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Georgia Municipal Tort Liability: Ante Litem Notice

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GEORGIA MUNICIPAL TORT LIABILITY: ANTE LITEM NOTICE

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THE "law" of municipal tort liability in Georgia consists largely of a mass of judicially declared principles.[1] Confusing in magnitude, overlapping in scope, and conflicting in result, these principles give boundary to a no-man's-legal-land where even the "experts" are hesitant to trod. The weary traveler forced to grope his way through this desertic wilderness thus squints with refreshed anticipation as he spies on the horizon what appears to be the lush oasis of a definitive statute. As he draws nearer, the plush greenery parts, revealing the following crystal-clear legislative pronouncement:

> No person, firm or corporation, having a claim for money damages against any municipal corporation on account of injuries to person or property, shall bring any suit at law or equity against said municipal corporation for the same, without first, and within six months of the happening of the event upon which such claim is predicated, presenting in writing such claim to the governing authority of said municipality for adjustment, stating the time, place, and extent of such injury, as nearly as practicable, and the negligence which caused the same, and no such suit shall be entertained by the courts against such municipality until the cause of action therein shall have been first presented to said governing authority for adjustment . . . .[2]

Chiseled in stone in 1899, this clear-cut commandment ostensibly offers the security of a comprehensible rule with which one may work. At least in this small sphere of the subject area, surely its definite language has served the ages and will not fade as a mirage upon closer inspection: or will it?

When he reaches the spot, of course, the traveler finds that the apparent simplicity of the command has dimmed and that around it, too, litigation abounds. He discovers that here, as elsewhere in the

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1 *See generally* R. SENTELL, THE LAW OF MUNICIPAL TORT LIABILITY IN GEORGIA (1967) [hereinafter referred to as GEORGIA MUNICIPAL TORT LIABILITY].

2 GA. CODE ANN. § 69-308 (1967).

wilds of municipal tort liability, a chart of the court decisions is essential.

Time and again the Georgia courts have spoken on the meaning of various phrases in the notice-of-claim statute, or, as they popularly refer to it, the "*ante litem* notice" statute.[3] During the last three or four years, the judiciary's activity has been particularly concentrated. Grappling with questions of first impression, changing approaches to interpretation, or confirming prior positions, their decisions must now be understood as a part of the statute itself. What follows is simply a brief effort to summarize this recent judicial activity, hopefully in an orderly fashion.[4] If the traveler is thereby aided in updating his map, the purpose will be served.

I. CLAIMS

Even at this late date, questions of first impression concerning the notice-of-claim statute still confront the Georgia courts. One of the most recent instances of this confrontation involved the types of claims to which the statute is applicable. The statutory language itself appears to indicate fairly pervasive coverage: it expressly precludes the bringing of "any suit at law or equity" by any "person, firm or corporation, having a claim for money damages against any municipal corporation on account of injuries to person or property," unless notice has been given.[5]

The specific question presented by *City of Atlanta v. J.J. Black & Co.*[6] was whether this language applied to claims arising out of the municipality's breach of contract.[7] The court of appeals relied upon two points in holding that such claims were not subject to the statutory requirement.[8] First, the court said that the notice-of-claim requirement was in derogation of the common law and, therefore, must be strictly construed.[9] In effecting this strict construction, the court ignored the

3 *See* GEORGIA MUNICIPAL TORT LIABILITY 134-55.

4 Generally, the treatment involves cases decided since 1964, the cut-off point for the discussion in GEORGIA MUNICIPAL TORT LIABILITY.

5 GA. CODE ANN. § 69-308 (1967).

6 110 Ga. App. 667, 139 S.E.2d 515 (1964).

7 The action was initiated by a building contractor who alleged that the municipality had delayed in bad faith the plaintiff's performance under a contract for construction of a school building.

