



News

Hinshaw Client Success: New York Court Invokes Sovereign Immunity To Dismiss \$15 Million Claims Against The University of Arizona And One Of Its Professors

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Hinshaw's clients the Arizona Board of Regents (ABOR) and Professor Greg Hodgins, Director of the University of Arizona's prestigious radiocarbon dating lab, recently won a complete victory in New York State's Appellate Division, First Department, which dismissed all claims asserted against them based on the doctrine of sovereign immunity. The ruling represents the first application by a New York court of the U.S. Supreme Court's ground-breaking, 2019 decision in *Franchise Tax Board v. Hyatt*. In *Hyatt*, the Supreme Court overruled its prior decision and held that a private lawsuit in a state's courts against another state or another state's agencies and employees is unconstitutional under the doctrine of sovereign immunity. Hinshaw attorneys Ed Lenci and Matthew Corwin represented ABOR and Prof. Hodgins.

The lawsuit's facts were unusual. In 1992, Dr. Martin Trepel, a collector and seller of African art, bought an 8-foot, wooden statue called a Baga Serpent, for \$15,000 and without provenance, from a person who, about ten years later, sold Trepel fake pieces of African art, as reported in a 2002 story [published by The New York Post](#). In 2016, Trepel wanted to sell the Serpent for \$15 million based on opinions that it was centuries old, but an antiquities expert told him he would need to get the statue radiocarbon dated in order to fetch such a price. Trepel contracted with the University of Arizona's radiocarbon lab to date the statue, but the lab's tests showed that the Serpent was carved from the wood of a tree cut down c. 1975. Trepel sued in the New York State court in Manhattan. He lost there and, in fact, the trial judge remarked that "[t]his action is frivolous." Trepel appealed. After he appealed, the Supreme Court decided *Hyatt*. Accurately predicting the Supreme Court's decision, the Hinshaw team first raised sovereign immunity in the trial court.

This is not Lenci's first foray into the issue sovereign immunity. In *Mutual Marine Offices, Inc., et al. v. Banco de Seguros del Estado*, 344 F.3d 255 (2d Cir. 2003), he convinced a federal Circuit Court of Appeals that an reinsurer owned by the government of Uruguay had waived sovereign immunity. In *Skandia America Reinsurance Corp. v. Caja Nacional de Ahorro y Seguro*, 1997 U.S. Dist. LEXIS 7221, 1997 WL 278054 (S.D.N.Y. 1997), he persuaded the court that a reinsurer owned by the government of Argentina was not immune from posting pre-answer security because an arbitral treaty, the New York Convention, permitted such security and overrode the U.S. Foreign Sovereign Immunities Act. Both are

Attorneys

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Service Areas

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considered key decisions concerning sovereign immunity.

Media Coverage

Arizona Daily Star: "[Arizona Scientific fight over treasured serpent sculpture ensnares Arizona researcher](#)," May 18, 2020

The case is *Martin Trepel v. Greg Hodgins, et al*, No. 2019-232 (2020 NY Slip Op 02735).