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Connolly v. Long Island Power Authority

Court of Appeals of New York - February 20, 2018 - N.E.3d - 2018 WL 942321 - 2018 N.Y. Slip Op. 01148

Property owners brought separate actions against public power authority and its operator, seeking to recover damages for negligence arising out of damage to their properties that allegedly occurred as result of negligent preparation for and reaction to a hurricane.

The Supreme Court, Queens County, separately denied defendants' motion to dismiss for failure to state a cause of action. Defendants appealed. The Supreme Court, Appellate Division, affirmed, and certified consolidated appeal to the Court of Appeals.

The Court of Appeals held that owners sufficiently alleged that operator was acting in a proprietary, rather than a governmental capacity, in failing to preemptively de-energize electrical grid.

Allegations in property owners' negligence action against public power authority and its operator, that operator failed to preemptively de-energize or otherwise suspend the provision of electricity before arrival of a hurricane, that operator received repeated warnings that the hurricane would cause a massive surge creating a risk of fire when salt water came into contact with electrical equipment, and that storm surge caused fires that damaged owners' property, sufficiently alleged that operator was acting in a proprietary, rather than a governmental capacity, as would preclude governmental function immunity, where the provision of electricity had traditionally been a private enterprise.