Jim's Perspective…

State Tort Claims Act

As you know, Nebraska has both a Political Subdivisions Tort Claims Act and a State Tort Claims Act (STCA). These two laws provide that some civil tort claims may be pursued against municipalities and the state. These two laws, in effect, waive the city and state ability to assert the legal doctrine of sovereign immunity against certain tort claims. However, both laws have many types of claims that are excluded from, and cannot be pursued, under these two laws. Recently, the Nebraska Supreme Court issued an opinion related to the STCA that involved certain circumstances in which a claim could not be pursued pursuant to the STCA.[1]

Brown was sitting at a picnic table in a state-owned recreation area when a riding lawnmower operated by a state employee slipped on wet grass, slid down a slope, and collided with the picnic table, injuring Brown. The State Claims Board denied Brown's claim. Brown filed a lawsuit against the State alleging that his injuries were proximately caused by the negligence of the state employee. The Nebraska District Court granted summary judgment in favor of the State and Brown appealed to the Nebraska Supreme Court.

Under the STCA, there are numerous exemptions to the pursuit of a tort claim against the state. Two exemptions to the STCA were asserted by the State in this lawsuit. First, there is an exemption for claims that arise out of conditions caused by weather. Second, there is an exemption for claims relating to recreational activities on state property. The Court focused on the weather conditions exemption.

On an afternoon in August, 2017, Brown visited a state recreation area. After fishing for some time, Brown decided to take a break. He sat at a picnic table which was next to a pond and at the bottom of a slope. While Brown was seated at the table, Mr. Blazek, a longtime park superintendent, started mowing grass in this area with a riding lawn mower. It had rained the previous day and the grass was wet. The mower slipped on the wet grass, slid down the slope, and collided with the picnic table. As a result of the collision, Brown was thrown from the picnic table and suffered injuries to his back and nervous system.

The weather conditions exemption in the STCA provides as follows:

> Any claim **arising out of** (emphasis added) snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 60-624, bridge, public thoroughfare, or other state-owned public place due to weather conditions.

This exemption also has one carve-out to the exemption which states that:

> Nothing in this subdivision shall be construed to limit the state's liability for any claim arising out of the operation of a motor vehicle by an employee of the state while acting within the course and scope of his or her employment by the state.

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[1] Brown v. State of Nebraska, 315 Neb. 336, (2023).

Brown asserted two arguments as to why the State is not immune from suit under the weather conditions exemption. 1. Brown's claim arises out of a state employee's operation of a motor vehicle in the course and scope of employment and therefore falls within the carve-out to the weather exemption. 2. The claim does not fall within the weather conditions exemption because the sole proximate cause of the accident was Blazek's negligence due to mowing in wet grass.

In reviewing Brown's assertion that this accident resulted from the operation of a motor vehicle, the Court noted that when interpreting statutes concerning the State's sovereign immunity, special rules of statutory interpretation come into play. The Court said, "Statutes that purport to waive the State's protection of sovereign immunity are strictly construed in favor of the sovereign and against the waiver." Consequently, the Court said, "we must construe. . . the term 'motor vehicle' narrowly." The Court found that the riding lawn mower was not a motor vehicle for purposes of the STCA.

Brown further argued, that even if the riding lawnmower was not motor vehicle under the STCA, his claim is still valid and the weather conditions exemption does not apply because Blazek should not have mowed the grass that day since it was wet. His decision to mow wet grass was negligent and that was the cause of the accident, not the weather. However, the Court said:

> When we have encountered the phrase "arising out of" in insurance contracts, we have described it as "broad and comprehensive; ordinarily understood to mean originating from, growing out of, or flowing from; and requiring only a 'but for' causal connection between the occurrence and the conduct or activity specified in the policy"

[I love it that the Court decided to mention insurance contracts in this opinion!]

Consequently, the Court determined that there was a causal connection between Brown's claim and the wet grass, and that was all that was needed to invoke the weather exemption to the STCA. Since the Court determined that the weather exemption to the STCA applied, it did not address the District Court's finding that the State was immune from application of the STCA based on the recreational activity exemption.

The decision in the Brown case provides, and illustrates, a narrow application of the benefits of the STCA and I think it will be understood that this narrow application will likewise be applied to the Political Subdivision Tort Claims Act. I assume both cities and the state are pleased, and in agreement with, the outcome in Brown. This case will no doubt, over time, have a positive effect on insurance loss costs for cities and the state. As you discuss liability coverage for municipalities with insurance underwriters, it probably wouldn't hurt to mention this case and the narrow application the Court gave to the STCA.

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