

# **Bond Case Briefs**

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## **IMMUNITY - NEBRASKA**

### **Moser v. State**

**Supreme Court of Nebraska - September 4, 2020 - N.W.2d - 307 Neb. 1820 - 20 WL 5264814**

Personal representative of inmate's estate filed suit against State under State Tort Claims Act (STCA), arising out of inmate's death by strangulation at hands of cellmate.

The District Court granted State's motion to dismiss for lack of subject matter jurisdiction, based on determination that State was immune from suit. Personal representative appealed.

The Supreme Court held that:

If claim against State under STCA would not exist without assault or battery, it "arises out of" the assault or battery, within the meaning of the "intentional tort" exception to the State's waiver of immunity from suit, regardless of whether the tortfeasor was a government actor; overruling *Doe v. Omaha Pub. Sch. Dist.*, 273 Neb. 79, 727 N.W.2d 447, and

Claims against State for negligence, negligence per se, and wrongful death of inmate arose out of assault or battery, within scope of intentional tort exception to State's waiver of immunity from liability.