

Bond Case Briefs

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Veolia Water Indianapolis, LLC v. National Trust Ins. Co.

Supreme Court of Indiana - February 6, 2014 - N.E.3d - 2014 WL 486181

Insurers of restaurant brought action against city, city's waterworks department, and for-profit water company that city contracted with after frozen fire hydrants caused delay in fighting fire at restaurant. The Superior Court denied city's motion to dismiss and company's motion for judgment on the pleadings. City and company appealed. The Court of Appeals reversed.

On petition to transfer, the Supreme Court of Indiana held that:

- City's decision to hire water company to provide water for fire protection services did not constitute a discretionary function for which city would be entitled to statutory immunity; but
- City was entitled to common law sovereign immunity on insurers' claim that city failed to provide an adequate supply of water from which to fight fire, and
- For-profit, private company was not entitled to common law sovereign immunity on insurers' claims that company failed to provide an adequate supply of water from which to fight fire.

City's decision to hire water company to provide water for fire protection services did not constitute a discretionary function for which city would be entitled to statutory immunity under the Tort Claims Act for damages that resulted from a fire that destroyed a restaurant when firefighters' efforts were delayed due to frozen fire hydrants. City made no deliberate policy decision to fail to require company to follow the terms of a management agreement by properly maintaining fire hydrants' water supply, or make a conscious decision about policy formation which involved assessment of competing priorities and a weighing of budgetary considerations or the allocation of scarce resources.

The provision of adequate fire protection constituted an essential service, and thus, city's failure to provide adequate fire protection constituted an exception to governmental tort liability under *Campbell v. State*, and city was entitled to common law sovereign immunity on insurers' claim that city failed to provide an adequate supply of water from which to fight fire.

For-profit, private company that contracted with city to provide a governmental service was not entitled to common law sovereign immunity on insurers' claims that company failed to provide an adequate supply of water from which to fight fire; as an autonomous entity, company had the independent authority to make internal decisions, such as insuring itself against negligence.