

***Andrews v. Metropolitan Transit System* 74 Cal.App.5th 597 (2022)**

A notice of rejection of a claim sent by a public entity is insufficient if it does not include a warning that is substantially the same as the warning in Gov. Code § 913 even if there are specific facts that may lead the drafter of the notice to believe that part of the warning is not necessary.

**FACTS/PROCEDURE**

Treasure Andrews boarded a Metropolitan Transit System (MTS) bus and was injured when the bus driver accelerated the bus before Andrews had time to sit down. Andrews said that when the bus accelerated it caused her to tumble down the aisle and break her hip. She sought \$500,000 in damages and listed her attorney as the contact to whom notices should be sent.

MTS rejected the claim on November 14, 2017. Under Gov. Code § 945.6 once notice of rejection of a claim has been properly given, a six-month statute of limitations period begins for a claim to be brought. If the notice of rejection is not given or if it is insufficient in some way, then the statute of limitations period becomes two years from the date the incident occurred. Andrews filed suit on July 3, 2018, which is almost 8 months after the notice of rejection was mailed. MTS moved for summary judgment due to the statute of limitations having already passed. The trial court held for MTS stating that Andrews claim was untimely.

Andrews appealed on the grounds that the notice of rejection was insufficient under Gov. Code § 913. Under the statute, a rejection is insufficient if it does not include a warning that is in substantially the same form as the warning provided in the statute which includes an advisement regarding the statutory period which a claim may be brought and an advisement to seek the advice of an attorney. MTS did not include an attorney advisement in the notice, leading Andrews to appeal the sufficiency of the notice.

**HOLDING/DISCUSSION**

Holding: Reversed and Remanded. MTS's notice of rejection was insufficient because it did not include an attorney advisement in substantially the same form as the one provided in Gov Code § 913. Compliance with § 913 determines the statute of limitations applicable to a claimant's subsequent lawsuit (*Him v. City & County of San Francisco* (2005) 133 Cal.App.4th 437, 441-442, 34 Cal.Rptr.3d 838.) If written notice is properly given the statute of limitations for such a claim is 6 months from when the notice of rejection is personally delivered or deposited in the mail; if the written notice is deemed insufficient, then the statute of limitations becomes two years from the day the incident occurred.

MTS argues that they did substantially comply with the required warning under the statute as they included the time advisement section of the warning and because of the specific facts of the case, they did not need to include the attorney advisement as they were already aware

that Andrews had retained an attorney. The court rejected these arguments for several reasons. First, the attorney advisement still has meaning if Andrews already had retained an attorney because Andrews may have only retained the attorney for the limited purpose of submitting the claim. Second, the statute's inclusion of the term "shall" lead the court to believe that the attorney advisement is absolutely required, and the court will not lightly disregard that statutory mandate. Third, the court discussed that for a notice to be in substantial compliance with the statute it must address every objective of the statute, and because alerting the party receiving the notice that they should consider consulting an attorney was clearly an objective of the statute, MTS's notice was not substantially compliant.

Because MTS's notice of rejection was found to have not included a warning in substantially the same form as the warning laid out in Gov. Code §913, the notice was insufficient. Therefore, the court held that Andrew's claim was not untimely because it fell within the two-year statute of limitations period that is activated when notice of rejection is improperly given.

#### Relevant Statute

#### Gov Code §913

(b) If the claim is rejected, in whole or in part, the notice required by subdivision (a) shall include a warning in substantially the following form:

“WARNING

“Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See [Government Code Section 945.6](#).

“You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.”