

Fund Finance Friday



FFF Sovereign Immunity Series – Part XIII and Wrap-Up

July 28, 2023



By **Danyeale Chung**
Partner | Fund Finance



By **Tara Polston**
Associate | Fund Finance

Fund Finance Friday: U.S. States Sovereign Immunity Series



© Cadwalader, Wickersham & Taft LLP

We have come to the final installment of our *FFF Sovereign Immunity Series*, having covered the 48 other states previously (see the links to the full series [here](#)). In this article, we will look at sovereign immunity in Wisconsin and Wyoming.

As a refresher, sovereign immunity is the doctrine that a sovereign or state is immune from suit unless it has chosen to waive such right. In the United States, each state is afforded a certain level of sovereign immunity protection under the Eleventh Amendment and, as a result, the government generally cannot be sued without its consent. This immunity can extend to government entities, including state pension funds. Many of the states have waived their own sovereign immunity to varying degrees via the relevant state constitution or by statute.

WISCONSIN

Wisconsin has waived sovereign immunity when suing on a breach of contract claim where the State is considered a debtor. Pursuant to Article IV, Section 27 of the Wisconsin Constitution, Wisconsin has delegated the authority to control immunity to the state legislature. The state legislature passed Wis. Stat. Ann. § 775.01, which allows a claimant to commence an action against the State. Relevant case law has interpreted § 775.01 to apply only to breach of contract cases where there is a debt and the State is considered a debtor.^[1] Pursuant to case law, a “debt” is that for which an action of debt or *indebitatus assumpsit* will lie; and includes a sum of money due upon a contract ...^[2]

While Wisconsin allows plaintiffs to sue the state and state officials in their official capacities for breach of contract, a plaintiff must first present its claim to the State legislature for payment. If the legislature denies its claim, the plaintiff may then file a lawsuit.^[3]

WYOMING

Wyoming has waived contractual sovereign immunity via statute. Wyoming has delegated the authority to control immunity to the legislature.^[4] Under Wyo. Stat. Ann. § 1-39-104, in general, the state legislature has waived sovereign immunity in actions based on a contract entered into by a governmental entity, except to the extent provided by the contract, if the contract was within the powers granted to the entity and was properly executed.^[5]

The claims procedures of W.S. 1-39-113 apply to contractual claims against governmental entities.^[6] The claim upon which the action is based must be presented to the relevant governmental entity within two (2) years of the date of the alleged act, error or omission.^[7] If the claimant can establish that the alleged act, error or omission was not reasonably discoverable within a two (2)-year period, or the claimant failed to discover the alleged act, error or omission within the two (2)-year period despite the exercise of due diligence, then a cause of action may be instituted not more than two (2) years after discovery of the alleged act, error or omission.^[8]

CONCLUSION

This concludes our *FFF Sovereign Immunity Series*. As mentioned in our prior installments, this is a high-level overview of sovereign immunity by state. Sovereign immunity is a complex and highly nuanced area of law. It is wise for lenders to consult counsel with any inquiries regarding state sovereign immunity concerns and investor-specific analysis. We hope this series has been interesting and helpful.

^[1] See *Trempealeau County v. State*, 260 Wis. 602, 605-6 (1952).

^[2] *Id.*

^[3] *Roman Catholic Found., UW-Madison, Inc. v. Regents of Univ. of Wisconsin Sys.*, 578 F. Supp. 2d 1121, 1143 (W.D. Wis. 2008) *aff'd sub nom. Badger Catholic, Inc. v. Walsh*, 620 F.3d 775 (7th Cir. 2010).

^[4] Wyo. Const. art. I, § 8.

^[5] Wyo. Stat. Ann. § 1-39-104.

^[6] Wyo. Stat. Ann. § 1-39-104.

^[7] Wyo. Stat. Ann. § 1-39-113.

^[8] Wyo. Stat. Ann. § 1-39-113.