UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 733

September Term, 2015

MARSHALL COLEMAN

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

Nazarian,
Leahy,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: May 18, 2017

In this case, we consider the outer contours of what constitutes substantial compliance with the notice requirement of the Local Government Tort Claims Act ("LGTCA"). In 2011, Marshall Coleman ("Appellant") was riding his motorcycle in Baltimore City when he struck a pothole, causing him to crash and sustain injuries. Mr. Coleman's counsel sent notice of the injury to the Baltimore City Solicitor within the statutorily prescribed notice period. This notice defined the site of the injury as "W Patapsco Avenue," a three-mile stretch of road. The Baltimore City Department of Law responded to Mr. Coleman's counsel's letter, seeking a clarification, but received no response.

Mr. Coleman filed suit in the Circuit Court for Baltimore City against Baltimore City in 2014. After some discovery, the City moved twice for summary judgment. The circuit court granted the City's second motion, finding that Mr. Coleman had not substantially complied with the LGTCA's notice requirement. Mr. Coleman appealed, presenting the following question for our review: "Did the trial court err when it granted the City's second motion for summary judgment when Mr. Coleman's notice substantially complied with Maryland's LGTCA by identifying the date, time, cause of injury, and location of the injury to the best of his ability within the 180 day requirement?"

We affirm the circuit court's grant of summary judgment, concluding that Mr. Coleman did not substantially comply with the LGTCA's notice requirement. In only defining the location of the injury as a three-mile stretch of road in Baltimore City, Mr. Coleman did not fulfill the purpose of the LGTCA's notice requirement, which is "to

apprise [the] local government of its possible liability at a time when [the local government] could conduct its own investigation, i.e., while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and [the local government's] responsibility in connection with it." *Ellis v. Housing Authority of Baltimore City*, 436 Md. 331, 342-43 (2013) (emphasis added) (brackets in *Ellis*) (quoting *Faulk v. Ewing*, 371 Md. 284, 298-99 (2001)).

BACKGROUND

On any grant of summary judgment, we review the evidence contained in the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party. *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007) (quoting *Myers v. Kayhoe*, 391 Md. 188, 203 (2006).

A. The Injury

On May 1, 2011, Appellant Marshall Coleman was riding his motorcycle, with a group of four other motorcycle riders, on West Patapsco Avenue in Baltimore City when he struck a "12`` square large pothole. Mr. Coleman alleged that the pothole caused him to lose control of his motorcycle and sustain serious and permanent injuries.

Ramon Stokes was the motorcycle rider who was riding at the head of the 5-cycle formation at the time of the accident. He submitted an affidavit dated March 3, 2015, in which he explained that Mr. Colman was ejected from his motorcycle and thrown against

a chain-linked fence after his front wheel hit the pothole. Mr. Stokes stated that emergency responders, including the Baltimore City Fire Department and the Baltimore City Police Department, arrived at the scene shortly after the accident and transported Mr. Coleman to the University of Maryland for medical treatment. Mr. Stokes returned to the scene of the accident on May 2 or May 3, 2011, to search for Mr. Coleman's cell phone, and observed that the pothole had been completely repaired.

B. The Letters and the Lawsuit

In an effort to comply with the LGTCA's notice requirement, Maryland Code (1974, 2006 Repl. Vol., 2011 Supp.), Courts and Judicial Proceedings Article ("CJP"), § 5-304,[1] Mr. Coleman's counsel mailed notice, via certified mail, of the injury to the City Solicitor on June 23, 2011. The notice specifies the date of the accident as May 1, 2011, and states the following, in pertinent part:

> Pursuant to [CJP] § 5-304 (b) and (c), this letter will put you on notice that a claim has been filed within 180 days of Mr. Marshall Coleman's injuries.
>
> **On May 1, 2011, at approximately 3:43 p.m., Mr. Marshall Coleman was riding W/B on W Patapsco Avenue when he lost control of his motorcycle due to the forceful impact of a deep and extensive pothole in the road. The force of said impact caused Mr. Coleman to be ejected from his motorcycle, sustaining numerous physical injuries.** The City of Baltimore is responsible for the maintenance and repair of W Patapsco Avenue.
>
> Mr. Marshall Coleman sustained conscious pain and suffering, medical bills, loss of employment, and property damages.
>
> Kindly assign a number to this claim and direct all future correspondence to our attention. I look forward to working with your office

[1] As will be discussed further *infra*, this provision of the Local Government Article has since been amended in material respect. These amendments do not affect the present case.

on this claim.

