ROGERS MORRIS & GROVER

Governmental Immunity Update

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Immunity cases issued in the past five years in all 14 intermediate courts of appeal:

Court	Total number of cases
1st Houston	105
2nd Fort Worth	62
3rd Austin	141
4th San Antonio	90
5th Dallas	102
6th Texarkana	10
7th Amarillo	32
8th El Paso	51
9th Beaumont	54
10th Waco	20
11th Eastland	25
12th Tyler	24
13th Corpus Christi	111
14th Houston	86
TOTAL:	913

Sovereign and Governmental Immunity in Texas: General Principles

- A common law doctrine that may be waived only by the Legislature.
- The state cannot be sued in her own courts absent consent "and then only in the manner indicated." *Hosner v. DeYoung*, 1 Tex. 764, 768 (1847).
- The Texas Supreme Court has also made clear that, although the "boundaries [of sovereign immunity] are established by the judiciary," waiving sovereign immunity is exclusively the "the prerogative of the Legislature". *City of Dallas v. Albert*, 354 S.W.3d 368, 373 (Tex. 2011).



Alexander Hamilton agrees:

- "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*." The Federalist No. 81.



Reasons for Governmental Immunity

- Preservation of state resources
- Governmental entities not bound by predecessors' policies
- Protection of public fisc

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