

Successfully Navigating the Minefield of Claims Against Government Entities

Tort claims against government entities are among the most challenging cases for a subrogation professional to pursue. In addition to establishing the traditional facets of liability that must be proven against a private actor, there are a whole host of potential obstacles that must be overcome to successfully pursue a claim against a government entity. The requirements for pursuing claims against government entities are jurisdiction specific and often vary depending on whether the claim is against a state, county or municipality.

Pursuing a tort claim against a government entity requires a claimant to navigate a minefield that typically includes strict compliance with draconian and confusing notice provisions and cumbersome administrative processes. While delays in notification or claims prosecution can be damaging in any subrogation case, such delays are especially damaging in a claim against a government entity where proper notice is often a statutorily mandated condition precedent to the waiver of the government's sovereign immunity. For example, some jurisdictions require notice within 90 days of the accrual of the cause of action. Accordingly, it is critical to identify the appropriate notice provisions and other requirements as soon as you become aware that a government entity may be liable.

It is also critical to determine whether the government entity has sovereign immunity and is protected from liability for the specific conduct. The specific acts that a government entity can be liable for in tort vary significantly by jurisdiction. Some jurisdictions still hold true to the old sentiment that "the King can do no wrong" and severely curtail one's ability to pursue a claim against the government. Others, on the other hand, have abolished this mantra altogether and freely allow such claims except in limited circumstances. Most fall somewhere in the middle.

In most jurisdictions, both the administrative requirements for pursuing tort claims against government entities and the specific situations in which sovereign immunity applies are set forth in a Tort Claims Act or other statute. Identifying and reviewing the relevant statutes should always be the first step in assessing a potential claim against a government entity.

In order to assist with this process and provide a roadmap in navigating the dangerous minefield of claims against government entities, Cozen O'Connor recently published its newest 50 state jurisdictional chart titled *Limitations and Notice Requirements for Tort Claims Against Government Entities*. The chart provides an overview of the scope of government immunity, notice and filing requirements and dollar limitations for claims against government entities in all U.S. jurisdictions. While the subrogation professional should still carefully review the relevant statutes before undertaking a claim against a government entity, this chart provides a helpful starting point and will direct you to the relevant authority.

Cozen O'Connor stands ready to assist with any questions you may have regarding issues discussed in this Alert.



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