

2006

Moises M. Morales and Lisa M. Morales v. State of Utah : Brief of Appellant

Utah Court of Appeals

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Michael P. Studebaker; Attorney for Plaintiff/Appellant.

Mark Shurtleff; J. Clifford Petersen; Attorney General; Attorneys for Defendant/Appellee.

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IN THE UTAH COURT OF APPEALS
FOR THE STATE OF UTAH

MOISES M. MORALES &
LISA M. MORALES,
Plaintiff/Appellant

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BRIEF FOR APPELLANT

v.

CASE NO. 20060593

STATE OF UTAH
Defendant/Appellee

ORAL ARGUMENT REQUESTED

ON APPEAL FROM A DISMISSAL AND FINAL ORDER FROM THE FOURTH
JUDICIAL DISTRICT COURT, IN AND FOR UTAH COUNTY. STATE OF UTAH

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FILED
UTAH APPELLATE COURT

FEB 16 2007

IN THE UTAH COURT OF APPEALS
FOR THE STATE OF UTAH

MOISES M. MORALES &
LISA M. MORALES,
Plaintiff/Appellant

v.

STATE OF UTAH
Defendant/Appellee

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LIST OF PARTIES

The parties in this matter are the same as the parties identified in the caption on the cover of Appellant's brief.

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BRIEF STATEMENT OF JURISDICTION OF COURT

Jurisdiction for the Appeal is conferred upon the Utah Supreme Court pursuant to U.C.A. §78-2a-3(2)(j).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

POINT I

Whether the trial court committed reversible error in its application of the Utah Governmental Immunity Act in dismissing the Plaintiff's Complaint and finding the Utah Governmental Immunity Act was not complied with

STANDARD OF REVIEW: The Trial Court's decision should be reviewed either for correctness or it should be assumed that the factual allegations in the complaint are true and all reasonable inferences should be viewed in the light most favorable to the plaintiff. *Patterson v. American Fork City*, 67 P.3d 466 (Utah 2003). Also, a dismissal of a case based on governmental immunity is a determination of law to which an appellate court affords no difference. *Hall v. Utah State Dep't of Corr.*, 24 P.3d 958 (2001).

POINT II

Whether the trial court committed reversible error in not applying the doctrine of equitable estoppel instead of dismissing the Plaintiff's Complaint

STANDARD OF REVIEW: The Trial Court's decision should be reviewed either for correctness or it should be assumed that the factual allegations in the complaint are true and all reasonable inferences should be viewed in the light most favorable to the plaintiff. *Patterson v. American Fork City*, 67 P.3d 466 (Utah 2003). Also, a dismissal of a case based

on governmental immunity is a determination of law to which an appellate court affords no difference. *Hall v. Utah State Dep't of Corr.*, 24 P.3d 958 (2001).

PRESERVATION FOR APPEAL

The issues sought to be reviewed were preserved for appeal by the Plaintiff's Memorandum in Support of Motion in Opposition to Motion to Dismiss (R. 0040-0099). The issues were also preserved by oral argument of which a transcript is part of the record before this Court.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann. §63-30d-401. Claim for injury–Notice–Contents–Service–Legal disability–Appointment of guardian ad litem.

(1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(b) The statute of limitations does not begin to run until a claimant knew, or with the exercise of reasonable diligence should have known:

(i) that the claimant had a claim against the governmental entity or its employee; and

(ii) the identity of the governmental entity or the name of the employee.

(c) The burden to prove the exercise of reasonable diligence is upon the claimant.

(2) Any person having a claim against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope

of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted;

(iii) the damages incurred by the claimant so far as they are known; and

(iv) if the claim is being pursued against a governmental employee individually as provided in Subsection 63-30d-202(3)(c), the name of the employee.

(b) The notice of claim shall be:

(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(ii) directed and delivered by hand or by mail according to the requirements of Section 68-3-8.5 to the office of:

(A) the city or town clerk, when the claim is against an incorporated city or town;

(B) the county clerk, when the claim is against a county;

(C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;

(D) the presiding officer or secretary/clerk of the board, when the claim

is against a special district;

(E) the attorney general, when the claim is against the State of Utah;

(F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body;
or

(G) the agent authorized by a governmental entity to receive the notice of claim by the governmental entity under Subsection (5)(e).