8 The plaintiff's petition, although failing to allege compliance with the statute, was not defective.

9 110 Ga. App. at 670, 139 S.E.2d at 517. In other words, the statute was not to be extended beyond "its plain and explicit terms." *Id.*

inclusive flavor of the statute: it said that the only claims covered were those " 'on account of injuries to persons or property.' "[10] Apparently concluding that a breach-of-contract claim does not arise from an injury to "person," the court turned to the question whether such a claim arose out of an injury to "property." Holding that it did not, the court declared that at common law " '[p]roperty' . . . was limited to tangible realty or personalty, and therefore cannot be extended to include property rights in contracts."[11]

The court's second point was a more general one—the purpose of the notice-of-claims statute. This purpose, said the court, was simply to notify the municipality of the individual's grievance against it and of the general character of his complaint:[12]

> In the case of claims arising out of contracts, as contrasted with torts, the city, being a party to the contract, is already on notice as to the existence and the circumstances of the contract which is the basis of the claim; therefore the reason for such notice does not exist.[13]

The court's entire treatment of this basic question of coverage of the statute was quite summary. It cited no authority for its definition of the common law's concept of "property" or for its conclusion about the impossibility of including contractual rights within that definition. Presumably, these basics were so well known that they had become commonplace. Moreover, the court's contrast between contract and tort claims may be misleading. Apparently, it is not to be taken as meaning that the statute's applicability is limited to tort actions. In other cases, when actions for damages were based both upon the taking-or-damaging provision of the constitution[14] and upon allegations of the

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10 *Id.*

11 *Id.*

12 *Id.* Commentators have delineated other purposes. For instance, McQuillin indicates: Provisions as to notice of the accident are enacted in furtherance of a public policy, and their object and purpose is to protect the municipality from the expense of needless litigation, give it an opportunity for investigation, and allow it to adjust differences and settle claims without suit.

18 E. McQUILLIN, MUNICIPAL CORPORATIONS § 53.153 (3d ed. 1963).

13 110 Ga. App. at 670, 139 S.E.2d at 517.

14 *See, e.g.*, Stambaugh v. City of Demorest, 221 Ga. 527, 145 S.E.2d 539 (1965) (The supreme court talked of compliance with the statute as a "condition precedent" to maintaining such an action.).

existence of a nuisance,[15] courts have insisted upon compliance with the statute.

In any event, the *J.J. Black & Co.* decision has exempted one having a breach-of-contract complaint against a municipality from the requirements of the notice-of-claim statute.

II. Petition

When the claim is subject to the notice requirement, a crucial relationship exists between the notice given by the plaintiff and the petition which he later files against the municipality, if his claim is not settled. Since the beginning of this century, the Georgia courts have held petitions fatally defective, if they fail to allege that required notice has previously been given a municipality.[16] They have disposed of numerous cases on this ground.[17]

Providing recent confirmation of this point was the supreme court's decision in *Stambaugh v. City of Demorest*,[18] an action initiated under the taking-or-damaging provision of the Georgia Constitution.[19] The plaintiff's petition alleged that the municipality cut timber and began road construction on her property without her consent; it prayed for both injunctive relief and damages.[20] Noting that the petition failed to allege plaintiff's presentation of notice of claim to the municipality prior to instituting litigation, the court held the prayer for damages subject to special demurrer. The law was settled, said the court, "that compliance with the terms of such Code section is a condition precedent to the maintenance of an action for damages such as the plaintiff here seeks to recover."[21] That this condition precedent has been fulfilled must be stated in the petition.[22]

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15 *See, e.g.*, Thompson v. City of Atlanta, 219 Ga. 190, 192, 132 S.E.2d 188, 189 (1963) ("[T]he words 'any suit' clearly mean that in *every* suit wherein . . . damages [on account of injuries to person or property] are sought, notice shall be given.").

16 *See, e.g.*, Saunders v. City of Fitzgerald, 113 Ga. 619, 38 S.E. 978 (1901).

17 For illustrative examples, see cases cited in Georgia Municipal Tort Liability 135.

18 221 Ga. 527, 145 S.E.2d 539 (1965).

