Washington Supreme Court No. _____

Washington State Court of Appeals, Div. III No. 345726

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

WILLIAM RUMBURG and CAROL RUMBURG,

Respondents,

v.

FERRY COUNTY PUBLIC UTILITY DISTRICT NO. 1,

Petitioner.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Defendant-Petitioner Ferry County Public Utility District No. 1 (hereinafter, "the PUD") files this Petition for Review.

II. COURT OF APPEALS DECISION

The PUD seeks review of *Rumburg v. Ferry County Public Utility District No. 1.*, No. 34572-6-III, 2017 WL 5560329 (Slip. Op. Nov. 16, 2017), a published opinion out of the Court of Appeals, Division III, attached at Appendix pgs. 1-10. Neither party to this appeal filed a Motion for Reconsideration.

III. ISSUE PRESENTED FOR REVIEW

Whether the Court of Appeals erroneously interpreted RCW 4.96.020(4)[1] when it held that the statute's five-day grace period immediately follows the extended limitations period instead of immediately following the 60-day waiting period as expressed by the plain language of the statute.

IV. STATEMENT OF THE CASE

The Rumburgs allege that, on July 16, 2012, the PUD participated in a community event in which the PUD set up a tent that collapsed and injured Mr. Rumburg. Clerk's Papers (CP) at 5.

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[1] See Appendix at 11-12.

The PUD is a quasi-governmental entity. In order to bring suit against the PUD, the Rumburgs were required to present a Notice of Tort Claim to the PUD's agent, which they did on November 30, 2012. CP at 37-40. For over two years, the Rumburgs took no further legal action.

On July 14, 2015, the Rumburgs, represented by an attorney, presented a second Notice of Tort Claim to the PUD's agent.

On Tuesday, September 15, 2015, three years and 62 days after Mr. Rumburg was allegedly injured, the Rumburgs filed suit against the PUD in Ferry County Superior Court. CP at 1-6.

The PUD brought a Motion to Dismiss on the grounds that the Rumburgs' suit was barred by the statute of limitations, and therefore, failed to state a claim upon which relief could be granted. CP at 12-19. The trial court granted the PUD's Motion and dismissed the Rumburgs' suit with prejudice. *See* CP 71-74.

The Rumburgs appealed. The Court of Appeals reversed the trial court and remanded for further proceedings. App. at 1-10. The Court of Appeals acknowledged that the sixty-day waiting period commenced when the Rumburgs filed their first Notice of Claim. *Id.* at 5. However, the Court found RCW 4.96.020(4) ambiguous regarding whether the five-day grace period applied to the end of the waiting period or the end of the limitations period (which is extended 60 days to account for the waiting

period). *Id.* at 8. Citing to RCW 4.96.020(5), which provides that a claimant's "substantial compliance" with "the content of claims . . . and all procedural requirements" is satisfactory, the Court of Appeals interpreted RCW 4.96.020(4) to find that the five-day grace period immediately follows the (extended) limitations period. *Id.* at 8-9. The Court of Appeals noted, "Local governments cannot reasonably complain about a merely 5-day margin of error being extended to all tort claimants." *Id.* at 10.

V. ARGUMENT

> A petition for review will be accepted by the Supreme Court only:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> . . .
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

The Court of Appeals' decision in this case is in conflict with decisions of the Supreme Court and involves a question of substantial public interest. This Court should therefore grant the PUD's Petition for Review.

A. The Court of Appeals' Decision is in Conflict with Decisions of the Supreme Court Requiring Washington Courts to Give Effect to the Plain Language of Statutes and Requiring Strict Compliance with Statutes of Limitation.

The Court of Appeals' *Rumburg* decision disregards the Supreme Court's mandate that courts must apply the plain language of the statute. In so doing, the Court of Appeals essentially rewrote RCW 4.96.020(4) according to the Court's own preferences and improperly usurped the role of the legislature. Further, the decision suggests that a plaintiff may substantially comply with a statute of limitations, which is contrary to holdings of this Court.

RCW 4.96.020(4) states:

> No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity . . . for damages arising out of tortious conduct **until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof.** The applicable period of limitations within which an action must be commenced shall be tolled during the **sixty calendar day period.** For the purposes of the applicable period of limitations, **an action commenced within five court days after the sixty calendar day period has elapsed** is deemed to have been presented on the first day after **the sixty calendar day period** elapsed.

(Emphasis added).