Thank you for your immediate attention to this matter.

(Emphasis added). The return receipt states that this notice was delivered on June 26, 2011. West Patapsco Avenue, the location of the injury as described in the notice, is a three-mile stretch of road.

On July 5, 2011, the Baltimore City Department of Law responded to the June 26 letter by writing to Mr. Coleman's counsel requesting more information. The July 5 letter stated the following, in pertinent part:

> This will acknowledge receipt of your client's claim for personal injuries on the above referenced date. . . .
>
> Please have your client complete, sign and date the enclosed Statement of Claim, Medial Authorization, and Index Bureau Information Sheet and return the originals to my attention. *We need to know the exact location (street address or block number) of the incident in order to conduct an investigation.*
>
> **Please note that the Index Bureau Information Sheet asks for information required under The Medicare Secondary Payor Mandatory Insurer Reporting Requirements of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. Unless this information is provided, we cannot entertain any resolution of this matter.**
>
> Thank you for your cooperation in this matter. You will be notified when our investigation is completed.

(Italics emphasis supplied; bold emphasis in original). Neither Mr. Coleman nor his counsel ever responded to this July 5 letter. On April 17, 2014, Mr. Coleman filed a complaint alleging negligence against Baltimore City in the Circuit Court for Baltimore City. [2]

[2] Mr. Coleman's complaint actually named the Baltimore City Department of Transportation as the defendant and the final order granting summary judgment in favor of the city that Mr. Coleman has appealed is still captioned "Marshall Coleman v. Baltimore

C. The First Motion for Summary Judgment

After some discovery, on February 23, 2015 the City filed a motion for summary judgment averring Mr. Coleman did not substantially comply with the LGTCA notice requirement.[3] Specifically, the City argued that Mr. Coleman failed to notify the City of the location of the pothole in his June 26 letter because West Patapsco Avenue is over three miles long, and it was not possible for the City to investigate and locate the specific pothole in question when Mr. Coleman provided only a street name. The City stated that it sent Mr. Coleman a letter providing him the opportunity to cure his defective notice, but that Mr. Coleman did not offer any further information until two years later. The City maintained that Mr. Coleman was required to provide more specific information to comply with the LGTCA's notice requirement.

Mr. Coleman filed an opposition to summary judgment on March 10, 2015, arguing that he substantially complied with the purpose of the LGTCA's notice requirement because his June 2011 notice provided the City with sufficient information to perform a proper and timely investigation. He maintained that with the information it was provided, the City could apprise the nature of his injuries, inquire with local authorities, and learn of

City Department of Transportation," although the body of the order refers to the "Mayor and City Council of Baltimore" as the defendant. Neither party disputes the substitution of parties or correction in nomenclature on appeal.

[3] The City also argued that Mr. Coleman did not have good cause for his failure to comply with the LGTCA notice requirement and that the City did not have actual or constructive notice (prior to the accident) of the pothole, or "alleged defect." Mr. Coleman does not present any argument concerning good cause or constructive notice on appeal.

potential witnesses. Mr. Coleman stated that the hazardous condition of the road was repaired within two days of the accident and that he could have provided exact coordinates to the pothole within four days of the accident.[4]

On March 25, 2015, the circuit court held a hearing on the City's motion. The City argued that Mr. Coleman did not strictly or substantially comply with the LGTCA's notice requirement because he did not give an exact location of the pothole. The City contended that it did not have sufficient information to investigate and that Mr. Coleman's letter did not shift the burden to the City to investigate.[5] In particular, the City stressed that Mr. Coleman did not respond to the City's letter requesting more information. The City contended that accepting the notice provided as sufficient notice of "location" would eviscerate the location requirement.

Mr. Coleman responded, arguing that Maryland case law requires only a general, not a detailed, description of the injury. He observed that, should the court find that there was no strict compliance, the court could still find substantial compliance. He contended that the purpose of the LGTCA's notice requirement was to allow the City to mount an investigation and that Mr. Coleman's notice accomplished this purpose. He observed that the City knew the time of the accident, the general area of the accident, Mr. Coleman's

[4] Mr. Coleman also argued that the City had constructive notice of the pothole, but, once again, this argument is not before us on appeal.

