

OREGON LAW UPDATE

Satisfying Actual Notice through Asserting A Claim rather than All Claims

From the Desk of Joshua P. Hayward: When is actual notice to a public body satisfied pursuant to the Oregon Tort Claims Act (OTCA)?

case in point...

Claims Pointer: In Oregon, as in many other states, a plaintiff is required to provide notice of a tort claim against a public body within six months to one year pursuant to the OTCA. In the following case, the Court of Appeals noted that Plaintiff provided actual notice of a property damage claim within six months of an accident. The Court ruled that despite not notifying the public body that she intended to file a personal injury lawsuit until more than one year after the car accident, Plaintiff timely notified Defendant of a claim within six months and, therefore, her personal injury claim was not time-barred.

Heng-Nguyen v. Tigard-Tualatin School Dist.,
275 Or App 724 (2015)

On February 28, 2011, Defendant's employee hit Plaintiff's car. A week after the accident, Plaintiff spoke to "Jensen," Defendant's liability insurance trust representative. Plaintiff and Jensen agreed that Defendant's insurance trust would pay Plaintiff \$6,030 in exchange for Plaintiff releasing Defendant from all claims she had against it, except for a potential personal-injury claim. Plaintiff received a check from Defendant. The front of the check stated, "full and final resolution of property damage only." The back of the check stated, "Endorsement of this check by Payee acknowledges a full and final release of all claims except personal injury claims against Tigard-Tualatin School District."

In March 2012, over a year after the accident, Plaintiff notified Jensen that she also suffered physical injuries in the accident. Plaintiff subsequently filed an action against Defendant, seeking damages for personal injuries. Defendant filed an answer and moved for summary judgment contending that it had not received notice of Plaintiff's personal injury claim within 180 days of the accident as required by the OTCA. Defendant argued that in communicating with Plaintiff after the accident, she never said she was physically injured or intended

to sue the District. Defendant argued that, at most, it received notice of Plaintiff's property claim. Defendant contended that notice of the personal injury could only be accomplished if the earlier communications would lead a reasonable person to believe that Plaintiff intended to file a personal injury lawsuit against the Defendant. The trial court granted Defendant's motion for summary judgment and dismissed Plaintiff's claims. Plaintiff appealed.

The Court of Appeals rejected Defendant's argument that it did not receive timely notice of Plaintiff's personal injury claim, reasoning that the Plaintiff asserted a claim for property damage within one week of the accident. The Court found that notice pursuant to the OTCA was achieved because the Defendant knew Plaintiff was asserting a property damage claim. It further asserted that the statute only requires a communication that would lead a reasonable person to believe Plaintiff intended to assert a claim, not file an action as argued by Defendant.

In reaching its decision, the Court provided an overview of the OTCA and focused on whether Defendant received actual notice. According to the OTCA, in order to maintain a tort claim against a public body, timely notice must be provided. Timely notice under the statute must generally occur within



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180 days from the alleged loss or injury. Actual notice occurs when a communication provides Defendant with actual knowledge of the circumstances of the claim, and the communication would lead a reasonable person to conclude that the person intends to assert a claim. The Court reasoned that the differing articles serve an important purpose. In addition to providing the general facts surrounding the circumstances of the claim, a Plaintiff is only required to convey an intention to assert a claim in general terms.

The trial court's ruling to grant summary judgment in favor of Defendant and to deny partial summary judgment to Plaintiff was reversed and the case was remanded.



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