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**INTRODUCTION: MUNICIPAL LIABILITY IN
NEW YORK**

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INTRODUCTION: MUNICIPAL LIABILITY IN NEW YORK

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1993

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Symposium: Municipal Liability

INTRODUCTION

Patricia E. Salkin [FNd]

In recognition of the need to search for ways in which municipalities can reduce their exposure to municipal liability, the Government Law Center of Albany Law School sponsored a one day conference in May, 1993, that brought together municipal officials, attorneys, academics, and the insurance industry to begin a dialogue on identifying the myriad issues in developing risk management and other preventive law strategies to minimize this costly problem.

The Government Law Center is grateful to CIGNA Property and Casualty Companies and Titan Indemnity and Insurance Companies for their generous support of the program, as well as to the Association of Towns of the State of New York, the New York State Association of Counties, the New York State Supervisors and County Legislators Association, the New York Conference of Mayors and Other Municipal Officials, and the Municipal Law Section of the New York State Bar Association for their participation. We are especially pleased that the Syracuse Law Review had the vision and the willingness to publish many of the papers presented at the conference in a special symposium edition. This volume of the Law Review will serve as an invaluable resource to all those interested in current municipal liability issues.

I. Defining the Problem

Due to escalating costs associated with federal and state mandates on local government combined with increasing costs and demands of local service delivery, municipalities across the country continue to find themselves in a financial squeeze. While many local officials search for new and innovative methods of raising revenue needed to meet these needs, municipal attorneys are increasingly being called upon to defend lawsuits alleging liability on the part of the municipality they serve.

Municipalities are finding themselves exposed to liability resulting from federal and state statutes, as well as from common law negligence actions. Section 1983 civil rights actions can be particularly troublesome to a locality because a successful plaintiff may recover damages and attorney's fees. The Americans with Disabilities Act, the Fair Housing Act, and a host of environmental statutes present opportunities for further federal claims of liability. Liability can also arise from the provision of routine services and actions by municipalities including local highway and public works departments, police and fire departments, and hiring and firing practices. In a litigious society, municipalities are viewed as a "deep pocket" despite the fact that often they can barely cover the costs associated with operating the government. A growing number of local governments are being notified by their insurance carriers of escalating premiums and, in some cases, a refusal to continue coverage as a result of paid liability claims.

Professor Susan MacManus' paper details the results of her national study on the impact of litigation costs on municipalities. She reports that litigation costs have increased an average of ten percent in the past two years, with two-thirds of municipal respondents confirming that this increase has had an impact on their local budget. Professor MacManus' presentation sets the framework for much of the remainder of the papers in the symposium.

II. Specific Areas of Potential Liability

Robert Brookes provides a current analysis of the impact of the Americans with Disabilities Act on municipalities including barriers, zoning, services and programs. He predicts that the Act, which was designed to provide access to a defined insular and

segregated segment of society, will in practice become a weapon for disgruntled employees who may not have been the intended recipients of the Act's protections. Professor David Markell offers reflections on municipal liability resulting from environmental statutes and regulations.

III. De-mystifying the Common Law

Judge Stewart Hancock presents a discussion of the development of New York's case law on municipal liability. This paper provides a valuable road map for what is often described as a confusing maze of rules and special exceptions in the common law. Professor Horace Robertson offers insight into municipal tort liability and special duty issues with respect to police, fire, and safety.

IV. Innovative Risk Management Strategies

Thomas Bergdall, Barbara Monahan and John J. Copelan, Jr. each offer practical advice to municipalities and their attorneys to assist in reducing exposure to liability, limiting costs, and achieving quicker resolutions. From the bifurcation of issues used in New York City to the preventive law program institutionalized by the Broward County Attorney's Office and the use of litigation and appeals to manage risk, these three papers offer a wealth of ideas for municipal attorneys who are developing and implementing new strategies to assist local governments.

The Government Law Center hopes that this symposium will serve as the beginning of meaningful dialogue on how municipalities across the country can reduce exposure to liability. This discussion should include methods for educating municipal officials about the vulnerability of local governments to allegations of liability; programs to assist municipal attorneys and staff in the development of self-assessment, training, and risk management programs for local governments and an examination of the policy implications of municipal liability under federal and state statutes as well as under the common law.

The Government Law Center was established at Albany Law School in 1978 to promote inter-disciplinary study and research in government and the problems facing government; to introduce law students to methods of policy analysis and to public service; and to serve as a resource to government at all levels in the resolution of specific problems. The Center focuses on legal aspects of important public policy issues which assist governments in meeting new challenges. The Center's studies outline options for legal and policy reform based upon a national and international comparative research methodology. Through cooperative efforts with other academic institutions, the non-profit sector, the private sector, and governmental entities, the Center has created both an environment for the open exchange of ideas and a laboratory for innovation.

[FNd]. Director of the Government Law Center, Albany Law School.