

# **Bond Case Briefs**

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## **EMINENT DOMAIN - NORTH CAROLINA**

### **Beroth Oil Company v. North Carolina Department of Transportation**

**Court of Appeals of North Carolina - November 21, 2017 - S.E.2d - 2017 WL 5584057**

Landowners brought inverse condemnation action against Department of Transportation for recordation of transportation corridor map affecting their properties.

The Superior Court granted landowners' motion for partial judgment on the pleadings, granted landowners' partial summary judgment, and established rules and procedures by which Department would adhere moving forward. Department appealed.

The Court of Appeals held that:

- Department did not hold substantial right involving title and area taken;
- State waived sovereign immunity;
- Department was judicially estopped from denying that no taking had been admitted; and
- Separation of powers did not justify immediate review of trial court's order.

Department of Transportation did not hold substantial right involving title and area taken in eminent domain proceeding, and thus Department did not carry its burden of demonstrating that order from which it sought to appeal was immediately appealable despite interlocutory nature, since the right was of one who holds an interest in property and not of the condemnor when that condemnor holds no interest.

State waived sovereign immunity to the extent of the rights afforded in statute governing transportation in condemnation action regarding recordation of transportation corridor map, and thus State could not immediately appeal trial order, since General Assembly established statutory framework conferring rights to landowners when State exercised its eminent domain power.

Department of Transportation was judicially estopped from denying that no taking had been admitted following Department's recordation of transportation corridor map, and thus trial order could not be appealed as interlocutory appeal, where Department admitted map recordation placed restrictions on landowners' fundamental property rights, other courts determined that taking occurred based on Department's admission, and Department was attempting to avoid payment of just compensation via technical argument denying taking.

Constitutionally-mandated separation of powers did not provide substantial right justifying immediate review of trial court's order in eminent domain proceeding regarding recordation of transportation corridor map, where taking has been established and statute provided landowners avenue for compensation.