It is fundamental that courts must apply the plain meaning of statutory language in order to carry out the intent of the legislature. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4

(2002). Separation of powers principles prohibit courts from inserting or removing statutory language, "a task that is decidedly the province of the legislature." *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 311, 268 P.3d 892 (2011). Courts are not "authorized to rewrite a statute because [they] might deem its effects susceptible of improvement." *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 447, 395 P.3d 1031 (2017) (internal quotation marks and subsequent citation omitted).

RCW 4.96.020(4) is unambiguous and the Court of Appeals disregarded Supreme Court precedent requiring courts to give effect to the plain meaning of statutory language. *E.g.*, *Dep't of Ecology*, 146 Wn.2d at 9-10. RCW 4.96.020(4) references one "sixty calendar day period." Per the first sentence of RCW 4.96.020(4), the "sixty calendar day period" commences when a claimant first presents a Notice of Claim to a government entity's designated agent and ends 60 days later. Per the second sentence of the statute, the applicable statute of limitations is tolled during the "sixty calendar day period." Per the third sentence of the statute, for "the purposes of the applicable period of limitations, an action commenced within five court days **after the sixty calendar day period has elapsed** is deemed to have been presented on the first day after the **sixty calendar day period** elapsed." (Emphasis added). (This third

sentence was included in 2009 amendments to the statute. Laws of 2009, ch. 433, § 1.)

Instead of applying the plain language of RCW 4.96.020(4), the Court of Appeals (relying on a pre-amendment, dissenting opinion authorized by Justice Chambers) ascertained two sub-parts within RCW 4.96.020(4)—a "tolling period" and a "waiting period"—and determined that the five-day grace period tacks onto the end of the tolling period. App. at 8-9. But the statute makes no distinction between a tolling period and a waiting period; rather, RCW 4.96.020(4) consistently uses the phrase "sixty calendar day period" to refer to the period that starts upon presentment of the Notice of Claim and ends 60 calendar days later. (This intervening period of 60 calendar days allows government entities time to investigate and evaluate, and possibly settle, the claim before a claimant files suit.) The third sentence of RCW 4.96.020(4) clearly provides that the five-day grace periods follows this "sixty calendar day period," not the end of the (extended) limitations period.

The Court of Appeals disregarded the plain language of the statute and instead rewrote the statute. In so doing, the Court of Appeals improperly usurped the role of the legislature. If the legislature wanted the five-day grace period to follow the (extended) limitations period, the legislature could have written the third sentence of RCW 4.96.020(4) as

follows: "An action commenced within five court days [**after the applicable period of limitations**], is deemed to have been presented on the [**last**] day [**of**] the applicable period of limitations." This is how the Court of Appeals rewrote RCW 4.96.020(4), which is contrary to the plain language of the statute. Such a change in the law should come from the legislature, not Washington courts.

Finally, the Court of Appeal's decision is contrary to Supreme Court precedent holding that a plaintiff cannot substantially comply with a statute of limitations. *City of Seattle v. Pub. Employment Relations Comm'n*, 116 Wn.2d 923, 929, 809 P.2d 1377 (1991) ("It is impossible to substantially comply with a statutory time limit . . . It is complied with or it is not."); *Forseth v. City of Tacoma*, 27 Wn.2d 284, 297, 178 P.2d 357 (1947) ("[T]here can be no 'substantial compliance' with the provision concerning the time within which a claim must be filed, except by filing it within that time.") *overruled on other grounds by Shafer v. State*, 83 Wn.2d 618, 623, 521 P.2d 736 (1974). Based on its erroneous conclusion that RCW 4.96.020(4) is ambiguous, and citing RCW 4.96.020(5), the Court of Appeals "liberally construed" RCW 4.96.020(4) to find claimants substantially comply with a statute of limitations if claimants file within five days after the end of the extended limitations period. App. at 10 & 10 n.3. RCW 4.96.020(5) does not require (or permit) the Court of Appeals

to disregard the plain language of RCW 4.96.020(4). The Court of Appeals' tortured construction of RCW 4.96.020(4) leads to further departure from this Court's precedent by allowing plaintiffs to pursue claims against government entities when plaintiffs have not strictly complied with statutes of limitation.

B. The Court of Appeals' Decision Involves an Issue of Substantial Public Interest as it Extends the Time for Plaintiffs to Sue Government Entities, Directly Impacting the Ability of Government Entities to Defend Themselves and Indirectly Harming Washington Residents who Ultimately Bear the Burden of Judgments Against Government Entities.

In addition to the fact that the Court of Appeals' *Rumburg* decision is contrary to the decisions of the Supreme Court, review is warranted because the issue in the case is one of substantial public interest.

