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TORT CLAIMS ACT - INDIANA

Schoettmer v. Wright

Supreme Court of Indiana - August 27, 2013 - N.E.2d - 2013 WL 4519807

After he was injured in an automobile accident, plaintiff cooperated with the other driver's insurer in hopes of settling his claim. Nearly a year later, when settlement proved elusive, he hired a lawyer and filed suit. Only then did he learn that the other driver was employed by a political subdivision subject to the Indiana Tort Claims Act. Plaintiff cited several reasons to excuse his failure to comply with the notice requirements of that Act, including waiver, substantial compliance, agency, and estoppel. The court found the first three unavailing, but concluded he should be permitted to present proof of estoppel to the trial court, and the court reversed and remanded on that basis.

In addition, the Supreme Court of Indiana held that:

- Agency's amendment of responsive pleading did not prejudice motorist;
- Notice to agency's insurer did not constitute substantial compliance with notice requirement of Indiana Tort Claims Act (ITCA);
- Liability insurer of agency was not agent for purposes of notice requirement; but
- Genuine issue of material fact existed regarding whether agency should have been estopped from asserting notice requirement as defense.

The crucial consideration when determining whether there has been substantial compliance with statutory notice requirement of the ITCA is whether the notice supplied by the claimant of his intent to take legal action contains sufficient information for the city to ascertain the full nature of the claim against it so that it can determine its liability and prepare a defense.

Genuine issue of material fact existed regarding whether designated community action agency should have been equitably estopped from asserting defense of motorist's failure to comply with notice requirement of ITCA in personal injury action against agency, and therefore summary judgment in favor of agency based upon failure to comply with notice requirement was precluded. Motorist presented evidence that he was not aware that agency was a statutorily designated community action program and thus a political subdivision, neither agency nor its insurer ever mentioned the ITCA or the notice requirement to motorist, and there was evidence that insurer's agent told motorist it was in his best interest to wait until completion of medical treatment before asserting claim.