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Does Adding Inaccurate and Unnecessary Information in Tort Claim Notice Bar Recovery? Indiana Supreme Court Says No

This past week the Indiana Supreme Court handed down its concise decision in *City of Indianapolis v. Buschman*. The specific issue before the court was:

> when a claimant includes information in her tortclaim notice beyond that required by the Indiana Tort Claims Act, may that information operate to restrict the scope of her claim? As the statute imposes no such sanction and we are bound to construe it narrowly, we answer that question in the negative.

That is, the Indiana Supreme Court held that a woman and her husband were able to sue the City of Indianapolis for their personal injuries that they suffered after being rear-ended by a city police officer, despite noting on her tort claim notice that she had suffered "No injuries."

In order to understand this decision, you must first be familiar with the role of the Indiana Tort Claims Act in suits against an Indiana governmental entity. We

have previously discussed the role of the Act in filing claims against the state government. For our purposes here, it is sufficient to note that when suing an Indiana governmental entity for a tort cause of action – such as personal injury – it is typically necessary to file a tort claim notice with the entity and various other persons/governmental bodies as prescribed by the act. In this case, Mrs. Buschman did just that. Except, at the time she filed her notice she did not realize that she had suffered fairly serious injuries to her spine. So her claim was only for property damage and stated, "No injuries."

After winning their claims by summary judgment at the trial court, the City of Indianapolis appealed. On appeal, the City argued that the Buschman's tort claims notice failed to substantially comply with the Tort Claims Act. "Specifically, the City claimed 'Buschman not only failed to mention an injury, she specifically misled the City into believing no personal injury claim existed.'" The Court of Appeals agreed with the City and reversed the trial court. The case was then transferred to the Indiana Supreme Court.

In making its decision, the first step that the Indiana Supreme Court took was to look at the purpose of the Tort Claims Act or ITCA, as the court referred to the Act. According to the court, "The purpose of the ITCA is 'to advise the city of the accident so that it may promptly investigate the surrounding circumstances.'" With that purpose in mind, the court looked to the specific language of the Act's notice requirement, which states that the notice:

> must describe in a short and plain statement the facts on which the claim is based . . . [and] include the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, the amount of the damages sought, and the residence of the person making the claim at the time of the loss and at the time of filing the notice.

In addition to the specific language of the statute, the court noted the well-settled principle that where a statute – such as the ITCA – acts in derogation of the common law, it "must be strictly construed against limitations on the claimant's right to bring suit." In previous cases, the Indiana Supreme Court has stated that the court "generally will find substantial compliance where a notice is timely filed, operates to inform the municipality of the claimant's intent to pursue the claim, 'and contains sufficient information which reasonably affords the municipality an opportunity to promptly investigate the claim.'"

The specific language of the statute conspicuously does not require an identification of the injuries suffered from the accident. This is particularly

conspicuous because a previous iteration of the ITCA did require such a description. The fact that the General Assembly chose to remove this language was very persuasive to the court as "evidence that the legislature . . . intended to remove any pre-existing requirement of specificity in regards to personal injuries." Thus, because Mrs. Buschman's notice was timely filed, put the city on notice of her intent to pursue a claim for the accident, and contained detailed information about the accident, it did not matter that she stated that there were "No injuries."

This is yet another unanimous opinion authored by Justice Mark S. Massa in which the court has applied a highly textualist approach to interpreting a statute. As we have discussed before, this is becoming not only a marquee of the current iteration of the Indiana Supreme Court, but of Justice Massa's opinions in particular. I think the most insightful statement that we have seen yet to support my conclusion is provided toward the end of this case. Justice Massa wrote:

> It may well be true, as the City argues, that "public and legislative policy support requiring notice to political subdivision of the nature of the injury to allow them to investigate and prepare defenses," and that Buschman could have amended her claim once she discovered her injuries. The statute, however, requires neither notice "of the nature of the injury" nor an amended notice. If the legislature wishes to impose either or both of these requirements, it is free to do so. We, however, are not.

This is the third case in which Justice Massa has authored the majority opinion that has resulted in a strict adherence to the language of a statute. I find it important to note that even though Justice Massa was appointed by a conservative governor and previously ran for elected office as a GOP candidate, his opinions have not strictly favored the traditionally more conservative defense bar over the plaintiffs' bar. In fact, of the three cases I have in mind – *Buschman*, *Robertson v. B.O.*, and *State v. Doe* – only *State v. Doe* has gone in favor of the defendant.

So what to take from this case? I think more important than the specific holding of the *Buschman* case is the method of reaching the decision – i.e. the textualist approach of the court. In observation of that method, I stand by my prior conclusion "that as long as the composition of the court remains as such, it is not an environment to challenge Indiana statutes."

Join us again next time for further discussion of developments in the law.

Sources

- *City of Indianapolis v. Buschman*, __ N.E.2d ___, No. 49S02-1210-CT-598, 2013 WL 2407481 (June 4, 2013).

- Indiana Tort Claims Act – codified at Ind. Code ch. 34-13-3.

- *City of Indianapolis v. Buschman*, 970 N.E.2d 757 (Ind. Ct. App. 2012), *trans. granted*, *opinion vacated*, ___ N.E.2d ___, No. 49S02-1210-CT-598, 2013 WL 2407481 (Ind. June 4, 2013).

- *Robertson v. B.O.*, 977 N.E.2d 341(Ind. 2012).

- *State v. Doe*, ___ N.E.2d ___, 49S00-1201-CT-14, 2013 WL 1975865 (Ind. May 14, 2013).