



## **Correct Filing Officer is Essential to Tort Claims Case**

Filing notice of a tort claim with the Omaha Transit Authority's legal and human resources officer did not meet the Political Subdivision Tort Claims Act's (PSTCA) requirement to file with the "clerk, secretary, or other officials whose duty it is to maintain the official records of the political subdivision, or the governing body of the political subdivision" (Neb.Rev.Stat. §13-905) in a recent Nebraska Court of Appeals Case.

In *Nyamatore v. Schuerman*, 25 Neb. App. 209, \_\_\_N.W.2d\_\_\_, (2017), Nyamatore was a passenger on an Omaha Transit Authority (OTA) bus that was in an accident. Nyamatore suffered injuries and sent a letter through her attorney to Simpson, who was the legal and human resources officer for OTA. Even though Simpson responded to the letter and discussed settling the claim, the district court granted summary judgment to OTA because pursuant to the PSTCA, the letter should have been sent to OTA's executive director Curt Simon.

Before the Court of Appeals, Nyamatore argued that she had substantially complied with the requirements of the PSTCA by sending a letter to Simpson approximately three weeks after the accident. The court applied the Nebraska Supreme Court's substantial compliance analysis which expressly holds that if the notice is not filed with the authorized recipient, a substantial compliance analysis is not applicable.

Because Simpson, who was not the defacto clerk or recordkeeper, was the only named recipient of the letter, the Court of Appeals found that the district court had not erred in granting summary judgment to OTA. Notice should

have been given to Simon, who was OTA's executive director and the only official whose duty it was to maintain the official records of OTA.

Nyamatore next argued that equitable estoppel should be applied because Simpson's actions led her to rely on the premise that OTA had received notice of her claim. The court noted that equitable estoppel is only invoked against a governmental entity under compelling circumstances where right and justice demand it. It is applied with caution and only for the purpose of preventing manifest injustice. Six elements must be met before the doctrine of equitable estoppel can be applied, including 1) conduct which amounts to false representation or concealment of material facts, 2) the intention, or at least the expectation, that conduct will be acted upon by, or influence, the other party, 3) knowledge, actual or constructive, of the real facts, 4) lack of knowledge and the means of knowledge of the truth as to the facts in question, 5) reliance, in good faith, upon the conduct or statements of the party to be estopped, and 6) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel.

Simpson's offers of settlement did not provide a basis for equitable estoppel. Nyamatore, through counsel, did not lack the knowledge or means to acquire the knowledge necessary to properly file her claim. There was no duty on OTA's part to inform Nyamatore of the nuances of the law. The court noted that the procedural requirements of the PSTCA can lead to harsh results but the Nebraska Supreme Court has consistently demanded strict compliance with statutory requirements in cases involving sovereign immunity.

The full text of the case is available on the Nebraska Judicial Branch's website and by clicking [here](#).

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