19 Ga. Const. art. I, § 3, para. I, Ga. Code Ann. § 2-301 (1948). "Private property shall not be taken, or damaged, for public purposes, without just and adequate compensation being first paid." *Id.*

20 Plaintiff demanded both actual and punitive damages. 221 Ga. at 527, 145 S.E.2d at 540.

21 *Id.* at 528, 145 S.E.2d at 540.

22 *Id.* However, because the municipality's special demurrer attacked only the prayer for damages, the court also held that the petition should remain pending "as to that

This line of decisions, then, sets the stage for the next logical question: When the plaintiff's original petition fails to allege compliance with the notice-of-claim statute, is he permitted by timely amendment to add the fact of compliance? In an early case, *Hooper v. City of Atlanta*,[23] the court of appeals ostensibly held that amendment was not permissible and that the petition remained defective.

However, in *City of Atlanta v. Fuller*,[24] a 1968 decision, a different conclusion was forthcoming. The court noted its prior decision in *Hooper*, but observed that the Civil Practice Act of 1966 provided generally that pleadings could be amended "as a matter of course at any time,"[25] and that "the amendment relates back to the date of the original pleading."[26] Armed with these provisions, a majority of the court declared that "[w]hatever may have been the former rule . . . , there is now no procedural inhibition against allowing the ante litem notice to be added by amendment."[27]

In a specially concurring opinion, Judge Pannell agreed with the result reached by the majority but based his conclusion upon a different provision of the Civil Practice Act.[28] He asserted that *Hooper* held the plaintiff's original petition lacking in sufficient allegations "to amend by," and argued that "it is no longer necessary that a petition contain such a sufficient framework of a cause of action before it is amendable."[29]

In any event, all the judges agreed that, by virtue of the Civil Practice Act of 1966, the fact of compliance with the notice-of-claim statute could be added to the original petition by amendment.

III. Written Notice

One of the specific requirements of the notice-of-claim statute is that the notice to the municipality be presented in writing.[30] An historically unresolved issue under the statute has been whether the municipality could waive written notice, or take action which would estop it from

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portion of it where its allegations were sufficient to show the plaintiff was entitled to recover injunctive relief." *Id.* at 529, 145 S.E.2d at 540.

23 26 Ga. App. 221, 105 S.E. 723 (1921).

24 118 Ga. App. 563, 164 S.E.2d 364 (1968).

25 Ga. Code Ann. § 81A-115(a) (1967).

26 Ga. Code Ann. § 81A-115(c) (1967).

27 118 Ga. App. at 564, 164 S.E.2d at 365.

28 *Id.* at 565, 164 S.E.2d at 366. He relied upon Ga. Code Ann. § 81A-108(a) (1967).

29 *Id.*

30 Ga. Code Ann. § 69-308 (1967).

insisting on this requirement. Until 1966 the courts had indicated that this was possible; indeed, as recently as 1960 the court of appeals said that it was "[a]ssuming but not deciding that the city could be estopped . . ." on this point.[31]

The controversy presented in *Holland v. City of Calhoun*[32] brought this issue to a head. The plaintiff's petition in that case alleged the following situation: The plaintiff was injured when her automobile struck a ditch which had been dug across the street by the municipality.[33] Twice, within six months of this event, the plaintiff appeared before the municipal governing authority, orally informing it of the occurrence and describing her injuries. Both times she was told by the officials that they wished to settle her claim without litigation and would do so when her complete medical information was furnished. She had already informed them that, according to her doctor, this information would not be available for several months. Less than two months following expiration of the statutory period, the plaintiff submitted to the authority her written claim, including her doctor's statement of injuries and expenses. The municipality denied liability on the ground that the claim had not been presented in writing within the six-month period, and the trial court dismissed the plaintiff's petition.

