TRAUB LIEBERMAN

NEWS & EVENTS

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Traub Lieberman Attorneys Lisa M. Rolle and Vito John Marzano Secure Dismissal of Claim in the New York Court of Claims

Related Attorneys: Lisa M. Rolle

On May 15, 2020, Traub Lieberman attorneys Lisa M. Rolle and Vito John Marzano secured dismissal on behalf of Defendant the State of New York in *Doona v. State of New York*, Claim No. 129383 (Ct. Cl., Liccione, J.), a suit proceeding before the New York Court of Claims. Claimant alleged personal injuries arising out of a purported incident while operating his bicycle on a bikeway at Jones Beach on July 21, 2016.

The New York Court of Claims Act ("CCA") waives the State's sovereign immunity for certain causes of action provided a claimant complies with the jurisdictional requisites of the statute. To recover for personal injuries, a claimant must commence an action by serving and filing a claim within 90 days of the alleged incident. A claimant can extend that time period up to two years upon serving a notice of intention to file a claim ("NOI") on the attorney general. A claimant may request leave to commence an untimely action—either through a belated claim or to treat an NOI as a claim—provided they do so within the statutory period for a like claim between private citizens. For this type of action, that statutory period is three years from the date of the incident.

CCA §11(b) enumerates certain pleading requirements for a claim and, separately, an NOI. This underscores the functional distinction between the two documents—an NOI extends the time to commence suit and allows the State to begin investigating, but it does not commence an action. The claim commences the action. Nevertheless, these requirements are jurisdictional in nature, thus requiring strict compliance. A failure to plead as required deprives the Court of subject matter jurisdiction and can be fatal to a claim. Relevant here, a claim must plead, among other things, the items of damages or injuries claimed to have been sustained. An NOI does not require this information.

In the instant matter, Claimant served an NOI and, thereafter, served and filed a claim. The State's first affirmative defense asserted that the Court was without subject matter jurisdiction because the claim failed to include the items of damages or injuries as required by CCA §11(b).

After the statute of limitations for a like cause of action between private citizens accrued, Traub Lieberman moved to dismiss the claim, pursuant to CPLR §3211 (a)(2), for lack of subject matter jurisdiction based on the deficient claim. Claimant opposed and cross-moved to amend the claim or, in essence, to treat the NOI as the claim.

In its decision, the Court agreed that the claim was jurisdictionally deficient because it did not comply with the above pleading requirements. It then rejected Claimant's contention that the NOI, which contained more information regarding injuries, could supplement the deficient claim. Notably, the NOI was neither attached to the claim nor incorporated by reference. Next, the Court rejected the argument that the bill of particulars could supplement the omitted information, reasoning that the claim per se serves as the operative document that commences suit—not the NOI and not the bill of particulars.

Regarding Claimant's cross-motion, the Court held that that Claimant could not seek to cure the defective claim through amendment or by treating the NOI as the claim because the time for such relief had expired. Accordingly, the Court granted Traub Lieberman's motion and dismissed the claim in its entirety.

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