

2006

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

Utah Court of Appeals

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No. 20060593-CA

IN THE UTAH COURT OF APPEALS

MOISES M. MORALES & LISA M. MORALES,

Plaintiffs-Appellants,

v.

STATE OF UTAH,

Defendant-Appellee.

Brief of Appellee

Appeal from an Order granting a motion to dismiss of the
Fourth Judicial District Court, Utah County, State of Utah,
the Honorable Fred D. Howard presiding

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ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

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ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

List of All Parties

All parties to the proceeding appear in the caption of this Brief.

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No. 20060593-CA

IN THE UTAH COURT OF APPEALS

MOISES M. MORALES & LISA M. MORALES,

Plaintiffs-Appellants,

v.

STATE OF UTAH,

Defendant-Appellee.

Brief of Appellees

Statement of Jurisdiction

This matter comes within the appellate jurisdiction of the Utah Supreme Court under Utah Code Ann. § 78-2-2(3)(j) (West 2004) because this is an appeal from a judgment of a court of record over which this Court does not have original appellate jurisdiction. On July 6, 2006, the matter was transferred to this Court by the Utah Supreme Court pursuant to Utah Code Ann. §§ 78-2-2(4) and 78-2a-3(2)(j) (West 2004).

Issues Presented

1. Waiver

The Plaintiffs' opening brief discusses only the dismissal of Moises Morales's claims. It does not contain any analysis of the dismissal of Lisa Morales's claims. Have Plaintiffs waived Lisa Morales's claim in its entirety?

A. Standard of Review

Generally, any issues "not presented in the opening brief are considered waived and will not be considered by the appellate court." *Brown v. Glover*, 2000 UT 89, ¶23, 16 P.3d 540.

B. Preservation of the Issue

This issue is unique to this appeal and does not require a review of the district court's decision.

2. Compliance with the immunity act

Although the State offered to settle part of Moises's claim, the parties never reached an agreement to settle the entire claim in the ninety days after Moises submitted his notice of claim. By operation of law, the claim was

deemed denied. The immunity act requires a plaintiff to bring suit within one year after the denial of a claim. This action was not brought until nineteen months after the claim was denied. Is the action barred by the immunity act?

A. Standard of Review

This Court reviews the granting of a motion to dismiss for correctness, affording no deference to the district court. *St. Benedict's Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d 194, 196 (Utah 1991).

B. Preservation of the Issue

This issue was raised in the State's motion to dismiss and accompanying memoranda. R. 6-37; 95-101.

Determinative Constitutional Provisions, Statutes and Rules

The following provisions are attached in Addendum 3:

Utah Code Ann. § 63-30-12

Utah Code Ann. § 63-30-15

Statement of the Case

1. Nature of the Case

This is an appeal from a final order of the district court granting the State's motion to dismiss under Utah's governmental immunity act. Plaintiffs brought this negligence action to recover damages sustained in an automobile accident.

2. Course of the Proceedings Below

Plaintiffs Moises Morales and Lisa Morales brought this negligence action against the State of Utah by filing a complaint on September 29, 2005.

R. 1-5. Moises sought damages for injuries he sustained in an automobile accident. R. 2-4. Lisa, his wife, sought damages for loss of consortium. R. 2.

The State filed a motion to dismiss, with supporting memorandum, based on the Utah governmental immunity act's one-year limitation on bringing suit. R. 6-37; 95-101. The district court granted the motion to dismiss, concluding that this action was barred because it was commenced well outside the immunity act's one-year limit. R. 113. The district court rejected the Morales's argument that the State was estopped from relying on the one-year limit, concluding that correspondence from the State's insurance

adjuster did not induce them to delay the filing of their lawsuit and did not lull them into a false sense of security. R. 112-13. The district court further concluded that Lisa Morales's claim was barred because she failed to file a notice of claim, a jurisdictional precondition to bringing suit. R. 112.

The Moraleses then filed this appeal. R. 131.

3. Disposition Below

The district court entered a memorandum decision on May 22, 2006, granting the State's motion to dismiss and directing the State to prepare a final order. R. 111-16. The final order of dismissal was entered June 12, 2006. R. 120-22.

Statement of Facts

In 2003, Moises Morales was significantly injured when his motorcycle collided with a vehicle owned by the State of Utah and driven by a State employee. R. 5.

On December 15, 2003, Mr. Morales properly filed a notice of claim with the State. R. 11-31. His wife, Lisa Morales, never filed a notice of claim. R. 8-9.

