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Brown & Gay Engineering, Inc. v. Olivares

Supreme Court of Texas - April 24, 2015 - S.W.3d - 2015 WL 1897646

Representative of driver who was killed when his vehicle was struck by a vehicle driven by an intoxicated driver traveling the wrong way on a tollway brought an action against various entities, including private engineering firm that was contracted by county toll road authority to design the tollway.

The District Court granted firm's plea to the jurisdiction based on governmental immunity under the Texas Tort Claims Act. Representative appealed. The Houston Court of Appeals reversed and remanded. Firm petitioned for review.

As matters of apparent first impression, the Supreme Court of Texas held that:

- Extension of sovereign immunity to firm would not further the doctrine's rationale, and
- Firm was not entitled to share in authority's sovereign immunity on the ground that authority was statutorily authorized to engage firm's services and would have been immune had it performed those services itself.

Extension of sovereign immunity to private engineering firm that was contracted by county toll road authority to design a tollway would not further the doctrine's rationale, in a case in which firm was sued by representative of driver who was killed when his vehicle was struck by a vehicle driven by an intoxicated driver traveling the wrong way on the tollway. Sovereign immunity was designed to guard against the unforeseen expenditures associated with the government's defending lawsuits and paying judgments that could hamper government functions by diverting funds from their allocated purposes, and immunizing firm would in no way further that rationale.

Private engineering firm that was contracted by county toll road authority to design a tollway was not entitled to share in authority's sovereign immunity on the ground that authority was statutorily authorized to engage firm's services and would have been immune had it performed those services itself, in a case which firm was sued by representative of driver who was killed when his vehicle was struck by a vehicle driven by an intoxicated driver traveling the wrong way on the tollway. The lawsuit did not threaten allocated government funds and did not seek to hold firm responsible merely for following authority's directions, and firm was responsible for its own alleged negligence as a cost of doing business and could insure against that risk.