(4) (a) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a claimant who is under the age of majority or mentally incompetent, that governmental entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.

(b) If a guardian ad litem is appointed, the time for filing a claim under Section 63-30d-402 begins when the order appointing the guardian is issued.

(5) (a) Each governmental entity subject to suit under this chapter shall file a statement with the Division of Corporations and Commercial Code within the Department of Commerce containing:

(i) the name and address of the governmental entity;

(ii) the office or agent designated to receive a notice of claim; and

(iii) the address at which it is to be directed and delivered.

(b) Each governmental entity shall update its statement as necessary to ensure that the

information is accurate.

(c) The Division of Corporations and Commercial Code shall develop a form for governmental entities to complete that provides the information required by Subsection (5)(a).

(d) (i) Newly incorporated municipalities shall file the statement required by Subsection (5)(a) at the time that the statement of incorporation and boundaries is filed with the lieutenant governor under Section 10-1-106.

(ii) Newly incorporated special districts shall file the statement required by Subsection (5)(a) at the time that the written notice of creation of the district is filed with the State Tax Commission and State Auditor under Sections 17A-1-102 and 17B-3-215.

(e) A governmental entity may, in its statement, identify an agent authorized by the entity to accept notices of claim on its behalf.

(6) The Division of Corporations and Commercial Code shall:

(a) maintain an index of the statements required by this section arranged both alphabetically by entity and by county of operation; and

(b) make the indices available to the public both electronically and via hard copy.

(7) A governmental entity may not challenge the validity of a notice of claim on the grounds that it was not directed and delivered to the proper office or agent if the error is caused by the governmental entity's failure to file or update the statement required by Subsection (5).

Utah Code Ann §63-30d-403. Notice of claim—Approval or denial by governmental entity or insurance carrier within 60 days—Remedies for denial of claim.

(1) (a) Within 60 days of the filing of a notice of claim, the governmental entity or its insurance carrier shall inform the claimant in writing that the claim has either been approved or denied.

(b) A claim is considered to be denied if, at the end of the 60-day period, the governmental entity or its insurance carrier has failed to approve or deny the claim.

(2) (a) If the claim is denied, a claimant may institute an action in the district court against the governmental entity or an employee of the entity.

(b) The claimant shall begin the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired, regardless of whether or not the function giving rise to the claim is characterized as governmental.

STATEMENT OF THE CASE

This is a personal injury case in which Mr. Morales brought claims against the State of Utah under the Utah Governmental Immunity Act. At the early stages of the case after a lawsuit had been filed the Defendant sought dismissal arguing the requirements of the Utah Governmental Immunity Act had not been complied with. After oral arguments the trial court dismissed the action with prejudice.

STATEMENT OF THE FACTS

On October 12, 2003 Moises Morales was riding his motorcycle on a public road

located in Springville, Utah. At the time, a Mr. Randall R. Minor, who was a State employee at the time, was operating a State vehicle and entered the same road in which Mr. Morales was traveling, and collided with Mr. Morales. Mr. Morales had the right-of-way, and Mr. Minor failed to yield the right-of-way to Mr. Morales. (R. 0005). Mr. Morales suffered serious personal injuries, suffered significant medical bills and a loss of wages, and claimed mental anguish. (R. 0002-0004).

Mr. Morales, through prior counsel, filed a Notice of Claim against the State for the injuries which he suffered. (R. 0036). Subsequent to that being filed, Mr. Morales filed a Complaint for the injuries which were suffered. (R. 0114).

On October 17, 2005 the State filed a Motion to Dismiss Plaintiff's Complaint with Prejudice alleging the statute of limitations had expired. (R. 0004-0007). On May 18, 2006 oral arguments were held before the trial court on this request. The trial court granted the Motion to Dismiss stating the statute of limitations had run, and did not agree with the Plaintiff/Appellant's claim that estoppel applied to keep this action viable.

It is from this decision the present matter is on appeal.