An issue is of substantial public interest if it "immediately affects significant segments of the population, and has a direct bearing on commerce, finance, labor, industry, or agriculture." *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake,* 150 Wn.2d 791, 803, 83 P.3d 419 (2004).

The Court of Appeals' *Rumburg* decision gives all plaintiffs an additional five days to sue government entities within the state of Washington. In justifying its holding, the Court of Appeals posited, "Local governments cannot reasonably complain about a merely 5-day margin of

error being extended to all tort claimants." App. at 10. But the plain language of RCW 4.96.020 does not provide all tort claimants with a 5-day margin of error; it provides a five-day grace period to file a Notice of Claim after the 60-calendar-day waiting period. The legislature could have easily written the statute to provide for the result reached by the Court of Appeals but did not do so. Like any other defendant, government entities are entitled to a defense based on statutes of limitation. Contrary to the sentiment expressed by the Court of Appeals, it *is* unreasonable to allow tort claimants additional time to file against government entities when the extra time is not plainly provided for in the statute. Unless the legislature expressly provides otherwise, statutes of limitation should provide a defense to government entities just like any other defendant.

The Court of Appeals' published decision applies to all civil actions that may be brought against Washington state government entities. Claims against government entities directly impact agenices that regulate and participate in fields including, but not limited to, trade, commerce, industry, and agriculture. Indirectly, the burden of claims brought against government entities will affect Washington state residents who bear the burden of judgments against government entities, through taxes or otherwise. The Court of Appeals' decision applies to a significant segment of the population (i.e., directly to all state government entities and civil

litigants with claims against government entities, as well as, indirectly, Washington taxpayers) and will affect the operations of the state.

Moreover, RCW 4.96.020(4) was subject to much confusion and litigation prior to the amendment of the statute in 2009. *See, e.g., Troxell v. Rainer Public School District No. 307*, 154 Wn.2d 345, 111 P.3d 1173 (2005); *Medina v. PUD No. 1. of Benton County*, 147 Wn.2d 303, 53 P.3d 993 (2002). This case squarely presents questions concerning the applicability of the 2009 amendments (which include the third sentence of RCW 4.96.020(4) (adding five-day grace period) as well as RCW 4.96.020(5) ("substantial compliance")). If, as found by the Court of Appeals, the statute, as amended, is ambiguous, then review of this case will further benefit the public interest by reducing future litigation that will surely work its way through the Washington trial and appellate courts.

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VI. CONCLUSION

For the foregoing reasons, Ferry County Public Utility District No. 1 respectfully requests that the Court grant its Petition for Review.

RESPECTFULLY SUBMITTED this 12TH day of December, 2017.

PAINE HAMBLEN LLP

By:_____

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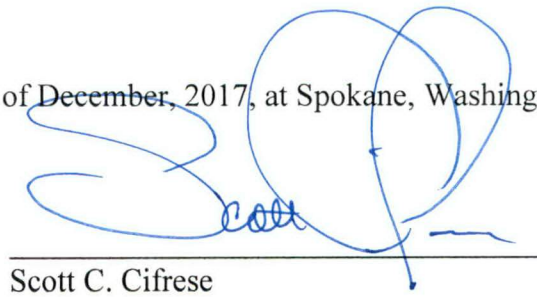
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that a true and accurate copy of the document to which this declaration is affixed was sent via email and regular mail, postage prepaid, on this day, to:

Douglas D. Phelps
Amber Henry
Katharine Allison
Phelps & Associates, P.S.
2903 N. Stout Rd.
Spokane Valley, WA 99206

Dated this 13TH day of ~~December~~, 2017, at Spokane, Washington.



Scott C. Cifrese

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APPENDIX

FILED
NOVEMBER 16, 2017
In the Office of the Clerk of Court
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

WILLIAM RUMBURG and CAROL RUMBURG, husband and wife and the marital community comprised thereof, Appellants, v. FERRY COUNTY PUBLIC UTILITY DISTRICT #1, A PUBLIC UTILITY COMPANY; and JOHN DOE(S), Respondents.	)	No. 34572-6-III PUBLISHED OPINION

SIDDOWAY, J. — At issue is whether William and Carol Rumburg timely filed suit under tolling and grace periods provided by RCW 4.96.020, the local government tort claim filing statute. After serving a second notice of claim on local government defendants and allowing 60 days for the defendants to respond, the Rumburgs relied on the statutory 5-day grace period in filing suit. The respondents contend that the 5-day grace period could apply only after the Rumburgs' first, early, notice of claim.