[5] The City also noted that the prejudice inquiry does not arise until the court has found good cause to waive the LGTCA notice requirement, upon the plaintiff's motion, but that Mr. Coleman had not raised the issue of good cause.

name, and the cause of the accident—and maintained that this was sufficient information to investigate. Based on the information he provided to the City in his June 23 letter, Mr. Coleman contended that a simple investigation or a contact of the police department or other state agencies would have revealed the exact location of the incident. In support of his motion, Mr. Coleman attached a copy of a State of Maryland Motor Vehicle Accident Report which stated:

> On 5-1-11 at 1500 hrs. vehicle #1 was traveling west on the 600 blk of W. Patapsco. Veh #1 left the road and struck light support pole #079 located next to the street. The operator of the vehicle was taken to University of Maryland by Medic #9. Condition check conducted, Doctor stated injuries were non[-]life threatening.[6]

The court found that Mr. Coleman had not strictly complied with the LGTCA's notice requirement but denied the City's motion for summary judgment on substantial compliance grounds, giving the City leave to file another motion. The court was skeptical that a three-mile stretch of road could be considered a specific location, but reasoned that the issue of substantial compliance was a "close call." The court noted that the City was free to raise its motion again:

> . . . the statute, [CJP] § 5-304, does require the 180 notice and it requires that three things be included in the notice, and that is time, place, and cause. **I certainly find notice was given in the 180 days. And time and cause are not at issue. As we said before, . . . the issue is the place requirement being given.**
>
> The place was identified as westbound on West Patapsco Avenue.

[6] Although the parties do not discuss the point in their briefing, we note that the report does not describe a pothole or show one on the drawing next to the statement set out above. The City does not challenge the contents or substance of the report on appeal, but contends that it was not the City's responsibility to make inquiries to various state agencies to uncover such a report.

> Again, the notice was given on June 23rd, 2011, that's the date of the notice letter. And there is a date of a letter back from the City, July 5th, 2011 stating that the City needed to know the address, the specific address or the block number in order to conduct their investigation and there was no response to that.
>
> **I do believe this is kind of a floating issue of what is sufficient substantial compliance because I do find that there was not actual compliance with the notice requirement. Whether there is substantial compliance is kind of a moving issue here. Sufficient for proper and timely investigation. We're talking about a three mile stretch of busy road.** And this isn't a question of law so it's not something that can be left for the finder of fact if you proceed with a jury trial.
>
> I think this is, for me, this is a rather, this is a rather close call. . . . I have difficulty with even substantial compliance with this and I simply don't understand it. I've seen a number of these where the City has requested additional information in terms of location and I just don't understand why that's not . . . provided.
>
> **Understanding that a motion for summary judgment can be made at any time, I'm going to deny the motion at this time. I think it's a very compelling argument by the City, but I'm going to deny the motion and have this case proceed. You're certainly free to raise it again in front of the trial judge perhaps** . . ., but we'll prepare an order.

(Emphasis supplied). Thus, the court denied the City's motion for summary judgment.

D. The Second Motion for Summary Judgment

On May 18, 2015, shortly before the scheduled trial, the City filed a new motion for summary judgment. The City's second motion for summary judgment was substantially the same as its first.

On May 22, 2015, the court, with a different judge presiding, held a pre-trial motions hearing on the second motion for summary judgment. The City noted that the first judge did not give a "definitive ruling on whether [Mr. Coleman] had in fact substantially complied with the LGTCA." The City then made substantially the same arguments in the

second hearing, specifically arguing that Mr. Coleman did not substantially comply with the LGTCA's notice requirement because of his failure to identify specifically the location of the injury on West Patapsco Avenue.[7]

Mr. Coleman pressed that the City's arguments in the second motion for summary judgment were substantially the same as those in the first and that it would not be error to deny the second motion if there was nothing new on which to base a different disposition. Mr. Coleman argued that, even if he had provided the exact geographical coordinates of the pothole, there would have been nothing for the City to investigate because the City had repaired the pothole within days of the accident. Upon question, Mr. Coleman admitted that the City's July 5 letter requesting more information had been received. Nonetheless, he argued the June 23 letter provided sufficient notice when viewed in conjunction with the City's ability to acquire the police report and contact other government entities.

