

# **Bond Case Briefs**

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## **IMMUNITY - NEBRASKA**

### **Kimminau v. City of Hastings**

**Supreme Court of Nebraska - June 19, 2015 - N.W.2d - 291 Neb. 133**

Motorist filed suit against driver of truck that spilled corn mash onto county boulevard, driver's employer, city, fire district, and county, arising out of injuries received when her vehicle came in contact with corn mash that remained on boulevard after clean-up on previous day, which caused her to lose control of vehicle and crash. The District Court entered summary judgment for all defendants, and motorist appealed. Petition to bypass was granted.

The Supreme Court of Nebraska held that:

- Spilled corn mash presented single "spot or localized defect" on boulevard, for purposes of determining whether defendants had actual notice of defect, as required to waive immunity from suit under Political Subdivisions Tort Claims Act (PSTCA);
- Government defendants waived immunity from suit;
- "Discretionary function" exception to waiver of immunity did not apply; and
- Truck driver and driver's employer owed no duty to motorist to ensure clean-up after government defendants assumed responsibility for same.

Spilled corn mash on boulevard that remained after fire district undertook remediation efforts to clean boulevard, and after county highway superintendent and district volunteer captain observed that surface was clear of corn mash debris, presented single "spot or localized defect" on boulevard, for purposes of determining whether city, fire district, and county had actual notice of defect, as required to waive immunity from liability under Political Subdivisions Tort Claims Act (PSTCA) for motorist's injuries after her vehicle came into contact with spilled corn mash, which caused motorist to lose control of vehicle.

City, fire district, and county had actual notice of corn mash that had spilled from truck onto boulevard and remained after fire district undertook efforts to remediate spill and swept it off paved portion of boulevard onto unpaved shoulder and ditch, and thus, defendants waived immunity from suit, under Political Subdivisions Tort Claims Act (PSTCA), for injuries sustained by motorist on day after spill when her vehicle came into contact with corn mash, which caused her to lose control of vehicle.

"Discretionary function" exception to waiver of immunity did not apply to motorist's suit against city, fire district, and county for injuries sustained when her vehicle came into contact with corn mash that had been spilled onto county boulevard on previous day that remained after fire district undertook efforts to remediate spill, which contact caused motorist to lose control of vehicle. County's obligation to remediate spot or localized defect on boulevard presented by spilled corn mash was ministerial act, not discretionary one.

Driver of truck from which corn mash spilled onto county boulevard, and driver's employer, did not owe duty to motorist to ensure that all spilled corn mash was cleaned off boulevard, and thus, were not liable for motorist's injuries sustained on day after spill when vehicle came into contact with

corn mash, which caused motorist to lose control of vehicle, after fire district, which responded to state trooper's report of spill, assumed responsibility to clean spill, trooper closed boulevard to traffic during clean-up, and then later declared boulevard safe for vehicular travel and reopened it to traffic.