COA Opinion: Under the motor vehicle exception of the Governmental Tort Liability Act (GTLA), Plaintiff's failure to file a "Notice of Intention to File a Claim" with the Court of Claims within 6 months of the car accident pursuant to MCL 600.631(3) bars Plaintiff's claim despite Plaintiff providing MDOT with notice and no actual prejudice resulted.

3. March 2011, 10:22 By Layla Kuhl

In *Kline v Department of Transportation*, the Court of Appeals reversed the trial court's denial of defendant Michigan Department of Transportation's (MDOT) motion for summary disposition. The court stated that it was bound by *McCahan v Brenna*, __ Mich App __; __ NW2d ___ (2011) which applied that rationale of *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007). In *Rowland*, the Supreme Court held that since a different notice provision did not contain a no prejudice requirement, the judiciary cannot read such a requirement into the statute. The present COA panel declared a conflict pursuant to MCR 7.215(J)(2) finding "that *McCahan* was wrongly decided and that *Rowland* does not dictate the outcome in this case because it involves a different statutory provision." But for the mandate in MCL 7.215(J)(1), the panel would have affirmed the denial of summary disposition and would not have followed *McCahan*.

Plaintiff was seriously injured in an automobile accident involving an MDOT vehicle. Two months after the accident Plaintiff sent a "Statutory Notice of Claim" by certified mail to MDOT. Plaintiff however did not file a "Notice of Intention to File a Claim" with the Court of Claims until eight months after the accident.

MCL 600.6431 sets forth the notice requirements for when a Plaintiff wants to file a claim under the motor vehicle exception to governmental immunity. In an action for personal injuries, it requires a claimant to "file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action." MCL 600.6431(3). In *McCahan*, a different Court of Appeals panel addressed this exact statutory provision and applied the reasoning of *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007) which involved the notice provisions of a different exception to governmental immunity. In *Rowland* the Supreme Court held that since the notice provision did not contain a no prejudice requirement, the judiciary cannot read such a requirement into the statute. *McCahan* applied this rationale to the notice provision presently at issue and determined that since it did not contain a not contain an no prejudice requirement, one could not be read into that statute.

The present Court of Appeal panel states that it is bound by *McCahan* and reversed the denial of MDOT's motion for summary disposition since Plaintiff failed to specifically comply with the requirements of MCL 600.6431. The panel, however, stated that in the absence of the *McCahan* decision it would have affirmed the trial court's denial of defendant's motion for summary disposition

because MDOT had timely notice of the claim and demonstrated no prejudice as a result of plaintiff's failure to comply with MCL 600.6431(3).

Judge Hoekstra concurred in the majority's decision to reverse but dissented from the majority's conclusion that *McCahan* was wrongly decided.