Administration of Municipal Tort Liability in Cleveland

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INTRODUCTION

The administration of municipal tort liability in Cleveland is unique. Where other Ohio municipalities administer such liability by one agency in the municipal government, the City of Cleveland has two independent agencies: (1) the Law Department of the city, and (2) the legal division of the Cleveland Transit System, the municipally owned and operated mass transportation system for Cleveland and its environs.

The city charter provides:

> The director . . . of law . . . shall prosecute or defend all suits for and in behalf of the city. . . .[1]

In the same charter the legal division of the Cleveland Transit System is authorized to:

> . . . prosecute and defend, settle or compromise, all suits for and on behalf of the city of Cleveland arising out of the operation of the transit system.[2]

As the charter provides for separate administrations, it is wise to consider the two administrative agencies individually.

THE LAW DEPARTMENT[3]

Tort liability administered by this municipal agency in Clevelands flows from two Ohio statutes and the common law. The first statute imposes upon municipalities the duty of keeping public highways "open, in repair, and free from nuisance,"[4] while the second establishes liability for injury inflicted by negligent operation of any vehicles on the public highway by officers, agents or servants

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[1] Charter, City of Cleveland §83.

[2] Charter, City of Cleveland §113-7, in effect January 1, 1943. The City of Cleveland purchased The Cleveland Railway Co. on April 28, 1942.

[3] Factual material for this section was obtained by conversations with city officials, from records and reports of various departments of the city, and from information furnished by the Municipal Reference Library.

[4] OHIO GEN. CODE §3714 (1938).

of the municipal corporation when engaged in municipal business.[5] By common law, municipalities assume tort liability in the field of proprietary functions but not governmental functions.[6]

Cleveland has 1,040 miles of paved and 125 miles of unpaved streets,[7] as well as 543 commercial vehicles and trucks and 281 passenger automobiles in operation, exclusive of police, fire and transit system vehicles. The population of 900,000 persons, therefore, has contact with these elements from which municipal tort liability may arise.

Organization

In May, 1946, the Law Department reorganized its tort liability administration work, creating a Division of Torts and Claims. An Assistant Director of Law, responsible to the Director, was placed in charge. The assistant supervises the work of three subordinates[8] who investigate accidents, contact injured parties, and negotiate settlements. Medical, photographic or other technical work required for investigation is purchased as needed from private sources. One stenographer is assigned to the division.

This division receives reports of accidents, accepts claims filed against the city under the statutes referred to above and seeks to settle with the injured parties. Claims which cannot be settled and which grow into lawsuits then are within the jurisdiction of the trial counsel, another Assistant Director of Law. This division aids the trial counsel, however, to prepare for trial by more extensive investigation.

Sometimes petitions are filed in the courts before any claim is presented. The trial counsel assumes responsibility over such lawsuits immediately and the division has no opportunity to attempt settlement. The trial counsel handles only lawsuits filed in the Common Pleas Court of Cuyahoga County. Some lawsuits of minor financial significance are filed in the Municipal Court of Cleveland where jurisdiction is limited to prayers not in excess of $5,000.[9] This litigation is handled either by one of the attorneys in the

[5] OHIO GEN. CODE §3714-1 (1938)). This statute further provides a defense for the municipal corporation if the injury was caused by the operation of police or fire vehicles carrying out their duties under the theory that such operation is a governmental function.

[6] Western College v. Cleveland, 12 Ohio St. 375 (1861); Tolliver v. Newark, 145 Ohio St. 517, 62 N.E. 2d 357 (1945).

[7] In addition to normal wear and tear on the public streets, the city at present is issuing permits to open the streets to various public and private utilities at the rate of 1,600 per year. Such man-made defects and resulting surface breaks after the filling of the holes cause additional maintenance problems for the prevention of tort liability.

[8] The Assistant Director of Law and two of his subordinates are attorneys. The other subordinate is a police officer.

[9] OHIO GEN. CODE §1579-6 (1937).

Division of Torts and Claims or by another assistant director of law assigned to municipal court work.

Type of Accidents

The vast majority of the 1,109 accidents—both personal injury and property damage—which occurred in 1947 arose out of defects in the public streets and sidewalks. Almost 90% of the personal injury and 50% of the property damage incidents resulted from such defects. Of the remaining accidents—not street and sidewalk incidents—75% resulted from negligent operation of Department of Public Service vehicles.[10]

Three deaths resulted in 1947 for which the city is alleged to be liable. One person was killed by a falling tree which struck his automobile and two persons died after their boat struck a submerged piling in the Cleveland harbor. Death claims are not a serious problem generally. One catastrophe which occurred October 20, 1944, however, has presented serious death claims. The result of the East Ohio Gas Company explosion was the total destruction of several blocks of residences in Cleveland's thickly populated East Side. One hundred and thirty deaths occurred. Lawsuits and claims filed allege liability on the city for granting building permits to construct the gas storage tanks in this type of neighborhood. Total damages claimed approach $9,000,000. Even though municipal liability upon these facts presents a delicate question of law, the possibility of settlement negotiations offers considerable work and thought for the Law Department. Such disaster claims are infrequent, however.

Claims and Settlements

Personal injury claims filed in 1947 totalled 376. Two hundred and ten were settled and paid. One hundred and forty-seven were rejected, but the files remain open pending a lawsuit within the Statute of Limitations period. Fifteen claims were granted the dignity of moral claims—no legal liability but moral liability on the city to reimburse the injured party. The Division of Torts and Claims recommends reimbursement for such claims but has no power to settle. Payment must be made by appropriate legislation in the city council for each individual claim.

Of the 357 property damage claims filed in 1947, 126 were paid and settled. Two hundred and seven were rejected and 23 were held to be moral claims.

Total claims filed in 1947 were 733 as compared with 585 in

[10] In 1945, 212 accidents involved service department vehicles. In 1946, this figure increased to 254. These vehicles include garbage and rubbish collection trucks, street repair and maintenance equipment.

1946 and 438 in 1945.[11]

$11,751.76 was expended to settle the 210 personal injury claims or an average of $56 per settlement. The property damage claims averaged slightly over $39 per settlement or $4,925.97 for the 126 paid.

The division was handicapped in its investigative work and settlement negotiations by the fact that about 25% of the claims filed were not submitted until at least 6 months or more had passed since the alleged incident.

It must be noted that 330 reports of accidents which came to the division in 1947 never appeared as claims. All of these involved only property damage. No work, other than preliminary analysis, has been done to investigate or negotiate settlement of these. The policy is to require the aggrieved party to come forward and present his claim.

Litigation

The year 1947 saw 49 tort liability lawsuits filed in the common pleas court against the city. Only five of these were ones in which claims had previously been made to the division. Forty-four petitions were filed where no claim was ever filed in the division. Once again the city was handicapped for lack of opportunity to investigate or to attempt amicable settlement. Sixty-four lawsuits were disposed of by the trial counsel in 1947—49 settlements before judgment, nine judgments for defendant city and six judgments for injured plaintiffs. The settlements cost a total of $23,300 for an average of $475 while the judgments totalled $2,825 for an average of $471. The total prayers for recovery in all the cases disposed of equalled $720,271.

In municipal court the division, which has been responsible for the trial of most cases, has attempted to reduce its backlog. In January, 1947, about 50 cases were pending. In June, 1948, this figure had been reduced to 22 pending cases. In 1947, 16 lawsuits were filed; 12 of these remain in the pending case category today. Two resulted in judgment for defendant city and two were settled at a total expenditure of $174.64. Furthermore, in 1947, 12 lawsuits from previous years were settled at a total amount of $1,326.06 or an average of $110. No judgments were rendered for plaintiffs. If the division attorney at the trial considers that the plaintiff's case be meritorious, settlement is always effected in the court.

