



# It Depends

## An Analysis of the Timeliness of Tort Claims Notices

**By Sarah K. Delahant**

Tort claims litigation can be one of the most challenging areas of law for both plaintiff and defense counsel. The pitfalls are apparent from the inception of claim through disposition. Nearly every claim against a public entity is subject to some form of immunity. However, one of the most challenging parts of handling a tort claim case is apparent from the start. When does a tort claim accrue? In what instances is the tort claim notice period relaxed?

## The Basics

Most practitioners know that the Tort Claims Act requires that a notice of tort claim be filed within 90 days from the date of injury<sup>1</sup> in order to maintain a claim against a public entity. As a prerequisite to suit against public entities and employees, the TCA requires presentation of the claim in accordance with its notice provisions.<sup>2</sup> The notice must provide “[t]he date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted” and “[a] general description of the injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.”<sup>3</sup> “[T]he notice [requirements are] triggered by the occurrence of injury and [notice] must be filed in order for a complaint to be lodged against the public entity.”<sup>4</sup>

Importantly, tort claim notices do not require specificity. They require only a general outline of damages and the connection to the public entity.

A claimant who fails to file the appropriate notice of claim with the public entity within 90 days of accrual of the claim is barred from recovery against a public entity<sup>5</sup> unless they file a motion seeking leave to file a late notice of claim within one year of the accrual date. To prevail on such a motion, the claimant must establish extraordinary circumstances which prevented timely filing of the notice of claim and demonstrate that no prejudice befell the public entity due to the delayed notice.<sup>6</sup> This is established through affidavits based upon personal knowledge demonstrating sufficient reasons (i.e., extraordinary circumstances) for claimant’s failure to file notice within the statutory time period. However, if a claimant fails to give notice within the 90-day period and does not file a motion seeking to file a late notice of tort claim within one year of the accrual date, the trial court

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The issue of late notice of claim was recently addressed by the Appellate Division in *Conzentino v. Rutgers*.<sup>8</sup> In *Conzentino*, the plaintiff was injured during a fall on the Rutgers University campus on Sept. 12, 2022. A Notice of Public Incident was filed with Rutgers University on Sept. 27, 2022. A notice of tort claim was filed on Feb. 8, 2023, well beyond the 90-day notice period. The plaintiff filed a complaint in the law division on Feb. 9, 2023. The defendants moved to dismiss the plaintiff’s complaint for failure to comply with *N.J.S.A. 59:8-8*. The plaintiff cross-moved seeking leave to file a late notice of tort claim. The trial court granted the plaintiff’s motion permitting the claim to proceed. However, on appeal as of right, the Appellate Division reversed, finding no extraordinary circumstances as the plaintiff failed to include a certification setting forth the circumstances that prevented a timely notice of claim. The university’s internal “Notice of Public Incident” was deemed insufficient notice to Rutgers University to comply with the TCA. This case highlights the

importance of not only timely notice, but also notice which meets the statutory criteria.

When discussing a timely notice of tort claim, attorney inattentiveness or inadequate medical proof does not qualify as extraordinary circumstances.<sup>9</sup> Waiting to determine whether claimant’s injury will qualify for recovery under that damages provision of the TCA will not toll the notice period or provide a basis for extraordinary circumstances.<sup>10</sup>

In a December 2025 unpublished decision, the Appellate Division upheld the trial court’s grant of defendants’ motion to dismiss for failure to file a timely notice of claim. In *Senape v. South Amboy Public Schools*,<sup>11</sup> the plaintiff alleged that on Jan. 4, 2024, she learned of an inappropriate disclosure of personal information resulting in damages. The plaintiff did not file a notice of tort claim until April 3, 2024. On Nov. 11, 2024, the plaintiff sought leave of the court to file a late notice of claim, citing the emotional effect of the disclosure; an interceding motor vehicle accident; and that fact



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that the plaintiff's housing was displaced between the disclosure and untimely filing. The Appellate Division upheld the trial court's denial, noting that there was insufficient evidence that the severity of the plaintiff's medical condition or housing issues were such that she was prevented from timely seeking redress.<sup>12</sup>

ordinary circumstances sufficient to warrant a late notice of claim.

### The Fine Print

In filing a notice of tort claim a practitioner must be aware of the accrual date of the claim and the identity of all public entities potentially responsible for the

did not file a notice of tort claim. The surgeon moved for summary judgment on the basis that he was a public employee, employed by the University of Medicine and Dentistry. However, the surgery took place at a private hospital.<sup>15</sup> The Supreme Court held that the surgeon qualified as a public employee,<sup>16</sup> but that the plaintiff's notice of tort claim was not untimely as the surgeon's identity as a public employee was obscured.

