

# **Bond Case Briefs**

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## **GOVERNMENTAL IMMUNITY - TEXAS**

### **Texas Adjutant General's Office v. Ngakoue**

**Supreme Court of Texas - August 30, 2013 - S.W.3d - 2013 WL 4608867**

Motorist filed negligence action against employee of Texas Adjutant General's Office (TAGO), seeking recovery for injuries sustained in collision with vehicle driven by employee. Employee filed motion to dismiss under election-of-remedies provision of Texas Tort Claims Act (TTCA), and motorist filed amended petition adding TAGO as a defendant.

The Supreme Court of Texas held that:

- Consent of a governmental unit to suit, under provision of Texas Tort Claims Act (TTCA) stating that the filing of a suit against any employee of a governmental unit constitutes an irrevocable election and immediately and forever bars any suit by plaintiff against governmental unit regarding same subject matter unless governmental unit consents, is not limited to statutory waivers of immunity found outside the TTCA itself, abrogating *City of Houston v. Esparza*, 369 S.W.3d 238;
- A suit against governmental employee in his official capacity does not trigger the bar contained in election-of-remedies provision to subsequent suits against governmental unit regarding same subject matter; and
- Motorist, in filing amended petition adding TAGO as defendant in response to TAGO employee's motion to dismiss, was not required to also dismiss employee before proceeding against TAGO as sole defendant.