

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **INVERSE CONDEMNATION - VIRGINIA**

### **AGCS Marine Insurance Company v. Arlington County**

**Supreme Court of Virginia - June 15, 2017 - S.E.2d - 2017 WL 2599187**

Property insurers brought subrogation action against county to recover for inverse condemnation as result of sewer backup into insured's grocery store.

The Circuit Court sustained demurrer and denied motion for leave to file an amended complaint. Insurers appealed.

The Supreme Court of Virginia held that:

- Allegation that county failed to properly maintain and operate sewage treatment plant causing backup was insufficient to state a claim for inverse condemnation;
- Amended complaint stated inverse condemnation claim; and
- "Private property" under state constitutional provision requiring just compensation for damaging or taking private property for public use applies to personal property.

Allegation that county failed to properly maintain and operate sewage treatment plant causing backup in grocery store was insufficient to state a claim for inverse condemnation. No allegation suggested that county planned or designed its system to allow the backflow in an effort to keep the entire county sewer system operating for public use.

Amended complaint stated inverse condemnation claim for sewage backup into grocery store by alleging that county purposefully diverted sewage and/or storm water from closed treatment facility or pump station, never increased treatment plant capacity or followed engineers' recommendations, knew that sewage back-flow onto the property of others would occur, and adopted policies, procedures, and practices that made it most probable that a sewage backup would occur.