

Precision Required for Government Tort Claims Act

By: Peter S. Bauman

<http://commercialcounselor.com/>

The Government Claims Act in California establishes the manner in which negligence and tort claims must be made against the Government. [Govt. Code, Section 900 et seq.] Failure to follow the rules set forth in the statute can be fatal to your claim against the Government, as the California Supreme Court reminded us in the case of *DiCampli-Mintz v. County of Santa Clara*, S194501, Dec. 6, 2012.

In *DiCampli-Mintz* a woman sued her doctors and the County-owned hospital for negligence after surgery resulted in painful complications. Her attorney sent a letter to the hospital, notifying it and the doctors that she intended to sue for negligence. The lawsuit followed.

Unfortunately, the plaintiff failed to provide notice of her claim to the County clerk, secretary or auditor. The Government Claims Act requires that a claim be presented to a local public entity by delivering or mailing it to “the clerk, secretary or auditor thereof.” [Govt. Code, Section 915(a)(1)(2)]

As a result, even though the County Risk Management Department received the letter, the Supreme Court held that this failed to meet the requirements of the Government Claims Act since there was no delivery or mail to the designated recipients, and the designated recipients did not actually receive the required notice.

Although the result may seem harsh, the Supreme Court noted that:

the intent of the Government Claims Act is “not to expand the rights of plaintiffs against government entities. Rather, the intent of the act is to confine potential governmental liability to rigidly delineated circumstances.” (Munoz v. State of California (1995) 33 Cal.App.4th 1767, 1776; State of California v. Superior Court (2004) 32 Cal.4th 1234, 1242-1243.)

This case points out the importance of carefully complying with the requirement of the Government Claims Act in order to preserve and pursue claims against the Government. Sections 910 through 915.4 of the Government Code set out the precise details regarding the presentation and consideration of claims. In addition to the requirements noted above, these sections detail, among other things:

1. Information that must be included in any claim [Section 910]
2. Amendments and applications for leave to file a late claim [Section 915(b)-(d)]
3. Exceptions to mail or delivery requirement for actual receipt by designated recipients [Section 915(e)]
4. Manner by which notice by mailing is required [Section 915.2]

Attorneys handling tort claims against the State of California or other government entities within the State must comply with the precise provisions of the Government Claims Act to avoid the unfortunate result that occurred in the *DiCampli-Mintz* case.

Link to original article: <http://commercialcounselor.com/precision-required-for-government-tort-claims-act/>

For over 35 years small businesses, major corporations, public entities, individuals and insurance companies have depended on Tharpe & Howell, LLP, to deliver pragmatic, innovative, cost-effective civil litigation and transactional solutions. For more information, please contact us at (818) 473-5720 or email your request to cabusinesslawreport@tharpe-howell.com.