On December 22, 2003, the State's insurance adjuster sent a letter to

the Morales's attorney. R. 49 (attached as Addendum 1). The letter acknowledged the attorney's representation of the Moraleses and stated: "We are continuing our investigation into this incident. Once our investigation is complete we will be in a position to make a firm decision on any coverage and liability issues." R. 49. The letter concluded by stating: "This letter does not constitute a waiver of any provisions or requirements of the Governmental Immunity Act . . . nor does it confirm or verify the sufficiency of the claimant's notice of claim as required by the Act." R. 49.

On May 22, 2004, the Morales's attorney sent a letter to the State's adjuster, asking whether the State's investigation was complete and whether the State had made a decision on liability and coverage. R. 46.

On May 26, 2004, the adjuster responded with another letter. R. 44 (attached as Addendum 2). The adjuster stated: "We are willing to consider any settlement offers you may present on behalf of your client." R. 44. He also offered to settle the property damage portion of the claim under the same terms he had previously offered before the Moraleses had retained counsel. R. 44. Regarding the bodily injury portion of the claim, however, the adjuster stated: "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." R. 44. This letter concluded, as did the first

letter, with this statement: “This letter does not constitute a waiver of any provisions or requirements of the Governmental Immunity Act . . . nor does it confirm or verify the sufficiency of the claimant’s notice of claim as required by the Act.” R. 44.

After this May 26th letter, no other communication took place between the parties until this lawsuit was filed sixteen months later, on September 29, 2005. R. 1-5.

Summary of the Argument

Lisa Morales’s claim has been waived in its entirety because Plaintiffs’ opening brief does not contain any discussion of the district court’s dismissal of her claim.

Moises Morales’s claim was correctly dismissed by the district court because this action was not filed within the strict time limit in Utah’s governmental immunity act. Moises points to no ambiguity in the immunity act that would relieve him of this strict time limit. In fact, the statute is clear that suit must be filed within one year of the denial of the claim. And although the Utah Supreme Court’s recent decision in *Davis v. Central Utah Counseling Center* does not make it clear whether collateral estoppel can ever apply without ambiguity in the statutory language, Moises has failed

nevertheless to demonstrate that estoppel should apply in this case to relieve him of the one-year time limit.

Because the district court correctly concluded that this action was untimely, this Court should affirm the district court's order of dismissal.

Argument

1. Lisa Morales's claim has been waived.

Plaintiffs have waived Lisa Morales's claim in its entirety by failing to brief the issue. The argument in their opening brief is limited to only Moises Morales's claim and does not contain any discussion of the dismissal of Lisa Morales's claim. Generally, any issues "that were not presented in the opening brief are considered waived and will not be considered by the appellate court." *Brown v. Glover*, 2000 UT 89, ¶23, 16 P.3d 540. Accordingly, this Court should affirm the district court's dismissal of Lisa Morales's claim.

2. This action is untimely because it was not filed within a year of the State's denial of the claim.

The Utah Supreme Court has "consistently and uniformly held that suit may not be brought against the state or its subdivisions unless the requirements of the Governmental Immunity act are strictly followed." *Hall*

v. Dep't of Corrs., 2001 UT 34, ¶23, 24 P.3d 958. Stringent enforcement is mandated because it is through the immunity act that the “legislature has recognized the necessity of immunity as essential to the protection of the state in rendering the many and ever increasing number of governmental services.” *Id.* at ¶14 (quoting *Epting v. State*, 546 P.2d 242, 243 (Utah 1976)). “Applying this rule of strict compliance, [the Utah Supreme Court has] repeatedly denied recourse to parties that have even slightly diverged from the exactness required by the Immunity Act.” *Wheeler v. McPherson*, 2002 UT 16, ¶ 12, 40 P.3d 632.

The immunity act’s one-year statute of limitation bars this action because it was not timely filed. Moises’s notice of claim was filed on December 15, 2003, the date it was postmarked. R. 12. His claim was deemed denied ninety days later, on March 15, 2004, because it was neither denied nor approved. *See* Utah Code Ann. § 63-30-14 (West 2004)¹ (stating 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”). After this deemed denial of his claim, the immunity act required that

¹Because the alleged injury here arose before July 1, 2004, this action is “governed by the provisions of Title 63, Chapter 30, Utah Governmental Immunity Act.” 2004 Laws of Utah ch. 267, § 48. Accordingly, this brief cites to those provisions.