The City contended that the issue "boil[ed] down" to whose duty it was to find the information. CJP § 5-304—it claimed—puts the burden squarely on the claimant to provide the location of the incident and that substantial compliance does not shift that burden. The City also maintained that any new information Mr. Coleman provided during discovery was irrelevant because he had not provided it during the LGTCA's 180-day notice period, thereby not allowing the City to perform a timely investigation.

[7] When the court questioned the City as to how the City would be prejudiced by the lack of location, the City responded that prejudice is not at issue until the court has found that there is good cause to waive the LGTCA's notice requirement and noted that Mr. Coleman had not argued that there was good cause for waiver in the present case.

The court opened its ruling with a recitation of CJP § 5-304 and the observation that Mr. Coleman did provide *some* notice to the City within 180 days in his June 23, 2011 letter. The court also noted that the LGCTA's notice provision "clearly places the burden on any plaintiff to provide the information which is necessary for a jurisdiction, in this case the City, to conduct an investigation." The court found that, for reasons that Appellant had not made clear, "no response was given by [Mr. Coleman]'s counsel, [Mr. Coleman], or anyone on [Mr. Coleman]'s behalf, to the July 5th, 2011 letter on or before the expiration of 180 days." From there, the court continued, finding

> that it was well beyond 180 days, indeed two years if not more, when the City was provided with information which identified the place of the occurrence as being the 600 block of West Patapsco Avenue. **That is a period of time this Court finds that is so far beyond the 180 day window of time contemplated by the statute that it precluded the jurisdiction, in this case the City, any meaningful opportunity or otherwise to investigate the issue alleged to then determine based upon the investigation the meritoriousness of the problem alleged and the nature of the defect.**
>
> Because substantial compliance is a condition precedent to [Mr. Coleman]'s ability to file and maintain a suit, and for the reasons I've just stated, this Court disagrees with [the first circuit court judge], respectfully. . . . **[T]his Court specifically finds that it's [Mr. Coleman]'s duty to provide the notice. It's not anyone else's, it's not any other entities[']notice, it is under the statute it is [Mr. Coleman]'s duty to provide the required information of time, place, and cause of injury.**
>
> **The Court finds that [Mr. Coleman]'s notice was insufficient in as much as it did not substantially comply with the requirements of the statute. And given no substantial compliance, the Court has no alternative but to grant the [City]'s motion for summary judgment.**

(Emphasis supplied). The court's ruling on summary judgment rendered moot other matters that were before the court at that time. The court entered an order granting the

City's motion for summary judgment on June 5, 2015. Mr. Coleman filed a timely notice of appeal on June 11, 2015.

DISCUSSION

We review the circuit court's determination as to whether Mr. Coleman substantially complied with the LGTCA's notice requirement *de novo*. *Housing Auth. of Baltimore City v. Woodland*, 438 Md. 415, 428 (2014) (citing *Ellis*, *supra*, 436 Md. at 342).

I.

Substantial Compliance

Mr. Coleman argues that he substantially complied with CJP § 5-304 in that he timely provided notice of the time, place, and cause of the injury in his June 23, 2011 letter. He contends that the purpose of the LGTCA's notice requirement is to provide the municipality with sufficient information to perform a timely and proper investigation and that he fulfilled this purpose when he notified the City of the date, time, cause, and location—the westbound lane of West Patapsco Avenue—of the injury, and that this would allow the City to mount a proper and timely investigation. With the information provided, Mr. Coleman contends that the City had the opportunity to apprise itself of the nature of Mr. Coleman's injuries, inquire of local authorities concerning the accident, and learn of potential witnesses within the Baltimore City Department of Transportation, whom he alleges were aware of the pothole, as demonstrated by the fact that it was repaired soon after the accident. He maintains that there is no Maryland precedent requiring the level of specificity that the City demands. He further contends that the City has suffered no

prejudice by not being able to investigate the pothole because it been repaired by the City a few days after the accident. In sum, Mr. Coleman states that he substantially complied with the LGTCA's notice requirement because he provided the City with information concerning the time, place, and cause of the injury within 180 days.