SUMMARY OF THE ARGUMENT

The Utah Governmental Immunity Act is applicable to cases which name the State of Utah in claims of personal injury. Compliance with this Act is a mandatory prerequisite to commencing a legal action. In the case currently before this Court, Mr. Morales has complied with the Act and the dismissal of his personal injury lawsuit was improper.

Along with the Utah Governmental Immunity Act, the doctrine of equitable estoppel will allow claims to proceed under certain circumstances when justified reliance or a manifest injustice will occur. This is also applicable in the case before the Court.

ARGUMENT

I. Moises Morales complied with the requisite elements of the Utah Governmental Immunity Act and it was improper to dismiss his claims

It is not in dispute that the Utah Governmental Immunity Act governs claims similar to the one presently before the Court. Utah Code Ann. §63-30d-401 *et seq.* Strict compliance to this procedure was fairly recently affirmed by the Utah Supreme Court. *Davis v. Central Utah Counseling Ctr.*, 147 P.3d 390 (Utah 2006). In this matter, a claim was brought against the defendant based on the suicide of one of its patients. The plaintiff's attorney contacted the defendant after the suicide to ascertain whether the defendant was a governmental entity for purposes of serving a Notice of Claim under the Utah Governmental Immunity Act. The same attorney also verified this information through the Attorney General's office and the appropriate internet website. *Id.* at 393. After a lawsuit was commenced, the case was dismissed on summary judgment based on the fact that the defendant was an interlocal agency, and the proper parties for an interlocal agency were not served the Notice of Claim as outlined in the Utah Governmental Immunity Act.

A controlling case that discusses the requirements of strict compliance with the Utah Governmental Immunity Act is *Greene v. Utah Transit Auth.*, 37 P.3d 1156 (Utah 2001). In this matter, the plaintiff sued the defendant for injuries she suffered while boarding a public

bus. Prior to actually filing a lawsuit, the plaintiff's attorney had both written and oral communication with the defendant's claims adjuster. During one of these conversations, this adjuster advised the attorney to send the Notice of Claim directly to him even though he was not the person statutorily able to accept service. *Id.* at 1158. This occurred, and the claim was denied because strict compliance with the delivery requirements as found in the Governmental Immunity Act was not followed. Unfortunately the one year statute of limitations to file a legal action had expired which led to the trial court dismissing the case. *Id.* The Utah Supreme Court upheld this dismissal based on the fact that strict compliance with the delivery requirements of the Notice of Claim was not followed even though there were allegations the defendant's adjuster intentionally misled the plaintiff's attorney. *Id.* at 1159-60. In *dicta* the Utah Supreme court expressed concern over any deceptive tactics by a defendant in similar cases.

In the present matter, the request Notice of Claim was served upon the necessary parties representing the State of Utah (R. 43; TR 4/20). There was also a letter sent to the State checking on the status of the Mr. Morales' claims. *Id.* A representative from the State stated its investigation was ongoing and when that investigation was complete there would be in a position to make a decision of coverage and liability. (R. 0092-0093; TR. 7/9-8/11). Subsequent correspondence between the parties about coverage occurred, with the State giving the same type of response. (R. 0092).

To argue that the Plaintiff did not comply with the necessary statutory guidelines as

found in the Utah governmental Immunity Act is nonsensical. The State itself must have approved Mr. Morales' claims based on the fact they had already approved and sought to settle the property damage claims for \$5400. (R. 0099, TR. 26/6-7). This is not only an acceptance of the claim but avoids the trigger of a deemed denial of the claim. It is also illogical to accept the State's view because this would allow the State to pick and choose what parts of a claim to grant. This is clearly not granted or anticipated under the statute. Even if the trial court was correct in its determination that Mr. Morales had not complied with the Utah Governmental Immunity Act the doctrine of equitable estoppel would keep Mr. Morales' claims viable.