Reversing, the court of appeals preliminarily noted that the purpose of the notice statute had been served[34] but conceded that this alone was insufficient to waive the requirement of a written notice. However, when the governing authority made the alleged assurances to the plaintiff and the plaintiff relied upon these assurances in the manner described, the municipality went too far. The court commented:

> . . . [T]he plaintiff's position was prejudiced by reliance on statements which it was within the authority of the board of aldermen to make to the extent that it would be fraudulent to deny the claim merely on the proposition that the notice was not given in writing *before* the expiration of six months.[35]

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31 Peek v. City of Albany, 101 Ga. App. 564, 566, 114 S.E.2d 451, 453 (1960). This case involved the additional question of to whom the notice is to be presented, which is discussed *infra*.

32 114 Ga. App. 51, 150 S.E.2d 155 (1966).

33 *Id.* at 51, 150 S.E.2d at 156. The ditch had been dug in laying a water pipe but had allegedly been improperly filled.

34 *Id.* at 53, 150 S.E.2d at 157. The court reasoned that, within the statutory period of six months, the municipality had received enough information to investigate the claim.

35 *Id.*

These allegations, concluded the court, if proved, were sufficient to create "an equitable estoppel."[36]

After granting certiorari, the supreme court reversed the court of appeals and held the petition insufficient to withstand the municipality's general demurrer.[37] The court distinguished between municipal acts which are ultra vires[38] and those which constitute merely an irregular exercise of a granted power.[39] It decided that the waiver of written notice was ultra vires. Consequently,

> the City Council of Calhoun had no right to waive the requirements of *Code Ann.* § 69-308 that written notice must be given a municipal corporation of any claim for money damages against it, within six months of the happening of the event upon which the claim is predicated, and the City of Calhoun could not be estopped by representations of the City Council made to the plaintiff in the present case.[40]

The apparent hardship resulting from the *Holland* decision intensifies the spotlight's glare upon the strictness of the supreme court's approach. The court's utilization of the ultra vires principle and rejection of the statutory purpose argument evidences its insistence upon literal compliance with the statute's requirement of written notice. Fully as striking, however, is the direct disagreement demonstrated between the two appellate courts. Judicial differences about the basic philosophy underlying the enactment and construction of recently adopted statutory language are to be expected. Such fundamental disagreement over a statute in existence for seventy years, however, is something else.

Although factually distinguishable, a more recent case in the court of appeals may indicate that the controversy still smoulders. In *Allen v. City of Macon*,[41] the petition alleged the plaintiff's negligent injury

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36 *Id.* at 53, 150 S.E.2d at 158. The court quoted GA. CODE ANN. § 38-114 defining such estoppel as a presumption in situations "where it would be more unjust and productive of more evil to hear the truth than to forebear the investigation." *Id.*

37 City of Calhoun v. Holland, 222 Ga. 817, 152 S.E.2d 752 (1966).

38 The court relied on GA. CODE ANN. § 89-903 (1963), regarding ultra vires actions. This section provides:

> Powers of all public officers are defined by law, and all persons must take notice thereof. The public may not be estopped by the acts of any officer done in the exercise of a power not conferred.

Id.

39 The court conceded that estoppel could operate in respect to irregular exercises of granted powers. *Id.* at 819, 152 S.E.2d at 754.

40 *Id.*

41 118 Ga. App. 88, 162 S.E.2d 783 (1968).

in a municipal hospital, written notice to the municipality's liability insurer, and oral notice to hospital authorities. The court held that the plaintiff had failed to comply with the notice-of-claim statute, but Presiding Judge Jordan seized the opportunity to concur specially.[42] He talked of the purpose of the statute and observed that here the municipality had ample notice of the claim, that the insurer had been delegated authority to settle such claims, and that an attempt to settle had been made within the six-month period. Were it not, he said, for the supreme court's "strict application"[43] of the notice statute, "the doctrine of equitable estoppel should have been applied against the defendant."[44]

