

**MEMORANDUM**  
**ADMINISTRATIVE SERVICES DEPARTMENT**

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TO: Thomas E. Thomas, City Manager

SUBJECT: Nolan General Liability Claim

Date: February 9, 2012

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The Administrative Services Department conducted further review of a general liability claim filed by Kevin Nolan. His claim is in regards to his son's injury within a public street.

Background

On October 23, 2011, Mr. Nolan's son was riding his bicycle in 35 Avenue (near 26 Street) and he struck a pothole resulting in a fall. The boy was transported to the hospital for his injury and he was treated.

On December 1, 2011, Mr. Nolan filed a claim with the city requesting payment of \$384.99. This appears to be a deductible related to his health insurance plan. Overall claim costs were \$3,279.65.

On December 14, 2011, the General Liability Committee (GLC) which consists of the City Attorney, Public Works Director/Assistant City Manager, Administrative Services Director, Risk Manager, Assistant to the Public Work Director and the City's insurance consultant reviewed the claim. The decision reached is the son was not an intended user of the roadway and the city had no constructive notice of the problem. The claim was denied under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3). A copy of the statute is attached.

The Risk Manager sent an email to Mr. Nolan informing him the claim was denied.

At a later date, Mr. Nolan had a discussion with the City Attorney Kutsunis about his claim. Mr. Kutsunis reiterated the reasoning and the GLC's earlier decision. Mr. Nolan stated that he planned to take this matter to city council for review.

Overview

As a citizen of Rock Island, Mr. Nolan has a right to come before the city council for redress of any complaint. City council does have the right to overrule the GLC's decision and award Mr. Nolan his claim demands.

I would caution city council on overruling the GLC's decision for the following reasons:

- 1) Assuming Mr. Nolan is paid, the city can be subrogated by Mr. Nolan's insurance company for its medical costs. The city will have no argument against denying his insurance company's costs (\$2,894.66) if city council elects to pay Mr. Nolan's claim.

- 2) Once claimants become aware they can appeal the GLC's decision, the city council agenda will become filled with more people coming directly to them.

The GLC should remain the final arbitrator of all general liability claims for the city. If claimants disagree with the GLC's decision, they would have the right to consult with their attorney and/or pursue this matter in small claims court.

- 3) The City is self-insured for claims up to \$100,000 and has excess coverage. If the excess insurer determines the city is paying claims for which it has a legal defense, the integrity of the GLC will be questioned by the excess carrier and an increase in the city's premium may ultimately result.

**Recommendation:** The Tort Immunity statute provides an appropriate legal defense for denying the claim. Mr. Nolan has not provided any new claim information since his initial presentation. The GLC continues to recommend denial of the Nolan claim under the Tort Immunity Act.

Submitted By: John Thorson, Administrative Services Director

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Approved By: Thomas E. Thomas, City Manager

**Information maintained by the Legislative Reference Bureau**

Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as Public Acts soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the Guide.

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

**CIVIL IMMUNITIES****(745 ILCS 10/) Local Governmental and Governmental Employees Tort Immunity Act.**

(745 ILCS 10/Art. III heading)

ARTICLE III--IMMUNITY FROM LIABILITY FOR INJURY OCCURRING IN  
THE USE OF  
PUBLIC PROPERTY

(745 ILCS 10/3-101) (from Ch. 85, par. 3-101)

Sec. 3-101. As used in this Article unless the context otherwise requires "property of a local public entity" and "public property" mean real or personal property owned or leased by a local public entity, but do not include easements, encroachments and other property that are located on its property but that it does not own, possess or lease.

(Source: Laws 1965, p. 2983.)

(745 ILCS 10/3-102) (from Ch. 85, par. 3-102)

Sec. 3-102. (a) Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.

(b) A public entity does not have constructive notice of a condition of its property that is not reasonably safe within the meaning of Section 3-102(a) if it establishes either:

(1) The existence of the condition and its character of not being reasonably safe would not have been discovered by an inspection system that was reasonably adequate considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property; or

(2) The public entity maintained and operated such an inspection system with due care and did not discover the condition.

(Source: P.A. 84-1431.)

(745 ILCS 10/3-103) (from Ch. 85, par. 3-103)

Sec. 3-103. (a) A local public entity is not liable under

this Article for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public property where the plan or design has been approved in advance of the construction or improvement by the legislative body of such entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved. The local public entity is liable, however, if after the execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe.

(b) A public employee is not liable under this Article for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public property.  
(Source: Laws 1965, p. 2983.)

