

NO. 447053

**COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON**

CHRISTINE M. LEE,

Appellant,

vs.

**METRO PARKS TACOMA, a municipal agency, and
GREATER METRO PARKS FOUNDATION, a
Washington nonprofit corporation,**

Respondent.

FILED
COURT OF APPEALS
DIVISION II
2013 NOV -7 PM 1:23
STATE OF WASHINGTON
BY _____
DEPUTY

**MOTION FOR EXTENSION OF TIME TO FILE
APPELLANT'S REPLY BRIEF**

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I.

ARGUMENT

The issue before the court is whether Chris Lee, the plaintiff/appellant, substantially complied with the requirements of RCW 4.96.020.

Ms. Lee sent her Claim For Damages to Metro Parks Tacoma on June 5, 2012. CP 22. She filed her First Amended Complaint for Damages adding Metro Parks Tacoma as a defendant on June 22, 2012. CP 5-8. She did not wait 60 days after sending her Claim for Damages before filing her First Amended Complaint; she waited only 17 days (June 5 to June 22). (Defendant claims it received her Claim for Damages on June 8 and therefore Ms. Lee waited on 14 days – from June 8 to June 22.)

RCW 4.96.020 is to be “liberally construed so that substantial compliance would be deemed satisfactory.” RCW 4.96.020(5). Substantial compliance applies to both the content of claims filed pursuant to the statute and all procedural requirements. *Id.* The defendant/respondent has made no argument that the Claim for Damages served by Ms. Lee was in any way deficient with regard to its content. The only issue, therefore, is whether

waiting 17 or 14 days between when the Claim for Damages was served and the Complaint filed is substantial compliance.

In its brief, the defendant/respondent cites a string of cases that “resulted in the dismissal of plaintiffs’ lawsuits for failing to strictly comply with statutory notice claim provisions except as to the content of the claim.” Respondent’s Brief, page 5. None of the cases cited was after 2009, the effective date of the amendment to RCW 4.96.020 that added new section 5: liberal construction and substantial compliance.

A. *Medina v. Public Utility District No. 1:*

In its brief, the defendant/respondent discusses substantial compliance on pages 9-14. Again, none of the case cited are post-2009. The first case cited, and the primary case relied on by defendant/respondent, is *Medina v. Public Utility Dist. No. 1*, 147 Wn.2d 303, 53 P.3d 993 (2002). In that case, Alirio Medina was injured when a car owned and operated by Benton County rear-ended his car. 147 Wn.2d at 307. In October 1995, Medina filed a claim with the county for property damage. That claim was settled on October 30, 1995. *Id.*

On January 7, 1998, two days before the statute of limitations was to expire, Medina filed a second claim with the

county for personal injury and loss of consortium. *Id.* On March 5, 1998, four days before the 60-day waiting period was to expire, Medina filed a complaint for personal injuries in Benton County Superior Court. The County was served with the summons and complaint on June 3, 1998. 147 Wn.2d at 308.

On December 28, 1998, the County filed a Motion for Summary Judgment, arguing that Medina failed to comply with the waiting period specified in RCW 4.96.020(4). The trial court initially denied the motion. Upon Motion for Reconsideration the court granted summary judgment and dismissed the case. *Id.*

The Court of Appeals affirmed the summary judgment in favor of the County. The only issues before the Supreme Court were the issue of compliance with RCW 4.96.020(4) and the statute's constitutionality. 147 Wn.2d at 309.

The Supreme Court held that RCW 4.96.020(4) was constitutional and that Medina's claim for personal injury and damages failed to comply with the provisions of RCW 4.96.020(4). Accordingly, the Supreme Court affirmed the Court of Appeals. 147 Wn.2d at 319.

Remember: this decision was before the amendment of RCW 4.96.020 which added new section 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.”

There was “liberally construed” and “substantial compliance” language in RCW 4.96.010 when the *Medina* case was decided. The statute as of that date (and this date) said: “The law specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.” RCW 4.96.010(1). Benton County cited this language in support of its Motion for Summary Judgment.

The County argues that, since the legislature specifically provided in RCW 4.96.010(1) that “[t]he laws specifying the *content* for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory,” can be inferred that no other provision is meant to be liberally construed. (Emphasis added.) The Court of Appeals in this case agreed.

Medina v. Public Utility Dist. No. 1, 147 Wn.2d at 316.

The Supreme Court agreed that liberal construction and substantial compliance, as stated in RCW 4.96.010, applied only to the content of claims not to the 60-day time period required by RCW 4.96.020. That is, the attitude/interpretation of the court was that strict compliance with the 60-day time frame was still required

and that “substantial compliance” with the statute required meeting the time requirements of the statute.

The purpose of RCW 4.96.020(4) is to establish a period of time for government defendants to investigate claims and settle those claims where possible. Compliance with the waiting period can be achieved only through meeting the time requirements of the statute.

Medina v. Public Utility Dist. No. 1, 147 Wn.2d at 317.

The 2009 amendment of RCW 4.96.020 changed that analysis and the outcome. It was clearly the intent of the legislature when amending RCW 4.96.020, and adding subsection 5, that not only the content of claims but also “all procedural requirements in this section” be liberally construed so that substantial compliance would be deemed satisfactory.