[11] The first three months of 1948 brought forth 62 personal injury and 130 property damage claims. Thirteen of the former and 18 of the latter were rejected. A total of $790 was paid to settle 11 of the personal injury claims or an average of $72 per claim; a total of $848 was required to settle 15 property damage claims or an average of $56 per claim. Also two property damage claims were recognized as moral claims in this period.

Appellate work was slight in 1947. In two common pleas court cases the plaintiffs appealed. Judgments for defendant city were affirmed. The city appealed no judgments. No cases were appealed by either side from municipal court decisions.

Expenses

The city council appropriated funds for actual expenditures of $57,755.38 for judgments, settlements and court costs arising out of municipal tort liability for last year. In 1946 and 1945, these sums were $56,694.11 and $50,992.02 respectively. In the 1948 budget an estimated $50,800 has been set aside to cover these expenses. The sums include all administrative expenses such as medical examinations, depositions, and other specialized work except salaries. Add to this total the sum of approximately $25,000 for salaries allocable to the administration,[12] as well as $19,554.80 [13] which was the premium paid for liability insurance [14] to cover the Public Auditorium and Municipal Stadium. Total expenditures for tort liability in Cleveland in 1947, then, approximated $102,000.

Evaluation of Administration

The administration of tort liability in Cleveland by the Law Department presents the balancing of two conflicting interests.

The public demands the prudent spending of tax money, and the elimination of accidents arising from defective public highways and careless operation of city vehicles. Tax funds allocable to tort liability in 1947 were $102,000 which compared with the total cost of general operation—$26,557,728—indicates the minor financial role played by this particular municipal function. Nevertheless, the function is growing, both in the number of claims filed and average settlement paid per claim.

Prudent administration suggests adequate investigation and opportunity to negotiate settlement. Elimination of fraudulent claims and fair evaluation of proper claims are fundamental if the highest value is to be obtained for the tax funds expended. The policy of the Law Department is geared to these goals.

Payment of damages for tort liability by the city has little effect as a sanction to produce better maintenance of the public highway or more careful operation of vehicles. As yet the total

[12] Several members of the Law Department devote only a portion of their time to tort liability administration, so an approximation of the salaries assignable to this work is required. All lawsuits defending police officers personally for false arrests are also handled by the trial counsel and investigation work performed by the Division of Torts and Claims. No city liability is involved, so time devoted to this activity should not be included within the municipal administrative expenses.

[13] In 1946, $8,630.87 and in 1945, $4,552.24 were the premiums paid.

[14] See page 455 *infra,* for criticism of this type of expenditure.

sum expended is too small in proportion to the entire city operation expense. More effective results, for example, are probably obtained by the policy of requiring careless city vehicle operators to pay for damage inflicted. Each department head has this power to exercise within his discretion. A well-planned safety program for all city activities under one agency devoted to promoting safety also appears wise to reduce the accident incidents. As yet this program is nonexistent in the governmental and in most proprietary functions of Cleveland.[15]

The second interest confronting the Law Department is the desire of the aggrieved party to receive fair and speedy reimbursement for the damages suffered. The average settlements in 1947—$56 for personal injury claims and $39 for property damage claims—appear modest at present standards. The fact that the claimants accepted them is evidence of some satisfaction. Furthermore, the fact that only five claims out of 733 filed became lawsuits is additional proof of satisfaction.[16]

Disposition of claims is not as speedy as the division desires, however. A proper schedule would allow an interval of no more than two weeks between filing and settlement. Today the delay is at least one month. The increase in number of claims filed and the attempt to investigate adequately are the causes. The division is seeking to eliminate delay. It is hoped that success can be readily attained, for delay in government operation as it affects any individual citizen is particularly irritating to the American public.[17]

The record system which should compile the important facts in the city's administration of tort liability is poor. Several months ago a new system was started which will aid in keeping the Law Department informed of the precise condition of the city's tort liability work at any particular time. With the increasing number of claims, adequate records will be indispensable to denote trends, to designate the types of unsafe conditions on the highway as well as careless vehicle operation, to measure the dollar value obtained in the spending of tax funds. It is hoped that a continual improvement of the record system can be promoted by the Law Department.

The Transit System

The magnitude of tort liability administration arising from the

[15] See page 448 *infra,* for such a program developed by the Transit System.

[16] Three hundred fifty-four claims filed in 1947 were rejected by December 31, 1947. Obviously, a portion of these will result in lawsuits, too. Nevertheless, with over one-half the 1947 claims disposed of and only five lawsuits therefrom, the record indicates reasonable fairness by the division in its settlement negotiations.

[17] See page 447 *infra,* for a study of the delay in trial and appeal of lawsuits.

ownership and operation of the Transit System by the City of Cleveland can best be appreciated if some general operating figures are disclosed. In 1947,[18] the 1,805 revenue vehicles[19] of the System carried 472,662,945 passengers while operating a total distance of 47,968,948 miles over street car, trackless trolley and motor coach routes totaling 432 miles. The gross revenue was $24,868,714.20.[20] Although owned and operated by the municipality of Cleveland, the Transit System provides urban transportation service not only within the city proper but also in twenty adjacent suburban communities, of which eight are served in whole or substantially in whole and twelve are served in part. The geographic area served is located in the northern half of Cuyahoga County and to a small extent in the northwest corner of Lake County. This total area covers approximately 140 square miles and has an estimated present population of 1,225,000 people.[21] Such a vast operation creates many incidents which give rise to tort liability. The System experienced 17,455 accidents in 1947.[22]

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[18] Unless otherwise stated, all 1947 operating figures were obtained from COMPTROLLER'S WORK SHEETS FOR 1947, prepared by the staff of the Comptroller, Cleveland Transit System, hereinafter referred to as COMPTROLLER'S WORK SHEETS.

[19] The 1,805 revenue vehicles were composed of 709 motor coaches, 162 trackless trolleys, and 934 street cars (motor cars and trailers). In addition, the Sytsem operated 137 nonrevenue or service vehicles which included 103 maintenance trucks and 34 automobiles for supervisory work. COMPTROLLER'S WORK SHEETS.

[20] REPORT ON PROPERTY AND EARNINGS OF THE CLEVELAND TRANSIT SYSTEM, March 8, 1948, W. C. Gilman & Co., New York 5, N. Y., hereinafter referred to as GILMAN REPORT, pp. 54, 60.

Total passengers carried:
1942—408,646,025
1943—470,530,595
1944—479,812,419
1945—480,736,503
1946—493,327,367

Total miles operated:
1942— 39,471,674
1943— 44,890,867
1944— 43,695,367
1945— 42,797,580
1946— 44,882,570

Gross revenue:
1942 (April 29 to December 31 only)—$12,950,642
1943—$22,005,775
1944—$23,220,693
1945—$23,432,600
1946—$24,764,647

[21] GILMAN REPORT, p. 1.

[22] REPORT OF ACCIDENT BUREAU, 1947, Cleveland Transit System; unless otherwise stated all factual data have been obtained from these annual reports published from 1942 to 1947, inclusive.

Organization

The legal division has two sections, both of which are under the control of the general counsel who is appointed by and is responsible to the transit board.[23]

The trial section is composed of four trial counsel, two assigned to the Common Pleas Court of Cuyahoga County and two assigned to the Municipal Court of Cleveland. Three legal stenographers aid in the stenographic work required for trial and appellate work.