In response, the City argues that substantial compliance is reserved for situations in which a claimant has properly provided the time, place, and cause of the injury, but has failed to comply *technically* with the LGTCA, such as by failing to send the notice via certified mail. The City contends that a finding of substantial compliance is inappropriate when a claimant's identification of the place of his injury lacked specificity. The City observes that it gave Mr. Coleman the opportunity to correct this defect by sending him the July 5, 2011 letter, but that Mr. Coleman never responded to that letter. The City maintains that it required more specific information on the location of the pothole because its liability depended on whether it had actual or constructive notice of the pothole, and there was no way for the City to determine, without more information, whether it had actual or constructive notice.

The City further contends that Mr. Coleman's arguments concerning prejudice to the City are irrelevant to the issue before this Court—because prejudice to the municipality only becomes an issue when the circuit court has found good cause to waive the LGTCA's notice requirement. The City notes that Mr. Coleman never argued in the proceedings below that there was good cause to waive the LGTCA's notice requirement. The City further argues that the burden is on a claimant to find and provide location information and

that substantial compliance does not shift the burden to the City to find the location of the incident.[8]

The LGTCA "provide[s] a remedy for those injured by local government officers and employees, acting without malice in the scope of their employment, while ensuring that the financial burden of compensation is carried by the local government ultimately responsible for the public officials' acts." *Ashton v. Brown*, 339 Md. 70, 107-08 (1995). The legislation makes local government entities liable for damages judgments for the tortious acts of their employees when acting within the scope of their employment. *Id.* However, to pursue an action against a local government entity, one must comply with the LGTCA's notice provision. *Rios v. Montgomery Cnty.*, 157 Md. App. 462, 479-80 (2014) (citing *Faulk*, 371 Md. at 304) (other citations omitted).

During the relevant time frame, the notice provision, CJP § 5-304 read, in pertinent part:

> (b) *Notice required.* –
>
> (1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.
>
> (2) The notice shall be in writing and shall state the time, place, and cause of the injury.
>
> (c) (1) The notice required under this section shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant.

[8] Both parties cite extrajurisdictional cases for support and attempt to distinguish the extrajurisdictional cases on which their opponent relies. The cases are not particularly helpful because they address statutes that vary in material respects from the one at issue in the present case.

* * *

> (3) If the defendant local government is:
>
> (i) Baltimore City, the notice shall be given to the City Solicitor;
>
> * * *
>
> (d) *Waiver of notice requirement.* – Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.[9]

Compliance with the LGTCA's notice requirement is a condition precedent to maintaining an action covered by the LGTCA. *Faulk v. Ewing*, 371 Md. 284, 304 (2002) (citing *Grubbs v. Prince George's Cnty.*, 267 Md. 318, 320-21 (1972)).

Because Mr. Coleman does not argue on appeal that he strictly complied with the notice requirement, we assume, without deciding, that he did not strictly comply with the notice requirement of CJP § 5-304. But a claimant who has failed to strictly comply with

---

[9] The statute has been amended several time since the date of the injury in this case. In 2014, the notice deadline was changed from 180 days to one year. *See* 2015 Md. Laws, ch. 131 (H.B. 113).

Notably, in 2016, the following subsection (e) was added to the statute:

> (e) This section does not apply if, within 1 year after the injury, the defendant local government has actual or constructive notice of:
>
> (1) The claimant's injury; or
>
> (2) The defect or circumstances giving rise to the claimant's injury.

2016 Md. Laws, ch. 624 (H.B. 637). Thus—although this does not affect our case—*currently*, a claimant who did not give notice will not be barred from proceeding with a claim if the defendant local government has actual or constructive notice of the claimant's injury or the defect that gave rise to the injury, within one year of the injury.

the LGTCA's notice requirement may nonetheless still demonstrate substantial compliance by fulfilling a four-part test that the Court of Appeals has prescribed:

> (1) the plaintiff makes "some effort to provide the requisite notice"; (2) the plaintiff does "in fact" give some kind of notice; **(3) the notice "provides ... requisite and timely notice of facts and circumstances giving rise to the claim"; and (4) the notice fulfills the LGTCA notice requirement's purpose, which is "to apprise [the] local government of its possible liability at a time when [the local government] could conduct its own investigation**, i.e., while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and [the local government's] responsibility in connection with it."

