

Sovereign Immunity Not Waived for Non-Extreme, Even Highly Unfair Results, Absent Express and Unambiguous Waivers by Statute or Regulation

January 6, 2012 by [Louis M. Solomon](#)

In prior postings we have tried to identify cases where courts have drawn distinctions between U.S. and non-U.S. citizens in terms of [accorded them rights and entitlements in connection with international disputes](#). In the area of application of the Foreign Sovereign Immunities Act in particular there has been a growing debate concerning whether U.S. citizens should be treated the same, better, or worse than non-U.S. citizens when they bring suit against non-U.S. sovereigns.

What is the law on the related question of when is U.S. immunity waived or not waived when dealing with conduct that creates what the court calls real unfairness but that doesn't rise to the level of international terror, torture, or similar wrong?

[Laporte v U.S.](#), Case No. 09-CV-7247 (KMK) (S.D.N.Y. 2011), presents a case of the mother and natural guardian of an infant against the U.S. for failure to inform the decedent of his right to convert his federal employees group life insurance policy to an individual policy following his separation from service of law enforcement for the Drug Enforcement Administration. The Court found, assuming the allegations of the complaint to be true for purposes of a motion to dismiss, that the U.S. should have given notice and did not. The Court also stated, more than once, that it was "extremely sympathetic" to the plaintiffs predicament. Yet the Court also determined as follows:

First, the Court determined that "[g]iven the rigorous standard that must be applied in determining whether sovereign immunity has been waived for a given claim, the Court must apply an exacting analysis to determine if any provision of [U.S. law or regulation] creates an actionable duty".

Second, the Court found a regulation clearly stating that the employing agency must provide notice of the right to conversion. Yet the Court found that the regulation, even when breached, did not allow for an award of monetary damages against the government.

Third, the Court held that a "waiver of sovereign immunity . . . must be 'strictly construed, in terms of its scope, in favor of the sovereign'", and to get monetary damages, or even an injunction tantamount to monetary damages, the statute "must extend unambiguously" to such claims. Finding that it did not in this case, the

Court dismissed for want of subject matter jurisdiction. The Court cited earlier authority that “available remedies are not those that are ‘appropriate’, but only those for which sovereign immunity has been expressly waived”.