

Michigan Supreme Court 'Takes Notice' of Statutorily Required Notice Provisions

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Rhonda R. Stowers
(810) 342-7003
rstowers@plunkettcooney.com

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In two recent cases, the Michigan Supreme Court has reaffirmed the need for plaintiffs to strictly comply with statutory notice requirements if they want to sue a municipal entity.

These rulings present an opportunity for municipalities and governmental entities to avoid or quickly resolve litigation by taking appropriate action to challenge failures by plaintiffs to meet the requirements.

The case of *Atkins v. Suburban Mobile Authority for Regional Transportation (SMART)* involved a bus accident in which the plaintiff was a passenger. Michigan law requires that a person with an injury claim involving a common carrier give notice of the claim to the transportation authority within 60 days. The plaintiff had informed the no-fault claims representative for the authority that she had been injured within 10 days of the accident. She claimed that this was sufficient notice when her later-filed tort claim was objected to due to lack of notice.

The Michigan Supreme Court held that the plaintiff had failed to provide adequate notice of her tort claim. In its decision, the court noted that no-fault claims and fault-based claims are "qualitatively different" and that notice of one distinct claim does not put a municipality on notice as to other claims. A municipality is not required to anticipate claims of which it has no notice.

In *McCahan v. Brennan*, the Michigan Supreme Court reaffirmed its earlier ruling in *Rowland v. Washtenaw County Road Commission*, which held that courts must enforce statutory notice provisions as written and that judicially created caveats (such as requiring the municipality to show prejudice) are not permitted. The plaintiff in *McCahan* was in an auto accident with a car owned by the University of Michigan. She did not file a timely notice with the Court of Claims as required to sue a state entity, but argued that she had met with university representatives and, therefore, the university had ample notice within the statutory time requirements. Despite the lack of prejudice to the university, the court held that the failure to follow the notice provisions of the statute barred the plaintiff's claim. The court further held that the logic of *Rowland* applies to all similar statutory notice or filing provisions.

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Plaintiffs cannot avoid such notice requirements by claiming a lack of prejudice to the defendant municipalities.

Given the above rulings, municipalities faced with a lawsuit should give careful consideration to the applicable notice requirements and whether they have been met by the plaintiff in their case. For example, it should be confirmed that the notice was given, in writing, within the proper time frame, was served upon the proper person or entity, and that the notice (and any attached documents) contain those items required by applicable statute.

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