IV. Amount of Damage

The notice-of-claim statute directs that notice afford the municipality several specific items of information. One of these items is the "extent of . . . injury" which the claimant has allegedly suffered.[45] At an early date, this direction prompted the question whether notice must specify the amount claimed by the prospective plaintiff as damages against the municipality.[46]

In 1915, when this question first reached the court of appeals, the court answered affirmatively and invalidated a notice in which no amount of money damages was stated.[47] The court, however, in later cases seemed to modify its position.[48] In 1919 the supreme court overruled the earlier decision sub silentio in *Maryon v. City of Atlanta*.[49] Since that time, the court of appeals has abided by *Maryon*.[50]

Providing recent confirmation of this point was *Mayor & Council of Waynesboro v. Hargrove*,[51] a case involving an action for property damages caused by ponding of water resulting from a municipality's alleged negligence. The court held: "Contrary to the contentions of the defendant, it was not necessary that the notice specify any amount

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42 *Id.* at 89, 162 S.E.2d at 784.

43 *Id.* As an example, he cited the *Holland* decision, *supra* note 37.

44 *Id.* at 90, 162 S.E.2d at 784.

45 GA. CODE ANN. § 69-308 (1967).

46 In other words, whether the "injury" referred to by the statute extended to monetary damage became an issue.

47 Mayor & Council of Macon v. Stringfield, 16 Ga. App. 480, 85 S.E. 684 (1915).

48 For discussion of this development, see GEORGIA MUNICIPAL TORT LIABILITY 138-40.

49 149 Ga. 35, 99 S.E. 116 (1919).

50 *See* GEORGIA MUNICIPAL TORT LIABILITY 140.

51 111 Ga. App. 26, 140 S.E.2d 286 (1965).

of money claimed as damages, . . . and the measure of damages was a matter to be fixed by the petition and not by the notice given."[52]

V. Causal Negligence

Still another specific commanded by the statute is that the notice of claim must inform the municipality of "the negligence which caused" the plaintiff's injury.[53] Over the years Georgia courts have generally agreed that "substantial compliance" satisfies this command but have experienced considerable confusion and disagreement in recognizing this compliance in factual situations which have arisen.[54]

In *City of Summerville v. Aldred*,[55] the latest episode of disagreement between the appellate courts, a notice of claim informed the municipality that plaintiff had been injured while riding in an automobile "being driven over a manhole located in approximately the middle of the street at the intersection of Union and First Street [*sic*]."[56] The court of appeals held that this notice fell short of substantial compliance with the statute, emphasizing that it neither set forth any contention with respect to a negligent municipal act nor informed of the cause of plaintiff's injuries.[57] Reversing this holding, the supreme court considered the notice within the ambit of prior decisions requiring only that the "instrumentality" causing the injury be set out.[58] This notice, said the court, advised the municipality that the manhole was the cause of the plaintiff's injury.

Even if one approved the permissive thrust of the supreme court's expressions in *Aldred*, he could not safely ignore the technical inaccuracy which appeared therein. Obviously the notice in question nowhere expressly stated that the described manhole was defective in any way or that it actually caused the plaintiff's injury. Moreover, in the trilogy of cases upon which the court relied as establishing the "instrumentality rule," each notice presented contained this missing allegation.[59] That is, each notice not only identified the damaging instru-

52 *Id.* at 26, 140 S.E.2d at 287.

53 Ga. Code Ann. § 69-308 (1967).

54 The entire development is described in Georgia Municipal Tort Liability 141-44.

55 100 Ga. App. 66, 110 S.E.2d 73 (1959).

56 *Id.* at 67, 110 S.E.2d at 74.

57 The court confirmed its awareness that only "substantial compliance" was necessary but thought that the notice must "at least, to some extent, advise the municipality of the negligence claimed." *Id.* at 66, 110 S.E.2d at 75.