II. The application of the doctrine of equitable estoppel will prevent a significant and manifest injustice from being perpetrated against Moises Morales for the personal injury which he suffered at the hand of a State employee

Issues between equitable estoppel and its interaction with the Utah Governmental Immunity Act have been decided by Utah Supreme Court as recently as four years ago. *Wheeler v. McPherson*, 40 P.3d 632 (Utah 2002). In this matter, the plaintiff brought a lawsuit for personal injury against a governmental employee. This was dismissed for failure to comply with the Utah Governmental Immunity Act. On appeal of the dismissal, the plaintiff tried to make an argument for equitable estoppel in relation to the Notice of Claim requirements. While making this argument, the plaintiff relied upon correspondence from the Kane County attorney and argued that office impliedly accepted the Notice of Claim. However, the letter did not in any way accept the Notice of Claim which the plaintiff filed.

Id. at 637. For example, the letter never mentioned the Notice of Claim, nor did subsequent communication between the parties address these issues. *Id.* However, there are factors to be evaluated to justify the application of equitable estoppel.

Underlying negotiations play a pivotal role in determining whether equitable estoppel is appropriate. *Rice v. Granite Sch. Dist.*, 23 Utah 2d 23, 456 P.2d 159 (Utah 1969). In this matter the plaintiff had been injured at a public school. While recovering from her injuries she had various correspondence with the school's insurance adjuster. The adjuster multiple times informed the plaintiff she would be fully compensated for her injuries after she recovered. 23 Utah 2d at 24, 456 P.2d at 161. While she was recovering she again contacted the carrier who for the first time told her claim was denied. *Id.* It was then she filed a lawsuit which was dismissed. On appeal the plaintiff raised the issue of estoppel, which the Utah Supreme Court addressed.

A key determination in applying equitable estoppel depends on the character of the negotiations between the parties. 23 Utah 2d at 27, 456 P.2d at 67. It was noted that in this case liability was admitted and compensation was promised for her injuries. Importantly, the Court noted the plaintiff was led to believe that the only unresolved issue was a determination of her damages. *Id.* The Court further found that the defendant's actions had lulled the plaintiff into inaction. *Id.* See also, *Whitaker v. Salt Lake City Corp.*, 522 P.2d 1252 (Utah 1974) (finding the State is estopped from relying on a statute of limitations defense when it makes assurances a settlement would be forthcoming after medical records

and reports are provided to the insurance adjuster).

When applying the doctrine of equitable estoppel, certain elements must be met. These include a determination of whether: (1) a relevant party acts or fails to act in a manner that is inconsistent with a subsequent claim; (2) the second party reasonably acts or does not act because of the first party's original act or failure to act; and (3) the second party would suffer injury based on the first party's actions. *CECO Corp. v. Concrete Specialists, Inc.*, 772 P.2d 967, 969-70 (Utah 1989). Equitable estoppel is applicable in a wide variety of cases.

The doctrine of equitable estoppel can be asserted against the State. *Eldredge v. Utah State Retirement Bd.*, 795 P.2d 671, 675 (Utah Ct. App. 1990). A key element in which the appellate courts have allowed this doctrine to be applied is when the injustice which would be suffered is sufficiently grave. *Id.* (citation omitted).

The matter presently before the Court is distinguishable from *Wheeler*. *Wheeler* dealt with issues of proper service of a Notice of Claim. Based upon improper service of the Notice of Claim, equitable estoppel could not be applied. In no pleading before this or any other court is this type of issue raised in the present matter.

Similar to *Rice*, the Defendant's own correspondence makes it clear that when Mr. Morales had recovered they would look at settlement issues (R. 0044). Added with the fact that the Defendant had already made offers to settle the property damage claims (R. 0099, TR 29/6-7) it was only reasonable to believe the claim had been accepted.

Similar to *CECO Corp.*, the elements for applying equitable estoppel are met in the present matter. The Defendant had correspondence that showed Plaintiff's claims were approved, and then subsequently denied it. Mr. Morales reasonably acted in reliance by not commencing a formal lawsuit. Lastly, Mr. Morales suffered an accompanying harm by having his action dismissed.