The accident bureau, composed of investigating, adjusting, medical, and clerical sections, is under the direct control of the superintendent of claims and his assistant, who in turn are responsible to the general counsel.

The investigating section operates with seven current investigators whose work is entirely devoted to the investigation of accidents immediately after they occur. One of these investigators remains constantly at the Central Police Station in Cleveland to obtain police accident reports involving System vehicles, to receive notices of serious Transit System accidents, and to act as a liaison officer between the System and the police department. In addition to the seven permanent investigators assigned to the current accident branch, three part-time investigators are also employed for similar work. Thirteen additional employees devote their full time to the investigation of claims which result in lawsuits. Three are assigned the added duties of accompanying the trial counsel during the trial of a lawsuit in order to aid in the preparation and presentation of the Transit System's cases in the courts. Complete preparation for the lawsuits requires the full-time employment of one photographer and one photographic developer as well as a part-time engineer who prepares diagrams, maps, profiles, sketches and mock-ups of the scenes of accidents.

The adjusting section seeks to settle claims. Three outside adjusters interview only claimants at their homes or places of business. Each one of this group has a particular section of Greater Cleveland as his working territory. The four inside adjusters, who remain in the Transit System main offices, are in contact with claimants and their lawyers, if any, endeavoring to settle claims.[24] Three of these inside adjusters devote their full time to personal injury claims, and

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Total number of accidents for years prior to 1947, GILMAN REPORT, p. 63:

1942	1943	1944	1945	1946
18,149	17,475	17,238	17,253	16,005

[23] Charter, City of Cleveland §113-7.

[24] The total number of personal calls per year made at the reception desk of the adjusting section in the Accident Bureau were as follows:

1942	1943	1944	1945	1946	1947
7,988	7,619	7,699	7,982	7,195	7,942

the fourth concentrates upon property damage claims only.[25]

The medical section includes three physicians who devote a portion of their time to Transit System medical work — examining injured claimants who come to the System's main offices.[26] One nurse aids the doctors. Additional medical investigation is provided by dividing Greater Cleveland into twelve geographical districts. In each district a physician retained by the Transit System, makes house calls, as directed, to examine persons injured in the operation of the System.[27]

The clerical section is responsible for all accident and claim records. In excess of 450,000 files with essental cross-indices are handled by the seventeen employees.

Type of Accidents

Of the 17,455 accidents occurring in Transit System operations for 1947, 12,119 involved street cars, 4,316 involved motor coaches, and 1,020 involved trackless trolleys. Personal injuries or fatalities were not suffered in every incident, however. In the street car accidents 3,137 passengers, 197 pedestrians, and 566 other persons[28] were injured, a total of 3,900. Seven fatalities occurred: five pedestrians, two others. No passenger, incidentally, has ever lost his life in Transit System operation.[29] In motor coach operation 1,305 passengers, 72 pedestrians, and 138 other persons were injured; four pedestrians and one other were killed, a total of 1,515 persons injured, five killed. Trackless trolley operation resulted in injury to 293 passengers, 18 pedestrians, and 28 other persons, or a total of 339 persons injured; no fatalities resulted.[30]

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[25] Since property damage claims do not require this adjuster's full time, he handles also all workmen's compensation claims made by the Transit System employees.

[26] Medical examinations made by the staff of three doctors with offices in the main office of the Transit System totalled 1,517 in 1947, excluding medical examinations of employees. In addition, 380 examinations were made outside of the main office.

[27] The number of medical calls made by the 12 outside doctors is unrecorded.

[28] Generally, these "other persons" include drivers or guests in private motor vehicles.

[29] This enviable record extends back to include all operations of the railway system under The Cleveland Railway Company, the privately owned corporation, before its purchase by the city in 1942.

[30] An additional breakdown as to types of accidents designates the manner in which the accident occurred:

	1942	1943	1944	1945	1946	1947
Collisions with Pedestrians	281	352	333	330	335	296
Collisions between Street Car-Motor Coach-Trackless Trolley	157	300	363	329	243	292
Collisions with Fixed Objects	Not segregated prior to Jan. 1, 1946				112	196
Collisions with Vehicles	8,794	8,752	8,654	9,099	8,164	8,704
Derailments	127	129	128	109	94	126

Claims

All accidents do not result in claims being made by the aggrieved person. In 1947, 7,033 claims were filed, of which 1,456 were declined.[31] The percentage of claims made to accidents reported was 45.5%.[32] The period of time within which claims are filed after an accident varies from the day of the accident to the last day before the Statute of Limitations could be invoked on the particular claim and action. On occasions the Transit System has never been notified of any claim or accident until the last day of the period for the Statute of Limitations, when a petition is served upon the System. The number of accidents unreported by system employees was 1,450, or about 9.1% of the total number of accidents.[33] The first and only knowledge which the System acquires of these incidents is from the party injured or a disinterested person. Of these unreported incidents only 349 ended in claims being filed, however.

In general, most claims are filed as soon as the aggrieved party has determined to a reasonable extent the amount of damage suffered. In personal injury claims, obviously, the damage suffered frequently cannot be determined until the injured party has fully recovered. In these situations the claim is made and negotiations are postponed until the claimant can present his full facts to the Transit System adjusters.

Settlement

In 1947, 3,849 claims were settled without suit being filed. Two hundred and twenty-two claims were settled after judgment had been rendered against the Transit System and before appeals were made. The total amount paid in settlement before a lawsuit originated was $337,213.23, or an average of $87.61 per claim. Claims

Road and Equipment	666	461	436	445	692	731
Boarding	1,491	1,138	1,071	898	874	1,063
In Vehicles	2,154	1,919	1,919	1,839	1,722	1,813
Alighting	1,790	1,441	1,296	1,214	1,047	1,029
Doors	529	627	637	573	670	862
Ejectments and Disturbances	230	385	316	336	243	298
Service Equipment	49	68	60	96	92	155
Miscellaneous	1,881	1,903	2,025	1,985	1,717	1,890

[31] Number of claims filed and number of claims declined in years prior to 1947:

	1942	1943	1944	1945	1946
Claims Filed	5,920	6,111	6,201	6,022	5,982
Claims Declined	2,106	1,704	1,606	1,448	1,282

[32] Percentage of claims filed to accidents reported for years prior to 1947:

1942	1943	1944	1945	1946
34.5%	37.6%	38.8%	38.1%	41.6%

[33] Number of unreported accidents for years prior to 1947:

1942	1943	1944	1945	1946
908	1,146	1,044	1,262	1,166

settled after suit was filed required the amount of $129,954.53, or an average of $585.38 per claim. The small group of claims settled after judgment had been rendered against the Transit System and before appeal cost the System $12,605.96, or an average of $600.28 per settlement.

