

**Rosario DLG. KUMAGAI, et al.
vs.
COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS, et al.**

**Civil Action No. 81-0034
District Court NMI**

Decided March 12, 1984

**Constitutional Law - Eleventh
Amendment**

A state's waiver of its immunity in its own courts is not interpreted to include a waiver of its Eleventh Amendment immunity. U.S. Const., Amend. 11.

1. Jurisdiction - Comity Doctrine

Although under no constitutional compulsion to do so, a state may, as a matter of comity, accord immunity in its courts to a sister state.

2. Jury - Civil Actions - Against Government

Where Commonwealth entered into agreement with State of Hawaii under which Hawaii would provide medical services and under which Hawaii agreed to assume liability for negligent acts of its employees according to Hawaii tort claims act, court properly denied as matter of comity jury trial in action for negligence on part of Hawaii employee where jury trial not allowed under Hawaii tort claims act.

**3. Sovereign Immunity
Constitutional Law - Eleventh
Amendment**

Eleventh Amendment immunity and sovereign immunity are separate and distinct concepts. The Eleventh Amendment shields state governments from intrusion by the federal government via the federal judiciary, whereas the doctrine of sovereign immunity prohibits both courts and plaintiffs from interfering in governmental affairs. U.S. Const., Amend. 11.

4. Sovereign Immunity - Waiver

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FACTS

The facts of this case appear in this Court's previous decision on Hawaii's motion to dismiss (Kumagai v. State of Hawaii, et al., Civil Action No. 81-0034 (D.N.M.I. Memorandum Opinion filed July 8, 1983)). The essential facts are repeated here. In 1978, the State of Hawaii contracted with the Commonwealth of the Northern Mariana Islands (hereinafter referred to as "CNMI" or "Commonwealth") to provide medical treatment and services to the inhabitants of the CNMI. From June 13 to June 16, 1978, plaintiffs sought medical treatment for their son from the Defendants. On or about June 16, 1979, the Plaintiffs' son died.

On June 12, 1981, Plaintiffs filed this action alleging that the Defendants negligently failed to examine, diagnose and treat their son and, as a result thereof, caused his death. Plaintiffs' seek \$100,000 in damages for pain and suffering; \$100,000 in general punitive damages; and special damages in an amount to be determined at trial.

On September 25, 1981, Hawaii filed a motion to dismiss on the grounds that the Eleventh Amendment bars suits against states in federal court. On July 8, 1983, this Court, finding the Eleventh Amendment of no force and effect in the CNMI, denied Hawaii's motion.

On December 1, 1983, Hawaii moved this Court to strike Plaintiffs' jury demand. This is the issue now before this Court.

1 Hawaii relies exclusively on these two sections to
2 support its argument that no jury trial can be had as against
3 Hawaii without its consent.

4 Plaintiffs contend, relying on Nevada v. Hall, 440 U.S.
5 410, 99 S.Ct. 1182, 59 L.Ed.2d 416 (1979), that Hawaii's sover-
6 eign immunity claims have no application outside the territorial
7 boundaries of the state, the Agreement notwithstanding. The
8 Agreement, Plaintiffs argue, exists between the Commonwealth
9 government and the State of Hawaii only and cannot be read to
10 affect the rights^{2/} of third parties. The issue presented to
11 this Court involves the force and effect of the sovereign
12 immunity laws of one state in the court's of another. The
13 Supreme Court has recently addressed this issue in Nevada v.
14 Hall, supra.

15 In Hall, an employee of the University of Nevada was
16 operating a motor vehicle on California's highways when his car
17 collided with that of respondent therein. It was conceded that
18 the employee was driving a University owned car on official
19 business and that the University was an instrumentality of the
20 State. The employee was killed in the accident.

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24 ^{2/}Since the Court finds that Plaintiffs are not entitled to a
25 jury trial against Hawaii based on notions of comity, the Court
26 will not discuss an underlying issue, not addressed by the
parties, of whether Plaintiffs claim entitles them to a jury
under local law.

