

Municipal Client Alert
January 2020

**Supreme Judicial Court's Decision Regarding Tort Claims Act
Preserves Vital Protections for Municipalities**

For a discussion of these and other legal issues, please visit our website at www.mhtl.com. To receive legal updates via e-mail, contact information@mhtl.com.

On January 22nd, the Supreme Judicial Court ("SJC") issued a decision in *Magliacane v. City of Gardner* which preserved key protections for municipalities facing tort claims. The SJC's decision agreed with the arguments put forth by MHTL's attorney Cindy Amara in an amicus brief she filed in the case on behalf of the Massachusetts Municipal Lawyers Association ("MMLA").

The case arose when a City of Gardner resident sued the City claiming she had to replace a hot water heater and heating coils due to corrosion caused by the City water. The resident alleged that the City was negligent and created a nuisance by knowingly supplying corrosive water to residents.

The City moved to dismiss the case on the basis that the resident failed to timely present her claims as required by the Massachusetts Tort Claims Act ("Act"). The resident argued that the Act did not apply to her claims, because the City was acting in a "proprietary" or "commercial" capacity when selling water to its residents. Her argument was based on the historical exemption from sovereign immunity when a municipality acted in a proprietary or commercial capacity.

The SJC acknowledged that, prior to the enactment of the Act in 1978 a municipality was not protected by sovereign immunity from liability arising from proprietary or commercial activity, including the distribution and sale of water and other services. The SJC went on to explain that the determination of whether a municipal activity was proprietary or commercial activity resulted in "a crazy quilt of complex and confusing distinctions." As a result, the SJC threatened to abrogate the doctrine of sovereign immunity unless the Legislature acted definitively on the topic. In response the Legislature promulgated the Act, a comprehensive statutory scheme designed to eliminate such complexities and govern the tort liability of public employers.

The Court concluded that the Act is the exclusive remedy for bringing tort claims against the Commonwealth and its municipalities. The Court's decision ensures that litigants alleging such tort claims must abide by all of the requirements in the Act, including those requiring litigants to timely present their claims to the municipality before filing suit. The SJC also made it clear that the provisions of the Act which cap the amount of damages a litigant can recover apply to such claims.

Municipal Client Alert
January 2020

If the Court had not concluded that claims similar to those raised by the resident were governed by the Act, the financial impact on municipalities could have been catastrophic. Murphy, Hesse Toomey & Lehane's brief to the SJC laid out the magnitude of the financial impacts to a municipality if the Act did not apply to such "commercial" activities. For example, the resident alleged damages in the amount of \$3,700. If each household in Gardner (8,245 households between 2013 and 2017) alleged damages in the same amount, the City could be liable for \$30,539,800, more than forty-five percent of its annual budget for Fiscal Year 2020 (\$67,365,703). The impact of such a decision would have been astronomical considering the wide variety of activities a municipality offers for a fee (e.g. sports, recycling, trash removal).

Given the important protections that the Act provides for municipalities and the potential fiscal cost that could have been imposed through this case, the SJC's decision in *Magliacane v. City of Gardner* constitutes a major win for the Commonwealth and municipalities.

If you have any questions about this issue, please contact Cindy Amara, Rachel Mills, or the attorney responsible for your account, or call (617) 495-5000

This alert is for informational purposes only and may be considered advertising

©2020 MHTL

1169631v1