

Supreme Court Restates Definition of “Imminent Harm” as Element of Governmental Immunity Exception

In a decision to be released on November 4, 2014, the Supreme Court of Connecticut has changed the standard for determining whether a harm was “imminent” and thus falls within one of the exceptions to governmental immunity. *Haynes v. Middletown*, SC 19175 (2014). For more than 25 years, the Supreme Court had emphasized the temporal duration of the allegedly foreseeable harm as the critical factor in “imminent harm” analysis. *Burns v. Board of Education*, 228 Conn. 640 (1994); *Purzycki v. Fairfield*, 244 Conn. 101 (1998). In *Haynes*, however, the court determined that the oft-cited phrase that a risk is not imminent if it could have caused an injury “at any future time or not at all” misses the mark.

Governmental immunity shields municipalities from liability for damages caused by the negligent acts or omissions of municipal officials which require the exercise of judgment or discretion. One exception to governmental immunity is the “identifiable person-imminent harm” exception, which imposes liability when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm.

In its decision, the Supreme Court clarified that “imminent” refers to the type of harm that is “so likely to happen that the duty to act immediately is clear and unequivocal.” The Court further explained that its statement in *Evon v. Andrews*, 211 Conn. 501 (1998), that a harm is not imminent if it “could have occurred at any future time or not at all” was not focused on the duration of the alleged dangerous condition but on the magnitude of the risk that the condition created. Accordingly, the Court held that the proper standard for determining whether a harm is imminent is whether it was apparent to the municipal defendant that the dangerous condition was so likely to cause harm that the defendant had a clear and unequivocal duty to act immediately to prevent the harm. The Court further emphasized that it was overturning *Burns* and *Purzycki* to the extent they adopted a different standard.

In *Haynes*, a high school student was injured when he was pushed into a broken locker during schools hours. Following a verdict in favor of the plaintiffs, the defendant, the City of Middletown, filed a motion to set aside the verdict on the basis that it was entitled to governmental immunity, which the trial court granted, concluding that the allegedly defective locker did not constitute an imminent harm because the locker could have caused an injury “at any future time or not at all.” After several appeals, the Supreme Court ultimately granted plaintiffs’ petition for certification to appeal.

On appeal, the Court held that the trial court should have let the jury decide whether, in fact, school officials had a duty to act immediately to prevent harm (by either supervising the students or fixing the locker) because it was apparent that ongoing horseplay and the condition of the locker were likely to cause injury to a student. For the trial court to have concluded, as it did here, that no reasonable jury could have made that determination, was error, the Court held.

The Supreme Court's ruling in *Haynes* changes the municipal liability landscape. To the extent the determination of whether a harm is "imminent" previously focused on whether the harm arose out of temporary conditions, the *Haynes* decision clarifies that this is incorrect. Practitioners should be aware that, in light of *Haynes*, the determination of whether a harm is "imminent" depends upon a consideration of the magnitude of the risk that the condition created, without a focus on the duration of that condition. An allegedly dangerous condition not of limited duration may therefore constitute an imminent harm if it was apparent to a municipal official that the condition was so likely to cause harm that there was a clear and unequivocal duty to act immediately to prevent the harm.

If you would like to discuss the *Haynes* decision, please contact Michael T. Ryan, Catherine S. Nietzel, or Jonathan C. Zellner.