Moises bring his lawsuit within one year, or by March 15, 2005. *See* Utah Code Ann. § 63-30-15 (West 2004) (stating that a “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”). Because this case was not initiated until September 29, 2005 – over seven months after the one-year deadline had passed – Moises’s claim is barred by the plain language of the immunity act. *See Patterson v. American Fork City*, 2003 UT 7, ¶¶ 11 & 13, 67 P.3d 466 (affirming trial court’s dismissal of case that was filed outside the one-year limit); *see also Wagner v. State*, 2005 UT 54, ¶10, 122 P.3d 599 (stating that courts look first to the immunity act’s plain language and go no further unless the language is ambiguous).

Moises should be held to strict compliance with the immunity act because he failed to demonstrate that any ambiguity in the act would relieve him of the act’s strict requirements. In *Davis v. Central Utah Counseling Center*, the Utah Supreme Court recently held that an exception to strict compliance with the immunity act’s provisions will be allowed only “in cases which depended upon ambiguities” in the act. 2006 UT 52, ¶ 44, 147 P.3d 390. Further, a plaintiff must “exercise the diligence necessary to effect strict compliance” with the act. *Id.* at ¶ 48. Where a plaintiff fails to exercise due diligence, the Court declined “to recognize an exception to the requirement of

strict compliance.” *Id.* Instead, “where, as here, the statute is clear, readily available, and easily accessible by counsel, there is no reason to require anything less than strict compliance.” *Id.* at ¶ 49 (quoting *Greene v. Utah Transit Auth.*, 2001 UT 109, ¶ 14, 37 P.3d 1156). Significantly, the *Davis* Court noted that even allegedly “intentionally misleading behavior” by the State that leads a plaintiff to fail to comply with the immunity act will not excuse strict compliance. *Id.* at 45 (quoting *Greene* at ¶ 19). Although the adjuster’s correspondence in this case is not even close to misleading, Moises would still be held to the strict one-year deadline even if the letters were misleading.

Based on the Utah Supreme Court’s decision in *Davis* requiring ambiguity in the immunity act before a party is relieved of its obligation to strictly comply with the act’s requirements, it is not clear whether the traditional estoppel test advanced by Moises applies to an unambiguous provision. But even if it does apply, Moises’s estoppel argument fails for two reasons. First, he has failed to demonstrate that this case qualifies as an exception to the general rule that estoppel may not be invoked against a governmental entity. And, second, he has also failed to demonstrate that the elements of estoppel were present in this case.

First, Moises’s estoppel argument fails because he cannot demonstrate

that this case qualifies as an exception to the general rule that estoppel may not be invoked against a governmental entity. *See Anderson v. Pub. Serv. Comm'n*, 839 P.2d 822, 827 (Utah 1992) (stating that, “[a]s a general rule, estoppel may not be invoked against a governmental entity”). A limited exception to this general rule applies “only if the facts may be found with such certainty and the injustice suffered is of sufficient gravity to invoke the exception.” *Id.* (citation and internal quotation marks omitted). Moises’s argument is based on the incorrect premise that the adjuster’s correspondence amounted to an approval of his entire claim and therefore Moises was lulled into postponing suit. This premise is simply wrong because it grossly mischaracterizes the correspondence.

As the district court correctly noted, the State adjuster’s May 26th letter cannot be reasonably construed as an approval of the entire claim. The adjuster stated generally, regarding the entire claim: “We are willing to consider any settlement offers you may present on behalf of your client.” R. 44 (attached as Addendum 2). He then renewed a previous offer to settle the property damage portion of the claim: “I believe it would be appropriate to conclude the property damage *portion* of the claim as soon as possible. I’d be willing to resolve that *portion* of the claim as outlined [previously].” R. 44 (emphasis added). But then the adjuster expressly left open the bodily injury

portion of the claim: “I’d welcome obtaining any information you feel might help us in evaluating and settling his bodily injury claim.” R. 44. The adjuster also stated, as he had done in his previous letter, that none of the requirements of the immunity act were waived. And he even pointed counsel to the sections of Utah Code where the immunity act was located. Significantly, the offer to settle the property damage portion of the claim came without an admission of liability and without an explanation of the reasons behind the settlement offer. It was simply an offer to settle one portion of the claim, not an acceptance of the entire claim.²