(745 ILCS 10/3-104) (from Ch. 85, par. 3-104)

Sec. 3-104. Neither a local public entity nor a public employee is liable under this Act for an injury caused by the failure to initially provide regulatory traffic control devices, stop signs, yield right-of-way signs, speed restriction signs, distinctive roadway markings or any other traffic regulating or warning sign, device or marking, signs, overhead lights, traffic separating or restraining devices or barriers.

(Source: P.A. 84-1431.)

(745 ILCS 10/3-105) (from Ch. 85, par. 3-105)

Sec. 3-105. (a) Neither a local public entity nor a public employee is liable for an injury caused by the effect of weather conditions as such on the use of streets, highways, alleys, sidewalks or other public ways, or places, or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near any of the foregoing or the ways adjoining any of the foregoing. For the purpose of this section, the effect of weather conditions as such includes but is not limited to the effect of wind, rain, flood, hail, ice or snow but does not include physical damage to or deterioration of streets, highways, alleys, sidewalks, or other public ways or place or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near any of the foregoing or the ways adjoining any of the foregoing resulting from weather conditions.

(b) Without implied limitation, neither a local public entity nor a public employee is liable for any injury caused by the failure of a local public entity or a public employee to upgrade any existing street, highway, alley, sidewalk or other public way or place, or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near such street, highway, alley, sidewalk or other public way or place, or the ways adjoining any of the foregoing from the standards, if any, which existed at the time of the original dedication to, or acquisition of, the right of way of such street, highway, alley, sidewalk or other public way or place, or the ways adjoining any of the foregoing, by the first local public entity to acquire the property or right of way, to standards which are or may be applicable or are imposed by any government or other person or organization between the time of such dedication and the time of such injury.

(c) Nothing in this Section shall relieve the local public entity of the duty to exercise ordinary care in the

maintenance of its property as set forth in Section 3-102.  
(Source: P.A. 84-1431.)

(745 ILCS 10/3-106) (from Ch. 85, par. 3-106)

Sec. 3-106. Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, unless such local entity or public employee is guilty of willful and wanton conduct proximately causing such injury.  
(Source: P.A. 84-1431.)

(745 ILCS 10/3-107) (from Ch. 85, par. 3-107)

Sec. 3-107. Neither a local public entity nor a public employee is liable for an injury caused by a condition of: (a) Any road which provides access to fishing, hunting, or primitive camping, recreational, or scenic areas and which is not a (1) city, town or village street (2) county, state or federal highway or (3) a township or other road district highway. (b) Any hiking, riding, fishing or hunting trail.  
(Source: Laws 1965, p. 2983.)

(745 ILCS 10/3-108) (from Ch. 85, par. 3-108)

Sec. 3-108. (a) Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.

(b) Except as otherwise provided in this Act, neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property unless the employee or the local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation and the local public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury.  
(Source: P.A. 90-805, eff. 12-2-98.)

(745 ILCS 10/3-109) (from Ch. 85, par. 3-109)

Sec. 3-109. (a) Neither a local public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.

(b) As used in this Section, "hazardous recreational activity" means a recreational activity conducted on property of a local public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.

"Hazardous recreational activity" also means:

(1) Water contact activities, except diving, in

places where or at a time when lifeguards are not provided and reasonable warning thereof has been given or the

injured party should reasonably have known that there was no lifeguard provided at the time.

(2) Diving at any place or from any structure where diving is prohibited and reasonable warning as to the specific dangers present has been given.

(3) Animal racing, archery, bicycle racing or jumping, off-trail bicycling, boat racing, cross-country and downhill skiing, sledding, tobogganing, participating in an equine activity as defined in the Equine Activity Liability Act, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swinging where the person or persons furnished their own rope, water skiing, white water rafting, and wind surfing.

(c) Notwithstanding the provisions of subsection (a), this Section does not limit liability which would otherwise exist for any of the following:

(1) Failure of the local public entity or public employee to guard or warn of a dangerous condition of which it has actual or constructive notice and of which the participant does not have nor can be reasonably expected to have had notice.

(2) An act of willful and wanton conduct by a public entity or a public employee which is a proximate cause of the injury.

Nothing in this subsection creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this Section shall limit the liability of an independent concessionaire, or any person or organization other than the local public entity or public employee, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization.

(Source: P.A. 89-111, eff. 7-7-95; 89-502, eff. 6-28-96.)