Similar to *Eldredge*, Mr. Morales has suffered serious harm and a manifest injustice has been placed upon him. Mr. Morales suffered serious injury in which he had to be flown to the University of Utah Hospital for treatment. (TR. 25/1-5). He suffered a lacerated liver and pancreas, a left elbow fracture, a dislocated left wrist, and multiple fractures to his right hand. (TR. 25/6-10). He had to be fed through a catheter for three months, and suffered through about twenty-two months of partial disability. (TR. 25/10-12). He has trouble using his right hand, sitting, and standing. He has incurred over \$69,000 in medical damage. (TR. 25/17-20). These figures and discussion do not include the emotional distress he suffered, lost wages, or similar matters. These facts rise to the level found in *Eldredge*, and meet the requirements for applying equitable estoppel.

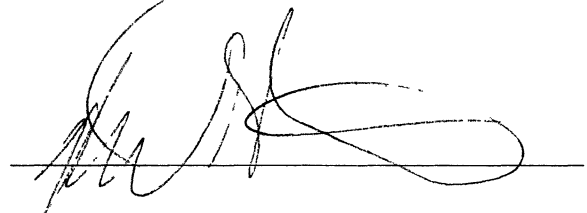
CONCLUSION

In the matter currently before the Court, Mr. Morales did comply with the requirements for commencing legal action by fulfilling and properly filing a Notice of Claim with the appropriate governmental agency, and the Defendant's actions it was clear the claim had been accepted so there was no deemed denial. Further, even if there was a minor

shortcoming in the underlying procedures, the doctrine of equitable estoppel would protect Mr. Morales' claims. The trial court was incorrect in its application of the requisite elements in this matter and should not have dismissed this matter.

Based on the facts and law as contained herein, The Plaintiff/Appellant prays this Court reverse and remand this case back to the trial court for trial.

DATED this the 16th day of February, 2007.

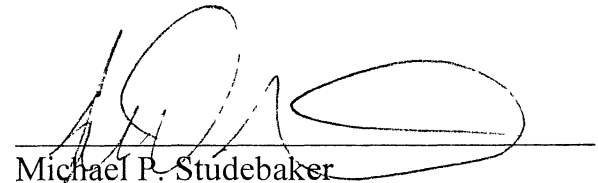
A handwritten signature in black ink, appearing to read "Michael P. Studebaker", written over a horizontal line.

Michael P. Studebaker

Attorney for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of February, 2007, a true and correct copy of the Appellant's brief was mailed to Mark Shurtleff and J. Clifford Petersen, Attorney General, 160 E. 300 S., 6th Floor, PO Box 140856, Salt Lake City, UT 84114.

A handwritten signature in black ink, appearing to read "Michael P. Studebaker", written over a horizontal line.

Michael P. Studebaker

Attorney for Plaintiffs/Appellants

ADDENDUM

Order Dismissing Plaintiffs' Complaint With Prejudice

Ruling RE: State of Utah's Motion to Dismiss Plaintiffs' Complaint With Prejudice

Minutes of Oral Argument

FILED
Fourth Judicial District Court
of Utah County State of Utah

6/12/06 NBT Deputy

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IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

MOISES N. MORALES and LISA M.
MORALES,

Plaintiff,

vs.

STATE OF UTAH,

Defendants.

:

: **ORDER DISMISSING PLAINTIFFS'**
: **COMPLAINT WITH PREJUDICE**

:

Case No. 050402970

:

Judge Fred D. Howard

:

Division 5

The above-entitled matter came before the Court on the State of Utah's Motion to Dismiss Plaintiffs' Complaint with Prejudice. The Court having entered a Ruling Re: State of Utah's Motion to Dismiss Plaintiffs' Complaint with Prejudice on May 22, 2006, now enters the following ORDER:


ORDER

IT IS HEREBY ORDERED as follows:

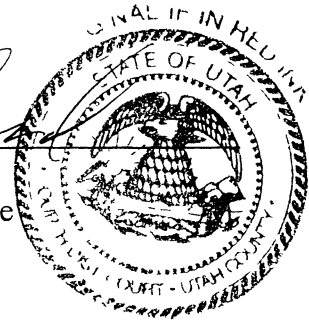
1. The State of Utah's Motion to Dismiss Plaintiffs' Complaint with Prejudice is granted;
2. Plaintiffs' Complaint is hereby dismissed with prejudice.

DATED this 12 day of June, 2006.