Ellis, 436 Md. at 342-43 (emphasis added) (brackets in *Ellis*) (quoting *Faulk*, 371 Md. at 298-99). The Court of Appeals has explained that "[t]he touchstone of substantial compliance is whether the alleged 'notice' was sufficient to fulfill the purpose of the requirement."[10] *Faulk*, 371 Md. at 308.

In *Harris v. Hous. Auth. of Baltimore City*, this Court found that a tenant's oral notice "failed to fulfill the purpose of the requirement—which is to apprise the local government unit of its potential liability in time for it to conduct its own investigation 'while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and [the local government's] responsibility in connection with it.'" 227 Md. App. 617, 624,

[10] The LGTCA's notice requirement has another purpose—it "is intended 'to protect the municipalities and counties of the State from meretricious claimants and exaggerated claims.'" *Halloran v. Montgomery Cnty. Dep't of Pub. Works*, 185 Md. App. 171, 183 (2009) (quoting *Bartens v. Mayor and City Council of Baltimore*, 293 Md. 620, 626 (1982)).

reconsideration denied (June 7, 2016), *cert. denied*, 449 Md. 418 (2016) (quoting *Ellis*, 436 Md. at 343). *Harris* was a lead paint case in which Harris's mother stated in an affidavit, filed eight years after the fact, that upon receiving notice that Harris had elevated blood lead levels she had informed unknown employees of the Housing Authority of Baltimore City ("HABC") that she was going to sue HABC. *Id.* at 635. She gave no written notice to any employee or agent of HABC, and never identified the persons to whom she gave the oral notice. *Id.* We concluded the mother's oral notice lacked sufficient detail to satisfy the purpose of the statute to "'protect the municipalities and counties of the State from meretricious claimants and exaggerated claims.'" *Id.* (quoting *Moore v. Norouzi*, 371 Md. 154, 167 (2002).

Just as the oral notice in *Harris* certainly fulfilled the first and second requirements of the four-part substantial compliance test, so too did Mr. Coleman's June 23 letter (1) make "some effort to provide the requisite notice" and (2) did "in fact" give some kind of notice. What is at issue is whether the specificity of the location provided in Mr. Coleman's notice satisfies the third and fourth requirements: whether the notice gave requisite and timely notice of the facts and circumstances that gave rise to the claim and, most importantly in the present scenario, whether the notice fulfilled the purpose of the LGTCA's notice requirement.

The *Faulk* case is instructive. In *Faulk*, the plaintiff was involved in an accident with an employee of the Easton Utilities Commission ("EUC"). 371 Md. at 290. The EUC employee then radioed another employee, who called the police, the paramedics, and

EUC's Director of Safety, who investigated the accident on behalf of EUC. *Id.* Within the prescribed statutory notice period, counsel for the plaintiff sent a letter to the insurer of the Town of Easton, but not to the proper authority specified by the LGTCA. *Id.* The top of the letter identified the plaintiff, the EUC employee with whom the plaintiff had collided, and the date of the accident, and identified the location of the accident as "Glebe Rd., Talbot Co., MD."[11] *Id.* The body of the letter simply stated the following:

> Please be advised that this office represents the above named in the matter of personal injuries and/or property damage sustained as the result of being involved in an accident with your insured on the above captioned date.
>
> Kindly acknowledge coverage in this matter.

Id. Easton's insurer then sent a letter back stating that it did not believe that Easton would be legally liable for the incident and denied payment of the claim. *Id.* at 291. The plaintiff thereafter filed a complaint in the district court. *Id.* at 292.

The Court of Appeals granted certiorari after the district court found for the plaintiff and the circuit court reversed. *Id.* at 294-95. The Court noted that "[t]he notice requirements are intended to apprise a local government 'of its possible liability at a time when it could conduct its own investigation, *i.e.*, while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and its responsibility in connection with it.'" *Id.* at 298-99 (some internal quotation marks omitted) (quoting *Williams v. Maynard*, 359 Md. 379, 389-90 (2000)). The Court explained, however, that even when a claimant does not comply in a

[11] Glebe Road in Talbot County is approximately two miles long.

technical manner with the statute's terms, the claimant's suit may proceed if claimant substantially complies with the notice requirement by fulfilling its purpose. *Id.* at 299.