In resolving reasonable questions about how the tolling provision operates, the Washington Supreme Court has provided a bright-line clarification, repeated several times in published decisions, that the tolling provision adds 60 days to the end of the

otherwise applicable statute of limitations. Given this construction of the statute and its 2009 amendment requiring procedural requirements to be "liberally construed so that substantial compliance will be deemed satisfactory," we construe RCW 4.96.020(4) to apply the 5-day grace period after the 60-day extension of the statute of limitations. The Rumburgs' action was timely.

PROCEDURAL BACKGROUND

On July 16, 2012, William Rumburg suffered injuries at an event in Republic City Park from the collapse of a tent set up by Ferry County Public Utility District No. 1 (PUD). Mr. Rumburg submitted a handwritten notice of tort claim to the PUD on November 30, 2012.

Nearly two and a half years later, on June 28, 2015, the Rumburgs had their first consultation with their current lawyer. The lawyer, unaware of the earlier notice of tort claim, filed a second notice of claim on July 14, 2015. Sixty-three days later, on September 15, 2015, he filed a summons and complaint.

The PUD eventually filed a motion to dismiss the Rumburgs' action as time barred, based on the more than 3 year and 60 day passage of time between Mr. Rumburg's July 16, 2012 injury and the September 15, 2015 commencement of the lawsuit.[1] The trial court granted the motion to dismiss. The Rumburgs appeal.

[1] The parties do not dispute that the three year statute of limitations provided by RCW 4.16.080 applies.

ANALYSIS

In chapter 4.96 RCW, the legislature has waived the sovereign immunity of local government entities and their officers, employees or volunteers, but has required that "[f]iling a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages." RCW 4.96.010(1). After a notice of a tort claim is presented to a local government defendant, the plaintiff must wait until 60 days have elapsed before commencing a lawsuit. RCW 4.96.020(4). "The purpose of this claim is 'to allow government entities time to investigate, evaluate, and settle claims' before they are sued." *Renner v. City of Marysville*, 168 Wn.2d 540, 545, 230 P.3d 569 (2010) (quoting *Medina v. Pub. Util. Dist. No. 1 of Benton County*, 147 Wn.2d 303, 310, 53 P.3d 993 (2002)).

The notice of claim requirement would effectively shorten the limitations period for tort claims against local government defendants by 60 days were it not for parallel language in RCW 4.96.020(4) that tolls the period of limitations for 60 days.

Although it is never a good idea to wait to commence a lawsuit until shortly before the statute of limitations expires, procrastination proved especially perilous for parties suing local government defendants under former RCW 4.96.020(4) (2006). For a plaintiff whose action would otherwise become time-barred in the 60 days following a notice of claim, there was at most one day on which suit could be commenced without

being too early (and violating the 60-day waiting rule) or being too late (and time-barred).[2] The difficulty was illustrated in *Medina*.

In that case, the plaintiff filed his notice of tort claim for personal injury 2 days before the statute of limitations would expire. *Medina*, 147 Wn.2d at 307. The county denied the claim after only a week. *Id.* at 308. The plaintiff then waited until 56 days had passed from the date of his notice of claim before filing suit. *Id.* Although his lawsuit was timely under the statute of limitations given the 60-day tolling period, our Supreme Court affirmed dismissal of the lawsuit because he commenced suit too soon: he did not wait for the full 60-day waiting period to run. *Id.* at 307. The court refused to construe the statute as creating a variable waiting period that ended in Mr. Medina's case when the PUD denied his claim. *Id.* at 318.

In a dissenting opinion, Justice Chambers identified the problem with the identical 60-day waiting and tolling periods for plaintiffs who present a notice of claim within 60 days of the expiration of the statute of limitations. Because such actions would become time-barred during the waiting period but for the companion tolling period—and because the tolling period is exactly equal to, not longer than, the waiting period—"Medina was

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[2] We say "at most," because in *Troxell v. Rainier Public School District No. 307*, the Supreme Court recognized that given its construction of the statute, a claimant who waited until the last day of the original statute of limitations period to serve notice of a claim would find it impossible to both comply with the waiting period and commence suit before becoming time-barred. 154 Wn.2d 345, 356, 111 P.3d 1173 (2005); *and see id.* at 364 (Chambers, J., dissenting).

required by unyielding law to file his complaint on a *single magic date*; precisely 60 days after the notice was filed. . . . No margin of error, according to the majority, is permitted, even an error in favor of timely compliance." *Medina*, 147 Wn.2d at 327-28 (Chambers, J., dissenting) (emphasis added).