BY THE COURT:



FRED D. HOWARD
Fourth District Court Judge



CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2006, I caused to be served by U.S. mail, postage pre-paid, a true and correct copy of the foregoing Order Dismissing Plaintiffs' Complaint with Prejudice, to the following:

Jose A. Loayza
Attorney at Law
5663 South Redwood Rd., Ste 2
Taylorsville, Ut 84123

Corina Richman

FILED
Fourth Judicial District Court
of Utah County, State of Utah

5/22/06 12:51 PM Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

MOISES N. MORALES and LISA M. MORALES, Plaintiffs, v. STATE OF UTAH, Defendant.	RULING RE: STATE OF UTAH'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT WITH PREJUDICE Case # 050402970 Judge Fred D. Howard Division 5
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This matter comes before the Court on State of Utah's *Motion to Dismiss Plaintiffs' Complaint With Prejudice*. The Court, having reviewed the file and being fully advised in the premises, hereby issues the following:

RULING

The Court notes that Defendant State of Utah filed a Motion to Dismiss Plaintiffs' Complaint with Prejudice with an accompanying memorandum on October 18, 2005. Plaintiffs filed a Motion in Opposition to Defendant's Motion to Dismiss Plaintiffs' Complaint with an accompanying memorandum on October 24, 2005. The Court notes that Rule 7 of the Utah Rules of Civil Procedure does not contemplate the filing of a motion as an opposition to the other party's motion to dismiss. Therefore, the Court will treat Plaintiffs' pleading as an Opposition to Defendant's Motion. Defendant filed a Reply to Plaintiffs' Opposition on November 4, 2005. Plaintiffs filed a Request for Hearing on November 9, 2005 and Defendant filed a Request to

Submit for Decision on November 14, 2005. Oral arguments were heard by the Court on May 18, 2006.

Defendant moves for dismissal of Plaintiffs' Complaint, asserting that Plaintiffs have failed to comply with the requirements of the Utah Governmental Immunity Act, and as a result, their claims are barred. Specifically, Defendant sets forth that Plaintiff Lisa Morales failed to deliver a notice of claim to the attorney general prior to instituting the current action, and argues that the Court lacks subject matter jurisdictions with regard to her claim. Defendant further asserts that, under the statute, Plaintiff Moises Morales was required to file suit no later than March 15, 2005 and failed to do so until September 29, 2005 and his claim is therefore barred.

Plaintiffs oppose Defendant's Motion to Dismiss as to both Lisa Morales and Moises Morales, arguing that the State is estopped from relying on the statute of limitations as a defense because Defendant induced Plaintiffs not to file suit by offering assurances that it would settle Plaintiffs' claims. Plaintiffs also contend that Moises Morales complied with the requirements of the Utah Governmental Immunity Act, and should be allowed to proceed to trial on the merits of his case. Plaintiffs reference a letter received from a state claims adjuster which included the following statement: "Once Mr. Morales reaches an appropriate stage in his recovery I'd welcome obtaining any information you feel might help us in evaluating and settling his bodily injury claim." Plaintiff asserts that the State's letter came in reply to a letter from Plaintiff's counsel sent four days earlier inquiring as to the status of the claim. Plaintiff claims that he

interpreted the State's letter to be the approval of the claim and a discussion of the ascertainment of damages and settlement that would logically come after liability was accepted. Plaintiff asserts that his counsel relied on the statements and refrained from filing suit, waiting for Plaintiff Moises Morales' injuries to be properly treated and assessed. Plaintiff asserts that it was not until the statute of limitations had run that the State informed Plaintiff that it refused to pay on the claim.

The Court notes that an auto accident between Plaintiff Moises Morales and State employee Randall Minor occurred on October 12, 2003. On December 15, 2003, Moises Morales served a notice of claim upon the attorney general as required under Utah Code Ann. § 63-30-11 (2002). Under U.C.A. § 63-30-14, the State has ninety days from the filing of the claim to notify the claimant in writing of its approval or denial. The statute sets forth that "[a] claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or its insurance carrier has failed to approve or deny the claim." U.C.A. § 63-30-14. In this case, the Court notes that the State did not inform Plaintiff Moises Morales within ninety days from the filing of his notice of claim that his claim had been approved or denied. Therefore, given the specific statutory language, the Court finds that Moises Morales' claim was deemed denied on March 15, 2004.