(745 ILCS 10/3-110) (from Ch. 85, par. 3-110)

Sec. 3-110. Neither a local public entity nor a public employee is liable for any injury occurring on, in, or adjacent to any waterway, lake, pond, river or stream not owned, supervised, maintained, operated, managed or controlled by the local public entity.

(Source: P.A. 84-1431.)



ROCK ISLAND  
ILLINOIS

December 1, 2011

Kevin Nolan  
3400 20<sup>th</sup> St Court  
Rock Island, IL 61201

[kevin.nolan@ecogistics.org](mailto:kevin.nolan@ecogistics.org)

Dear Kevin,

In follow up to our conversation I have attached a copy of our Accident/Incident Report. Please complete the section on "Describing Accident and List of the Extent of the Property Damage" as thoroughly as possible as it is important I fully understand what happened/occurred. I will need copies of the invoice/s as that will be the amount you are requesting for reimbursement.

I always put information about the Illinois Tort Immunity Act in my initial correspondence. The purpose of the Tort Immunity Act is to protect public entities from some but not all liability arising from the operation of government. You can also Google it by inserting the following into you Google search bar: "**CIVIL IMMUNITIES (745 ILCS 10) Local Governmental and Governmental Employees Tort Immunity Act**". It explains some of the immunities local governments experience as we are in the business of running government.

I wanted to give you this information in advance so you are not misled. I am not the decision maker when it comes to these matters, I function as a liaison, gathering information, investigating the claim and proceeding to take the claim to the General Liability Committee (GLC). We have our GLC meetings on a monthly basis, I present each claim and the committee will decide to accept or deny the claim. If you have any questions please do not hesitate to contact me.

Sincerely,

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Patrick Doherty  
Risk Manager  
City of Rock Island  
1528 Third Ave,  
Rock Island, IL  
309-732-2052  
[doherty.patrick@rigov.org](mailto:doherty.patrick@rigov.org)



ROCK ISLAND  
ILLINOIS

**Personnel Department**

**ACCIDENT / INCIDENT REPORT**

Date 12-1-11

Please answer the following questions in detail so the Personnel Department may complete our investigation into this matter and properly evaluate any and all claims arising thereof. Return the completed form as soon as possible including any attached estimates or information documenting your loss.

Name Kevin Nolan  
Printed

Phone # 901-831-3361 Date of Loss 10/23/11

Exact Location of Accident / Incident 35<sup>th</sup> Ave and 2<sup>nd</sup> Street intersection

Describe Accident / Incident in Detail Sam hit pothole and was thrown off of his bike leaving him unconscious on the pavement. Ambulance transported him to Hospital where he was treated for his injuries.

Name and Address of Attending Physician (if applicable)  
Emergency Room Physician

Attach copies of all medical expenses or estimate to repair / replace damaged property. An inspection will be required by a Personnel Department representative to verify any claimed property damage loss. Do not dispose of any damaged property until it has been inspected and the verified by the City of Rock Island

Signature [Handwritten Signature]

Please Return to:  
City of Rock Island Personnel Department  
1828 - 3<sup>rd</sup> Avenue  
Rock Island, IL 61201  
Attention: Risk Manager



**TRINITY  
MEDICAL CENTER**  
IOWA HEALTH SYSTEM

**HOSPITAL STATEMENT**  
KEEP THIS PORTION FOR YOUR RECORDS

**Customer Service Phone Hours:**  
Monday - Thursday 8:00 a.m. - 6:30 p.m.  
Friday 8:00 a.m. - 4:30 p.m.  
Toll Free 888-343-4165  
Questions: <http://www.ihc.org/billing>  
On-line BillPay: <https://billpay.ihc.org>

Guarantor Name	Guarantor No.	Statement Date	Page
[REDACTED]	440530	Nov 26, 2011	1 of 1



Financial Assistance is available to those who qualify. If you believe you may qualify for financial assistance please contact us at 1-888-343-4165.

Service Date	Account No.	Facility	Patient Name	Account Activity	Amount
10/23/2011	208831586	TQW	[REDACTED]	CT Scan	1,440.25
				CT Scan	1,297.50
				Drug charge	4.15
				Drug charge	6.75
				Emergency Room	531.00
				PYMT/ADJ	-2,894.66
Balance Due:					384.99

Thank you for making payment arrangements. This a reminder that your payment is now due. Thank you.

**Balance Due**

**\$384.99**

Contract payment arrangements have been made, if new accounts are added please call 888-343-4165 and reschedule.

