No. 81959-9

FAIRHURST, J. (dissenting) – In the name of liberal construction and substantial compliance, the majority distorts the amount requirement of the claim filing statute, former RCW 4.96.020(3) (2001). By holding that it is sufficient to merely list all the available classes of damages, the majority undermines the legislature's intent to encourage settlement. Because I would hold that Renner's claim form was deficient, I respectfully dissent.

The Washington State Constitution reserves to the legislature the right to "direct by law, in what manner, and in what courts, suits may be brought against the state." Const. art. II, § 26. The right to sue state and local governments is "created by statute and is not a fundamental right." *Medina v. Pub. Util. Dist. No. 1 of Benton County*, 147 Wn.2d 303, 312, 53 P.3d 993 (2002).

The legislature has created a claim filing statute that requires plaintiffs to file tort claims with a city 60 days before they may bring an action for damages against that city. RCW 4.96.010(1); former RCW 4.96.020(4) (2001). Among other things, the statute requires a claim to "contain the amount of damages claimed."

Former RCW 4.96.020(3). The purpose of the claim filing statute is to allow the city "time to investigate, evaluate, and settle claims." *Medina*, 147 Wn.2d at 310. Marc Stephen Renner failed to meet the requirements of the claim filing statute because he listed all of the available classes of damages instead of an amount.[1]

The failure to strictly abide by statutory requirements is not always fatal to bringing a tort claim. The legislature has directed that "[t]he laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory." RCW 4.96.010(1). We have explained that substantial compliance has two requirements. First, there must be a "bona fide attempt to comply with the law." *Brigham v. City of Seattle*, 34 Wn.2d 786, 789, 210 P.2d 144 (1949). Second, the filing must "actually accomplish its purpose." *Id.*

The majority asserts that the purpose of requiring an amount of damages in the tort claim "is to provide the government notice of the *type* of relief sought." Majority at 6 (emphasis added). The majority cites no authority for this proposition nor does the majority give any reason for its conclusion. *See id.*

The word "amount" means "the total number or quantity **:** AGGREGATE . . . **:** SUM, NUMBER." Webster's Third New International Dictionary 72 (2002). It

[1]Additionally, Renner failed to provide his address for the six months preceding accrual of his tort claim. Because I would dispose of this case on the basis that Renner failed to meet the amount requirement of former RCW 4.96.020(3), I do not address the residence requirement.

is clear from the foregoing definition that an amount is a number. What is unclear is how the majority concludes that the purpose of listing such a number is to provide notice of the type of damages sought. A bare number provides little information about the type of damages from which the number is derived. It seems more reasonable to assume that if the legislature intended claimants to describe the type of damages they sought, the legislature would have simply required them to list the actual categories. Therefore, the majority's conclusion that the purpose of the amount requirement is to provide notice of the type of relief sought makes little sense.

Instead of divining new purposes for old statutes, I would look to the purposes already described. We have previously identified that one purpose of former RCW 4.96.020 is to "encourage negotiation and settlement of claims." *Medina*, 147 Wn.2d at 313. Requiring the claimant to submit an amount supports settlement by quickly allowing the city to determine whether the costs of litigation would exceed the claimant's demands or by helping the city to determine how the claimant's requested sum compares to the city's potential exposure. Requiring an amount does not significantly disadvantage a claimant because a claimant's recovery at trial is not limited to the amount claimed. *Olson v. King County*, 71 Wn.2d 279, 291, 428 P.2d 562 (1967). Instead, the amount listed provides a

convenient starting point for negotiation in furtherance of the statute's purpose.

The majority concluded that Renner provided sufficient guidance to facilitate settlement. Majority at 8. Specifically, the majority found that Renner's description of damages was sufficient to "'calculate an approximate base amount of the claim.'" *Id*. (quoting *Renner v. City of Marysville*, 145 Wn. App. 443, 458, 187 P.3d 283 (2008)). Curiously, the majority appears to simultaneously pay heed to Renner's claim "that he was unable to calculate his damages accurately at the time he submitted his claim."[2] *Id*. at 7. Taken together, these beliefs seem to imply that the city would be in a better position to calculate damages than Renner. However, the city would likely be in a worse position to calculate damages in light of Renner's vague claims for emotional damages and "other damage as determined." Clerk's Papers (CP) at 75. While it is true that the city has the benefit of 60 days to investigate the claim prior to Renner's filing his suit, the time provided for the city to investigate the claim should not need to be spent remedying deficiencies in the filing.

The effect of the majority's conclusion is that a claim may now include vague

[2]Renner argues that the law "should not compel [him] to state a fictitious or untruthful amount." Marc Renner's Resp. to City of Marysville's Pet. for Review at 6. However, the statute does not require pinpoint accuracy in determining the amount of damages. *See Olson*, 71 Wn.2d at 287-91. The statute merely requires that the claimant "'state as near as he can the amount of his damages.'" *Id.* at 288 (quoting *Born v. City of Spokane*, 27 Wn. 719, 725, 68 P. 386 (1902)).

statements seeking all available damages and still satisfy the amount requirement of former RCW 4.96.020(3). The typical measure of damages for a wrongful termination action is back pay and front pay. 16A David K. DeWolf & Keller W. Allen, Washington Practice: Tort Law and Practice § 23.41, at 25-26 (3d ed. Supp. 2009). Wrongful termination is treated as an intentional tort, and tort damages, including emotional distress damages, are available. *Cagle v. Burns & Roe, Inc.*, 106 Wn.2d 911, 916, 919, 726 P.2d 434 (1986). Additionally, attorney fees are available for plaintiffs who recover lost wages. RCW 49.48.030. Here, Renner claimed damages for "[w]ages and benefits as well known to the city since termination plus front pay, emotional damages, costs, fees and such other damage as determined." CP at 75. Renner's claim covers all damage categories available for wrongful termination. A municipality is already on notice of the applicable damage categories when it discovers the nature of the cause of action. Accordingly, if the amount requirement of former RCW 4.96.020(3) means anything, it must require more than a vague statement listing all the available damage categories.

The state constitution explicitly grants to the legislature the power to condition suits against the State. Const. art. II, § 26. The legislature has conditioned the right to sue on the filing of a claim with the city 60 days before bringing suit. RCW 4.96.010(1); former RCW 4.96.020(3), (4). It has placed the

burden on the claimant to provide an amount of damages in his or her claim. Former RCW 4.96.020(3). "If this requirement is no longer meaningful, it is for the legislature and not for this court to take it out of the statute." *Nelson v. Dunkin*, 69 Wn.2d 726, 732, 419 P.2d 984 (1966). Instead, the majority effectively relieves claimants of their duty to provide an amount by allowing them to claim any and all available damages. This interpretation frustrates the statutory goals of negotiation and settlement and should not be adopted. Accordingly, I respectfully dissent.

AUTHOR:
Justice Mary E. Fairhurst

____

WE CONCUR:

____

____

____

____

____