

MUNICIPAL LIABILITY AND IMMUNITY FOR STORMWATER CLAIMS

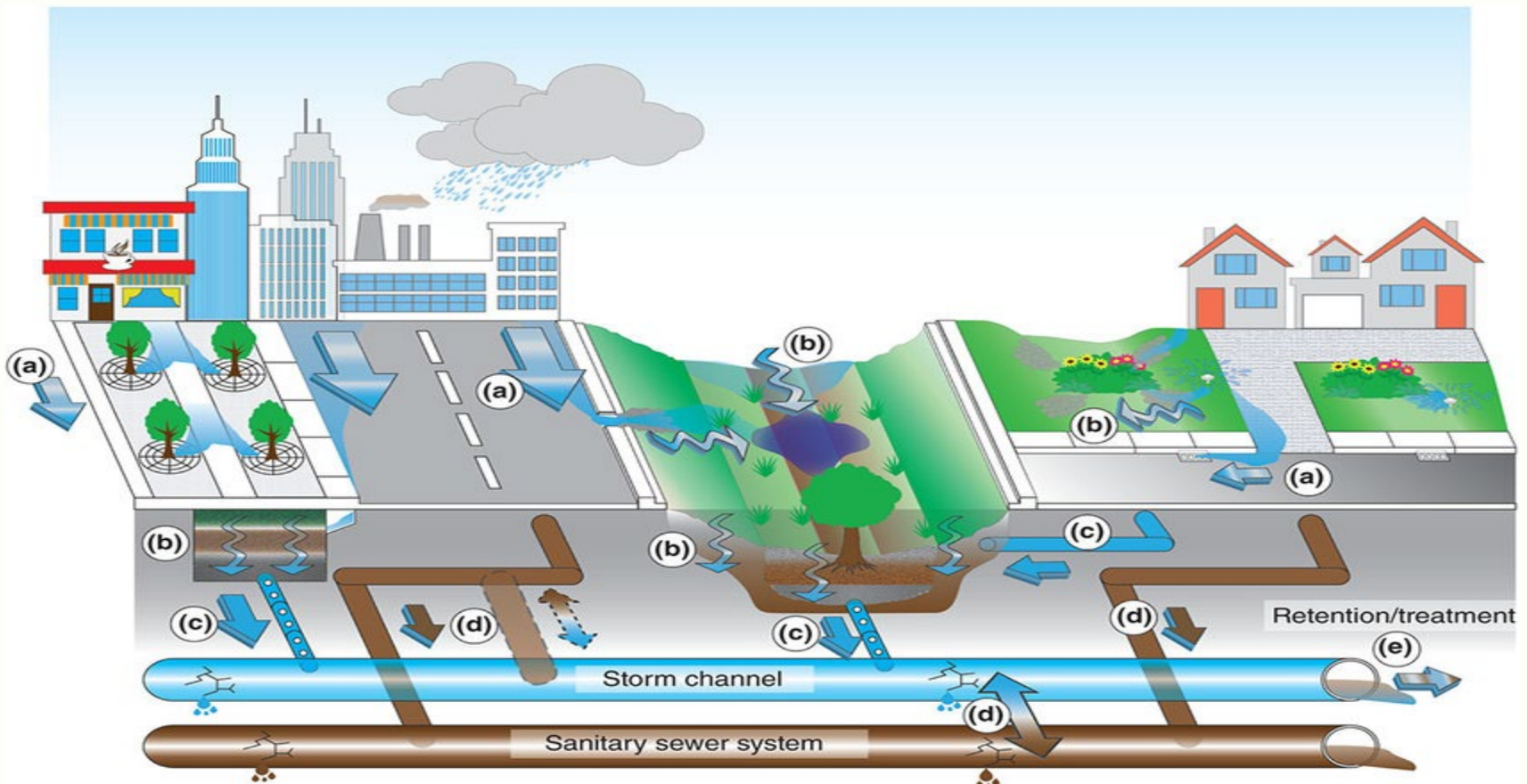
Attorney Remzy D. Bitar

**2023 Waukesha County Stormwater Workshop with
Wisconsin Land and Water**

Negligence Claims: Overflowing Storm Sewers, Sewer Backups and Broken Water Mains



Immunity Under Wis. Stat. § 893.80(4)



Contractor Immunity and Liability

- ✓ Government approved reasonably precise specifications
- ✓ Contractor conformed to those specifications
- ✓ Contractor warned supervising governmental authority about dangers



Exceptions to Immunity

- **Ministerial Duties**
- **Notice of Defects**
- **Discharging Collected Water**



Damage Claims From Natural Versus Artificial Accumulation of Water/Snow



Focus is the Presence or Absence of a Negligently Designed System

- Purpose of structures/systems, grading, etc.
- How designed/built
- Adequate for stormwater



Water Damage Claims from Construction and Maintenance of Roads



Wisconsin Statute § 88.87's Purpose

“It is recognized that the construction of highways and railroad grades must inevitably result in some interruption of and changes in the preexisting natural flow of surface waters and that changes in the direction or volume of flow of surface waters are frequently caused by the erection of buildings, dikes and other facilities on privately owned lands adjacent to highways and railroad grades. The legislature finds that it is necessary to control and regulate the construction and drainage of all highways and railroad grades so as to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters due to a highway or railroad grade construction and to impose correlative duties upon owners and users of land for the purpose of protecting highways and railroad grades from flooding or water damage.”



Liability Under § 88.87(2)(a)

- Constructs/maintains highway grade**
- Over natural drainage/watercourse**
- Impedes water flow**
- Unreasonable manner**
- Unnecessary accumulation/soaking**
- Duty: sound engineering practices & maintain original flow lines**

Claims Under the Inverse Condemnation Statute or “Takings” Clauses



Constitutional and Statutory Causes of Action



Taking vs. Damage to Property



SCOTUS: *Arkansas Game & Fish*



Water Damage and Flooding Alleged to Constitute a Public or Private Nuisance



Municipal LAW

& LITIGATION GROUP