In *Lowe*, the surgery at issue occurred on Sept. 26, 1994. The metal clips were removed in December 1994. After the initial removal of the clips, Dr. Faramarz Zarghami assured the plaintiff that the metal clips would not cause any problems. The plaintiff had a series of additional medical conditions related to the failure to remove metal clips and was treated through August 1995. On July 19, 1996, the plaintiff filed a late notice of tort claim. In doing so, the plaintiff noted the accrual date as August 1995, based upon the additional treatment after the metal clip removal.

The plaintiff filed a malpractice suit against Zarghami on Feb. 8, 1996. On April 19, 1996, Zarghami filed a motion to dismiss the plaintiff's complaint based upon the failure to timely file a notice of claim. In granting Zarghami's motion to dismiss, the trial court determined that Zarghami qualified as state employee and the accrual date of plaintiff's claim was December 1994, when the metal clips were removed. Thus, the claim against Zarghami failed as the plaintiff failed to seek leave to file a late notice of tort claim within one year of the accrual date.

The Appellate Division overruled the trial court, holding that Zarghami was not a state employee and thus was not entitled to a notice of tort claim. In so holding, the Appellate Division did not reach the question of whether extraordi-

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Similarly, in *Okio-gah v. New Jersey Transit*,<sup>13</sup> the Appellate Division affirmed the trial court's denial of a motion seeking leave to file late notice of claim. In *Okio-gah*, the plaintiff was a pedestrian struck by a New Jersey Transit bus. The plaintiff was discharged from the hospital after the 90-day notice period expired. Despite this, the Appellate Division upheld the trial court's denial of the plaintiff's motion seeking leave to file a late notice of claim on the basis that the plaintiff was able to communicate with his girlfriend and counsel while in the hospital and he had no cognitive injuries.

Extraordinary circumstances are determined on a case-by-case basis. However, in the event a motion seeking leave to file a late notice of claim is necessary, the movant will need affidavits setting forth in detail not only the circumstances surrounding the delayed notice, but also how those circumstances prevented the timely filing of a notice of tort claim. Without both elements, the court will have a difficult time finding extraor-

inary. In most instances the accrual date of the tort will be clear, such as the date of an auto accident or the date of a trip and fall. In other instances, the accrual date is not easily identifiable, as with an environmental exposure claim or a medical malpractice claim. Most often the identity of the appropriate public entity is apparent, as well. However, in other instances, even the involvement of a public entity in a tort may be obscured. In those instances, a practitioner may have available a secondary argument that the notice period should be tolled based upon the discovery rule.

It is these gray areas of accrual date and public entity identification which generate the majority of Appellate Division cases each year.

The case of *Lowe v. Zarghami*<sup>14</sup> is instructive as to several tort claim notice pitfalls. *Lowe* arises out of a medical malpractice claim wherein the plaintiff alleged injury due to metal surgical clips left inside of her body. The plaintiff initially filed suit against the surgeon but

nary circumstances were present to permit the late notice of claim.

In determining that the plaintiff's claim against Zarghami was not barred by the notice provisions of the TCA, the court recognized that the notice provisions of TCA were not intended as a "trap for the unwary."<sup>17</sup> In finding that extraordinary circumstances existed, the court noted that the plaintiff contacted an attorney as soon as she found out about the potential malpractice and timely filed a malpractice claim. Moreover, the plaintiff had no reason to suspect that Zarghami was a public employee. Moreover, a late notice of claim would not prejudice Zarghami as he was required to keep the plaintiff's medical records well beyond the TCA notice period.<sup>18</sup>

Of course, best practice is to file the notice of tort claim as soon as possible, naming any and all potentially responsible public entities and public employees. However, when determining the accrual date, practitioners must bear in mind that the term "accrual" under the TCA is defined the same as in the public sector.<sup>19</sup> Thus, a claim under the TCA accrues on the date the injury is sustained, provided the plaintiff is aware both of the injury and of the involvement of a public entity or employee.<sup>20</sup>

In certain instances, the discovery rule may provide relief from the strict notice requirements of the TCA. The discovery rule "tolls the statute until the victim discovers both the injury and the facts suggesting that a third party may be responsible."<sup>21</sup> Thus, the discovery rule can be used as a tool to determine the accrual date. While generally applicable in the context of the TCA, claimants often conflate the discovery rule with exceptional circumstances.

For example, the plaintiff in *Beauchamp v. Amedio*<sup>22</sup> attempted to use the discovery rule to toll the notice peri-

od. *Beauchamp* arises out of an auto accident wherein the plaintiff's vehicle was struck by a New Jersey Transit bus. The plaintiff did not file a timely notice of claim as there were doubts as to whether she would be able to vault the TCA injury threshold. In seeking leave to file a late notice of claim, the plaintiff unsuccess-

passing of the CVA, TCA provided absolute protection against any intentional torts or criminal actions of public employees and provided a wide array of procedural and substantive immunities. However, most of the immunities, procedures, and defenses have been removed from the TCA by way of the amendments

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fully argued that the discovery rule should apply, tolling the 90-day TCA notice period until after she received positive MRI findings. The Court rejected this argument, noting that the plaintiff was aware that she was injured in a car accident with a New Jersey Transit bus on the date of the accident. The late discovery as to the significance of her injuries did not toll the running of the 90-day period.<sup>23</sup>

In a situation where the accrual date is clear, a practitioner seeking leave to file a late notice of claim might be wise to focus efforts on establishing the circumstances surrounding the delayed notice and how those circumstances prevented the timely filing of a notice of tort claim. Quibbling over an accrual date if the accrual date is at all apparent is unlikely to carry the day.

