

OREGON LAW UPDATE

Tort Claim Notice: What is Required?

case in point ..

From the Desk of Jeff Eberhard: Government bodies must be placed on notice of a claim within six months of an injury. This case addresses whether a payment to a PIP carrier is sufficient.

Claims Pointer: To bring an action against a public body for personal injury, ORS 30.275 requires that a notice of claim be made to the public body within six months of the date of the accident or loss. This notice requirement can be satisfied under ORS 30.275(3)(d) if payment of all or any part of the claim is made by or on behalf of the public body at any time. Payment by a public body of a PIP insurer's request for reimbursement of PIP benefits provided to an injured party can be considered payment of part of the injured party's claim, thus establishing notice under ORS 30.275(3)(d).

Scott Hughes v. City of Portland, in the Court of Appeals of the State of Oregon, A149379, --- P.3d --- (February 13, 2013).

City's payment toward State Farm's PIP reimbursement request. The trial court granted the City's motion and Hughes appealed.

On November 20, 2008, an employee of the City of Portland ("City") was driving a truck owned by the City when he rear-ended a vehicle in front of him which, in turn, caused the vehicle to run into the truck in which Scott Hughes ("Hughes") was a passenger. Hughes sustained injuries as a result of this accident. The vehicle was insured through State Farm. Following the accident, State Farm opened a PIP claim for Hughes. On December 1, 2008, State Farm sent the City's risk-management office a letter providing the date, location, and a brief description of the accident stating that State Farm was handling the claim on behalf of Hughes and would be seeking reimbursement rights under the PIP claim.

The Court of Appeals reversed and remanded. The Court recognized that ORS 30.275(3)(d) provided that the City's notice requirement was satisfied by payment of all or any part of the Hughes' claim at any time following the accident. The City's argument on appeal, however, was that payment of the PIP insurer's request for reimbursement of PIP benefits did not constitute payment of part of Hughes' claim. The Court disagreed, finding that an injured party who brings an action against a tortfeasor can, but is not required to, include in their prayer for relief damage amounts for losses covered by PIP benefits that had been reimbursed. Further, if judgment is later entered for the injured party, the amount of the judgment against the tortfeasor is entered in the full amount of the verdict and then reduced by the amount of the PIP reimbursement. Thus, contrary to the City's argument, an injured party's claim could include damages for losses that were compensated by PIP benefits. Accordingly, since there was a question of fact as to whether the prayer for relief in Hughes' complaint included the PIP benefits that the City reimbursed to State Farm, the court held that summary judgment was improper.

The City assigned the case to a claims analyst. Within six months of the accident date, the City had made at least one payment towards Hughes' PIP claim, and the City continued to make payments on Hughes' PIP claim thereafter. In September 2010, Hughes brought a negligence action against the City, seeking more than \$125,000 in damages. The City moved for summary judgment arguing that to bring an action against a public body, ORS 30.275 required that notice of claim be made within 180 days of the loss or injury, and Hughes had not provided such notice. Hughes argued that pursuant to ORS 30.275(3)(d), the notice requirement was satisfied by the

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