

Police Officers Are Not Absolutely Immune From Tort Liability Arising Out of Law Enforcement Investigations; Other Immunities May Apply

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ATTORNEYS

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The Government Claims Act generally immunizes public employees from liability for "instituting or prosecuting any judicial or administrative proceeding" within the scope of their employment. Courts had broadly applied this immunity, found at Government Code Section 821.6, to all forms of investigative or law enforcement conduct, in addition to the prosecution of an official proceeding. The California Supreme Court has narrowed this immunity to exclude claims based on injuries that occur during the course of law enforcement investigations.

In *Leon v. County of Riverside*, a shooting victim's exposed body was left visible for approximately eight hours while sheriff's deputies investigated the incident. The victim's wife sued the County and the deputies for negligent infliction of emotional distress for failing to care for her husband's body. The County moved for summary judgment assuming its deputies were immune from liability because the claim arose during the course of an active investigation.

The California Supreme Court clarified that Section 821.6 only provides immunity in cases where an officer's negligence occurs during a judicial or administrative prosecutorial proceeding. It covers such torts as malicious prosecution, but not claims arising out of an officer's investigation of a crime. In light of this case, law enforcement officers will no longer be able to rely on this section to support a claim of absolute immunity. Nevertheless, other provisions of the Government Claims Act, or other areas of the law, may confer immunity for certain investigatory actions taken by law enforcement.

If you have any questions about this case, please contact **Jennifer Petrusis** or your RWG attorney. This e-alert was written by Emma Hair, an RWG summer associate from the USC Gould School of Law.