In personal injury claims $362,348.06 was paid, or an average of $164.63 per claim. Property damage claims required the expenditure of $117,425.66, an average of $62.10 per claim. All claims settled in 1947 totaled 4,092 requiring the expenditure of $479,773.72, or an average of $117.25. The percentage of claims settled to claims made was 59.2%.[34]

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[34] Analysis of settlements for years prior to 1947:

	1942	1943	1944	1945	1946
Settlement of Claims Without Suit					
Number of Settlements	2331	2877	3249	3315	3253
Total Amount Paid	$132,749.50	$190,176.19	$306,262.17	$301,643.04	$271,241.57
Average Amount Paid	$ 56.95	$ 66.11	$ 94.26	$ 90.99	$ 83.38
Settlement of Claims With Suit					
Number of Settlements	131	163	241	196	164
Total Amount Paid	$66,588.21	$ 47,834.40	$127,908.78	$156,451.55	$138,048.89
Average Amount Paid	$ 508.38	$ 293.46	$ 530.74	$ 798.22	$ 841.76
Settlement of Claims Judgments					
Number of Settlements	35	32	15	23	18
Total Amount Paid	$ 36,830.85	$ 11,189.65	$ 7,035.33	$ 27,353.66	$ 55,459.67
Average Amount Paid	$ 1,052.31	$ 349.67	$ 469.02	$ 1,189.29	$ 3,081.09
Total Number of Settlements	2529	3093	3590	3634	3615
Total Amount Paid	$236,168.56	$249,200.04	$441,206.28	$485,448.25	$464,750.13
Average Paid per Settlement	$ 100.29	$ 85.42	$ 129.83	$ 140.28	$ 136.03
Personal Injury Settlements					
Total Number	1634	1919	2187	1985	1781
Total Amount Paid	$220,391.39	$205,493.07	$375,811.56	$398,973.19	$376,835.65
Average Amount Paid	$ 134.87	$ 107.09	$ 171.83	$ 200.99	$ 211.59
Property Damage Settlements					
Total Number	895	1153	1318	1549	1654
Total Amount Paid	$ 33,234.94	$ 43,707.18	$ 65,394.72	$ 86,495.06	$ 87,914.48
Average Amount Paid	$ 37.13	$ 37.91	$ 49.61	$ 55.83	$ 53.15
Percentage of Claims Settled to Claims Made	42.5%	50.4%	57.0%	59.7%	58.6%

Settlement negotiations vary in length of time, depending upon the seriousness of the injury and the extent of the claim. After the meritorious nature of a claim has been determined settlement adjusting will be pursued up to a certain point. If the claimant demands an excessive amount of money, in the opinion of the Transit System, it is to the benefit of the System and the car-riding public, who owns the System, to deny such claim and meet the claimant in the trial court. Frequently, before trial, a claimant faced with the uncertainty of a jury verdict will temper his prior claim, and settlement can be effected in that manner. Generally, immediately before trial, claimants reduce the amount requested to a figure more in line with an acceptable adjustment.

Litigation

The percentage of lawsuits filed against the System to claims made was 4.2% in 1947.[35]

In the Municipal Court of Cleveland, the System tried 38 cases in 1947. In 27, judgments were rendered for defendant System, while in 10 plaintiff obtained judgment. One suit ended in disagreement; in one suit a new trial was granted the defendant System; one suit was appealed by the city and two suits were dismissed by the plaintiff. Total amount of judgments rendered equalled $2,452.41. In these 10 judgments rendered for the plaintiffs, total amount claimed in the petitions was $8,482.53. In all 38 cases tried, plaintiffs prayed for a total of $39,619.83.

On January 1, 1947, 216 lawsuits were pending, while at the end of the year 207 were pending. During the year 127 lawsuits were filed and 136 disposed of. The total amount claimed by plaintiffs in lawsuits pending on December 31, 1947, was $360,253.14.[36]

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[35] Percentage of lawsuits filed to claims made for years prior to 1947:

1942	1943	1944	1945	1946
4.8%	4.9%	6.0%	6.1%	5.0%

[36] Analysis of litigation in Municipal Court of Cleveland for years prior to 1947:

	1942	1943	1944	1945	1946
Number Suits Tried	89	62	52	56	34
Judgments for Plaintiffs	20	23	16	15	7
Judgments for Defendant System	69	39	36	41	28
New Trial for Defendant System	2	1	5	2	3
New Trials for Plaintiffs	1	0	0	1	0
Judgments Appealed by Defendant System	4	1	1	2	3
Judgments Appealed by Plaintiffs	2	1	0	1	1
Suits Dismissed	46	60	36	14	13
Lawsuits pending January 1	273	257	212	197	215
Lawsuits filed in year	171	163	197	187	133

Activity in 1947 in the Common Pleas Court of Cuyahoga County was greater and more expensive. Thirty-seven lawsuits were tried. Plaintiffs obtained judgments in 20, totalling $141,243. In these, plaintiffs had prayed for money damages totalling $324,-543. Defendant System obtained judgments in 17 lawsuits. A new trial was granted to the city in three cases; the plaintiff appealed four cases; 15 lawsuits were dismissed. The total amount claimed by all plaintiffs who tried lawsuits in this court in 1947 amounted to $589,543.

Lawsuits pending at the first of the year numbered 357, while at the end of the year this figure had increased to 361. One hundred and seventy-six were filed during the year against the System and 172 lawsuits were disposed of. At the end of 1947 the total amount prayed for in damages in lawsuits pending in the common pleas court amounted to $5,273,360.19.[37]

Lawsuits disposed of in year	187	208	212	169	132
Lawsuits pending December 31	257	212	197	215	216

	1942	1943	1944	1945	1946
Total Amount Judgments Rendered	$ 7,909.08	$ 10,756.62	$ 7,502.00	$ 4,503.66	$ 4,896.18
Total Amount of Prayers by Plaintiffs Obtaining Judgments	$ 30,034.27	$ 97,236.60	$ 23,024.74	$ 9,456.74	$ 10,096.18
Total Amount of Prayers in Lawsuits Pending December 31	$586,456.64	$380,025.94	$264,775.55	$290,622.11	$352,608.40

[37] Analysis of litigation in Common Pleas Court of Cuyahoga County for years prior to 1947:

	1942	1943	1944	1945	1946
Number Suits Tried	34	25	22	23	30
Judgments for Plaintiffs	13	11	6	14	16
Judgments for Defendant System	21	14	16	9	14
New Trials for Defendant System	0	2	2	0	3
New Trials for Plaintiffs	0	1	2	0	0
Judgments Appealed by Defendant System	4	3	0	0	2
Judgments Appealed by Plaintiffs	4	3	1	2	0
Suits Dismissed	32	17	20	10	12
Lawsuits pending January 1	209	184	202	242	298
Lawsuits filed in year	130	140	192	189	177
Lawsuits disposed of in year	155	122	152	133	118
Lawsuits Pending December 31	184	202	242	298	357

Appellate practice in 1947 was limited. One judgment appealed by the System was reversed by the court of appeals — a $10,000 judgment. Four judgments were pending in this court. These involved verdicts totalling $23,400.[38]

Briefly 75 lawsuits were tried in 1947. Five hundred and sixty-eight lawsuits were pending in all courts at the end of the year. An aggregate sum of $5,633,613.33 was demanded in all these pending cases.[39]

Expenses

Administrative expenses in 1947 amounted to $286,730.63.[40] The

	1942	1943	1944	1945	1946
Total Amount Judgments Rendered	$ 18,850.00	$ 11,850.00	$ 5,250.00	$ 117,070.00	$ 71,448.33
Total Amount of Prayers by Plaintiffs Obtaining Judgments	$ 149,500.00	$ 96,985.50	$ 68,000.00	$ 275,293.00	$ 420,631.33
Total Amount of Prayers in Lawsuits Pending Dec. 31	$2,066,504.21	$2,265,142.23	$3,462,342.27	$4,201,832.60	$4,859,176.08

[38] Analysis of appellate court litigation for years prior to 1947:

	1942	1943	1944	1945	1946
Court of Appeals					
Appealed by Defendant-System					
Judgments Affirmed	6	1	0	0	0
Judgments Reversed	3	0	2	3	0
Appealed by Plaintiffs					
Judgments Affirmed	6	3	0	1	1
Judgments Reversed	4	0	0	0	0

The Supreme Court of Ohio has never granted an appeal as of right to Transit System tort litigation. All cases are presented either by the Transit System or plaintiffs in a request for an order to certify the record. The Supreme Court has been most reluctant to grant such requests in common tort liability cases. As a practical matter appellate litigation for the Transit System is concluded in the court of appeals.

