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Federal Tort Claims Act Summarized

Russell E. Ake*

TO ATTEMPT A BRIEF summary of the Federal Tort Claims Act may be likened to an attempt to explain atomic energy in ten words. But such a summary may be of some usefulness to our esteemed adversaries—the plaintiff's counsel in F. T. C. A. cases.

Like most statutes, both state and federal, the text of this Act is encompassed within a few paragraphs. Then there follows a welter of interpretations, exceptions, and constructions. However, I shall attempt to hit the high spots and see if we can't come at least to a general understanding of what it's about and what it means.

Suit by Consent Only

Now, a tort is a tort, whether state or federal, and the word means simply "the infringement of a right or the violation of a duty."¹ The remedies for such a wrong exist in every state's procedure, either by common law or by statute. The United States of America, however, being a sovereign entity, enjoys its sovereign immunity from suit and protects its rights zealously.

For example, consider the language in *Pflueger v. United States*:² ". . . the immunity of the sovereign from suit is paramount, even over rights founded in the Constitution." And equally as forceful, we find in *Lynch v. United States*:³ ". . . The sovereign's immunity from suit exists whatever the character of the proceeding or the source of the right sought to be enforced. It applies alike to causes of action arising under acts of Congress . . . and to those arising from some violation of rights conferred upon the citizen by the Constitution . . . immunity from suit is an attribute of sovereignty which may not be bartered away."

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¹ Bouvier's Law Dictionary, p. 1181 (1 vol. ed., 1928).

² *Pflueger v. United States*, 121 F. 2d 732, 73 App. D. C. 364 (App. D. C., 1941).

³ *Lynch v. United States*, 292 U. S. 571, 581, 582, 54 S. Ct. 840, 844 (Ga., 1934).

It follows that the sovereign, enjoying such immunity, also has the inherent power to waive that immunity when and as often as it sees fit. Such consent is never to be implied, however. It is of strictly statutory origin. That the Federal Government cannot be sued without its specific consent is one of the fundamental principles of law supported by, as I always enjoy stating in a brief, "cases too numerous to mention." Of this, *In Re Greenstreet*⁴ said: "the sovereign immunity from suit is a right and privilege which can be divested only by specific congressional enactment so providing."

Thus, prior to June 25, 1946, the only way a recovery in tort could be had against the United States was by the passage of a special bill authorizing payment. These bills were allowed to accumulate, and usually the last congressional act prior to adjournment was their consideration. It had become a "you scratch my back and I'll scratch yours" proposition—which could hardly be called a sound administration of justice. The need for bold new legislation on the matter of waiver of immunity had become obvious.

In the Federal Tort Claims Act, we do have just such a congressional waiver or consent, embodied in what is now Title 28, United States Code, Section 1346 (b), which reads as follows:

"Subject to the provisions of chapter 171 of this title, the district courts, together with the District Court for the territory of Alaska, the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on or after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Now, as is not at all unusual, as one soon learns in dealing with federal statutes, Section 1346 merely authorizes the United States to become a defendant, and then sends us to another book for the provisions of Chapter 171, of Title 28, which becomes Title 28, Section 2671 and subsequent sections.

⁴ *In Re Greenstreet, Inc.*, 209 F. 2d 660 (C. A. 7, 1954).

Section 2671 confines itself to definitions. Section 2672 briefly provides for administrative settlement of claims under \$1,000.00, and says that acceptance of the award is conclusive as to all parties. Title 28, Section 2673 requires an annual report to Congress by the head of each federal agency, listing all claims paid by it under Section 2672 of this title. Section 2674 declares the freedom of the United States from liability for interest prior to judgment, or from liability for punitive damages.

Title 28, Section 2680 is of particular interest to the plaintiff's attorney, in that it sets out specific exceptions to the otherwise sweeping waiver of sovereign immunity, the more pertinent of which are those claims specified in Section 2680 (h): "Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights."

There are additional sections, but the gist of the matter lies in the ones quoted. So we find the consent to be sued.

