

**OFFICE OF STRUCTURES  
MANUAL ON HYDROLOGIC AND HYDRAULIC  
DESIGN**

**CHAPTER 2, APPENDIX 2B  
CLAIMS AGAINST THE STATE OF  
MARYLAND**



**APRIL 2011**

June 6, 1991

TO: Senior Managers  
FROM: Office of Counsel  
SUBJECT: Tort Claims

The Office of Counsel has received several inquiries concerning tort claims.

If a person, homeowners association or other entity wishes to bring a claim for money damages against the State or SHA, this should be done pursuant to the Tort Claims Act. If a claimant can demonstrate that as a result of SHA's negligence, they were damaged, that claimant can collect up to \$50,000 from the State. The first \$1,000 of a judgment against SHA is paid by SHA. Beyond that, the judgment is paid by the State's insurance fund.

Conditions to Bringing a Claim

As the Tort Claims Act waives the State's sovereign immunity, the Legislature imposed several specific conditions before claims could be brought against the State.

- A written notice describing the basis for the claim must be delivered to the Office of the State Treasurer within 180 days of the incident or occurrence which serves as the basis for the claim.
  - If the notice is sent to any other person (i.e., SHA Administrator, DOT Secretary, Attorney General, Governor, etc.) and not to the Treasurer, it is not satisfactory and the courts will generally dismiss such a claim.
  - If the notice is received late, even a day late, the courts have held the condition for bringing suit has not been met.
- If the claim is received on time, the Tort Claims Unit at the Treasurer's Office will investigate the claim, and will generally call persons within SHA to determine whether SHA was negligent. Based on its investigation, the Treasurer's Office will either accept or deny the claim. Only after the claim is denied may a lawsuit be brought.
- So long as an official or employee is acting within the scope of his/her employment when the subject action (contended to be negligent) occurred, that individual is immune from suit.

### Our Concerns

Like many laws, the average person is neither aware of his/her rights under the Tort Claims Act, nor familiar with the strict requirement that a claim be filed with the Treasurer's Office within 180 days of their claim.

Typically, that individual will call SHA headquarters or a District office or maintenance shop. On many occasions, the individual ends up speaking to an SHA employee who either is not aware of the Tort Claims Act or, in an attempt to engage in customer service, fails to mention the availability of the Tort Claims Act.

The typical result is usually one of the three following situations:

- An individual calls SHA for help with a problem, but because that individual was not advised of his/her rights under the Tort Claims Act, he/she fails to give proper notice to the Treasurer in time and is prevented from bringing a claim

or

- An individual calls SHA with a claim for damages because of SHA's alleged negligence. Rather than requiring that individual to follow the Tort Claims Act procedure, an attempt is made to work out the claim through customer service. However, things eventually do not work out and the cost to rectify the problem is much greater than expected. It is too late for the individual to file a claim and SHA winds up paying much more than originally intended.

or

- Because things are worked out informally, and legal procedures are avoided, claims are paid without first obtaining appropriate releases and the problem reappears in another form soon after the first problem was thought to have been solved.

### Possible Solutions

- Senior Managers should decide where customer service ends and requirement to file a claim under the Tort Claims Act begins.

The Office of Counsel suggests that because SHA's cost is limited to \$1,000 if judgment is entered pursuant to Tort Claims Act, SHA should limit customer service to a claim which will not exceed \$1,000 in cost to SHA.

- Educate SHA personnel of availability of Tort Claims Act remedy and requirements for bringing claim against State.

- Advise SHA personnel to contact Office of Counsel staff if notified of a potential tort claim where more than \$1,000 is involved, even if customer service approach is being explored.
- At a minimum, potential claimants should be informed of their rights early on, without admitting any responsibility on SHA's part. This does not preclude resolving the matter thereafter by customer service.

Questions

How do Senior Managers communicate the message to SHA personnel?

- Article in Maryland Roads publication
- Memorandum from Hal Kassoff or Office of Counsel
- Training seminars

Attachment

PLEASE SEE BELOW

The attachment referred to in the above memorandum from the Office of Counsel dated June 6, 1991 is an excerpt from the Annotated Code of Maryland (COMAR), Section 12. This is a lengthy document addressing various aspects of claims against the State of Maryland. This information is available in the Offices of the SHA, but is not included here in the interest of limiting the size of the drainage manual.