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Indiana Supreme Court Permits Application of Equitable Estoppel Doctrine to Tort Claims Act Case

It is not uncommon for the Indiana Supreme Court to not release an opinion in any given week. It is not uncommon, as was the case this week, for the court to release four decisions. However, what is quite uncommon is for the court to hand down two opinions under the civil tort designation in the same week. This is especially true when the cases are not companion pieces. In part because it has been close to a month since the Hoosier Litigation Blog addressed an Indiana state court decision and due to the fact that one of the two opinions was a decision that had garnered much attention with the other authored by Justice Mark S. Massa, this week the Hoosier Litigation Blog presents a double dip into Indiana state jurisprudence and seeks to put the Hoosier back in the title.

In this post we shall examine the court's decision in *Schoettmer v. Wright*. The companion post to this piece shall focus on the much-anticipated *Santelli v. Rahmatullah*.

The *Schoettmer* case once more draws us into the realm of the Indiana Tort Claims Act (ITCA). We first discussed the ITCA in our post *Filing Claims Against the State Government*. More recently we addressed the ITCA a little over two months ago in the context of the case *City of Indianapolis v. Buschman*: also an

opinion authored by Justice Massa. Without going into great detail again, the ITCA is the Indiana statute that authorizes people to sue the state of Indiana. The need for the ITCA stems from the fact that at common law – that is the law of the courts and not the law of legislative acts – the state as the sovereign was absolutely immune from suit.

Though the ITCA now permits the right to sue, it still provides restrictive limitations on that right. One important limitation that was not at issue in this case is that it preserves the common law standard of contributory negligence. That means that if the plaintiff is even one percent at fault for his or her own injuries, then that person is barred from any recovery. In most every other area of Indiana tort law this harsh doctrine has been replaced by the comparative fault standard that allows for recovery where the injured person is no more than 50% at fault for his/her own injury.

Most importantly to our discussion today is that the ITCA requires that a tort claims notice be filed. Further, that notice must be filed in a fairly short period of time. Precisely how long that requires varies a bit, but it is less than a year. Compare that to the statute of limitations for negligence actions in Indiana that permits two years to bring a case, and you can see how restrictive the deadline to file a tort claims notice can be. The *Schoettmer* case is one that tests the boundaries of what can be done to preserve a claim after the deadline has past.

The facts of the case are not very complicated. Mr. Schoettmer was driving in Indianapolis when his vehicle was struck by Miss Wright. Where things get complicated is that Miss Wright was an employee of South Central Community Action Program, Inc. and acting within the scope of her employment. If you are a normal person who has not had his/her brain warped by the doublespeak of the law, you are probably wondering how the ITCA – which applies to cases where the state government is a party – has any application to what sounds like a private company. The answer to this mystery is that "South Central is a community action agency and thus a political subdivision governed by the ITCA."

After the accident, Mr. Schoettmer sought treatment and was in negotiations with the insurance company for Miss Wright. After his treatment was finished, the insurance company offered Mr. Schoettmer, what he considered to be, an unacceptable settlement offer. So, Mr. Schoettmer hired counsel and brought suit. To draw a timeline on this matter, the accident occurred in November 2008. It was not until September 2009, that Mr. Schoettmer sought and hired legal counsel. It was not until October 2010 that the lawsuit was filed.

After suit was filed, the defendants answered the complaint and then a few

months later, in February 2011, amended their answer to include the affirmative defense of failure to comply with the ITCA. The defendants sought and were awarded summary judgment and the case was dismissed. Mr. Schoettmer appealed that decision and a split (2-1) Court of Appeals agreed with the trial court. Mr. Schoettmer sought transfer to the Indiana Supreme Court and that's what brings us to today's discussion.

To begin the decision, the court found that Mr. Schoettmer did not meet his duty of notice under ITCA, which in his case required notice within 180-days. In reaching that conclusion, the court resolved a split within the Court of Appeals caselaw as to whether notice to a governmental entities insurance company constituted sufficient notice. The court agreeing with the reasoning of one of the appellate decisions wrote:

> On balance, we agree with the *Brown* [*v. Alexander*] panel and decline to find substantial compliance where, as here, the claimant communicated only with the insurer and "took no steps whatsoever to comply with the notice statute." We recognize that it may be desirable to encourage potential claimants to work with insurers to settle claims rather than proceed directly to litigation, and we acknowledge that our conclusion today may tend to encourage the opposite. We are confident, however, that such policy considerations will be addressed in the proper forum: the General Assembly.

Despite not satisfying the ITCA notice requirements, the court did ultimately reinstate Mr. Schoettmer's case. This happened because the court found that there were genuine issues of material fact that needed to be resolved at trial as to whether the doctrine of equitable estoppel applied to prevent the defendants from raising the ITCA defense. In summarizing the doctrine of equitable estoppel the court wrote:

> "The party claiming equitable estoppel must show its '(1) lack of knowledge and of the means of knowledge as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) action based thereon of such a character as to change his position prejudicially.'" Equitable estoppel will not apply against the State unless there is "clear evidence that its agents made representations upon which the party asserting estoppel relied." The burden to produce that evidence rests upon the party claiming estoppel.

If the doctrine applies, then the defendant is "estopped" from raising the defense. Because we are lawyers we have decided to use a lawyer word – estop – for what

simply means stop. That is, if equitable estoppel applies, then justice requires that the party be stopped from doing something.

In finding that equitable estoppel may apply in this case, the court looked to the following facts. (1) The Schoettmers provided evidence that they did not know that South Central was a political subdivision subject to the ITCA. (2) That the agent for the insurance company never informed Mr. Schoettmer of the fact that South Central was a political subdivision. In fact, there was evidence that the agent made representations that contradicted the notion that the ITCA applied. The agent told Mr. Schoettmer that it would be "'it would be in his best interest to wait until he is released from treatment' to settle his claim." And (3) there was sufficient evidence that Mr. Schoettmer relied upon these representations. He worked with the agent in attempting to receive a settlement offer, which did not come until more than three months after the ITCA notice deadline had passed. Because the doctrine of equitable estoppel may apply, the case was reinstated and permitted to go to trial where a jury can decide that issue.

As I noted at the beginning, this decision was authored by Indiana Supreme Court Justice Massa. If you are a regular to the Hoosier Litigation Blog, then you know that I have written extensively on the opinions of Justice Massa. Each new decision providing further and further insight into his analytical approach. While I do not think that this decision is as informative as many of his prior opinions, it does have one extremely informative line that merits discussion.

As I said long ago about the current composition of the Indiana Supreme Court and Justice Massa in particular:

> I believe that the inescapable conclusion . . . is that this court and Justice Massa in particular are highly deferential toward the legislature

This opinion was all but proven fact by the following line from *Schoettmer*:

> We are confident, however, that such policy considerations will be addressed in the proper forum: the General Assembly.

This single line is indicative of the fact that this court, at least on the surface, is reticent to use the court to exercise public policy considerations. I add the caveat "at least on the surface" because I think there are a handful of cases that have fallen within the confines of policy considerations that the court has seen fit to exercise its authority in resolving: *see*, *e.g.*, *Walczak v. Labor Works-Fort Wayne LLC*; *City of Indianapolis v. Buschman*; *Miller v. Dobbs*. Thus, I think a better pronouncement of

the current court's view is where the policy concern is one of wide application and not one that is resolved through the exercise of Hoosier common sense, the issue is best resolved by the legislative process.

Join us again next time for further discussion of developments in the law.

Sources

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- *Schoettmer v. Wright*, 971 N.E.2d 118 (Ind. Ct. App. 2012), *trans. granted*.
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