

CASE SUMMARIES

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Illinois Supreme Court Case:

Coleman v. East Joliet Fire Protection District et al., 2016 IL 117952,

Summary of the Abolishment of the “Public Duty Rule” and possible impact on Police and Fire employees

The Local Governmental and Governmental Tort Immunities Act (745 ILCS 10/1, et al.) is a regular encounter for practitioners who either sue local governments directly or through contribution claims. This Act provides many challenges and hurdles, but looming in the background to these impediments was the common law doctrine known as the "public duty rule". Last week the Illinois Supreme Court abolished the public duty rule in *Coleman v. East Joliet Fire Protection District*, 2016 IL 117952 (Jan. 22, 2016) in a 4 to 3 decision.

The public duty rule in essence provides that governmental entities owe duties to the public as a whole and not no duty of care to individual members of the general public in providing governmental services such as police and fire protection services. Since the enactment of the local governmental immunity acts such as 745 ILCS 10/1 courts have struggled as to how to reconcile both principles. Until *Coleman* the main way both principles were applied was by stating that the issue of whether a duty is owed is distinct as to whether immunity applies.

In abolishing the public duty rule in *Coleman* the court reasoned that the two issues have become muddled because prior to addressing whether

immunity applies a court needs to determine if a duty exists and a duty analysis is irrelevant where immunity applies. The court also reasoned that application of the public duty rule is incompatible with the legislature's grant of limited immunity in willful and wanton cases because application of the public duty rule precludes pursuing an action for willful and wanton conduct in contravention of the clear legislative decision to allow for recovery against a public entity under certain circumstances.

Immediate Impacts

The *Coleman* decision likely will increase the number and duration of lawsuits filed against public employees, despite the immunity provisions of the Tort Immunity Act. In addition, public employees now are at risk of liability for willful and wanton conduct, unless the Illinois Legislature acts to fill that gap. Additionally, public employees rightly rely on consistency in the court's decisions on critical issues such as immunity and liabilities. The court's willingness here to abandon a long-held precedent adds unfortunate uncertainty to these and other matters important to local governments.

In any case, the Illinois Legislature has the power to close the liability gap created by the abolition of the public duty rule. The Legislature may codify the rule or amend immunity laws to extend to willful and wanton conduct under certain circumstances.