58 Aldred v. City of Summerville, 215 Ga. 651, 656, 113 S.E.2d 108, 111 (1960).

59 *See* Olmstead v. Mayor & Aldermen of Savannah, 57 Ga. App. 815, 196 S.E. 923 (1938); City of Atlanta v. Hawkins, 45 Ga. App. 847, 166 S.E. 262 (1932); Kennedy v. Mayor

mentality, but also noted a defect in the instrumentality or described the manner in which it was responsible for the plaintiff's injury. This oversight in *Aldred*, against the background of vacillating interpretations thus far given the causal negligence command of the notice statute, left the subject unsettled. Would the courts now follow the liberating theme sounded by the supreme court?

A recent decision by the court of appeals on this point reveals that it does take *Aldred* seriously, oversight and all. In *City of Atlanta v. Fuller*,[60] the only reference in the notice to the cause of plaintiff's injuries was that they had been received "on Spring Street as the result of a collision between an automobile operated by Mrs. Ann Dowdy and a Water Works vehicle."[61] The court rejected the municipality's contention that this reference did not substantially set forth "the negligence which caused" the plaintiff's injuries. The court noted the previous disagreement between it and the supreme court in *Aldred* and described the "instrumentality rule" which was there applied. It then placed the *Aldred* notice beside the notice presented here and observed that "[i]n both cases the time and place of injury is alleged."[62] Then taking a giant step, the court concluded that "[t]he letter contained sufficient data to enable the municipality to examine into the facts of the case, and was a substantial compliance."[63]

At this point, therefore, the diluted version of the "instrumentality rule" has apparently carried the day.

VI. Governing Authority

The notice-of-claim statute provides that written notice is to be presented to "the governing authority of said municipality."[64] In the past, the Georgia courts have not overly explicated their views on the exact meaning of this provision.[65] Requiring literal compliance would apparently cast the burden upon the claimant to make his presentation to the "governing authority" as technically defined by the particular municipal charter. On occasion the courts have indicated that this may

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& Aldermen of Savannah, 8 Ga. App. 98, 68 S.E. 652 (1910). These cases are discussed in Georgia Municipal Tort Liability 141-43.

60 118 Ga. App. 563, 164 S.E.2d 364 (1968).

61 *Id.* The notice also gave the date of the collision.

62 *Id.* at 564, 164 S.E.2d at 365.

63 *Id.*

64 Ga. Code Ann. § 69-308 (1967).

65 The entire development is discussed in Georgia Municipal Tort Liability 151-53.

be necessary,[66] but at other times they have passed the question without reference.[67] Of particular interest, therefore, are two recent opinions in which this matter was discussed by the court of appeals.

In *Allen v. City of Macon*,[68] a case to which reference has already been made,[69] plaintiff alleged negligent injury in a municipal hospital and subsequent presentation of his written notice to the claims manager of the municipality's liability insurer.[70] The insurer then advised plaintiff that it was investigating the claim and would attempt to settle. To this end, the insurer's adjuster called on plaintiff, discussed the matter with him, and wrote a report concerning the claim.

Given the described events, could the municipality successfully argue lack of effective notice of the claim? Holding that it could, a majority of the court of appeals said that "[n]one of this amounts to written notice presenting the claim to the governing authority of the municipality, a condition precedent to this action."[71] Thus, the trial court's dismissal of plaintiff's petition was affirmed.

Presiding Judge Jordan concurred, only because of the supreme court's "strict application" of the notice-of-claim statute.[72] He argued that the purpose of the statute had been served,[73] since the municipality had "ample notice" of the claim.[74] He pointed out that the municipality's liability insurance policy delegated the power to adjust and settle claims to the insurer, and that negotiations and attempts to settle had already been made. These points were at least sufficient, he thought, to apply the doctrine of equitable estoppel against the municipality.[75]

The court's ostensibly strict approach in *Allen* can be contrasted with the decision rendered only four months later in *City of Atlanta*

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66 *See* City of Tallapoosa v. Brock, 138 Ga. 622, 75 S.E. 644 (1912), *discussed in* Lewis v. City of Moultrie, 31 Ga. App. 712, 121 S.E. 843 (1924). *See also* Peek v. City of Albany, 101 Ga. App. 564, 114 S.E.2d 451 (1960) (involving the additional point of oral notice).