1 The respondent filed suit for damages in a California
2 court naming, among other defendants, the State of Nevada. The
3 trial court granted Nevada's motion to quash service. The
4 California Supreme Court unanimously reversed, holding, as a
5 matter of law, that Nevada was amenable to suit in California's
6 courts (Hall v. University of Nevada, 8 Cal.3d 522, 105 Cal.Rptr.
7 355, 503 P.2d 1363). The Supreme Court denied certiorari (414
8 U.S. 820, 94 S.Ct. 114, 38 L.Ed.2d 52). On remand, Nevada
9 asserted its tort liability act and sought to limit its liability
10 to the statutory limit of \$25,000. The motion was denied. A
11 subsequent jury verdict of \$1,150,000 was upheld by the Court of
12 Appeal; the California Supreme Court denied review.

13 On certiorari, the United States Supreme Court tackled
14 the issue, admittedly one of first impression, of whether a state
15 must recognize, in its own courts, another state's claims of
16 immunity. The Court, per Justice Stevens, reviewed the Consti-
17 tution and its history to determine whether support existed for
18 Nevada's sovereign immunity defense. Although the Court found
19 that the framers presumed that prevailing notions of comity would
20 provide adequate protection against the assertion of jurisdiction
21 by one state's courts over a sister state, the majority found no
22 explicit protection embodied in the Constitution. While the Full
23 Faith and Credit clause did require that each state respect the
24 judicial decisions of a sister state, provided the forum state
25 had proper jurisdiction, the clause did not require a state to
26 apply another state's law in violation of its own legitimate

1 public policy.^{3/} '99 S.Ct. at 1189. Justice Stevens felt that
2 California's stated policy of compensating those injured on its
3 highways was supported by California's waiver of its immunity for
4 torts committed by its own agents Id. at 1190. Under the
5 facts of the case, California's courts were not required by the
6 Constitution to respect Nevada's claims of sovereign immunity.

7 [1] In a closing paragraph, the Court emphasized that,
8 while under no constitutional obligation to do so, a State has
9 the power to recognize, as a matter of comity, the legitimate
10 immunity claims of sister states:

11 It may be wise policy, as a matter
12 of harmonious interstate relations,
13 for States to accord each other
14 immunity as to respect any estab-
lished limits on liability. They
are free to do so.

15 Id. at 1191. This recognition of a state's ability to volun-
16 tarily accord immunity is a logical corollary to the Court's
17 decision if the understandings and intentions of the framers are
18 to be given the consideration due; it has been followed in subse-
19 quent decisions of federal courts. See e.g., Harris v. City of
20 Chattanooga, 507 F.Supp. 374 (N.D. Georgia 1981)("State of
21 Georgia is free to confer upon its sister state's municipal
22 corporations any vestige of sovereignty which Georgia
23 legislators deem proper").

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25 ^{3/}The exact limits of the Full Faith and Credit clause as relat-
26 ing to recognition of a sister state's laws remains unclear
after Hall; however, it is clear that no recognition is re-
quired where such would conflict with the forum state's public
policy. See The Supreme Court-1978 Term, 93 Harv.L.Rev. 59,
189-198 (1979).

1 [2] In this case, the language of the Agreement appears
2 quite clearly to be a recognition by the Commonwealth of Hawaii's
3 sovereign immunity. The gesture of comity seems appropriate
4 under the circumstances as the Commonwealth does not allow
5 actions against it to be tried by a jury (6 Trust Territory Code
6 § 251(c)(3)). In fact, a refusal to recognize Hawaii's jury
7 statute would appear inconsistent and discriminatory, possibly
8 raising due process concerns. See The Supreme Court-1978 Term,
9 supra note 3, at 195-196. The Court finds the Agreement to be a
10 valid accord of immunity under Hall.^{4/}