[39] General litigation summary for years prior to 1947:

	1942	1943	1944	1945	1946
Lawsuits tried	123	87	74	79	65
Lawsuits pending December 31	441	414	439	515	573
Total Amount Demanded in Lawsuits Pending	$2,652,960.85	$2,645,168.17	$3,727,117.82	$4,492,454.71	$5,211,784.48

[40] Administrative expenses for years prior to 1947:

1942	1943	1944	1945	1946
$207,322.35	$223,739.20	$232,539.76	$246,318.54	$258,317.24

greater bulk of this amount was allocated to salaries — $220,817.11.

The amount paid to dispose of all claims and judgments amounted to $517,052.65. Total expenses allocated to tort liability, arising out of the operation of the Transit System, therefore, were $803,783.28. The percentage of this total expenditure to the gross receipts in 1947 was 3.3%.[41]

Evaluation of Administration

The Transit System, in administering tort liability, is also confronted with conflicting interests. Obligations to the injured party, the car riders, and the general public demand a balance. The injured party is seeking speedy and fair compensation. The car riders are seeking (a) better service which can be acquired to some extent by maintaining at a minimum the amount expended for tort liability and utilizing any savings in this expenditure for better transportation service, and (b) safe transportation. The general public seeks the elimination of accidents from the streets of Greater Cleveland.

The injured party's idea of fair compensation most frequently is not commensurate with the System's idea of the same. The System is governed by the over-all ratio of total tort liability expenditures to gross receipts. Individual cases mean nothing, except insofar as they may influence this ratio. To each injured party, however, his case is paramount. He is the one suffering and expending money as a result of the accident. His mind is further influenced by the fact that the party who allegedly caused his injury is a large financial operation. It is not execution-proof. A balance between the demands of the injured party and the consideration of fair compensation as viewed by the Transit System generally occurs. As the figures indicate, only between four and five percent of the claims filed result in lawsuits. The element of speedy compensation is also important to the injured party. The Transit System seeks to settle cases in which it is liable and the injury slight within 24 hours. Where liability is present and the injury serious, additional time is granted until the aggrieved party regains health and then settlement negotiations proceed. Where there is a question of liability, the System endeavors to determine from its own investigations within ten days whether or not it will approve a claim. In the majority of cases, this time schedule prevails.

If the claimant is unsatisfied with the settlement offer and files

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[41] Total tort liability expenses for years prior to 1947:

	1942	1943	1944	1945	1946
Amount paid	$460,948.68	$487,945.10	$698,624.60	$756,118.55	$750,071.70
Percentage to gross receipts	2.47%	2.24%	3.06%	3.3%	3.1%

a lawsuit, the present docket in Cuyahoga County requires him to wait approximately eighteen months between the date of filing the petition and trial. In the Municipal Court of Cleveland, this time lag at present is approximately twelve months. The period which an appeal must wait to be heard in the Court of Appeals for Cuyahoga County is now about six months. The delay from the date of the court of appeals decision until the supreme court rules on the motion to certify the record is at present about two months. Lawsuits, therefore, do not give speedy justice; two years' time or more may elapse before final disposition. If a new trial be granted additional months of delay occur. This element, however, is controlled by the courts, not the municipality. It must be remembered, the figures indicate that lawsuits do render greater compensation on the average than settlements. The expense required and the time consumed, as well as the physical and nervous tension of a lawsuit, may well reduce the economic gain resulting from the higher compensation acquired, however.

The car riders have an indirect interest in maintaining the lowest possible expenditures for tort liability. Whatever is not expended in this category may well be devoted toward improvement in the mass transportation service. There are no stockholders demanding dividends, for the property is owned and operated by the City of Cleveland. There is no profit in the business sense of the term. Whatever profit results is reflected by improvement in service. This financial interest of the mass of car riders however is not great. The ratio of tort expenditures to gross receipts has remained steady at about three to four percent. Any money saved in and of itself would represent only a slight value to the car riders in improved service.

More important, the car riders seek safe transportation. In so far as tort expenditures exert pressure on the System and its employees to strive for safer operation, a greater direct benefit accrues to the passengers in general.

To the extent that the expenditures for tort liability create a pressure upon the Transit System to reduce accidents, the general public will be benefited. The 17,455 accidents in 1947 in and of themselves present a large figure. Analyzed, however, into number of accidents per one million passengers carried, the safety record appears brighter. In 1947 this figure was 37 accidents. One accident incident occurred every 2748 miles traveled by Transit System vehicles. An impressive record when one considers that each incident, however minor, is included in this calculation.

More tangible results in accident prevention have appeared from the well-developed safety program carried on by the Transit System. This program involves safety lectures, motion pictures, contests between operating stations, and constant safety advertising.[42] The fact that the Transit System is the most frequent and constant user of Cleveland's streets and the fact that Cleveland was awarded the title of "Safest Large City" in the nation for 1947 permit the System to be proud of its share in this safety honor.

At present there is being developed a program for tabulating complete information concerning each individual accident. Some of the interesting elements which will be revealed for each accident will be the time of day, type of vehicle, type of accident, the age, sex, race, experience of the employee involved, and other pertinent information. It is hoped from this that each year an analysis of all accidents will reveal the weak points in the continuous battle to improve Transit System safety. In addition, a program is being developed to further increase the contact between the employee involved in an accident and the Accident Bureau in order to impress upon the employee individually what his accident has cost the System in dollars and cents as well as damage to the injured party. This is not planned as a basis necessarily for reprimanding or punishing the employee. Reprimands and punishments in the form of days off or firings are given at present. Such discipline will always be required. The System does not, however, extract any money reimbursement from employees whose negligent actions require money expenditure by the System.

More effective accident prevention may be obtained, it is believed, by bringing the employee into closer contact with the human elements of injury and monetary losses which have resulted from his accident.

Some Observations on Suggested Reforms in the Administration of Tort Liability

Notice of Claim or Injury

In a majority of the states the injured party must file with the municipality within a maximum period of time a notice of the incident which resulted in damage to him. This requirement is

[42] For example a safety suggestion campaign brought forth, in 1947, 976 suggestions from employees on methods for improving safety. Sixty nine and two-tenths per cent of these were accepted and adopted; 9.8% were rejected; 20.9% were pending at the end of the year.

established by statute,[43] municipal charter,[44] or municipal ordinance.[45]

Theoretically, since municipalities are immune from tort liability,[46] any statute, charter or ordinance which imposes liability can provide a reasonable condition precedent before the city can be sued.[47] Just as there exists no common law right to sue the mu-

