court found:

1. Although entitled a work "order" the paper completed by the maintenance supervisor indicated that it pertained to general maintenance, the supervisor who completed it was identified as the "requester" and the date it was completed was identified as the "request date".
2. Although the work order stated "cut and fit colored/textured plexiglass" into the window of the door, it did not stay that the staff had no discretion to vary from that
3. The work order was not a "mandate of legal authority," given that the maintenance supervisor was not a policy maker for the Town. In so holding the Court emphasized

there were several elements that must be met before a finding of ministerial duty is made:

1. "a ministerial act is one in which a person performs in a given state of facts"
2. "in a prescribed manner,"
3. "in obedience to a mandate of legal authority,"
4. "without regard to or the exercise of his own judgment or discretion upon the propriety of the action being done"

This is a definition of ministerial duty that all involved in public entity defense need to keep handy. We are frequently confronted with claims that a certain statement by a municipal employee that something should be done a certain way constitutes a ministerial act that defeats discretionary act immunity. However, unless that statement can be considered a mandate of **legal authority**, it will not qualify as creating a mandatory duty that defeats immunity.

--We need to look at more than the language itself; we need to look at the source of the language. If the statement regarding how something should be done, comes from a Board of Education, a Town Council, or a final policy maker, such as a Chief of Police or a Town tree warden or building official, then the statement could be a mandate of legal authority that defeats the immunity. However, a supervisor does not make policy for the Town, so his statement could not be considered a mandate of legal authority.

Ward v. Town of North Stonington - State case- 2025 WL 1112604 (2025) Federal case- 2023 WL 2563212 (2023)

Two summary Judgment wins for the Town of North Stonington.

--The Town of North Stonington won summary judgment twice after five years of litigation involving alleged violation of federal and state civil rights laws. In Ward v. Town of North Stonington et al. the Plaintiff/operator of a large farm and landscape business sued the Town, the Zoning Commission, the Zoning Board of Appeals and 6 individuals, stemming from a 2016 order by the Town Zoning Enforcement Officer that Ward stop the expansion of his business to include extensive hardscape materials processing and storage, as that activity violated zoning regulations and was not a grandfathered use.

--Plaintiff appealed the cease and desist order to the Superior Court, which found in favor of the Plaintiff-specifically finding the evidence in the record before it did not support the ZEO's claim that the hardscape activities were an expansion of the pre-existing, grandfathered use, and that the order to cease and desist was arbitrary.
Plaintiff used this as a springboard to allege civil rights violations against the Defendants, specifically claiming Due Process, Equal Protection and Unconstitutional Takings claims, along with state law violations, and sought over $2 million in damages.

--The Town first argued successfully that it was not collaterally estopped in the federal civil rights litigation from providing additional evidence that the ZEO's conduct was not arbitrary; and then moved for summary judgment on the basis that the Due Process claims failed because the Plaintiff lacked a constitutionally protected property interest, and was given all required notice and opportunity to be heard; further, the Equal Protection claim failed because Plaintiff could not identify comparators who were similarly situated in all material respects who were treated differently that he and his business were; and the Takings claim failed because Plaintiff's property still retained economic value as a farm and landscape business.

--The federal court agreed and granted summary judgment on the federal claims, while remanding the state claims to Superior Court.

--The Town then followed with a summary judgment motion on the state law claims of abuse of process, intentional infliction of emotional distress, negligent infliction of emotional distress and negligence, arguing that the Town's compliance with constitutional requirements, along with governmental immunity doctrine, defeated Plaintiffs state law claims as a matter of law.

--The Superior has now issued its decision granting summary judgment in favor of the Town defendants on the state law claims.

Beger v. City of Bristol 233 Conn. App. 134 (2025)

--This case involved a fall down at a City transfer station on uneven black top near a ground level recycling bin. Plaintiff sued for negligence and defective highway liability. As to negligence claim the City moved for summary judgment based on governmental immunity, given that inspection/maintenance responsibilities involve judgment and discretion, and Plaintiff was not identifiable as being at risk of imminent harm at the time she fell.

-- Plaintiff attempted to turn this case into a defective highway claim on the theory that the part of the pavement where she fell was technically a driveway that allowed cars to drive immediately adjacent to the ground level receptacles and dispose of their recyclables.

--The trial court concluded, and the Appellate Court has now affirmed, that the fall was not within the ambit of the defective highway act (CGS 13a-149) because the area where Plaintiff fell was not open to the indefinite public—the critical fact being that transfer station access was restricted to City residents who held a permit. Here is the important language from the decision:

> ‘‘[f]or an area to be open to public use it does not have to be open to everybody all the time’’; (internal quotation marks omitted) *Cuozzo* v. *Orange*, supra, 147 Conn. App. 158; it is equally well established that ‘‘[t]he essential feature of a public use is that it is *not confined to privileged individuals or groups whose fitness or eligibility is gauged by some predetermined criteria*, but is open to the indefinite public.’’ Id. Because it is undisputed that the transfer station in the present case is, like the transfer station in *Read*, accessible only to City residents who have purchased a permit—that is, to a group

whose eligibility is gauged by predetermined criteria—it lacks the ‘‘ ‘essential feature’ ’’ that would qualify it as open to public use for purposes of § 13a-149.

