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MORRIS DUFFY ALONSO & FALEY
NEW YORK STATE MUNICIPAL LAW UPDATE

In an effort to keep our municipal clients apprised of changes in the law we have summarized two recent New York State decisions.

THE NEW YORK STATE COURT OF APPEALS DEFINES FURTHER THE REQUIREMENTS FOR A NOTICE OF CLAIM

Rosenbaum v. City of New York, — N.E.2d — (2006)

In our litigious times, it is a rare municipality indeed that is not familiar with a Notice of Claim. Under § 50-e of the New York State General Municipal Law, service of a Notice of Claim on a municipality must be performed in a timely manner (generally 90 days from the date of occurrence) before a negligence case can be commenced against a municipality. This law was enacted to enable a municipality to locate the alleged defect, conduct a meaningful investigation and assess the merits of the injured plaintiff's claim. Because a defective Notice of Claim can result in a dismissal of the lawsuit, there has been much litigation on what constitutes sufficient notice under the statute.

A document does not need to have the words "Notice of Claim" on it to be one. However, it is required to contain: (1) the name and address of each claimant (and attorney if there is one); (2) the nature of the claim; (3) the time, place and manner in which the claim arose; and (4) the items of damage or injuries claimed. In *Rosenbaum*, when the court deemed the "official" Notice of Claim sent by plaintiff to be untimely, plaintiff stated that an earlier letter from his attorney to a lawyer for the city agency involved served sufficiently as a Notice of Claim.

When determining whether a document complies with the requirements of § 50-e, the courts look at the purpose of the statute set forth in paragraph one. In *Rosenbaum*, the attorney's letter in question had statements of tentative expressions such as, "[u]nless these liens are removed forthwith then [the owner] may lose his current sale and be substantially damaged" and "[i]f an action is brought due to [the] City's unlawful refusal to remove the illegal liens, then the owner is entitled not only to costs but legal fees as well."

The highest court in the State of New York, the Court of Appeals, held that the language in the letter from plaintiff's attorney was insufficient to satisfy § 50-e. The Court stated: "The requirements of General Municipal Law § 50-e are not fulfilled when a plaintiff or an attorney writes a letter to a City agency suggesting that unmet demands might lead to litigation. If they were, the City would be placed in an untenable position since any number of everyday disputes between citizens and City agencies will inevitable yield streams of similar, vaguely threatening correspondence. Section 50-e does not abet notice of claim by stealth."

While you need not be concerned over every threatening letter you receive, if you receive a document that appears to contain all four parts of the information required that document might be considered to be a Notice of Claim by the courts. Therefore, it would be good practice to alert your attorney or insurance carrier once you receive this type of document. In this way valuable time to investigate and conduct a hearing of the claimant would not be lost.

WHAT IS A MUNICIPALITY?

Jericho Water Dist. V. One Call Users Council, Inc., — N.Y.S.2d— (2nd Dept. 2006)

As noted in the above article, there are laws that apply specifically to municipalities. Sometimes, a question arises as to what public bodies are considered to be municipalities. The short answer is that it depends.

There are about 100 "books" of laws and acts within New York State's consolidated and unconsolidated laws. The General Municipal Law, which contains the provisions of Notices of Claim, is just one of them. Most of these "books," called chapters, have a section that defines key terms used throughout the law. A word defined one way in one chapter of New York State law might be defined differently in another chapter. For example, within the General Municipal Law, a "municipal corporation" only includes a county, a town, a city or a village.

The case of *Jericho Water Dist.* involved a dispute concerning the non-payment of fees to the One Call Users Council (the "Council") by the Water District. Briefly, the One Call Users Council was set up through legislation recorded in the New York State General Business Law. The law allows for any company or person with the intention of digging to make one phone call to ascertain where all utility lines are in the affected area. The Council, according to statute, is paid by all the operators of underground facilities that participate in the system. However, municipalities and authorities that operate underground facilities are exempt from payment.

Jericho Water District ("JWD"), a public entity, claimed that it was a municipality and would not pay the fee asserted by the Council. The Council, citing the General Construction Law, claimed that the JWD was not a municipality. (The General Construction Law defines a municipality similarly to the General Municipal Law). The Appellate Division, Second Department, held in favor of the Jericho Water District.

The court noted that there are many different definitions of the term municipality that appear in the laws of New York State. The term municipality, however, was not defined in the General Business Law. Therefore, the court looked at the intent of the legislators. Clearly, the law exempting municipalities and authorities from payment to the Council was to avoid burdening entities with limited resources and to place the funding of the one call notification system upon entities with ample resources. Noting that the Jericho Water District was a public entity with limited resources, the court interpreted that the intent of the legislators

was to include public entities of this type as a municipality within this section of the General Business Law.