[43] ALA. CODE ANN. *tit.* 37 §476 (6 months) *tit.* 37 §504 (1940) (content of statement of claim or injury); COLO. STAT. ANN. c. 163 §261 (1935) (90 days); CONN. GEN. STAT. §1420 (1930) (60 days but if injury caused by ice or snow, 10 days); DEL. REV. CODE §2470 (1935) (City of Wilmington, six months); GA. CODE ANN. §308 (1935) (no time limit, notice just prerequisite to lawsuit); IDAHO CODE ANN. §49-162 (1932) (30 days); ILL. ANN. STAT. c. 24 §1-11 (1942) (six months); IND. ANN. STAT. (Burns Supp.) §48-8001 (1947) (60 days, but if injury caused by ice or snow, 30 days); IOWA CODE §420-25 (30 days, cities under special charters) §614.1 (1946) (60 days, municipal corporations); KY. REV. STAT. §411.110 (1946) (90 days); MASS. ANN. LAWS c. 84 §18 (1946) (30 days, but if injury caused by ice or snow, 10 days); MICH. STAT. ANN. (Henderson 1936) §1291 (60 days, villages), §1806 (60 days, 4th class cities), §598 (60 days, cities); MINN. STAT. ANN. (Mason 1929) §1831 (30 days); MO. REV. STAT. ANN. §§6577, 6823, 7044, 7524, 7636 (1939) (90 days except for first class cities which require 60 days and second class cities which require 30 days); MONT. REV. CODES ANN. §5080 (1935) (60 days); NEB. REV. STAT. §14-801 (1943) (10 days, metropolitan cities); N. H. REV. LAWS c. 105 §9 (1943) (10 days, towns); N. Y. GEN. MUN. LAW §50-e (60 days); N. D. REV. CODE §40-4201 (1943) (30 days); PA. STAT. ANN. *tit.* 53 §2774 (1947) (six months); R. I. GEN. LAWS c. 352 §7 (1938) (60 days); S. D. CODE §45.1409 (1939) (60 days); TENN. CODE ANN. §8596 (Williams 1934) (90 days); UTAH CODE ANN. §7-76 (1943) (30 days); VT. PUB. LAWS §4958 (1933) (20 days); VA. CODE ANN. §6043a (1942) (60 days); WASH. REV. STAT. ANN. §9481 (1933) (30 days, 2d, 3d, and 4th class cities); WIS. STAT. §81.15 (1943) (30 days).

[44] Sandstoe v. Atchison, T. and S.F. Ry., 28 Cal. App. 2d 215, 82 P. 2d 216 (1938); Nelson v. City and County of Denver, 109 Colo. 113, 122 P. 2d 252 (1942); Harrington v. Battle Creek, 288 Mich. 152, 284 N.W. 680 (1939); Peterson v. City of Red Wing, 101 Minn. 62, 111 N.W. 840 (1907); Sprague v. City of Astoria, 100 Ore. 298, 195 Pac. 789 (1921); Connolly v. Spokane, 70 Wash. 160, 126 Pac. 407 (1912).

[45] Wichita Falls v. Geyer, 170 S.W. 2d 615 (Tex. Civ. App. 1943) (home-rule city); City of Terrell v. Howard, 130 Tex. 459, 111 S.W. 2d 692 (1938) (home-rule city); Hase v. Seattle, 51 Wash. 174, 98 Pac. 370 (1908) (ordinance passed under provisions of state statute).

[46] *See* David, *Municipal Liability in Tort in California,* 6 So. CALIF. L. REV. 269 (1933); Fuller and Casner, *Municipal Tort Liability in Operation,* 54 HARV. L. REV. 437 (1941); Warp, *The Law and Administration of Municipal Tort Liability,* 28 VA. L. REV. 360 (1942).

[47] Grambs v. Birmingham, 202 Ala. 490, 80 So. 874 (1919); Gribben v. City of Franklin, 175 Ind. 500, 94 N.E. 757 (1911). See David, *Municipal Liability in Tort in California,* 7 So. CALIF. L. REV. 372, 402 (1934).

nicipal government there is also no right in the city to demand the filing of notice without express legislative action.[48]

Ohio has as yet never adopted a notice statute.[49] In the past two decades, however, three attempts to enact such a law were made. None succeeded; one bill died in the House Judiciary Committee,[50] two bills were enacted in the general assembly by overwhelming majorities only to be vetoed by the Governor.[51]

One Ohio city attempted to provide for the filing of notice by charter provision. East Cleveland passed a charter amendment which established as a condition precedent to a lawsuit against the city the filing of notice of the incident within 30 days after it happened. The tort liability and the notice requirement were both limited to injuries arising out of the failure of the city to maintain the public highway in good repair. When plaintiff Wilson sued the City of East Cleveland he failed to allege in his petition that he had filed this required notice. The city demurred. The common pleas court and the court of appeals sustained the demurrer. The supreme court, however, reversed judgment and overruled the demurrer.[52] The court reasoned that the municipality was without power to prescribe a condition precedent to its liability imposed by the general law. Since the state had prescribed liability and had not provided for the filing of any notice, the East Cleveland charter provision, to that extent, conflicted with the general law and was void.

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[48] Russell v. Mayor and Council of Wilmington, 5 Harr. 193, 162 Atl. 71 (Del. 1932); Green v. Town of Spencer, 67 Iowa 410, 25 N.W. 681 (1885).

[49] In City of Warren v. Davis, 43 Ohio St. 447, 3 N.E. 301 (1885), the supreme court held that the statute which permits damages to be assessed against a municipality when injury results from improvements in public buildings, places, streets and bridges, provided a claim has been filed before the lawsuit was instituted, was inapplicable to require a plaintiff, injured by a fall in a hole in the street, to file a claim notice before filing his petition.

[50] House Bill No. 313, 94th General Assembly, provided for a 60-day period in which the injured party must file a notice of injury with the municipality, setting forth the time, place, and cause of injury; otherwise the city could not be held liable. *Bulletin Ohio General Assembly No. 94* (1941-42).

[51] House Bill No. 230, 88th General Assembly, provided for a 120-day period in which the injured party must file notice of injury. In the House, 88 legislators approved this bill while only 20 rejected it; in the Senate, 22 senators unanimously adopted the bill. *Bulletin Ohio General Assembly No. 88* (1929-30).

Senate Bill No. 178, 92nd General Assembly, provided for a 30-day period in which a notice of injury must be filed. It was passed in the Senate, 27 to 1, and in the House, 94 to 3. *Bulletin Ohio General Assembly No. 92* (1937-38).

[52] Wilson v. East Cleveland, 121 Ohio St. 253, 167 N.E. 892 (1929).

Oklahoma has followed a similar rule.[53] Also in Florida where a city charter provision similar to East Cleveland's amendment was construed as the basis for the cause of action and not merely as a remedial requirement, such a charter provision was held unconstitutional.[54] If, on the other hand, a state statute demands the filing of notice can a municipality by charter set forth its own independent notice procedure? Minnesota and Wisconsin have permitted this action.[55]

What purposes will the filing of a notice satisfy? The courts have recited many: to permit the municipalities to investigate the accident,[56] to allow examination of the injuries received,[57] to determine the condition of the alleged defect which caused the accident,[58] to prevent fraudulent claims,[59] to prepare for trial,[60] to settle

[53] Tulsa v. Macura, 186 Okla. 674, 100 P. 2d 269 (1940); Tulsa v. Adams, 151 Okla. 165, 3 P. 2d 155 (1931); Tulsa v. McIntosh, 141 Okla. 220, 284 Pac. 875 (1930). Although the Ohio Supreme Court has been confronted with only one municipal-charter attempt to require the filing of a notice of claim or injury, the Oklahoma Supreme Court has been plagued with similar cases. The court observed in Tulsa v. Macura, *supra* at 676, 100 P. 2d at 271: "Like Banquo's ghost, or the proverbial cat of many lives, this Charter provision, in one form or another, returns to this court for observation."

[54] Skinner v. City of Eustis, 147 Fla. 22, 2 So. 2d 116 (1941). *Cf.* Wilkes v. City and County of San Francisco, 44 Cal. App. 2d 393, 112 P. 2d 759 (1941).

