SUPREME COURT OF NEW HAMPSHIRE

# Farm Family Casualty Insurance Co. as Subrogee of Marc Janetos and Deborah Janetos v. Town of Rollinsford, 155 N.H. 669

927 A.2d 1234 (2007) · No. No. 2006-791 · Decided July 17, 2007


## SUMMARY

The Supreme Court of New Hampshire affirmed dismissal of Farm Family Casualty Insurance Company's subrogation negligence action against the Town of Rollinsford. The court held that RSA 507-B:2 did not waive municipal immunity because the town's fire department neither owned, occupied, maintained, nor operated the insured property within the meaning of the statute.


## CASE DETAILS

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| COURT | Supreme Court of New Hampshire |
| WRITING FOR THE COURT | Broderick, C.J.; Dalianis, J.; Duggan, J.; Galway, J.; Hicks, J. |
| JURISDICTION | New Hampshire |
| DECIDED | July 17, 2007 |
| DOCKET | No. 2006-791 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Farm Family appealed the Superior Court's dismissal of its negligence and subrogation action against the Town of Rollinsford for failure to state a claim. |
| STANDARD OF REVIEW | The court reviewed the motion to dismiss de novo, assumed the truth of the facts alleged, and construed reasonable inferences in the plaintiff's favor; dismissal was proper if those facts did not constitute a basis for legal relief. |
| PRECEDENTIAL VALUE | Published opinion; precedential authority of the Supreme Court of New Hampshire. |
| PARTIES | Farm Family Casualty Insurance Company as Subrogee of Marc Janetos and Deborah Janetos v. Town of Rollinsford |

## TOPICS

municipal liability · statutory interpretation · insurance · appellate procedure · standard of review

## PRACTICE AREAS

municipal liability | insurance subrogation | negligence | statutory interpretation | appellate procedure

## QUESTIONS PRESENTED

1. Whether the alleged negligent firefighting and restoration of electrical service constituted municipal ownership, occupation, maintenance, or operation of the insureds' property under RSA 507-B:2.
2. Whether the complaint stated a claim for municipal liability under RSA chapter 507-B.

## HOLDINGS

1. The phrase 'all premises' in RSA 507-B:2 is limited to premises owned, occupied, maintained, or operated by the governmental unit.
2. A municipality's temporary seizure or control of private property while fighting a fire does not constitute 'occupation' under RSA 507-B:2; occupation denotes an ownership-like situation such as a lease or rental, not a brief, transitory presence.
3. Firefighting at private property, operating firefighting equipment there, and cutting off or restoring electrical power do not constitute 'operation' of the property under RSA 507-B:2.

## KEY QUOTATIONS

> *"By its plain language, the statute places a limitation upon the phrase "all premises," narrowing that term to premises "owned, occupied, maintained or operated" by governmental units."* (927 A.2d at 1237)

> *"That is, by "occupation," the legislature intended to denote an ownership-like situation such as lease or rental of a property, rather than a seizure or a brief, transitory presence."* (927 A.2d at 1238)

> *"But neither those acts nor any other acts alleged by Farm Family rise to the level of "operating" the property in the manner contemplated by the statute."* (927 A.2d at 1239)

## FACTUAL BACKGROUND

The Rollinsford Fire Department responded to a fire at a garage owned by Farm Family's insureds, Marc and Deborah Janetos. Firefighters cut off electrical power, extinguished the fire, and restored service without electrically isolating the damaged portion of the structure. Approximately two hours later, a second electrical fire began in another part of the garage and destroyed the garage and the home; Farm Family paid the insureds' claim and sued the town as subrogee.

## PROCEDURAL HISTORY

After Farm Family paid its insureds' fire-loss claim, it sued the Town of Rollinsford as subrogee, alleging that municipal firefighters negligently restored electrical service without isolating damaged wiring, causing a second fire. The Superior Court granted the town's motion to dismiss, concluding that RSA 507-B:2 did not authorize liability because the town did not own, occupy, maintain, or operate the insureds' property. The Supreme Court of New Hampshire affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Paul v. Sherburne, 153 N.H. 747, 749, 903 A.2d 1011 (2006)
- In the Matter of Liquidation of Home Ins. Co., 154 N.H. 472, 479, 913 A.2d 712 (2006)
- Weare Land Use Assoc. v. Town of Weare, 153 N.H. 510, 511-12, 899 A.2d 255 (2006)