Because the most significant portion of the claim was still unresolved, it was unreasonable for Moises to not file suit in the nearly ten months he had remaining before the one-year deadline passed. Because the adjuster’s correspondence clearly communicated without deception that the bodily injury portion of the claim remained unresolved, any injustice worked on Moises by not being able to litigate his claim is not due to the State’s conduct. Where the immunity act’s requirements are clear, “it is really those parties

²If, as Moises suggests, the May 26th letter was an approval of the entire claim, then the district court lacked jurisdiction to hear the case since the immunity act allows suit to be brought only after *denial* of a claim. See Utah Code Ann. § 63-30-15(1) (West 2004) (stating that “[i]f the claim is *denied*, a claimant may institute an action in district court”). The act does not authorize a suit for approved claims.

who fail to follow the express provisions of the statute correctly that prevent justice, not the strict compliance rule.” *Wheeler*, 2002 UT 16, ¶ 12. Therefore, this case does not qualify as an exception to the general rule that estoppel may not be invoked against the State.

Second, Moises’s estoppel argument fails because he cannot demonstrate that the elements of estoppel are satisfied. Those elements are:

- (a) “a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted”;
- (b) “reasonable action or inaction by the other party taken or not taken on the basis of the first party’s statement”; and
- (c) “injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act.”

CECO v. Concrete Specialists, Inc., 772 P.2d 967, 969-70 (Utah 1989).

Because the May 26th letter was not an approval of Moises’s claim, the State’s position now that the claim was deemed denied is not inconsistent with any prior position. The first element is therefore not met.

Nor is the second element met. Moises’s inaction was unreasonable. He should have filed his suit within the year when bodily injury portion of the claim was clearly unresolved. His inaction was even more unreasonable since

he was represented by counsel who was not only charged with a full knowledge of the strict requirements of the immunity act but was expressly told that none of the immunity act's requirements were waived. The State did not lull Moises into inaction because: (1) the correspondence from the State's insurance adjuster could not reasonably be construed as an approval of the claim; (2) Moises was represented by counsel who was charged with an understanding of the plain requirements of the immunity act; and (3) the correspondence contained an express statement that none of the provisions of the immunity act were waived. Nevertheless, even if the State lulled Moises into delaying suit, the Utah Supreme Court has upheld dismissal of a suit for noncompliance *in spite* of the State's allegedly misleading conduct. *Greene*, 2001 UT 109 at ¶¶ 17-19.

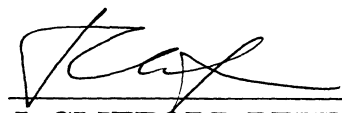
The case law cited by Moises does not support his estoppel argument. Unlike *Rice v. Granite School District*, 456 P.2d 159 (Utah 1969), the adjuster here never promised full compensation for the Moises's injuries, either one time or several. And unlike *Whitaker v. Salt Lake City Corp.*, 522 P.2d 1252 (Utah 1974), the State here never admitted liability. The offer to settle the property damage portion of the claim came without an admission of liability and without an explanation of the motivations behind the settlement offer. And, contrary to the facts of *Whitaker*, the adjuster here never promised that

a settlement offer would be forthcoming. Instead, he indicated that he welcomed any settlement demand Moises might be inclined to make. R. 44.

Conclusion

Because Plaintiffs' opening brief contains no discussion of Lisa Morales's claim, that claim has been waived on appeal. The district court correctly dismissed Moises Morales's claim because he failed to bring this action within the immunity act's strict one-year limitations period. Because the statute is unambiguous, Moises should not be relieved from this time limit. Although it is not clear after *Davis* whether collateral estoppel can ever apply without statutory ambiguity, Moises has failed, in any event, to demonstrate that estoppel should apply. Accordingly, the district court properly concluded that this action was untimely under the immunity act, and the State asks this Court should affirm the district court's order of dismissal.

Dated this 4th day of May, 2007.

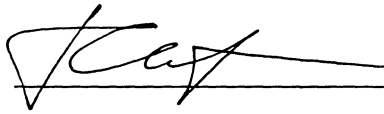


J. CLIFFORD PETERSEN
Assistant Attorney General
Attorney for the State of Utah

Certificate of Service

This is to certify that I mailed TWO copies of the foregoing Brief of Appellee to the following this 4th day of May, 2007:

Michael P. Studebaker
Law Offices of Michael Studebaker, LLC
2550 Washington Blvd., Suite 331
Ogden, UT 84401



Addendum 1

Letter from State adjuster dated December 22, 2003
(R. 49)



Michael O. Leavitt
Governor
S. Camille Anthony
Executive Director
Alan Edwards
Risk Manager

State of Utah

Department of Administrative Services Division of Risk Management

5120 State Office Building • Salt Lake City, Utah 84114
(801) 538-9560 • FAX (801) 538-9597 • www.nsk.utah.gov

December 22, 2003

Jose A. Loayza Esq.
7321 South State Street, Suite A
Midvale, Utah 84047

Re: Letter of Representation- Moises Morales Our file #45453

Dear Mr. Loayza:

This letter will acknowledge receipt of your letter of representation on behalf of Mr. Morales in this matter. I appreciate your letter and look forward to working with you and your client toward a resolution of this matter.

