

Bond Case Briefs

Municipal Finance Law Since 1971

IMMUNITY - NEW YORK

Bauer v. County of Erie

Supreme Court, Appellate Division, Fourth Department, New York - October 9, 2020 - N.Y.S.3d - 2020 WL 5987012 - 2020 N.Y. Slip Op. 05623

Commuter's estate brought wrongful death action against town and police department alleging negligent failure to rescue commuter who was found dead in vehicle three days after becoming stuck in snow bank during a town-issued travel ban during severe winter storm and making calls to town's 911 dispatcher.

The Supreme Court, Erie County, granted summary judgment in favor of town and police department. Estate appealed.

The Supreme Court, Appellate Division, held that:

- Town and police department were acting in a governmental capacity for purposes of municipal negligence, and
- Town and police department did not voluntarily assume a duty of care to commuter to form a special relationship.

Town and police department were acting in a governmental capacity when a commuter made calls to town's 911 dispatcher during severe winter storm in which town had issued travel ban, and thus commuter's estate was required to prove special duty in order to impose negligence liability on town and police department for failing to rescue commuter, who was found dead in vehicle three days after becoming stuck in snow bank and making 911 calls.

Town and police department did not voluntarily assume a duty of care to commuter that would generate reasonable reliance, and thus there was no special relationship on which to impose negligence liability on town and police department for failing to rescue commuter who was found dead in vehicle three days after becoming stuck in snow bank during a town-issued travel ban during severe winter storm and making calls to town's 911 dispatcher; town and police department did not assume, through promise or action, any duty to act on commuter's behalf, and any alleged reliance upon representations made by town or police department was not justifiable.