--This is a favorable decision to Connecticut public entities, as the Plaintiffs’ side has sought to expand the reach of the defective act, and the Appellate Court has determined that the defective highway act will not apply to any injury on premises where the right to be there is gauged be a specific criterion, such as needing a permit or pass to enter. The decision allows Connecticut public entities to raise the traditional protections of governmental immunity and be done with the case rather than having to deal with a second theory for a Plaintiffs recovery.

Hobin v Town of Madison 2025 WL 214172 (2025)

--Plaintiff was walking on the grounds at Madison surf club when he tripped over a guide wire anchored in the ground and was injured

--Plaintiff sued for negligence and nuisance, and the town raised defenses based on government immunity and recreational use immunity

--The court noted that recreational use immunity protects municipal land owners who open their land free of charge for recreational uses, except land used for swimming pools, playing fields/courts and playgrounds

--Plaintiff attempted to defeat this immunity by pointing to the fact that there was an annual charge to park at the Surf Club, which essentially constituted an admission fee that defeated recreational use immunity. The court noted that at the time the plaintiff was injured, it was outside the window of months when a parking fee was required

Plaintiff also argued that the anchored guidewire was not "recreational land" because the wire he tripped over was above the land.

--The court indicated that this was not a situation where an artificial structure was placed on the land in the wire was anchored in the land and became appurtenant to it

--There was no question this was an injury occurring on recreational land, which meant immunity protected the Town unless there was a malicious or willful failure to guard or warn against. The court noted there was nothing more than a claim of negligent failure to warn involved, so recreational use immunity was not defeated

--Note that recreational use immunity will defeat not only negligence claims but nuisance claims as well

--The court further noted that governmental immunity would bar the plaintiffs claim because inspection and maintenance of the public grounds are subject to judgment and discretion of employees

--Plaintiff attempted to point to a town policy that employees had responsibility to pick up garbage in the park and buy other assets to make sure "everything is OK".

--There was no evidence of written or verbal policy, mandating the manner in which the employees were expected to inspect the park, how any hazards should be remedied, so they maintained their discretion to inspect and maintain as they thought appropriate

--There was no claim of the identifiable person exception applying to this plaintiff's fall

Rodriguez v City of Hartford 2025 WL 1444061 (2025)

--Plaintiff was injured when, while playing on a basketball court in a public park, a gust of wind caused a tree to fall and strike him

--Plaintiff originally sued for negligence, however, that was barred by the cities, discretionary act immunity relating to inspection and maintenance

--Plaintiff attempted to add claims for recklessness and nuisance, and the court granted the City's motion to strike both claims

--Regarding the reckless claim, it was added after the statute of limitations expired, and it was only to be allowed if the amendment to the complaint adding reckless could be deemed in amplification of an existing claim in the complaint rather than statement of a new claim

--The court held that this was not merely an amplification of an existing negligence claim, but the statement of a new claim. The court noted that the evidence necessary to prove recklessness is different from that required to prove negligence.

--The court specifically recognized that the basis for the negligence claim was a failure to prune the tree, remove the tree and warn about the tree whereas the factual basis for the reckless claim was the failure to have an expert inspect the tree, test for the hollowness of the tree, and utilize certain equipment to determine the tree was dead

--Accordingly, even though both the negligence and reckless claim related to the single event that occurred when the tree fell and injured the plaintiff, they were separate and distinct claims, and each had to be brought within the applicable statute of limitations

--Regarding the nuisance claim the court noted that nuisance requires a positive act of the municipality and a failure to act does not suffice

--The court noted there was no allegation in the complaint that the defendant created the condition that caused the tree to fall, and a failure to act or remediate a condition does not constitute a nuisance

Lumbard v City of Norwalk 2025 WL 3012325 (2025)

--Plaintiff was driving in a vehicle on a road to a public park in Norwalk, when an unsecured steel gate arm swung shut suddenly and struck Plaintiff's vehicle, causing injury and property damage.

--Plaintiff sued for negligence, nuisance, and defective highway

--The City defended the negligence and nuisance claims by asserting that this was an injury by means of an alleged defective road, which made the defective highway act 13 a-149 plaintiffs exclusive remedy

--The court agreed and struck the negligence and nuisance claims

--Regarding the defective highway claim, the City Asserted that the defective highway claim was barred by the recreational use immunity statute, given that the plaintiff was making use of the land for recreational purposes as he drove into the public park

--The Court accepted this argument, noting that in the recreational use immunity statute "land" includes "land, roads, water, water, courses, private ways, and buildings or equipment when attached to the realty…

--**Note**--In rendering this decision, the trial court stated that there is no remedy whatsoever for an injury on a road through a public park, because the defective highway acts is the plaintiff, exclusive remedy, and the recreational you use immunity statue bars the defective highway claim.

--I think the better way (for the defense) to say it would've been to simply state that recreational use of immunity bars, all claims. To state that the negligence and nuisance claims are barred because the plaintiff exclusive remedy is the defective highway act, and then in the next sentence state that the defective highway act claim is barred by recreational use of immunity will catch the eye of an Appellate Court