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May 2008

## Legal Issues



## Pointing Fingers

By Timothy R. Hughes and Alison R. Mullins



The March 15, 2008, crane collapse in New York City has raised many questions about who can be held legally liable for such tragic events. One seemingly "obvious" person reason would logically point to would be the city inspector. Serious injuries, deaths and potential claims bring to mind the well-established legal theory of sovereign immunity. In many jurisdictions, sovereign immunity could block any liability claims against the inspector, even if he was at fault.

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### What is sovereign immunity?

Generally speaking, sovereign immunity holds that a government cannot be legally liable and is immune from civil suit or criminal prosecution. The scope of protection of sovereign immunity extends to government agents, officers and employees when they are acting within the scope of their official duties and capacities. The historical background of English common law is buried in the name and brings to mind the phrase, "The King can do no wrong."

While we no longer have royalty, the initial conception of protection of the government against liability still holds sway. In more modern times, curbs and statutory exceptions have been placed upon the doctrine of sovereign immunity. There are examples in the Federal Tort Claims Act and parallel state statutes permitting lawsuits against various state governments or their employees or agents. Such waivers of sovereign immunity often have severe limitations, such as very rapid and unforgiving periods within which to file suit.

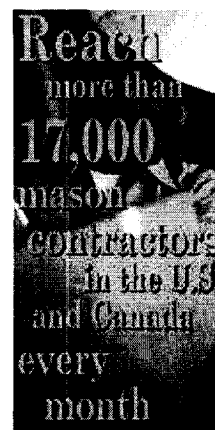
### Examining the crane accident

In the wake of the recent crane collapse, it has come to light that the New York City Department of Buildings crane and derrick inspector may not have properly inspected the fallen crane; indeed, some news reports indicate the inspector did not even inspect the crane. The city inspector has been criminally charged with not actually inspecting the cranes and, instead, filing false inspections reports approving the crane.

Potential plaintiffs may be happy that this accident happened in New York, rather than some other jurisdictions. The state of New York has a broad form waiver of sovereign immunity that permits the city to, in essence, be sued to the same extent as an individual or entity. Therefore, in New York, the state and its officers can be sued just like any other individual or corporation in the state, subject to certain limitations. The limitations on filing a suit against New York are

extremely stringent. In order to recover damages for personal injuries caused by the negligent or intentional tort of an employee of the state while acting within the scope of employment, the suit must be filed and served upon the attorney general *within 90 days* after the accrual of such claim.

While New York's law has a tight time frame, it does permit suits for both negligent conduct and intentional misconduct of its employees. The national law regarding sovereign immunity protection available to state and local governments is a patchwork and contains wide variations. These variations can extend not only to the time frames for notice and suit, but even to the precise nature of claims available against the state. For example, it is possible in other states that another jurisdiction might not permit an intentional tort to give rise to a sovereign immunity waiver, because the act might have been outside the scope of employment of the employee.



### **Location, location, location**

As you can see, a large factor in determining the viability of a plaintiff's claims against a state, state officer or employee depends upon the location of the project. In addition, the required timing of notices, filings and legal action varies widely from jurisdiction to jurisdiction. Therefore, it may be important to know what the sovereign immunity laws are in your state.

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***This article is not intended to provide specific legal advice but, instead, as general commentary regarding legal matters. You should consult with an attorney regarding your legal issues, as the advice you may receive will depend upon your facts and the laws of your jurisdiction.***

This article first appeared in *Masonry Magazine*, [www.masonrymagazine.com](http://www.masonrymagazine.com).

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Web site by: **Lionheart Publishing, Inc.**

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