### **Practice Point—Claims Under the Child Victims Act**

There is one discrete circumstance in which the notice requirements of the TCA do not apply, in claims arising out of the Child Victims Act. Prior to the 2019

to the CVA. Specifically, the TCA has been modified by the CVA to explicitly remove any procedural requirements relating to claims that arise out of a sexual assault by a public employee. Therefore, the TCA notice requirements do not apply to claims asserted under the CVA.<sup>24</sup>

In conclusion, the timeliness and sufficiency of tort claim notices under the TCA present significant challenges for both plaintiffs and defense counsel. Strict adherence to the 90-day notice requirement is essential, as courts rarely find extraordinary circumstances sufficient to excuse late filings, and procedural missteps can be fatal to a claim. Practitioners must be vigilant in identifying the accrual date and all potentially responsible public entities, while also understanding the limited circumstances in which the discovery rule may toll the notice period. Notably, claims arising under the Child Victims Act are exempt from these procedural requirements, reflecting legislative intent to remove barriers for survivors of sexual abuse. Ultimately, best practice dictates prompt and comprehensive notice to

preserve a claimant's rights and avoid the many pitfalls that can arise in tort claims litigation against public entities. ■

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## Endnotes

1. *N.J.S.A.* 59:8-8
2. *N.J.S.A.* 59:8-3
3. *N.J.S.A.* 59:8-4(c) and (d).
4. *Beauchamp v. Amedio*, 164 N.J. 111, 121 (2000)
5. *N.J.S.A.* 59:8-8(a)
6. *N.J.S.A.* 59:8-9
7. *Pilonero v. Twp. of Old Bridge*, 236 N.J. Super. 529, 532 (App. Div. 1989)
8. 2025WL1873109 (App. Div. July 9, 2025)
9. *D.D. v. University of Medicine & Dentistry of New Jersey*, 213 N.J. 130 (2013)
10. *Beauchamp v. Amedio*, 164 N.J. 111 (2000)
11. 2025WL3493980 (App. Div. December 5, 2025)
12. *D.D. v. University of Medicine & Dentistry of New Jersey*, 213 N.J. at 150
13. 2025WL1583904 (App. Div. April 2, 2025))
14. *Lowe v. Zarghami*, 158 N.J. 606 (1999)
15. Plaintiff received a bill from the private hospital for various services including anesthesiology. Although Dr. Zarghami alleges that his bill was issued by UMDNJ, plaintiff claims she never saw that bill as it went directly to her insurer, thus obscuring the identity of Dr. Zarghami's employer. *Id.* at 612-613,
16. To determine whether the surgeon qualified as a public employee, the Court applied the common law control test. The control test looks to the (1) the degree of control exercised by the employer over the means of completing the work; (2) the source of workers' compensation; (3) the source of the equipment and resources; and (4) the employer's termination rights to determine whether master-servant relationship exists. *Id.* at 615-616.
17. *Id.* at 629, citing, *Murray v. Brown*, 295 N.J. Super. 360, 365 (Law Div. 1991)
18. *Lowe v. Zarghami*, 158 N.J. at 630-631.
19. *Fuller v. Rutgers, State University*, 154 N.J. Super. 420, 423 (App. Div. 1977)
20. *Beauchamp v. Amedio*, 164 N.J. 111, 119 (2000)
21. *Ayers v. Jackson Twp.*, 106 N.J. 557 (1987)
22. *Beauchamp v. Amedio*, 164 N.J. 111 (2000)
23. *Id.* at 119.
24. In 2019 the New Jersey Legislature passed SB477, known as the Child Victims Act (CVA), which modified many other laws including the TCA. "The procedural requirements of this chapter shall not apply to an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1). *N.J.S.A.* 59:8-3." See also *J.H. v. Warren Hills Bd. of Educ.*, 481 N.J. Super. 536, 544 (App. Div. 2025) ("Normally, a person or entity seeking to sue a public entity must give notice of its claim ninety days "after accrual of the cause of action." *N.J.S.A.* 59:8-8. That notice requirement, however, was eliminated for actions at law for injury resulting from sexual assaults."). Therefore, in any matter where there is a sexual assault claim, the procedural notice requirements under the TCA no longer apply.