

**04-1618 NORTHERN INSURANCE CO. OF NEW YORK V. CHATHAM COUNTY,
GEORGIA**

DECISION BELOW: No. 04-13308, unreported

LOWER COURT CASE NUMBER: 04-13308

QUESTION PRESENTED:

In this action, the Appellate Court affirmed the decision of the United States District Court Southern District of Georgia Savannah Division holding that the County was entitled to sovereign immunity in a case involving a case involving a hazard to navigation from a drawbridge collapsing onto a boat sailing beneath the defective bridge while it was raised causing extensive damage, thereby creating a conflict of authorities between the Georgia Court of Appeals for the Eleventh Circuit and the Supreme Court of Georgia, the Constitution and statutes of the State of Georgia, and rulings of the U.S. Supreme Court. The questions presented are:

1. Did the U.S. District Court and Court of Appeals err in ruling that sovereign immunity applied to a county which negligently operated and maintained a drawbridge over navigable waters, which collapsed while raised for passage of a yacht, which bridge had collapsed previously causing damage to the yacht involved in this lawsuit and other yachts previously, contrary to the U.S. Supreme Court and of the Supreme Court of Georgia rulings which denied sovereign immunity as that would conflict with maritime law thereby creating a conflict under rulings of the U.S. Supreme Court and the Supreme Court of Georgia.
2. Did the United States District Court and the Court of Appeals err in ruling that the county was entitled to sovereign immunity for damage to a yacht traveling under a drawbridge constructed, operated, and maintained by the County which damage was caused by the collapse of the bridge while raised for passage of the yacht as Georgia law provides that if a county has a duty to repair and maintain the roads and bridges that duty, then the county must also bear the liability for any defective bridge for damages occurring resulting from such repairs provided the county has not obtained a performance bond (which was not obtained for this bridge at the time of this damage). O.C.G.A. § 32-4-71, thereby creating a conflict between the rulings of the Eleventh Circuit, the U.S. Court of Appeals, and Georgia statutory law.
3. Did the U.S. District Court and U.S. Court of Appeals err in determining that a Defendant/Appellee, Chatham County, as a political subdivision of the state was an "arm of the state" when the County alone would be responsible for satisfying the adverse judgment, and the State of Georgia has no control over the maintenance and operation of the bridge all of which would be required if the state is to be granted sovereign immunity in this claim thereby being in conflict with the same Court's ruling in *Vierling v. Celebrity Cruises*, 339 F.3d 1309 (11th Cir. 2003).
4. Did the court err in ruling that Chatham County is entitled to sovereign immunity even though the damages inflicted on the Plaintiffs were caused by the negligent performance of ministerial act and the creation of a continuing nuisance which the Constitution of the State of Georgia provides that sovereign immunity is not granted in such instances, thereby creating a conflict between the ruling of the U.S. Court of Appeals for the Eleventh Circuit and the Constitution of the State of Georgia.
5. Did the U.S. District Court and the U.S. Court of Appeals err in dismissing the plaintiffs' claim on the grounds of residual common law and sovereign immunity thereby ignoring the numerous cases decided by the U.S. Supreme Court which held state and local government authorities responsible for creating hazards to navigation.
6. Did the U.S. District Court and the U.S. Court of Appeals err in holding that "residual sovereign immunity" (quotation marks inserted by Court) that arises from common law applies which was referred to in page 6 of the District Court Order does not have that quoted language nor does any opinion of any appellate court in the State of Georgia contain such quoted language of "residual sovereign immunity" (quotation marks inserted by Court) as to justify granting sovereign immunity on that questionable ground as opposed to 11th amendment sovereign immunity?
7. Did the U.S. District Court and the U.S. Court of Appeals for the Eleventh Circuit err in relying on *Federal Maritime Commission v. State of South Carolina State Ports Authority*, 535 U.S. 743, 753, 122 S. Ct. 1864, 152 L. Ed. 2d 962 as authority for granting the defendant "residual sovereign immunity" (quotation marks inserted by Court) which does not mention "residual sovereign immunity" (quotation marks inserted by Court) thereby creating and magnifying the conflict between Georgia case law, Georgia statutory law, Georgia constitutional law, and the U.S. Supreme Court decisions which should have precluded sovereign immunity as a defense for the county?

10/17/05 THE ORDER GRANTING THE PETITION FOR A WRIT OF CERTIORARI
CERT. GRANTED 10/11/2005