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ALERTS

Public Entities: Federal Decision Supports Cross-Border Application Of Public Tort-Claims Protections

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A recent opinion from the U.S. District Court for the District of Columbia has reaffirmed and strengthened the power of public entities to enforce their home state's tort-claims act and immunities when they are sued in other states. The decision in *Coleman v. Clark*—in which Barnes & Thornburg represented the prevailing parties—ensures that when public entities send their agents on out-of-state business, they do not lose their home state's tort-claims protections for their agents' conduct. It is the first federal case to interpret a question of cross-border immunities since the Supreme Court's 2016 decision on this issue in *Franchise Tax Board of California* v. *Hyatt*.

Coleman v. Clark arose from a traffic collision between the plaintiff, Maciste Coleman, a Maryland resident, and Ann Marie Clark, a political science professor at Purdue University, which is an Indiana public institution. The collision occurred in Washington, D.C., where Professor Clark was attending a political science conference. Coleman sued Professor Clark and Purdue on a *respondeat superior* theory. Purdue conceded that Professor Clark was acting within the scope of her employment at the time of the collision, but moved to dismiss the case for Coleman's failure to serve timely pre-suit notice under the Indiana Tort Claims Act.

The Indiana Tort Claims Act applies to suits against Indiana public entities, and it has similar counterparts in most states. These laws function as a selective waiver of the enacting state's sovereign immunity. Under the common law, all states (and subdivisions and employees) are immune from suit unless they consent to be sued. A tort-claims act thus waives this immunity, and signals the state's consent to be sued. But the waiver and consent are limited—every tort claims act applies certain limitations and conditions on the state's liability, such as damages caps and a requirement of accelerated pre-suit notice.

In *Coleman*, the condition in issue was the Indiana act's provision that written notice of a claim against an Indiana public entity must be filed with that entity within 180 days of the underlying injury, or else the claim is time-barred. It was clear that Purdue is a public entity and that Coleman failed to give notice within 180 days. Less clear was whether that notice requirement, and the act's other protections, would apply to an Indiana agent's conduct that took place beyond the state's borders. Could the Indiana act apply and bar a claim filed in D.C. District Court, by a D.C.-area plaintiff, for injuries suffered in D.C.?

The district court said yes. Faced with Supreme Court and lower court authority that cut both ways, the district court applied the Indiana act to

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bar Coleman's claims. It held that principles of comity instructed the application of a defendant-state's immunity law when, or to the extent that, the defendant-state's law is similar to the forum state's law. In this instance, reasoned the court, application of Indiana's law was sufficiently consistent with D.C. law so as not to contravene D.C. policy. (This result cannot be disturbed on appeal—the appeal window has closed with no appeal taken.)

A few things are notable about this decision:

1. It provides strong, recent authority in favor of the application of foreign-state immunities. Again, the results leading up to *Coleman* were somewhat mixed, but *Coleman's* result is clear—the opinion did not hedge, equivocate, or add language meant to limit itself to unique facts before it. Because of this clarity, and because of the D.C. District's prominence in American jurisprudence, *Coleman* provides excellent authority for foreign public entities sued in other states' courts in the future.
2. *Coleman* provides this authority at an important time. In our ever-shrinking modern world, public entities are doing more business with one another and in one another's territories. From interstate compacts, to multi-city associations, to cross-border satellite campuses, to trade and educational conferences, and beyond, public entities and agents are traveling more and are conducting more operations beyond their traditional sphere. *Coleman* provides greater protection and reliability to those entities and agents who may be accused of negligence or wrongdoing while conducting that interstate business.
3. *Coleman* arguably broadens the application of cross-border immunities. While courts in certain other cases have been hung up on differences between forum-state and defendant-state law, and concerns that forum-state policy could be undermined, the *Coleman* opinion focuses on how important (or not) any such differences may be to the case at bar. The opinion rejected arguments that pointed out more restrictive requirements in the Indiana act—such as a hard damages cap—as "not so substantial" as to raise a comity concern.
4. *Coleman* is the first federal case on this issue since the Supreme Court's 2016 decision in Hyatt. Although *Hyatt* also ruled in favor of the out-of-state defendant, the case is a bit of a muddle, especially since the Court split votes on different holdings. Perhaps wishing to steer clear of that uncertainty, the *Coleman* opinion does not cite *Hyatt*, but instead sticks to pre-*Hyatt* authorities in its comity discussion. Still, *Coleman* is consistent with *Hyatt*, and is a clearer proclamation of extraterritorial immunity.

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