What is substantial compliance:

The question then is: was waiting only 14 or 17 days after filing the Notice of Claim before filing the First Amended Complaint “substantial compliance” with the requirements of the applicable statute?

Five justices of the Supreme Court joined in the majority decision in *Medina v. Public Utilities Dist. No. 1*. Four dissented. The dissent written by Justice Ireland discussed, at considerable

length, the issue of substantial compliance. Her comments are applicable in this case.

Ordinarily, the Court of Appeals requires strict compliance with statutory time provisions. Majority at 316. It is possible, however, to substantially comply with RCW 4.96.020(4) where the facts of a particular case show the intent of the statute is met.

Defined as “actual compliance in respect to the substance essential to every reasonable objective of the statute,” substantial compliance asks whether the statute has been followed sufficiently to carry out the intent for which it was adopted. *In re Habeas Corpus of Santore*, 28 Wn. App. 319, 327, 623 P.2d 702 (1981). What constitutes substantial compliance is determined on the facts for each particular case. *Id.*

The courts, on a case-by-case basis, can determine whether RCW 4.96.020(4) was substantially complied with if evidence shows that the government defendant (1) acted on the claim, (2) was not further investigating the matter, and (3) was not further negotiating settlement. A mere showing that the government agency acted on a claim does not satisfy the substantial compliance test since the agency can continue investigating, negotiating, or settling the matter after its initial action. Moreover, a substantial compliance argument can be defeated if the government defendant shows that it would be prejudiced by plaintiff's early filing because it was still proceeding on the claim. However, once the government ceases all action or intent to act on the issue after making a decision on the claim, the purpose of RCW 4.96.020(4) is satisfied and the test of substantial compliance can be met.

Medina substantially complied with RCW 4.96.020(4) when he filed suit against Benton County 4 days prior to the expiration of the 60-day waiting period. Within 6 days of receiving Medina's personal injury claim, the County rejected it. There is no evidence that suggests the County intended to further

investigate, negotiate, or make any settlement offer. Medina filed suit on Thursday, March 5, 1998, four days prior to the expiration of RCW 4.96.020(4). The last two days of the waiting period were a Saturday and Sunday, nonbusiness days for the Court. Pet'r's Br. at 4. The timing of filing in this case is important in determining whether Medina substantially complied with RCW 4.96.020(4). One can logically conclude that, since the County had already acted, was not pursuing the claim any further, and had only one day left within which it could further proceed, it was not likely to initiate any new investigation or negotiations. Thus, Medina's early filing did not frustrate the purpose of RCW 4.96.020(4) and substantially complied with the statute.

Medina v. Public Utility Dist. No. 1, 147 Wn.2d at 321-322.

As to whether Ms. Lee substantially complied with the requirements of RCW 4.96.020(4), this court must consider whether the defendant/respondent (1) acted on the claim, (2) was or was not engaged in further investigation of the claim, and (3) was or was not engaged in further negotiations regarding settlement. As set forth by Ms. Lee in her Brief, the defendant/respondent was not investigating the claim and was not, in any form or fashion, interested in negotiating a settlement. On the contrary, the position of the defendant/respondent is and has always been: denial of the claim.

As was argued by Ms. Lee in her Brief, there was no prejudice to the defendant/respondent. Its position has always

been denial of the claim. Concerning which denial, and as stated by Justice Ireland in her dissent:

However, once the government ceases all action or intent to act on the issue after making a decision on the claim, the purpose of RCW 4.96.020(4) is satisfied and the test of substantial compliance can be met.

Medina v. Public Utility Dist. No. 1, 147 Wn.2d at 321.

II.

CONCLUSION

Strict compliance with the 60-day requirement of RCW 4.96.020(4) is not required. What is required is “substantial compliance.” Substantial compliance should be determined based on the facts of each particular case. In this case there is absolutely no evidence before the court that the defendant/respondent would have attempted to negotiate a settlement but for when the plaintiff/appellant filed her First Amended Complaint.

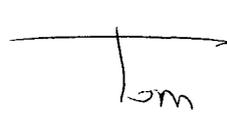
Ms. Lee filed an appropriate Claim for Damages. She did not wait 60 days before filing her First Amended Complaint. However, the position of the defendant/respondent with respect to the Complaint is the same now as it was at the time the Complaint was filed: outright denial of liability and a refusal to discuss settlement. There has been substantial compliance with the

statute. The Order Granting Summary Judgment should be reversed.

DATED this 4 day of November, 2013.

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By:



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14 METRO PARKS TACOMA, a municipal
15 agency, and GREATER METRO PARKS
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17 corporation,

18 Respondents.
19

20 NO. 44705-3-II

21 CERTIFICATE OF SERVICE

22 STACY PAMBRUN DEMORY declares under penalty of perjury under the laws of
23 the State of Washington that the following is true and correct:

24 1. That I am a citizen of the United States, over the age of 18 years, and not a
25 party to this action;

26 2. That on November 4, 2013, true a correct copy of APPELLANT'S REPLY
27 BRIEF was served by the method indicated below, and addressed to the following:
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STACY PAMBRUN DEMORY
Signed November 4, 2013
at Walla Walla, Walla Walla County, Washington