67 *See* Taylor v. King, 104 Ga. App. 589, 122 S.E.2d 265 (1961).

68 118 Ga. App. 88, 162 S.E.2d 783 (1968).

69 The *Allen* decision is considered in the context of waiver and estoppel. See text accompanying note 40 *supra*.

70 Also alleged was the presentation of oral notice to the municipal hospital authorities. 118 Ga. App. at 89, 162 S.E.2d at 784.

71 *Id.*

72 *Id.* He cited the supreme court's decision in *Holland*, discussed in text accompanying note 32 *supra*.

73 That is, the municipality had been given an opportunity to investigate and adjust.

74 118 Ga. App. at 90, 162 S.E.2d at 784.

75 *Id.*

v. Fuller.[76] The action in *Fuller* was based on injuries allegedly sustained by the plaintiff when struck by a municipal water truck; the notice in question was addressed to "City of Atlanta, Department of Law, Atlanta 3, Ga. Attention: Mr. R. A. Harris, Attorney."[77] When the municipality objected that notice had not been sent to the proper party, a majority of the court of appeals provided the swiftest of treatments: "Here the notice was given to the corporation, the City of Atlanta, and was mailed to it at the address of its legal department, which constitutes a substantial compliance with the law."[78]

What this holding meant seems open to question. For instance, did the court intend to indicate that the notice could be presented to an agent of the municipality, as long as the corporation was made aware of the claim? If so, this would seem in tension with the rationale of the *Allen* holding.[79] Alternatively, did the court mean that as long as the top line of the address named the municipality, the notice's specific destination within the administrative structure was immaterial? This, too, apparently strays considerably from the express statutory language, which requires presentation to "the governing authority."

In a special concurrence, Judge Pannell disagreed with the majority's position that mailing notice to the municipality's legal department constituted compliance with the statute.[80] This, he said, "is not notice to the governing authorities of the municipality, which . . . is required by the statute."[81] He charged, however, that the majority had misread the plaintiff's petition. It alleged "unequivocally" that notice had been given to "the City of Atlanta"; thus, the address on the notice was im-

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76 118 Ga. App. 563, 164 S.E.2d 364 (1968).

77 *Id.* The entire notice was contained in the report.

78 *Id.* at 564-65, 164 S.E.2d at 365. In City of Atlanta v. Frank, 120 Ga. App. 273, — S.E.2d — (1969), the court of appeals expressly refused to overrule its holding in *Fuller*. In *Frank* the plaintiff's notice, alleging negligent injury at the municipal airport, was addressed to "City of Atlanta, City Hall, 68 Mitchell Street, S.W., Atlanta, Georgia 30303. Attention: Airport Authority." The airport manager received the notice, acknowledged it, and forwarded it to the city attorney, who later notified the plaintiff that the claim had been investigated and that the municipality denied liability. Characterizing the city attorney as "an officer of the court," the court presumed that his authority to handle the municipality's case was "plenary." Thus, the attorney's letter to the plaintiff "amounted to an acknowledgment that *Code Ann.* § 69-308 had been complied with and the ante litem notice was sufficient. This cleared the way for the filing of the complaint. The city is estopped to deny the validity of the notice." *Id.* at 275-76, — S.E.2d at —.

79 For discussion of *Allen*, see text accompanying note 67 *supra*. It would also appear in conflict with City of Tallapoosa v. Brock, 138 Ga. 622, 75 S.E. 644 (1912).

80 118 Ga. App. at 565-66, 164 S.E.2d at 366.

81 *Id.* at 566, 164 S.E.2d at 366.

material.[82] Therefore, "[t]he conclusion in the opinion that this notice was *mailed* to the address of the Law Department of the City of Atlanta, rather than to the governing authorities of the municipality, is unauthorized."[83] Consequently Judge Pannell agreed with the majority's result although not with its reasoning.

