

WASHINGTON CASE UPDATE

Patience is a Virtue: Complying with the Statutory Waiting Period Before Filing a Lawsuit Against a Local Government Entity

From the desk of Kyle Riley: Must a tort claimant strictly comply with a 60-day statutory waiting period before filing a lawsuit against a local governmental entity?

Claims Pointer: No. Strict compliance is not required for the 60-day statutory waiting period to file a lawsuit against a local government entity under RCW 4.96.020(4). Rather, a tort claimant must substantially comply with the waiting period, allowing the government entity time to investigate, evaluate, and settle claims.

case in point...

Lee v. Metro Parks Tacoma, --- P.3d ---, 2014 WL5011120 (Wash. Ct. App. Oct. 7, 2014).

In 2009, plaintiff Christina Lee was injured at Owen Beach at Point Defiance Park in Tacoma, Washington, which is operated by Metro Parks Tacoma. On June 5, 2012, Lee completed and signed a claim for damages form, stating she was seeking damages against Metro Park as a result of her injury in 2009 at Owen Beach. Metro Park received Lee's claim for damages form on June 8, 2012.

On June 22, 2014, Lee filed a lawsuit against Greater Metro Parks Foundation and Metro Parks Tacoma. The complaint specifically alleged that Metro Parks was a municipal agency. Both defendants moved for summary judgment on the ground that Lee did not wait 60 days after submitting her tort claim to Metro Parks before filing a lawsuit against Metro Parks, in violation of RCW 4.96.020. The trial court granted summary judgment in favor of Metro Parks and dismissed Lee's lawsuit. Lee appealed the trial court's dismissal of Metro Parks. Greater Metro Parks Foundation also prevailed on summary judgment; however, Lee did not challenge the trial court's summary judgment dismissal of Greater Metro Parks Foundation on appeal.

RCW 4.96.010(1) provides that before filing a lawsuit against a local governmental entity, a claimant must first file a claim for damages with the local governmental entity. RCW 4.96.020 outlines the process a tort claimant must follow in filing such a claim for damages. One of the statute's requirements is that the claimant must wait until 60 days have elapsed after the claim was presented to the local governmental entity before filing a lawsuit. See RCW 4.96.020(4).

Lee filed her lawsuit against Metro Parks only fourteen days after Metro Parks had received her claim for damages form, and therefore Lee did not comply with the 60-day waiting period required under

the statute. Lee argued that her noncompliance with the statute did not bar her claim against Metro Parks because she *substantially complied* with the statutory requirements. The issue then became whether substantial or strict compliance with the statutory 60-day waiting period was required.

The court looked to the language of the statute, which provides: "With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory." RCW 4.96.020(5). The court concluded that the 60-day statutory waiting period was a "procedural requirement []" and therefore, based on the statutory language, the substantial compliance doctrine applied. Thus, Lee's claim against Metro Parks would not be barred if she substantially complied with the 60-day waiting period.

The court advised that substantial compliance with a statute meant that the "statute has been followed sufficiently so as to carry out the intent for which the statute was adopted." *Banner Realty, Inc. v. Dep't of Revenue*, 48 Wash.App. 319, 327 (1981). Here, the court concluded that the purpose of the statute was to allow governmental entities time to investigate, evaluate, and settle claims; i.e., to assess the potential costs and benefits of litigation.

Having filed a lawsuit only fourteen days after Metro Parks received her tort claim, the court concluded that Lee did not substantially comply with the 60-day waiting period. Lee failed to present any evidence that Metro Parks had completed its investigation and evaluation, decided whether to accept or reject her claim, or had engaged in any settlement negotiations. In fact, Lee failed to present any evidence that Metro Parks had taken any action at all on her claim at the time she filed her complaint. Accordingly, the court concluded that Metro Parks was entitled to summary judgment and affirmed the trial court's dismissal of Lee's lawsuit.



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