[55] Peterson v. City of Red Wing, 101 Minn. 62, 111 N.W. 840 (1907); Harris v. Fond du Lac, 104 Wis. 44, 80 N.W. 66 (1899); *accord,* Pender v. Salisbury, 160 N.C. 363, 76 S.E. 228 (1912); Ellis v. Geneva, 259 App. Div. 502, 20 N.Y.S. 2d 21 (1940); Walters v. Tacoma, 88 Wash. 394, 153 Pac. 311 (1915); Wolpers v. Spokane, 66 Wash. 633, 120 Pac. 113 (1912).

But in an earlier Minnesota case it was held that the passage of a state statute on notice repealed a similar charter provision. Nicol v. St. Paul, 80 Minn. 415, 83 N.W. 375 (1900).

[56] Smith v. Birmingham, 243 Ala. 124, 9 So. 2d 299 (1942); Nelson v. City and County of Denver, 109 Colo. 113, 122 P. 2d 252 (1942); Christian v. Waterbury, 123 Conn. 152, 193 Atl. 602 (1937); Tredwell v. Waterloo, 218 Iowa 243, 251 N.W. 37 (1933); Spangler's Adm'r v. Middlesboro, 301 Ky. 237, 191 S.W. 2d 414 (1945); Bethscheider v. Hebron, 137 Neb. 909, 291 N.W. 684 (1940); Bowers v. South Glen Falls, 260 App. Div. 39, 23 N.Y.S. 2d 656 (1940); Gannon v. Fitzpatrick, 58 R.I. 147, 191 Atl. 489 (1937); Gidcome v. Nashville, 177 Tenn. 295, 145 S.W. 2d 1029 (1941).

[57] Spangler's Adm'r v. Middlesboro, 301 Ky 237, 191 S.W. 2d 414 (1945); Pierce v. Spokane, 59 Wash. 615, 110 Pac. 537 (1910).

[58] Nelson v. City and County of Denver, 109 Colo. 113, 122 P. 2d 252 (1942); Galloway v. Winchester, 299 Ky. 87, 184 S.W. 2d 890 (1944); Pierce v. Spokane, 59 Wash. 615, 110 Pac. 537 (1910).

[59] Murphy v. Chicago, 318 Ill. App. 227, 47 N.E. 2d 494 (1943); Gidcome v. Nashville, 177 Tenn. 295, 145 S.W. 2d 1029 (1941); Titus v. City of Montesano, 106 Wash. 608, 181 Pac. 43 (1919); Giuricevic v. Tacoma, 57 Wash. 329, 106 Pac. 908 (1910).

[60] Gidcome v. Nashville, 177 Tenn. 295, 145 S.W. 2d 1029 (1941); Pierce v. Spokane, 59 Wash. 615, 110 Pac. 537 (1910); Hase v. Seattle, 51 Wash. 174, 98 Pac. 370 (1908).

claims,[61] to consult witnesses,[62] to obtain witnesses,[63] to procure evidence,[64] and to limit the claimant to recovery only on the defect named in his notice.[65]

Most states with all or some of these reasons in mind have drafted their notice statutes to require the written statement of the injury to include the time and place of the accident, how it happened, and what injuries were received.[66] The first such enactment was passed by Massachusetts in 1877. The majority adopted since that date have usually provided for this notice procedure only when injuries arise out of the failure or neglect of the city to maintain the public roadway and its environs in proper repair. These statutes have passed not only the test of general adoption in our country but also the test of time. Ohio municipal corporations, barred from independent action by the *Wilson v. East Cleveland* rule, have the right to expect from the state government — both the general assembly and the Governor — the passage of a well-considered notice statute. The Law Department of the City of Cleveland and the legal division of the Transit System strongly favor state legislation requiring the filing of notice as a condition precedent to any lawsuit for tort liability against the City of Cleveland.

What elements should a notice statute contain?

1. The filing of written notice should apply to all tort claims against the municipality.

It is true that the majority of states' statutes restrict the notice requirement to accidents from defects in the public highway and its environs.[67] Obviously in large cities where the public streets are many and the area of possible tort incidents wide the city officials have little opportunity to acquire knowledge of the accident.[68] But more than the desire to obtain information is involved. Municipalities are not operating for profit. Public funds are involved. Oppor-

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[61] Wilkes v. City and County of San Francisco, 44 Cal. App. 2d 393, 112 P. 2d 759 (1941); Sandstoe v. Atchison, T. and S.F. Ry., 28 Cal. App. 2d 215, 82 P. 2d 216 (1938); Nagle v. City of Billings, 80 Mont. 278, 260 Pac. 717 (1927); Gannon v. Fitzpatrick, 58 R.I. 147, 191 Atl. 489 (1937); Pierce v. Spokane, 59 Wash. 615, 110 Pac. 537 (1910).

[62] Nagle v. City of Billings, 80 Mont. 278, 260 Pac. 717 (1927).

[63] Palmer v. Cedar Rapids, 165 Iowa 595, 146 N.W. 827 (1914); Titus v. City of Montesano, 106 Wash. 608, 181 Pac. 43 (1919).

[64] Titus v. City of Montesano, 106 Wash. 608, 181 Pac. 43 (1919).

[65] Harrington v. Battle Creek, 288 Mich. 152, 284 N.W. 680 (1939).

[66] Alabama, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, Rhode Island, South Dakota, Utah, Vermont, Virginia.

[67] See note 43 *supra*, for states so providing.

[68] See David, *Municipal Liability in Tort in California*, 6 So. CALIF. L. REV. 372, 402-03 (1934).

tunity for fair settlement, discovery of fraudulent claims, and proper preparation to defend the public interest weigh heavily in all municipal tort situations. These interests demand the filing of notice by the aggrieved party to permit intelligent handling of the claim and lawsuit.

The statute should not permit any distinction in the notice requirement between governmental and proprietary functions of local government as one court has allowed.[69] New York by statute[70] and at least one court by decision[71] have attempted to eliminate this difference. The same public interests must be protected whether the function be governmental or proprietary.

2. The filing of the written notice must be a condition precedent to the filing of a lawsuit and the petition must aver such filing.

Notice is jurisdictional and creates the right of action.[72] The injury creates the cause of action.[73] Some courts have denied the municipality the power to waive the notice requirement;[74] other courts apply the stricter rule which holds that the claimant must plead the filing of his notice to recover in any lawsuit.[75] The majority of decisions support this latter rule.[76] It would not appear too burdensome to require the injured person to plead the filing of notice in his petition once the duty to file is established. The danger of damage to the public interest which would result from unwarranted waiving of the required notice because of political pressure or expediency will be greatly minimized.

3. The written notice must identify the injured party, the time, place, manner and extent of the injury, and the notice shall be held satisfactory if substantial facts are stated which can enable the city officers to determine with reasonable effort the tort incident to which the notice refers.

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[69] Harms v. City of Beatrice, 142 Neb. 219, 5 N.W. 2d 287 (1942).

[70] N.Y. GEN. MUNICIPAL LAW Art. 4, §50e.

[71] Collins v. Memphis, 16 F. Supp. 204 (W.D. Tenn. 1936).

[72] Sprague v. City of Astoria, 100 Ore. 298, 195 Pac. 789 (1921).

[73] Mercer v. Richmond, 152 Va. 736, 148 S.E. 803 (1929). *Contra*: Marino v. East Haven, 120 Conn. 577, 182 Atl. 225 (1935).

[74] Hall v. Los Angeles, 19 Cal. 2d 198, 120 P. 2d 13 (1941); King v. Boston, 300 Mass. 377, 15 N.E. 2d 191 (1938). *Contra*: Cole v. Seattle, 63 Wash. 1, 116 Pac. 257 (1911).

