



[Private Company Claims Governmental Immunity from Liability in Indiana Car Crash](#)

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Governmental immunity isn't a new concept. It's a longstanding legal concept that the government coffers can be protected from financial liability for an individual's harm, as part of the overall public good. All levels of government enjoy some level of "sovereign immunity," from tiny municipalities and school districts, to states and the federal government.

However, over in Fort Wayne, Indiana, crafty defense counsel have come up with a new twist to the immunity defense. Now, a private company – not a governmental entity, but a for-profit corporation – is claiming governmental immunity as its own.

The private company contracted to lease the Indiana Toll Road for a period of 75 years.

Specifically, ITR Concession Co. paid almost \$4 billion for the rights to operate the toll road on behalf of a Spanish-Australian consortium for 75 years. Now that someone has been seriously injured in a car crash on that stretch of roadway, [ITR Concession is asserting that it has governmental immunity](#) because what it is doing is essentially "governmental functions undertaken for the public purpose."

That's right. Public road under a private lease to a for-profit company acting as agent for two foreign corporations, and suddenly, governmental immunity?

Can a private company operating a toll road for the profit of a foreign consortium realistically claim governmental immunity?

It might be nice to read the language of that lease between ITR Concession Co. and the State of Indiana, to see if there is language regarding assumption of the risk, etc. ([It's being reported that immunity isn't addressed in the contract.](#))

Will the governmental entity from where this immunity purportedly derives be considered to be a proper party to this federal lawsuit? Will it be held that any private

lease of a public property implicitly carries immunity with it? A Chicago Federal Judge will decide.

Duty to Maintain

[ITR has also asserted a claim that it properly maintained the road](#) after a storm hit back in December 2008 when the car crash occurred. “No, we didn’t breach our duty to maintain.” Now, there’s a defense for you.