

# **Bond Case Briefs**

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## **IMMUNITY - NEBRASKA**

### **Clark v. Sargent Irrigation District**

**Supreme Court of Nebraska - March 11, 2022 - N.W.2d - 311 Neb. 123 - 2022 WL 727360**

Landowners brought negligence action against irrigation district alleging that irrigation district's employee negligently mixed and over-applied an off-label herbicide mixture on trees near canal causing damage to landowners' corn crops.

The District Court denied irrigation district's motion for summary judgment. Irrigation district filed interlocutory appeal.

In a case of first impression, the Supreme Court held that:

- Denial of summary judgment motion challenging compliance with presuit procedures of tort claims acts is not a final appealable order involving assertion of sovereign immunity, disapproving *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 305 Neb. 609, 941 N.W.2d 497; *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 308 Neb. 916, 958 N.W.2d 378; Denial of summary judgment motion asserting discretionary function exemption of Political Subdivisions Tort Claims Act (PSTCA) was a final appealable order; and
- Discretionary function exemption of PSTCA did not apply to bar landowners' claim.

When the State or a political subdivision moves for summary judgment asserting the plaintiff's failure to comply with presuit claim presentment procedures of State Tort Claims Act (STCA) or Political Subdivisions Tort Claims Act (PSTCA), the motion is not based on the assertion of sovereign immunity, within meaning of statute providing that a final order, which may be appealed, includes an order denying a motion for summary judgment when such motion is based on the assertion of sovereign immunity; disapproving *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 305 Neb. 609, 941 N.W.2d 497; *Great Northern Ins. Co. v. Transit Auth. of Omaha*, 308 Neb. 916, 958 N.W.2d 378. Neb. Rev. Stat. §§ 13-905, 25-1902(1)(d), 81-8,212.

Irrigation district's summary judgment motion alleging discretionary function exemption of Political Subdivisions Tort Claims Act (PSTCA) as a bar to landowners' negligence claim against district arising from application of herbicide along canal near crops was based on the assertion of sovereign immunity, and thus the denial of motion was a final appealable order.

Discretionary function exemption to waiver of sovereign immunity under Political Subdivisions Tort Claims Act (PSTCA) did not apply to bar landowners' negligence claim against irrigation district alleging that irrigation district's employee negligently mixed and over-applied an off-label herbicide mixture on trees near canal causing damage to landowners' corn crops, where Pesticide Act specifically prescribed course of conduct that holders of noncommercial applicator licenses, like employee, were required to follow when mixing and applying herbicides, and as a result employee and had no choice but to adhere to that course of conduct.