The Court observed that the notice provided did not strictly comply with the LGTCA's notice requirement because it was not sent via certified mail and it was not sent to the corporate authorities of Easton. *Id.* at 306. Concerning whether the notice's substance—the time, place, and cause of the injury—would suffice for the LGTCA's notice requirement, the Court opined:

> **It is debatable whether the content of the letter fully informs the addressee as to the** "time" (although a date is supplied), **"place" (some unspecified point along "Glebe Rd., Talbot Co., MD")**, or "cause of the injury" (advising only of an "accident," without regard to whether it involved a motor vehicle or vehicles, an open hole, or any other operative modality).

Id. at 306-07.

Because it was not necessary to reach the issue, the Court did not decide whether the notice strictly complied with CJP § 5-304. *Id.* at 306-08. Instead, the Court held that the plaintiff had substantially complied with CJP § 5-304. *Id.* at 308-09. The Court determined that the plaintiff made "'some effort'" to comply with the notice requirement and that the notice the insurer received "contain[ed] apparently sufficient information about the accident to enable a timely investigation to occur and notif[ied the insurer] that [the plaintiff] expected some type of compensation from its insured, the Town of Easton, for his personal injuries and property damage." *Id.* at 307 (quoting *Moore*, 371 Md. at 307). Most importantly, the Court observed that, by the insurer's own admission, it was able to conduct an investigation concerning the accident because of the letter. *Id.* at 307-08.

Just as it was "debatable" whether the letter in *Faulk* fully informed the local government of the time, place, and cause of the injury, *id.* at 306-07, here that question is also debatable—meaning that it is a borderline case. Unlike the *Faulk* notice, the notice was sent via certified mail to the correct entity, the City Solicitor. We observe that the notice in the current case is also more specific as to time, in that it pinpointed the time of day, unlike the notice in *Faulk*. Where Mr. Coleman falters, however, is the notice's statement of the location of the accident. On this point, the *Faulk* notice is certainly more specific because Glebe Road is a 2-mile stretch of road—in a rural area, whereas West Patapsco Avenue is 3 miles long—in a city.[12] Further to the point, the dispositive distinction between the two cases is that the insurer in *Faulk* **was able to and did mount an investigation based on the plaintiff's notice** (and in fact acknowledged this), *id.* at 307-08, whereas the City, in the case *sub judice*, sent Mr. Coleman a letter specifically requesting the information that it needed to investigate his case, to which Mr. Colman never responded. In these circumstances, we cannot say that Mr. Coleman's June 23 letter fulfilled the purpose of the LTCA.

The substantial compliance vertex moves with the facts of each case. The time and location parameters are defined by the purpose of the notice requirement, which is to apprise the local government unit in time for it to conduct its own investigation in a timely manner. *See Moore*, *supra*, 371 Md. at 167; *Faulk*, 371 Md. at 308. Each substantial

[12] It is also clear that W. Patapsco Avenue, a three-mile, congested, road in Baltimore City, is also heavier trafficked than the average road in Talbot County.

compliance case requires its own analysis as to whether the substance of the notice is sufficient to fulfill the purpose of the LGTCA. The substance of what would fulfill the purpose of the LGTCA in sparsely populated Talbot County would not necessarily fulfill the purpose of the LGTCA in a densely settled commercial and residential street in Baltimore City.

Because Mr. Coleman's June 23 letter did not fulfill the purpose of the LGTCA, the City's July 5 letter requesting more information was a courtesy. It gave context to what was sufficient, and it informed Mr. Coleman that more information was needed to allow the City to conduct its investigation. In fact, it stated that the City "need[ed] to know the exact location (street address or block number) of the incident in order to conduct an investigation." Mr. Coleman did not respond to this letter. As a result, the City was not able to "'conduct its own investigation, *i.e.*, while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and [the local government's] responsibility in connection with it.'" *Ellis*, 436 Md. at 342-43 (emphasis added) (brackets in *Ellis*) (quoting *Faulk*, 371 Md. at 298-99). Based on these circumstances, we affirm the circuit court's grant of summary judgment.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.