**RETURN THIS PORTION WITH YOUR PAYMENT**

IF PAYING BY CREDIT CARD, PLEASE SELECT CORRECT CARD AND FILL OUT BELOW

<input type="checkbox"/> VISA	<input type="checkbox"/> M/C	<input type="checkbox"/> DISC	V. CODE
CARD NUMBER			EXPR. DATE
SIGNATURE			AMOUNT
DATE	PAY THIS AMOUNT	GUARANTOR NO.	
Nov 26, 2011	\$384.99	440530	

Payment Due Date 12/14/11

AMOUNT PAID \$



**TRINITY  
MEDICAL CENTER**  
IOWA HEALTH SYSTEM  
CENTRAL BILLING OFFICE  
1200 PLEASANT STREET  
DES MOINES, IOWA 50309

Please check box if address below is incorrect or insurance information is changed. Indicate change(s) on reverse side.



[REDACTED] NOLAN  
[REDACTED]  
ROCK ISLAND, IL 61201-6201



TRINITY REGIONAL HEALTH SYSTEM  
PO BOX 7265  
DES MOINES, IA 50309-7265

**MAKE CHECKS PAYABLE TO:**

The amount due represents your financial obligation to the hospital  
You will be billed separately for any physician charges

**Patrick D. Doherty**

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**Subject:** FW: GLC meeting

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**From:** Patrick D. Doherty  
**Sent:** Wednesday, December 14, 2011 4:09 PM  
**To:** 'Kevin Nolan'  
**Subject:** RE: GLC meeting

Kevin,

I am sorry but your claim was denied. The basis for the denial is the Illinois Tort Immunity Act. As I said in my letter of 12-1, the purpose of the Tort Immunity Act is to protect public entities from some but not all liability arising from the operation of government. This is one of those situations. Again, you can goggle it by inserting the following into you Google search bar: "CIVIL IMMUNITIES (745 ILCS 10/) Local Governmental and Governmental Employees Tort Immunity Act". Another aspect of the Tort Immunity Act is to prove if the governmental entity acted "willful and wanton" under the circumstances; we did not. I am sorry.

Patrick

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**From:** Kevin Nolan [<mailto:kevin.nolan@ecogistics.org>]  
**Sent:** Wednesday, December 14, 2011 3:27 PM  
**To:** Patrick D. Doherty  
**Subject:** Re: GLC meeting

Patrick:

Did you have an outcome for the claim that I submitted?

Kevin Nolan  
Ecogistics  
120 16 1/2 Street  
Rock Island, IL 61201  
[kevin.nolan@ecogistics.org](mailto:kevin.nolan@ecogistics.org)  
662-420-7378 Office Phone  
309-948-2077 Fax  
901-831-3361 Mobile  
[www.ecogistics.org](http://www.ecogistics.org)

On Dec 2, 2011, at 6:52 AM, Kevin Nolan wrote:

Do I need to be present and or is there any benefit for me to be there? If so, when and where is the meeting?

Thanks,

Kevin Nolan  
Ecogistics

120 16 1/2 Street  
Rock Island, IL 61201  
[kevin.nolan@ecogistics.org](mailto:kevin.nolan@ecogistics.org)  
662-420-7378 Office Phone  
309-948-2077 Fax  
901-831-3361 Mobile  
[www.ecogistics.org](http://www.ecogistics.org)

On Dec 1, 2011, at 4:02 PM, Patrick D. Doherty wrote:

Kevin,  
Our next General Liability meeting is December 14<sup>th</sup> and your claim will be on the agenda.  
Thanks  
PD

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**From:** Kevin Nolan [<mailto:Kevin.nolan@ecogistics.org>]  
**Sent:** Thursday, December 01, 2011 3:54 PM  
**To:** Patrick D. Doherty  
**Subject:** Re: son's age

Thanks again for your support. I appreciate it very much.

Kevin Nolan  
Ecogistics  
120 16 1/2 Street  
Rock Island, IL 61201  
[kevin.nolan@ecogistics.org](mailto:kevin.nolan@ecogistics.org)  
662-420-7378 Office Phone  
309-948-2077 Fax  
901-831-3361 Mobile  
[www.ecogistics.org](http://www.ecogistics.org)

On Dec 1, 2011, at 3:43 PM, Patrick D. Doherty wrote:

Kevin,  
I am putting your claim in our database. What is your son's age?  
Thanks  
PD

**Patrick Doherty**  
Risk Manager  
City of Rock Island  
Rock Island, IL 61201  
309-732-2052