Construction

The courts, realizing how wide the doors might be opened by the Federal Tort Claims Act, and in order to stem a possible flood of litigation, held, as in *United States v. Webb Trucking Co.*,⁵ that: "It is clear that the United States is immune from suit except as it has consented to be sued, and statutes waiving immunity are construed not only strictly in favor of the Government but narrowly and literally." Or, as was said in *California Cas. Indemnity Exchange v. United States*:⁶ "The United States may not be sued without its consent; such consent must be given by an Act of Congress; when such consent has been thus given the conditions of suit set forth in the Act must be complied with, even though they be purely formal; and such act must be strictly construed in favor of the United States."

The general trend, however, as numerous cases indicate, has been to a generally more liberal construction. To use the words of our own Judge Paul Jones,⁷ in a recent case: "the Government must assume its responsibilities and cannot attempt to hide behind a Federal Agency."

⁵ U. S. v. Webb Trucking Co., 141 F. Supp. 573 (D. C. Del., 1956).

⁶ California Cas. Indemnity Exchange v. U. S., 74 F. Supp. 404 (D. C. Calif., 1947).

⁷ Federal District Court, Northern District of Ohio.

Effect of the Statute

You and I are primarily interested in the effect the Federal Tort Claims Act has on our clients, and on us as practicing lawyers. Its prime effect is that, with the activities of millions of federal employees, in the staggering number of modern Governmental enterprises, a vast and entirely new field of recovery now is opened.

Take a few simple illustrations. For instance, how many Government-owned or Government-operated motor vehicles do you suppose are in daily operation on the highways and streets in the State of Ohio alone? We have no means of knowing the exact number, but it would include vehicles of almost every Federal Agency—Army, Navy, Post Office, etc., just to mention a few—which agencies before the Tort Claims Act could have permitted their men to drive in practically any manner they pleased, inflicting everything short of outright murder on the general public—injuries formerly compensable only by the graciousness of Special Act of Congress. Under the F. T. C. A., injured plaintiffs now can recover without exasperating “red tape,” where the Government’s liability is clear. In addition, there are numerous suits pending—including six in this district alone—resulting from collisions between military aircraft and commercial planes. Consider, too, the fact that the Federal Government, owning approximately 22 percent of the entire land in the United States, is the nation’s largest land owner. As such, and by virtue of the employer and employee relation, it must respond in damages in an appropriate proceeding, just as must any other landlord or employer.

I do not mean to imply that the field is limited to personal injury claims alone. The same rules are applicable to the entire tort field.

Defenses

Suppose you start an F. T. C. A. suit. It is not as easy to collect as it might seem at first glance. Let’s look at some of the curves those of us whose duty it is to represent the United States might pitch back at you upon the receipt of your complaint. Since Title 28, U. S. C., Section 1346 (b) provides for liability “in accordance with the law of the place where the act or omission occurred,” it follows that the same defenses which exist under State law apply to Federal Torts. Then, as was said in *Noe v.*

United States:⁸ "Under the (Tort Claims) Act, the United States fixes the limits of its liability, the primary limit being that liability which arises from the relation of master and servant. If that relationship does not exist, the United States has excluded liability by withholding its consent to be liable." *Hopson v. United States*⁹ said that: "Liability under the Act cannot be predicated upon the alleged negligence of an independent contractor or its employees." Then too, of course, there is the old standby defense—contributory negligence.

There is an additional factor, stated in Title 28, U. S. C., Section 2401 (b), which imposes a two-year statute of limitations after the claim accrues. Section "a," which is the general section, provides for its tolling for any person under legal disability. However, since this wording is not used in the tort section "b," this relief is not afforded there.

The Department of Justice and the United States Attorney's Office have no shortage of business, and do not desire these few remarks to be construed as an invitation to be sued. However, we do hope they may be of some small assistance,¹⁰ should some client come to your office under an appropriate set of circumstances involving a claim against the Government's Agencies.

⁸ *Noe v. United States*, 136 F. Supp. 639 (D. C. Tenn., 1956).

⁹ *Hopson v. United States*, 136 F. Supp. 804 (D. C. Ark., 1956).

¹⁰ For a new and detailed treatment of F. T. C. A., see, Wright, *Federal Tort Claims Act Analyzed & Annotated* (1957).