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EMINENT DOMAIN - MICHIGAN

Bruneau v. County of Midland

United States District Court, E.D. Michigan, Northern Division - July 26, 2023 - F.Supp.3d - 2023 WL 4765562

Property owners, whose properties were flooded after dam collapsed after several days of rain due to static liquefaction, brought putative class action against counties in which dam was located, alleging gross negligence and violations of both Fifth Amendment's Takings Clause under § 1983 and Takings Clause of Michigan's constitution.

Counties moved for summary judgment.

The District Court held that:

- Counties' conduct in setting lake levels to attempt to protect property values of nearby properties was not "taking" under Takings Clause of Fifth Amendment;
- There was no evidence that counties flooded nearby properties to achieve some public benefit, as would be required for owners to support their claim that counties' actions were taking under Michigan's Takings Clause; and
- Counties were entitled to governmental immunity from claims of gross negligence.

Even if counties in which dam was located knew that they had set lake levels at dangerously high levels that would increase risk of dam failure, counties' conduct in setting lake levels to attempt to protect property values of nearby properties was not "taking" under Takings Clause of Fifth Amendment, in putative class action against counties by owners of properties, whose properties were flooded after dam collapsed after several days of rain due to static liquefaction, where counties did not flood properties to achieve any benefit for any third party.

There was no evidence that counties, in which dam was located, flooded nearby properties to achieve some public benefit, as would be required for owners of properties to support their claim that counties' actions in setting lake levels to attempt to protect property values of nearby properties were taking under Michigan's Takings Clause, in putative class action by owners after dam collapsed following several days of rain due to static liquefaction.

Counties in which dam was located were entitled to governmental immunity from claims of gross negligence brought by property owners, whose properties were flooded after dam collapsed after several days of rain due to static liquefaction, where owners only named counties themselves as parties, rather than naming any individual employees of counties.