In 2009, RCW 4.96.020(4) was amended. Arguably in response to this timing difficulty for plaintiffs with claims against local government defendants, the amendments provided a 5-day grace period. Statutory construction of that amendment and earlier-enacted language identifying the 60-day waiting and tolling periods proves critical here.

Statutory interpretation is a question of law that we review de novo. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). Our fundamental objective is to ascertain and carry out the legislature's intent, and if a statute's meaning is plain on its face, we give effect to that plain meaning as an expression of legislative intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002) "If the statutory language is susceptible to more than one reasonable interpretation, then a court may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent." *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

Applying the statute to the facts of this case, we agree with the PUD that only the Rumburgs' first, November 30, 2012 notice of claim triggered a 60-day waiting period.

That result follows from the plain "first presented" language of RCW 4.96.020(4) highlighted below:

> No action subject to the claim filing requirements of this section shall be commenced . . . until sixty calendar days have elapsed after the claim *has first been presented* to the agent of the governing body thereof.

(Emphasis added.) This is not a case in which the Rumburgs filed two substantively different claims. *Cf. Medina*, 147 Wn.2d at 310 (property and personal injury claims were distinct and separate, and each was subject to RCW 4.96.020(4)).

The 60 days elapsing after the Rumburgs' claim was "first presented" ran from November 30, 2012 to January 29, 2013, a period when they were not at risk of their claim becoming time-barred and did not need the statute of limitations "tolled," in the sense of "take[n] away," "ma[de] null," or "remove[d]." *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 2405 (1993). In this respect, their case is like *Castro v. Stanwood School District No. 401*, 151 Wn.2d 221, 86 P.3d 1166 (2004), in which a student's notice of claim was presented to the school district well before the expiration of any limitation period. The district argued that RCW 4.96.020 should be construed as only tolling the statute of limitations if needed to carry a plaintiff to the end of the 60-day waiting period. *Castro*, 151 Wn.2d at 223. Since the student did not need the 60-day reprieve to avoid a time bar, the district argued he was not entitled to extend the limitations period by 60 days. The Supreme Court disagreed. It concluded that the legislature intended to assure a person injured by the negligence of a local government

defendant the entire number of days provided by the three-year statute of limitations period, and that days lost to the waiting period must be made up later. "Essentially, the provision adds 60 days to the end of the otherwise applicable statute of limitations." *Id.* at 226.

The fact that the Rumburgs did not enjoy a second 60-day period following their second notice of claim is not what led to dismissal of their claims. Their lawyer, unaware of the first notice of claim, assumed that the statute of limitations on the Rumburgs' claim would expire on July 16, 2015. Given their right to have 60 days added, the limitations period would expire instead on September 14, 2015. The Rumburgs are not contending they were entitled to two 60-day tolling periods.

Rather, the parties' dispute is over whether the Rumburgs could claim the benefit of a five-day grace period for filing suit, added by amendment in 2009. The following sentence was added to RCW 4.96.020(4) by the 2009 legislation:

> For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed.

LAWS OF 2009, ch. 433, § 1.

The Rumburgs' lawyer waited 60 calendar days from the second notice of claim, or until Sunday, September 13, 2015, and relying on the 5-day grace period filed the summons and complaint on Tuesday, September 15. The last day to file *without* the 5-

day grace period was Monday, September 14, 2015. The last day to file *with* the 5-day grace period was Friday, September 18, 2015.

The language in the amendment to RCW 4.96.020(4) critical to this appeal is "an action commenced within five court days after *the sixty calendar day period* has elapsed." (Emphasis added.) There are arguably two "sixty calendar day period[s]" addressed by the statute, since RCW 4.96.020(4) "has two subparts. One subpart sets the time that a government entity must be given to investigate and settle a claim, and the other tolls the statute of limitation during that time." *Troxell v. Rainier Pub. Sch. Dist. No. 307*, 154 Wn.2d 345, 361, 111 P.3d 1173 (2005) (Chambers, J., dissenting). The *waiting period* has been characterized as a period of "intervening days." *Id.* at 354-55. By contrast, the *tolling provision* has been consistently characterized as "'add[ing] 60 days to the end of the otherwise applicable statute of limitations.'" *Id.* at 349 n.2 (quoting *Castro*, 151 Wn.2d at 226); *accord Estate of Connelly v. Snohomish County Pub. Util. Dist. No. 1*, 145 Wn. App. 941, 945, 187 P.3d 842 (2008). It was clear before the 2009 amendment that the tolling provision added 60 days to the end of the otherwise applicable statute of limitations, so it is not clear which "sixty calendar day period" the 5-day grace period is intended to follow.

