



CLAIMS BRIEF

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COURT OF APPEALS DEEMS NOTICE OF CLAIM MADE TO A THIRD-PARTY CLAIMS ADMINISTRATOR SUFFICIENT UNDER THE LOCAL GOVERNMENT TORT CLAIMS ACT

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Generally, a plaintiff cannot bring a state tort action against a local government or its employees unless the notice of the claim required by the Local Government Tort Claims Act (hereinafter "LGTCA") is given within 180 days after the injury. Section 5-304(b) of the LGTCA requires that the notice of claim "be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant, to the county commissioner, county council, or corporate authorities of a defendant local government" The exceptions are Baltimore City, where notice is to be given to the City Solicitor, Howard and Montgomery Counties, where notice is to be given to the County Executive, and Anne Arundel, Baltimore, Harford, and Prince George's Counties, where notice is to be given to the County Solicitor or County Attorney. The written notice must include "the time, place, and cause of the injury." § 5-304(b)(3).

The purpose of the notice requirement is to protect the municipalities and counties from exaggerated claims by providing a mechanism whereby the municipality or county would be apprised of its possible liability at a time when it could conduct its own investigation, i.e., while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and its responsibility in connection with it. *Williams v. Maynard*, 359 Md. 379, 389-90 (2000). Since its enactment in 1987, the notice provision frequently has been the subject of litigation. On the one hand, local governments have pursued strict application of the notice requirements as an affirmative defense to lawsuits. On the other hand, plaintiffs have sought a more liberal interpretation, especially where they have not complied with some or all of the statutory requirements.

One area of contention concerns the person or persons to whom notice may be given. While the LGTCA seemingly is unambiguous in this regard, claimants, or their attorneys, often

Please Route to:

Sheriff _____
Attorney _____
Police Chief _____
Clerk _____

Human Resources _____
Risk Management or Claims _____
Manager _____

send notice not to the designated public officials, but rather to third party insurers or other entities responsible for investigating claims against local governments and their employees. Plaintiffs have persistently contended that notice to such entities is sufficient to comply with the LGTCA. Not unexpectedly, local governments have taken the position that, since the statute is unambiguous, notice to a person or entity other than those identified in the LGTCA is insufficient, and, thus, bars the plaintiff's suit.

Despite the existence of long-standing precedent favorable to the local governments' position, the issue recently was revisited by Maryland's Court of Appeals. In two cases consolidated on appeal, *Robert Moore v. Mostaba Norouzi and Stuart C. Mendelson v. Philip George Brown*, Nos. 126 and 127, Court of Appeals, September Term, 2000, decided September 25, 2002, the Court of Appeals overruled prior case law supportive of the position advanced by local governments. In both cases, the plaintiffs had been injured in motor vehicle accidents, in which employees of Montgomery County were involved. In neither case did the plaintiff send any notice of claim to the County Executive. Instead, one plaintiff was contacted after the accident by Trigon Administrators, Inc. (hereinafter "Trigon"), which, pursuant to a county-solicited contract, provided claims administration services for the Montgomery Self-Insurance Program. The plaintiff and his attorney gave detailed information concerning the accident to Trigon's representatives. The second plaintiff completed a Telephone Claim Report to the Montgomery County Division of Risk Management. This Report was forwarded to Trigon, which initiated investigation of the claim. When both claims failed to settle, suits were filed. The Circuit Court dismissed both cases, ruling that, by not directly notifying the Montgomery County Executive as required by the LGTCA, plaintiffs had failed to satisfy the Act's written notice requirement. Appeals were taken, and the Court of Appeals assumed jurisdiction over both cases.

The Court of Appeals reversed the lower court, holding that the plaintiffs had "substantially complied" with the notice requirements, and, in any event, that "good cause" existed to excuse the plaintiffs' failure to give notice. In reaching its decision, the court observed that the purpose of the notice requirement, stated above, was fulfilled in both cases by providing notice to Trigon. Due to the contract between the county and Trigon, the Court concluded that "[a]lthough the County uses a third party, private company to act as its claims administrator, it is clear, given this contractual arrangement, its comprehensiveness and degree of control that the county maintains, that actual notice to the County results when notice is given to Trigon."

The effect of this case will be that, in the future, where a tort claimant provides the information required by the LGTCA to the unit or division with the responsibility for investigating tort claims against the local government, including third party administrators and insurers, the claimant will be deemed to have substantially complied with the notice provisions of the LGTCA.

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