The Court has read the letter dated May 26, 2004 from Jeff Coates, Claims Adjuster, to Plaintiffs' counsel and is unpersuaded by Plaintiffs' arguments that the language of the letter

amounted to an approval of Plaintiffs' claim. The letter was sent to Plaintiffs' attorney and contains an express statement that the invitation to evaluate Plaintiff Moises Morales's claim toward the object of settlement does not constitute a waiver of Plaintiff's obligation to comply with the Governmental Immunity Act. The offer by the State to discuss settlement cannot be construed as an inducement of delay, particularly where the requirements of the statute are express and clear and available to retained counsel. The Court finds that, given the facts of this case, the State did not lull Plaintiff Moises Morales into a false sense of security.

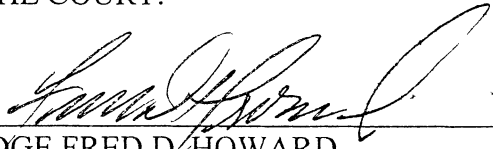
Given the clear language of the statute, the Court finds that Plaintiff was on notice that his claim was deemed denied on March 15, 2004 when he had not received written notice as to approval or denial from the State by that date. The Court finds that the State's willingness to consider settlement offers, as expressed in the May 26, 2004 letter, is consistent with the idea that Plaintiff's claim was still viable, if instituted as an action in district court as set forth in U.C.A. § 63-30-15. The Court finds that Plaintiff Moises Morales did not comply with the statutory requirements of the Utah Governmental Immunity Act because he waited too long to file his lawsuit in this Court. By September 29, 2005, the statute of limitations for his claim had already run; therefore, his claim is barred under the statute.

Although Plaintiffs have made an estoppel argument as to the claims of Lisa Morales, the Court also notes that neither the letter from Jeff Coates nor other communications between the parties reference Lisa Morales. The Court finds that Plaintiffs' estoppel argument as to Lisa

Morales also fails. The parties have stipulated to the fact that Lisa Morales did not file a Notice of Claim before filing suit against the State. Given that Lisa Morales failed to comply with the requirements of the Utah Governmental Immunity Act, the Court finds that her claims against the State are also barred. Although the Court is sympathetic to Plaintiff's plight and the challenges of his continuing recovery, the requirements of the Governmental Immunity Act must be strictly followed if one is to maintain an action against the State. *See Hall v Utah State Dep't of Corr* , 2001 UT 34, ¶23, 24 P.3d 958. The Court hereby grants Defendant's Motion to Dismiss. Counsel for Defendant is directed to submit an Order consistent with this Ruling.

Dated this 22nd day of May, 2006.

BY THE COURT:


JUDGE FRED D. HOWARD
District Court Judge

CERTIFICATE OF DELIVERY

I certify that true copies of the foregoing Ruling were delivered on the 22 day of May, 2006 to the following in the manner indicated, to wit:

by U.S. first class mail

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Deputy Court Clerk

ADDENDUM 1

FILED
Fourth Judicial District Court
of Utah County, State of Utah

5/18/06 MMT Deputy

4TH DISTRICT COURT - PROVO COURT
UTAH COUNTY, STATE OF UTAH

MOISES N MORALES Et al,	:	MINUTES
Plaintiff,	:	ORAL ARGUMENT
	:	
	:	
vs.	:	Case No: 050402970 PI
	:	
STATE OF UTAH,	:	Judge: FRED D HOWARD
Defendant.	:	Date: May 18, 2006

Clerk: miket

PRESENT

Plaintiff(s): MOISES N MORALES
Defendant(s): STATE OF UTAH
Plaintiff's Attorney(s): JOSE A LOAYZA
Defendant's Attorney(s): STEVEN A COMBE
Audio
Tape Number: 06-8-202 Tape Count: 8:59-10:01

HEARING

Counsel address the Court as to the State of Utah's Motion to Dismiss Plaintiffs' Complaint with Prejudice. The Court takes this matter under advisement and will issue a written ruling.