

## COURTS: U.S. SUPREME COURT GRANTS FTB'S REQUEST TO REVIEW *HYATT* CASE

The U.S. Supreme Court announced June 30 that it has granted the Franchise Tax Board's request to review *Franchise Tax Board v. Gilbert Hyatt*, in which a Nevada jury found that the FTB committed fraud against inventor Gilbert Hyatt and intentionally inflicted emotional distress upon him.

The jury's 2008 decision was upheld last year by the Nevada Supreme Court. The FTB was ordered to pay Mr. Hyatt more than \$1 million in damages for the fraud count, and a trial is pending to determine the amount of damages the agency must pay for the emotional distress. The jury had awarded Mr. Hyatt \$85 million in damages for the emotional distress claim.

"Hyatt suffered extreme treatment from FTB," the Nevada Supreme Court wrote last year. "FTB disclosed personal information that it promised to keep confidential and delayed resolution of Hyatt's protests for 11 years, resulting in a daily interest charge of \$8,000. Further, Hyatt presented testimony that the auditor who conducted the majority of his two audits made disparaging remarks about Hyatt and his religion, was determined to impose tax assessments against him, and that FTB fostered an environment in which the imposition of tax assessments was the objective whenever an audit was undertaken. These facts support the conclusion that this case is at the more extreme end of the scale, and therefore less in the way of proof as to emotional distress suffered by Hyatt is necessary."

The FTB asked the U.S. Supreme Court to review three questions:

- Whether the federal discretionary-function immunity rule, 28 U.S.C. §2680(a), is categorically inapplicable to intentional torts and bad-faith conduct.
- Whether Nevada may refuse to extend to sister states haled into Nevada courts the same immunities Nevada enjoys in those courts.
- Whether *Nevada v. Hall* (1979) 440 U.S. 410, which permits a sovereign state to be haled into the courts of another state without its consent, should be overruled.

The high court granted the request to review the case in light of the latter two questions.

In his petition asking the court to leave the Nevada court's decision intact, Mr. Hyatt stated: "Nevada obviously has no control over the hiring and training of California tax officials, and it cannot exert influence over their apparent willingness to violate Nevada's tort laws. Consequently, it had no ability to rein in California tax officials once they embarked upon an offensive, and wholly inappropriate, personal campaign to 'get' a Nevada resident. Instead, Nevada was left with the after-the-fact option of awarding compensation for the harm caused by the Board's deliberate and malicious acts. The Nevada Supreme Court's decision to allow full compensation – rather than directly or

indirectly giving priority to California's immunity laws – was well within the bounds of Nevada's own sovereign authority.”

Mr. Hyatt added: “[W]e note the irony created by the Board’s attempt to invoke (albeit, at second hand) the protection of a damages cap for Nevada officials under Nevada law. It may be recalled that, when the shoe was on the other foot in *Nevada v. Hall*, Nevada officials sought protection under the very same Nevada law in the California courts, only to be told by the California courts that they would not apply it. ... As a result, Nevada officials were exposed to unlimited damages in California for a claim of negligence. Here, of course, Nevada voluntarily accorded the Board complete immunity against negligence claims as a matter of comity, and the Board finds itself obligated to pay damages at all only because it went well beyond the bounds of simple negligence and undertook a calculated campaign aimed at causing harm to a Nevada resident. Given these circumstances, the Board’s demand for additional immunity is particularly unjustified.”

*USA Today* on June 30 called the case “the new War Between the States.”

This is not the first trip to the U.S. Supreme Court for this case. In April 2003, the nation’s high court ruled unanimously that Mr. Hyatt could sue the FTB in Nevada, rejecting the FTB’s argument that its auditors were immune from being sued for on-the-job conduct. Writing the decision for the court, Justice Sandra Day O’Connor noted that Nevada does not provide immunity to government employees who commit intentional torts, and said California was trying to elevate its sovereign interests above those of Nevada.