As noted, the judicial history is nebulous on this question of to whom the notice of claim must be presented. Whether these two recent decisions by the court of appeals contribute any clarification is doubtful. Certainly *Allen's* prohibition of utilization of the insurer as a claims receiver should be heeded. Perhaps, too, some happy surface medium might be divined by setting off *Allen's* literal compliance approach against *Fuller's* substantial compliance reasoning. But each holding carries its own dissent, and efforts to seek further specific guidance appear doomed.

VII. Injured Party

Finally, a literal reading of the notice-of-claim statute reveals that notice is to be presented to the municipality by the "person, firm, or corporation" having a claim for money damages.[84] In the limited number of cases which have arisen on this point, the key consideration in decisions by the court of appeals appears to be the number of distinct claims emerging from a single injury.[85] As long as only one claim arises, the court has been fairly permissive in determining who may give notice.[86] When more than one claim is made, however, the court's approach becomes more restrictive.[87]

In the recent case of *Campbell v. City of Atlanta*,[88] a husband had allegedly suffered personal injury as a result of municipal negligence and had presented his notice of claim. The question litigated was whether the husband's notice could also serve as the basis for a suit against the municipality by the wife for loss of consortium. Holding such use of the notice improper, the court observed that "the claims

82 *Id.*

83 *Id.*

84 Ga. Code Ann. § 69-308 (1967).

85 For discussion see Georgia Municipal Tort Liability 153-54.

86 For example, in Taylor v. King, 104 Ga. App. 589, 122 S.E.2d 265 (1961), it upheld the presentation of a notice by the plaintiff's insurance carrier.

87 In Jones v. City Council of Augusta, 100 Ga. App. 268, 110 S.E.2d 691 (1959), for example, the court of appeals refused to allow notice given by parents of a minor alleging loss of the minor's services to serve as the basis for personal injury suit by the minor.

88 117 Ga. App. 824, 162 S.E.2d 213 (1968).

of the husband and wife are separate and distinct . . ."[89] and that no notice had been given by anyone on behalf of the wife's claim.[90] The purpose of the statute, said the court, is to afford the municipality an opportunity to adjust claims without litigation; it can be served only in regard to "parties who make known their claim and their identity as claimants."[91] Therefore, the municipality was entitled to a summary judgment.[92] Thus, the number of claims arising from the injury apparently remains crucial in determining who must present notice of claim.

VIII. Conclusion

Although not dealing with all the provisions of the *ante litem* notice statute, recent litigation in the Georgia appellate courts has touched a surprising number of its facets. This litigation is informative if only as a current record of the meaning of the statute.

The supply of issues presented by the statutory language appears inexhaustible. Continuously new questions arise and confront the courts for resolution. Moreover, previously litigated questions return, and prior answers must be confirmed or changed. During the period here surveyed, both confirmation and change occurred, the latter being especially noteworthy. Some of the inquiries reappear merely for clarification, which unfortunately is not always forthcoming; thus, the cycle continues.

Adding color to the entire exercise are the disagreements manifested both within and between the two appellate courts. The absence of soundly evolved interpretation constants allow decisions which are entirely too ad hoc in flavor. At one point the supreme court slaps the wrists of the court of appeals for failing to insist upon literal compliance with the statute; at the next turn it gravely lectures the court on the perils of being too literal. The heralded concept of substantial compliance undergoes almost daily revision in both courts.

Such, then, are the wanderings of the traveler in the desertic wilds of municipal tort liability.

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89 *Id.* at 825, 162 S.E.2d at 214.

90 This remains true, implied the court, even though the husband's notice may contain enough information for an independent investigation of the wife's damages. *Id.*

91 117 Ga. App. at 825, 162 S.E.2d at 214.

92 The court stressed that the issue was not the validity of the wife's claim against the municipality. *Id.*

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