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12 [3,4]

13 ^{4/}The conclusion reached herein does not require reconsideration
14 of this Court's previous decision rejecting Hawaii's Eleventh
15 Amendment defense. Eleventh Amendment immunity and sovereign
16 immunity are separate and distinct concepts. Employees v.
17 Department of Public Health and Welfare, 411 U.S. 279, 93 S.Ct.
18 1614, 36 L.Ed.2d 251 (1973); Litton RCS, Inc. v. Pennsylvania
19 Turnpike Commission, 376 F.Supp. 579, 588 n.18 (E.D.Penn.
20 1974). See Civil Actions Against State Government, § 4.1.
21 (Shepard's/McGraw-Hill 1982)(distinction cannot be overempha-
22 sized). The Eleventh Amendment shields state governments from
23 intrusion from the federal government via the federal judici-
24 ary, whereas the doctrine of sovereign immunity prohibits both
25 courts and plaintiffs from interfering in governmental affairs.
26 See Civil Actions Against State Government, supra; See also
Nevada v. Hall, 99 S.Ct. at 1187-1188. Thus a state's waiver
of its immunity in its own courts is not interpreted to
include a waiver of its Eleventh Amendment immunity. See e.g.
Richins v. Industrial Construction, Inc., 502 F.2d 1051, 1055
(10th Cir. 1974); see Civil Actions Against State Government,
supra, at § 5.1. While an implied waiver of the Eleventh
Amendment immunity has been associated with a similar waiver of
sovereign immunity, Parden v. Terminal R. Co., 377 U.S. 184, 84
S.Ct. 1207, 12 L.Ed.2d 233 (1964), the same does not follow in
the unique situation in the Commonwealth where the Eleventh
Amendment is not applicable; therefore, even though Hawaii's
Eleventh Amendment defense failed, its sovereign immunity
defense may be independently reviewed by this Court.

1 Plaintiffs also contend that the CNMI has no authority
2 to limit the terms of Hawaii's liability as to claims made by
3 persons not "party" to the Agreement; the Agreement at best
4 operates as a limit on Hawaii's liability vis-a-vis claims made
5 by the Commonwealth government. Plaintiffs misunderstand the
6 mechanics of Hawaii's immunity claim. First, in reaching the
7 agreement with Hawaii, the CNMI was acting on behalf of the resi-
8 dents of the Commonwealth and presumably in their interests.
9 Second, the indemnity paragraph of the Agreement is not a re-
10 striction on Hawaii's liability, but a recognition of the jurisdic-
11 tional limits of the Commonwealth's courts.

12 Finally, in the course of pretrial proceedings, Plain-
13 tiffs have raised another issue in need of clarification. Plain-
14 tiffs have suggested severing the trials of defendant Hawaii from
15 that of defendant Humphrey should some form of sovereign immunity
16 be found. Today, this Court finds that Hawaii does retain its
17 immunity in this action per the Agreement with the CNMI. No
18 problem arises should Humphrey be found to have been acting with-
19 in the scope of his employment during the relevant period.
20 Hawaii has assumed liability in such a case, subject to the

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1 provisions of its tort liability act.^{5/} However, should Humphrey
2 be found individually liable, another situation would present
3 itself and would have to be addressed at that time. For the
4 purposes of this motion, the Court addresses the jury issue with
5 respect to the State only and not with respect to Humphrey
6 individually.

7 The motion to strike the jury trial is granted.

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9 DATED this 12th day of March, 1984.

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15 JUDGE ALFRED LAURETA

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24 ^{5/} Any suggestion that Humphrey, as employee, should be severed
25 for jury trial could not be supported as it would effectively
26 subject Hawaii to a jury trial in violation of its recognized
sovereignty. See Benbow v. Wolf, 217 F.2d 203 (9th Cir. 1954);
Pittsburgh v. United States, 359 F.2d 564 (3rd Cir. 1966).