[75] Swenson v. Aurora, 196 Ill. App. 83 (1915); Harms v. City of Beatrice, 142 Neb. 219, 5 N.W. 2d 287 (1942). But in Koontz v. St. Louis, 230 Mo. App. 128, 89 S.W. 2d 586 (1936) where plaintiff did not plead his filing of notice and defendant failed to state this defense, the court held the notice requirement waived.

[76] Thomas v. Coffeyville, 145 Kan. 588, 66 P. 2d 600 (1937); Harrington v. Battle Creek, 288 Mich. 152, 284 N.W. 680 (1939); Gidcome v. Nashville, 177 Tenn. 295, 145 S.W. 2d 1029 (1941); Hamilton v. Salt Lake City, 99 Utah 362, 106 P. 2d 1028 (1940).

When called upon to interpret notice statutes, the courts usually have applied a strict rule as to the filing, but a liberal rule is enforced when determining whether sufficient facts have been included in the statement.[77] Substantial compliance with the elements demanded in the statute is satisfactory.[78] If the notice states (a) a place which is nonexistent,[79] (b) a place which is considerable distance from the actual place of the occurrence,[80] (c) the manner of injury as a fall on ice and snow when it was actually a hole in the highway,[81] the courts have held such notices to be invalid and recovery by lawsuit barred. Then, too, if the notice fails to state correctly the time of the incident[82] or to describe only generally the injuries received,[83] it is ineffective and precludes recovery. If, however, the claimant raises the dollar amount of damage claimed in his petition over what he submitted in his notice, such should not prevent his recovery, and one court has so held.[84]

What the notice must contain to be valid should be measured by the purposes to be achieved. Essential facts — the person injured, time, place, manner and extent of injury — are basic. To define by statute the precise terms of each is dangerous, for all the possible situations cannot and will not be considered by the lawmakers. Judicial interpretation will share in this control. Let the legislature and courts be governed by the needs and desires of the cities: opportunity to investigate, to negotiate a fair and speedy settlement, to prevent fraudulent claims, and to prepare for a possible lawsuit.

Ohio municipalities, especially the large population centers as Cleveland, have the right to continue their demands on the general assembly and chief executive for the adoption of a notice of injury and claim statute as well as the enlightened interpretation thereof by the courts of Ohio.

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[77] Volk v. Michigan City, 109 Ind. App. 70, 32 N.E. 2d 724 (1941); Koontz v. St. Louis, 230 Mo. App. 128, 89 S.W. 2d 586 (1936).

[78] Smith v. Birmingham, 243 Ala. 124, 9 So. 2d 299 (1942); Christian v. Waterbury, 123 Conn. 152, 193 Atl. 602 (1937); Atlanta v. Hawkins, 45 Ga. App. 847, 166 S.E. 262 (1932); Gannon v. Fitzpatrick, 58 R.I. 147, 191 Atl. 489 (1937).

[79] Van Den Bergh v. City of New York, 208 App. Div. 72, 203 N.Y.S. 127 (1924) (notice stated place of injury as "524 West 85th St.", but actually the accident occurred at 525 West End Ave.).

[80] Tredwell v. Waterloo, 218 Iowa 243, 251 N.W. 37 (1933) (3000 feet away).

[81] Morrisey v. Boston, 268 Mass. 324, 167 N.E. 651 (1929); Lane v. Cray, 50 R.I. 486, 149 Atl. 593 (1930).

[82] Swenson v. Aurora, 196 Ill. App. 83 (1915).

[83] Marino v. East Haven, 120 Conn. 577, 182 Atl. 225 (1935).

[84] Smith v. Tacoma, 163 Wash. 626, 1 P. 2d 870 (1931) (notice claimed damages of $7500, petition prayed for damages of $15,000).

Insurance

To the average citizen-taxpayer it is a mystery why the municipal government does not purchase tort liability insurance from private companies. Where studies have been made of such insurance, however, it has been determined more prudent for the municipality to act as a self-insurer.[85] Two such studies have been made in Cleveland on the Transit System property. Formerly the System insured its nonrevenue service vehicles with private insurance. A study revealed better value could be obtained by assuming tort liability on the self-insurer basis for such vehicles, as the revenue vehicles were handled, so the insurance was cancelled. Several years ago one large accident insurance company made a three months' investigation of the Transit System property only to report that the premium for one year's insurance would far exceed the actual sum utilized by the System for one year's liability expenditures.[86]

Today the city government purchases private liability insurance to cover all accidents arising out of operation of the Public Auditorium and Municipal Stadium. As proprietary functions from which revenue is received, these properties impose tort liability on the municipality.[87] In 1947, 111 claims were presented.[88] The premium paid has increased fourfold in 1947 over the 1945 payment, however, without a corresponding increase in claims. With premium costs increasing so rapidly, the time has come for the municipal government to reassess the value received from this private insurance.

One student of municipal government has stated that generally private insurance for municipal tort liability is "nothing short of a luxury."[89] In these days of financial strain on the municipal budget in Cleveland, the local government can ill afford luxuries.

Limitation of Recovery to Actual Damages

Two thoughtful legal articles on the subejct of tort liability for

[85] Warp, *The Law and Administration of Municipal Tort Liability*, 28 VA. L. REV. 360 (1942).

[86] The possibility of buying catastrophe insurance to cover any verdicts in excess of a certain sum, $25,000 for example, also has proved uneconomical upon study. The absence of serious accident potentials such as steep hills, dangerous bridges, etc., further minimized the need for catastrophe insurance.

[87] See page 436 *supra*.

[88] Thirty-four additional claims were made. These accidents happened when the Auditorium or Stadium was leased to a private organization which had assumed tort liability and protected itself by private insurance independently of the city insurance. Would it be wise to require all lessees to assume tort liability for their particular events saving the city harmless from any claims filed?

[89] Warp, *The Law and Administration of Municipal Tort Liability*, 28 VA. L. REV. 360, 384 (1942).

municipalities suggest the limiting of the amount of recovery to the actual damages incurred by the injured party.[90] Such limitation will protect the public purse from skyrocketing damage verdicts, will eliminate unpredictable and emotionalized juries, will grant damages more in proportion to real losses, and will tend to speed settlements. A state statute providing for such limitation would be necessary.

When confronted with this suggestion, both the Law Department and the Transit System were skeptical. The former feared an increase in the number of claims filed; the latter desired a free hand in negotiating settlements unfettered by any relatively fixed amounts based on damages actually suffered.[91] Where liability is in issue, it is feared that claimants would be reluctant to negotiate settlement because of their belief that actual damages should be paid regardless of the question of fault.

Despite the fears expressed, tort liability administration by the municipality is not measured by the same interests as private corporation liability. The public money expended and the satisfaction of the citizens injured may well compel the limitation of damages recovered to actual losses incurred. At least a comprehensive investigation of this proposal as it affects the City of Cleveland would be a wise step.

CONCLUSION

Municipal administration of tort liability in Cleveland — both by the Law Department and the Transit System — in 1948 will involve approximately $1,000,000, 18,000 accidents, and 8,000 claims. In short, this administration has become a "big business" in itself.

Constant study and improvement of the administrative function is required in order to satisfy aggrieved parties with fair and speedy justice, to protect public funds, and to reduce the number of public accidents. To the extent that city officials promote such study and improvement of this process, all citizens will benefit.

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[90] David, *Municipal Liability in Tort in California*, 6 So. CALIF. L. REV. 372, 467 (1934); Fuller and Casner, *Municipal Tort Liability in Operation*, 54 HARV. L. REV. 437, 461 (1941).

[91] This attitude may be caused by the fact that the Transit System over its years of experience does not consider itself the victim of many excessive verdicts.