

LITIGATION INFORMATION MEMO

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The Death of (Special) Duty? NYS Court of Appeals Creates “New” Exception to Long-Standing Limitation on Municipal Liability

In Feb. 2025, the New York State Court of Appeals issued a decision in the case *Weisbrod-Moore v. Cayuga County* (2025 NY Slip Op 00903) that has major implications for municipalities and local governments.

In that case, the plaintiff brought suit against the County of Cayuga pursuant to the Child Victims Act to recover for sexual abuse allegedly suffered at the hands of her foster parents when the plaintiff was in foster care in the 1970s and 1980s. In the complaint, the plaintiff alleged that the County had a duty to exercise reasonable care in selecting, retaining and supervising her foster placement, and that the County breached this duty by placing her in the foster home and failing to adequately supervise her placement to ensure that she was safe under her foster parents' care.

Traditionally, a municipality engaged in a governmental function may be liable in negligence only where the facts demonstrate that a “special duty” was created. This “special duty” arises when: “(1) the plaintiff belonged to a class for whose benefit a statute was enacted; (2) the government entity voluntarily assumed a duty to the plaintiff beyond what was owed to the public generally; or (3) the municipality took positive control of a known and dangerous safety condition.” In *Weisbrod-Moore*, the intermediate level appellate court dismissed the action, finding that because the County was acting in a governmental capacity in administering the foster care system, plaintiff was required to establish that one of these three categories applied and failed to do so.

In a 5-2 split, the Court of Appeals overruled the intermediate appellate court's decision and reinstated the action against the County, finding that the “special duty” rule did not apply to persons who are in “governmental custody.” The Court went on to explain that by taking persons into its custody and care, governmental entities undertake a responsibility to protect those individuals from risks of harm that are reasonably foreseeable, including those harms inflicted by non-governmental third parties, such as foster parents. In so holding, the Court found that, although the plaintiff was in the physical custody of her foster parents, the County—as the plaintiff's legal custodian—had a continuing duty of care to safeguard the child.

While the Court of Appeals' decision in *Weisbrod-Moore* dealt specifically with allegations of sexual abuse by a plaintiff in foster care, its holding is far-reaching. Under *Weisbrod-Moore*, a governmental entity may be subject to potential tort liability where an individual can establish the existence of a custodial relationship. By eliminating the plaintiff's burden of establishing the existence of a “special duty,” the dissenters in *Weisbrod-Moore* warn that governmental entities may now face protracted litigation and the settlement of “meritless claims” to avoid “the risk of monumental judgments.”

If you have any questions about the information contained in this memo, please contact [Claire Bopp](#), [Karl Deuble](#), or the attorney at Bond with whom you are regularly in contact.