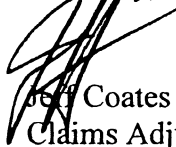
We are continuing our investigation into this incident. Once our investigation is complete we will be in a position to make a firm decision on any coverage and liability issues.

With regard to your question regarding liability policy limits, The State of Utah's liability limits are clearly outlined in the Utah Governmental Immunity Act.

Please feel free to contact me directly if you have any questions or concerns. I can be reached at 801-538-9560 during business hours.

This letter does not constitute a waiver of any provisions or requirements of the Governmental Immunity Act, Utah Code Ann. 63-30-1 *et seq*, nor does it confirm or verify the sufficiency of the claimant's notice of claim as required by that Act.

Sincerely,


Jeff Coates
Claims Adjuster

Utah!

0049

Addendum 2

Letter from State adjuster dated May 26, 2004
(R. 44)



State of Utah

OLENE S. WALKER
Governor

GAYLE McKEACHNIE
Lieutenant Governor

Department of Administrative Services

S. CAMILLE ANTHONY
Executive Director

Division of Risk Management

ALAN EDWARDS
Director

Jose A. Loayza Esq.
7321 South State Street, Suite A
Midvale, Utah 84047

May 26, 2004

RE: Your Client: Moises Morales
Our File #45453
Date of Loss: 10/12/03

Dear Mr. Loayza,

Thank you for your recent letter updating me on your client's condition. I'm glad he is continuing to do better.

We are willing to consider any settlement offers you may present on behalf of your client.

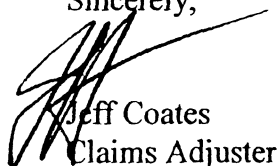
I believe it would be appropriate to conclude the property damage portion of the claim as soon as possible. I'd be willing to resolve that portion of the claim as outlined in my letter to your client on November 13, 2003. Of course the date of that letter is prior to your Letter of Representation dated December 4, 2003. If you, or your client do not have a copy of that settlement offer, please advise and I'll forward another copy to you for your consideration.

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.

I look forward to working with you to resolve these matters. I can be reached at 801-538-9560 during business hours.

This letter does not constitute a waiver of any provisions or requirements of the Governmental Immunity Act, Utah Code Ann. 63-30-1 *et seq*, nor does it confirm or verify the sufficiency of the claimant's notice of claim as required by that Act.

Sincerely,



Jeff Coates
Claims Adjuster

Addendum 3

Determinative Statutes

STATE AFFAIRS

§ 63-30-11. Claim for injury—Notice—Contents—Service—Legal disability—Appointment of guardian ad litem

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(2) Any person having a claim for injury 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; and
- (iii) the damages incurred by the claimant so far as they are known.

(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 to:

(A) the city or town recorder, 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 president or secretary of the board, when the claim is against a special district;

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

(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.

(4)(a) If the claimant is under the age of majority, or mentally incompetent and without a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time for service of notice of claim.

(b)(i) After hearing and notice to the governmental entity, the court may extend the time for service of notice of claim.

(ii) The court may not grant an extension that exceeds the applicable statute of limitations.

(c) In determining whether or not to grant an extension, the court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits.

(d)(i) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a potential claimant described in Subsection (4)(a), that government

entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.

(ii) If a guardian ad litem is appointed under this Subsection (4)(d), the time for filing a claim under Sections 63-30-12 and 63-30-13 begins when the order appointing the guardian is issued.

Laws 1965, c. 139, § 11; Laws 1978, c. 27, § 5; Laws 1983, c. 131, § 1; Laws 1987, c. 75, § 4; Laws 1991, c. 76, § 6; Laws 1998, c. 164, § 1, eff. May 4, 1998; Laws 2000, c. 157, § 1, eff. July 1, 2001.

See, now, § 63-30d-401.

