

# Ohio Law and Defenses Against the Elements

Lauryn Kitchen | Law Clerk

McMahon DeGulis LLP

[lkitchen@mdllp.net](mailto:lkitchen@mdllp.net) | 216.367.1422

J.D. Candidate 2019 | University of Akron School of Law



# The Act of God Defense Generally

# Summary of the Act of God Defense in Ohio

1. Acts of God must be the **direct and exclusive** cause of the injury.
2. Acts of God must not be **foreseeable** by the exercise of **reasonable foresight and prudence**.

# *City of Piqua v. Morris*, 98 Ohio St. 42 (1918)

A jury found that the damage sustained during the March 1913 flood was caused solely by an act of God, even though the city may have been negligent in the construction of the outlets.



# Case Examples: Events that are not Acts of God

## Another Cause of the Damage

1. Debris clogging the ditch.
2. Roof construction during a rainstorm.

## Reasonably Foreseeable

1. A heavy storm expected once a year.
2. Culvert that could accommodate a 100 year storm.





# The Political Subdivision Tort Liability Act

# Two Functions of Municipalities

## Governmental Functions

The provision or nonprovision, **planning or design, construction, or reconstruction of a public improvement**, including, but not limited to, a sewer system.

## Proprietary Functions

Include the **maintenance, destruction, operation, and upkeep** of a sewer system.

# The Political Subdivision Tort Liability Act

Political subdivisions are immune from tort liability unless the damage was caused by a political subdivision failing to perform a **proprietary function**.



# The Political Subdivision Tort Liability Act

But if the political subdivision can demonstrate the activity that would have prevented the damage is a **governmental function**, the political subdivision should be immune from suit.

# Navigating the Governmental/Proprietary Function Analysis

The analysis hinges upon answering this question:

What activity or remedy would have prevented the injury from occurring?

# Two Functions of Municipalities: Case Examples

## Governmental Functions

Upgrading a drainage pipe

Upgrading a sewer system

## Proprietary Functions

Failing to remove debris from a culvert

Failing to repair known areas of the sewer system

Failing to inspect a sewer line

# Distinguishing Between Governmental Functions and Proprietary Functions

Analyze:

1. The Size of the Storm
2. Any consensus among the expert witnesses
3. Evidence of maintenance and upkeep







# The Size of the Storm

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Heavy rain that fell during a short period of time on frozen ground caused flooding.

Evidence demonstrated that a storm exceeded the design capacity of the lift station.

Heavy storms resulted in sewer backups because storms continued to exceed the capacity of the sewer system.



# Consensus Among the Experts

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Experts agreed that the blocked outfall pipe was the cause of the flooding.

The Plaintiff's expert agreed that heavy rain could have been a cause for the flooding.





# Evidence of Maintenance and Upkeep

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Court determined that a city could have removed the broken sewer debris that blocked certain sewer lines.

Court concluded a township was not immune from suit because they could not provide any evidence of maintenance and upkeep.

# Evidence of Maintenance and Upkeep

Even though a clog was found in a sewer line after a flood, a Court still concluded that the city was immune from suit because the city was able to demonstrate its maintenance efforts and the city did not have prior knowledge of the clog.

Court found the pump station was regularly maintained and frequently checked during the day of the flood.



# Questions?

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