

# **Bond Case Briefs**

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## **IMMUNITY - OKLAHOMA**

### **Gowens v. Barstow**

**Supreme Court of Oklahoma - December 15, 2015 - P.3d - 2015 WL 8922587 - 2015 OK 85**

Motorist brought action against driver of emergency vehicle, who was paramedic supervisor, and his employer, for property damage and injuries sustained in automobile collision. The District Court found that driver was negligent and reckless and awarded motorist damages capped at \$125,000 under the Government Tort Claims Act (GTCA). Employer appealed. The Court of Civil Appeals reversed. Motorist petitioned for writ of certiorari, which was granted.

The Supreme Court of Oklahoma held that:

- Trial court's finding that driver was acting within scope of his employment when he collided with motorist was reasonable;
- Acts performed with reckless disregard do not automatically rise to level constituting malice or bad faith, as to result in acts being outside of scope of employment under GTCA, overruling *Fehring v. State Ins. Fund*, 19 P.3d 276;
- Evidence supported finding that driver acted with reckless disregard for safety of others;
- Trial court was not required to apportion liability to city; and
- Motorist was entitled to cap of \$125,000 in damages.

Acts performed with reckless disregard do not automatically rise to a level constituting malice or bad faith, as to result in those acts being outside of the scope of employment under the Governmental Tort Claims Act (GTCA) and, while malice or bad faith can be inferred from conduct exhibiting reckless disregard for the rights of others, such determination shall be made on a case-by-case basis; overruling *Fehring v. State Ins. Fund*, 19 P.3d 276.