A new subsection (5) added to RCW 4.96.020 by the 2009 legislation tells us how to construe the statute in the event its language is not clear:

> With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

LAWS OF 2009, ch. 433, § 1. Our Supreme Court has interpreted "substantial compliance" in the context of claim filing statutes to require that the claimant make a bona fide attempt to comply with the law and that its actions actually accomplish or advance the statute's purpose. *Renner*, 168 Wn.2d at 545-46 (citing *Brigham v. City of Seattle*, 34 Wn.2d 786, 789, 210 P.2d 144 (1949)).

The Rumburgs have demonstrated a bona fide attempt to comply with the law, and the filing of a second, lawyer-prepared notice of claim following the earlier notice handwritten by Mr. Rumburg advanced the statute's purpose. Liberally construing the statute to allow for substantial compliance supports construing the 5-day grace period as following the 60-day extension of the statute of limitations.[3]

The PUD nonetheless argues that there is some evidence the legislature intended the 5-day grace period to address the timing trap that arose only for claimants providing late notices of claim, whose waiting period coincides with the 60 days added to the otherwise applicable statute of limitations. In essence, the PUD argues that the 5-day grace period was only intended to help tort claimants who "needed" the margin of error.

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[3] Construing RCW 4.96.020(4) in this way is different from holding that a tort claimant can substantially comply with the statute of limitations. We agree with the PUD that allowing substantial compliance with the limitations period provided by RCW 4.16.080 would be problematic.

But construing the statute as extending the benefit of the 5-day grace period to all tort claimants is consistent with the Supreme Court's earlier construction of RCW 4.96.020(4) as extending the benefit of an additional 60 days to all tort claimants, not just those who "needed" the extra 60 days. Local governments cannot reasonably complain about a merely 5-day margin of error being extended to all tort claimants.

We reverse the trial court's dismissal of the Rumburgs' complaint and remand for further proceedings.

Siddoway, J.

WE CONCUR:

Korsmo, J.

Pennell, J.

RCW 4.96.020

Tortious conduct of local governmental entities and their agents—Claims—Presentment and filing—Contents.

(1) The provisions of this section apply to claims for damages against all local governmental entities and their officers, employees, or volunteers, acting in such capacity.

(2) The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced. A claim is deemed presented when the claim form is delivered in person or is received by the agent by regular mail, registered mail, or certified mail, with return receipt requested, to the agent or other person designated to accept delivery at the agent's office. The failure of a local governmental entity to comply with the requirements of this section precludes that local governmental entity from raising a defense under this chapter.

(3) For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the office of risk management in the department of enterprise services, except as allowed under (c) of this subsection. The standard tort claim form must be posted on the department of enterprise services' web site.

(a) The standard tort claim form must, at a minimum, require the following information:

(i) The claimant's name, date of birth, and contact information;

(ii) A description of the conduct and the circumstances that brought about the injury or damage;

(iii) A description of the injury or damage;

(iv) A statement of the time and place that the injury or damage occurred;

(v) A listing of the names of all persons involved and contact information, if known;

(vi) A statement of the amount of damages claimed; and

(vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b) The standard tort claim form must be signed either:

(i) By the claimant, verifying the claim;

(ii) Pursuant to a written power of attorney, by the attorney-in-fact for the claimant;

(iii) By an attorney admitted to practice in Washington state on the claimant's behalf; or

(iv) By a court-approved guardian or guardian ad litem on behalf of the claimant.

(c) Local governmental entities shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity. If a local governmental entity chooses to also make available its own tort claim form in lieu of the standard tort claim form, the form:

(i) May require additional information beyond what is specified under this section, but the local governmental entity may not deny a claim because of the claimant's failure to provide that additional information;

(ii) Must not require the claimant's social security number; and

(iii) Must include instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity appointed to receive the claim.

(d) If any claim form provided by the local governmental entity fails to require the information specified in this section, or incorrectly lists the agent with whom the claim is to be filed, the local governmental entity is deemed to have waived any defense related to the failure to provide that specific information or to present the claim to the proper designated agent.

(e) Presenting either the standard tort claim form or the local government tort claim form satisfies the requirements of this chapter.

(f) The amount of damages stated on the claim form is not admissible at trial.

(4) No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed.

(5) With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.