§ 63-30-12. Claim against state or its employee—Time for filing notice

A claim against the state, 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, is barred unless notice of claim is filed with the attorney general within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

Laws 1965, c. 139, § 12; Laws 1978, c. 27, § 6; Laws 1983, c. 131, § 2; Laws 1987, c. 75, § 5; Laws 1998, c. 164, § 2, eff. May 4, 1998.

See, now, § 63-30d-402.

§ 63-30-13. Claim against political subdivision or its employee—Time for filing notice

A claim against a political subdivision, 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, is barred unless notice of claim is filed with the governing body of the political subdivision according to the requirements of Section 63-30-11 within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

Laws 1965, c. 139, § 13; Laws 1978, c. 27, § 7; Laws 1983, c. 131, § 3; Laws 1987, c. 75, § 6; Laws 1998, c. 164, § 3, eff. May 4, 1998; See, now, § 63-30d-402.

§ 63-30-14. Claim for injury—Approval or denial by governmental entity or insurance carrier within ninety days

Within ninety days of the filing of a claim the governmental entity or its insurance carrier shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or

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its insurance carrier has failed to approve or deny the claim.

Laws 1965, c. 139, § 14.

See, now, § 63-30d-403.

§ 63-30-15. Denial of claim for injury—Authority and time for filing action against governmental entity

(1) 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.

(2) 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.

Laws 1965, c. 139, § 15; Laws 1983, c. 129, § 6; Laws 1985, c. 82, § 2; Laws 1987, c. 75, § 7.

See, now, § 63-30d-403.

§ 63-30-16. Jurisdiction of district courts over actions—Application of Rules of Civil Procedure

(1) The district courts shall have exclusive original jurisdiction over any action brought under this chapter.

(2) An action brought under this chapter may not be tried as a small claims action and shall be governed by the Utah Rules of Civil Procedure to the extent they are consistent with this chapter.

Laws 1965, c. 139, § 16; Laws 1983, c. 129, § 7; Laws 1999, c. 166, § 1, eff. May 3, 1999.

See, now, §§ 63-30d-501 and 63-30d-601.

§ 63-30-17. Venue of actions

Actions against the state may be brought in the county in which the claim arose or in Salt Lake County. Actions against a county may be brought in the county in which the claim arose, or in the defendant county, or, upon leave granted by a district court judge of the defendant county, in any county contiguous to the defendant county. Leave may be granted ex parte. Actions against all other political subdivisions including cities and towns, shall be brought in the county in which the political subdivision is located or in the county in which the claim arose.

Laws 1965, c. 139, § 17; Laws 1983, c. 129, § 8.

See, now, § 63-30d-502.

§ 63-30-18. Compromise and settlement of actions

(1) A political subdivision, after conferring with its legal officer or other legal counsel if it does not have a legal officer, may compromise

and settle any action as to the damages or other relief sought.

(2) The risk manager in the Department of Administrative Services may:

(a) compromise and settle any claim of \$25,000 or less in damages filed against the state for which the Risk Management Fund may be liable;

(b) with the concurrence of the attorney general or his representative and the executive director of the Department of Administrative Services, compromise and settle any claim of \$25,000 to \$100,000 in damages for which the Risk Management Fund may be liable; and

(3) The risk manager shall comply with procedures and requirements of Title 63, Chapter 38b, in compromising and settling any claim of \$100,000 or more.

See, now, § 63-30d-602.

Laws 1965, c. 139, § 18; Laws 1981, c. 250, § 6; Laws 1983, c. 303, § 2; Laws 1983, c. 320, § 54; Laws 1990, c. 97, § 9; Laws 1995, c. 313, § 1, eff. May 1, 1995.

§ 63-30-19. Undertaking required of plaintiff in action

At the time of filing the action the plaintiff shall file an undertaking in a sum fixed by the court, but in no case less than the sum of \$300, conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.

Laws 1965, c. 139, § 19.

See, now, § 63-30d-601.

§ 63-30-20. Judgment against governmental entity bars action against employee

Judgment against a governmental entity in an action brought under this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

Laws 1965, c. 139, § 20.

See, now, § 63-30d-202.

§ 63-30-21. Repealed by Laws 1978, c. 27, § 12

§ 63-30-22. Exemplary or punitive damages prohibited—Governmental entity exempt from execution, attachment, or garnishment

(1)(a) No judgment may be rendered against the governmental entity for exemplary or punitive damages.

(b) The state shall pay any judgment or portion of any judgment entered against a state employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages if the state would be