

Appellate Courts Continue Strict Application of Statutory Notice Requirements in Favor of Governmental Entities

In a group of recent decisions, the Michigan Court of Appeals has continued, with one exception, the movement toward mandating strict compliance with statutory notice requirements in MCLA 691.1404(1), 600.6431(3) and 691.1403 to preclude injury suits against governmental entities.

In *McCahan v Brennan*, Mich App 2011 WL 309413 (2/1/11), the court extended the strict compliance rule set forth in MCLA 691.1404(1) as adopted by the Michigan Supreme Court in *Rowland v Washtenaw County Road Commission*, 447 Mich 197 (2007), for notices of intent to file claims with governmental entities to notices of intent required to be filed with the Michigan Court of Claims under MCLA 600.6431(3). *Rowland* had overturned prior precedent requiring the governmental agency to show prejudice arising from the lack of notice.

In another published decision in *Kline v Department of Transportation*, Mich App, 2011 WL 711042 (3/1/11), the court reluctantly followed *McCahan* due to the required procedure for following previously published decisions on an issue, but two of the three judges would otherwise have reversed and asked that a special panel of the Court of Appeals consider the conflict.

In several other unpublished decisions, the strict compliance rule was followed. Service of a notice of intent to file a claim on a city's risk management department was held insufficient where the statute provided for service to be made on the Mayor, City Clerk, or City Attorney. *Carroll v City of Flint*, 2011 WL 475190 (2/10/11). The use of an incorrect

location of the alleged sidewalk defect (northeast instead of a northwest corner of an intersection) in a notice of intent was held to be fatal to Plaintiff's case in *Graczyk v City of Bay City*, 2011 WL 521191 (2/15/11). Pictures of generally rough road where the Plaintiff could not point to a specific pothole which caused his motorcycle accident was insufficient to give actual or constructive notice of the defect to the county road commission or required by MCLA 691.1403 as held in *Kurzer v Oakland County Road Commission*, 2011 WL 445656 (2/8/11).

However, in the earlier published decision of *Plunkett v Department of Transportation*, 286 Mich App 168 (2009), a panel ruled that substantial compliance with the notice requirement as far as the description of the nature of the defect was enough.

Although a conflicts panel of the Court of Appeals as requested in *Kline*, could change the movement toward strict compliance with notice requirements, it is likely that claimants will be required to dot all their I's and cross all their T's by fully and strictly following the letter of the notice requirements when seeking damages against a governmental entity.

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