

What Is The Date Of Accrual When Serving A Personal Injury Notice Of Claim Against A Public Entity?

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Prior to filing a claim against a public entity, a plaintiff must file a notice of tort claim within 90 days of the accrual of a claim, or, if there are extraordinary circumstances and no substantial prejudice to the public entity, within one year from the accrual date. If that notice is not filed within the appropriate time period, the plaintiff is barred from filing a claim.

In Estate of Rene Melendez Jr., v. New Jersey Turnpike Authority and The New Jersey Department of Transportation, Docket Number A-0868-19T1, the Court ruled that Plaintiff's notice of tort claim was not untimely because the date of accrual of the claim was not the date the injury and death occurred, but rather when Plaintiff became aware of the possible fault of the New Jersey Turnpike Authority.

Facts About the Accident and Investigation

In this matter, Rene Melendez Jr., was involved in a one-car accident when he struck "the head of the guardrail" separating the entrance ramps to two roadways at a toll plaza on the New Jersey Turnpike on September 2, 2018. He was pronounced dead shortly thereafter on the same day.

On October 3, 2018, his widow and administrator of his estate retained an attorney and then learned, on or about October 10, 2018, that the State Police were investigating whether the guardrail he struck had not been repaired from a previous accident, thereby contributing to the death of Mr. Melendez.

On November 6, 2018, Plaintiff served a notice of tort claim to the New Jersey Attorney General's Office advising of the claims against the New Jersey Turnpike Authority (NJTA) and the New Jersey Department of Transportation (NJDOT). However, by letter dated December 4, 2018, the New Jersey Department of Treasury notified Plaintiff that the NJTA was an entity distinct from the state. On

December 12, 2018, Plaintiff sent a notice of claim directly to the NJTA and NJDOT.

NJTA Denial of Plaintiff's Claim

In March 2019, the NJTA denied Plaintiff's claim and indicated that Plaintiff's notice of tort claim was untimely. Regardless, Plaintiff filed suit against the NJTA and NJDOT, and a motion for a determination that the notice of tort claim was timely served, or, in the alternative, for leave to file a late notice of tort claim.

The lower court entered an order granting Plaintiff's motion and determined that Plaintiff's December 12, 2018 notice of tort claim was properly and timely served. Defendants appealed.

Appellate Decision About Date of Accrual

After a review of the record, the Appellate Division held that Plaintiff's notice of tort claim was timely filed, holding that although the date of accrual is generally the date when an injury occurred, it can be tolled when the victim is either unaware of the injury or unaware that a third-party is responsible. The accrual date is tolled until the date Plaintiff discovers the injury or the third-party, known as the discovery rule.

Here, while Melendez's death was known on September 2, 2018, "a reasonable person exercising ordinary diligence" could not have known about a prior accident in the same location that "left the guardrail system in a defective state of disrepair" on that date. The Court pointed to the State Police initial investigation report that indicated there were no apparent contributing circumstances to the accident. Plaintiff did not discover that NJTA and NJDOT could bear responsibility until October 10, 2018. Therefore, the date of accrual was October 10, 2018 and Plaintiff's December 12, 2018 was timely served.

The Validity of the Discovery Rule and Legitimacy of a Claim

This opinion demonstrates that the discovery rule is valid and is a reliable protection for Plaintiffs in affording them their day in court. It also serves as an example of the benefits of having a skilled litigator advocating for you. If you are injured, it is best to consult counsel as soon as possible to avoid jeopardizing the legitimacy of your claim. An experienced personal injury litigator can assist you in navigating through the complex legal hurdles. If you have been injured, contact us as soon as possible to discuss your options.