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**IMMUNITY - NEBRASKA**

## City of Lincoln v. County of Lancaster

**Supreme Court of Nebraska - July 21, 2017 - N.W.2d - 297 Neb. 25620 - 17 WL 3091658**

City brought action against county, that was insured under retained limits insurance policy with general liability coverage, for reimbursement of workers' compensation expenses paid on behalf of city police officer, who suffered injury to his shoulder, that had recently undergone surgery, when county deputy sheriff's hand made intentional physical contact with officer's shoulder.

The District Court entered summary judgment in favor of county. City appealed to the Court of Appeals and its appeal was moved to the Supreme Court.

The Supreme Court of Nebraska held that:

- City's claim arose out of battery, and, thus, was barred by intentional torts exception under Political Subdivisions Tort Claims Act, and
- County did not waive its sovereign immunity under Act by procuring liability insurance.

City's claim against county arose out of battery, and, thus, was barred by intentional torts exception under Political Subdivisions Tort Claims Act, where city was seeking reimbursement of workers' compensation expenses paid on behalf of city police officer, who suffered injury to his shoulder, that had recently undergone surgery, when county deputy sheriff's hand made intentional physical contact with officer's shoulder, and sheriff's contact constituted battery.

County's retained limits insurance policy with general liability coverage did not provide coverage for city's claim seeking reimbursement of workers' compensation expenses paid on behalf of city police officer, who suffered injury to his shoulder, that had recently undergone surgery, when county deputy sheriff's hand made intentional physical contact with officer's shoulder, and, thus, county did not waive its sovereign immunity under Political Subdivisions Tort Claims Act by procuring such liability insurance, since city's claim arose out of battery, policy required that a claim arose out of an "occurrence," policy defined "occurrence" with respect to bodily injury as "accidental happening" that resulted in bodily injury, and battery by definition could not be accidental.

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