

NO. 09-0369

IN THE SUPREME COURT OF TEXAS

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GLENN COLQUITT,  
Petitioner,

Vs.

BRAZORIA COUNTY,  
Respondent.

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**RESPONSE TO PETITION**

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**TEX. GOV’T CODE ANN.**, § 311.034 (Vernon 2007).....3, 4, 5, 6, 7

## ***STATEMENT OF THE CASE***

On March 9, 2006, Glenn Colquitt, petitioner in the current action, appellee in the court of Appeals and petitioner in the trial court filed suit against Brazoria County, respondent in the current action, appellant in the Court of Appeals and defendant in the trial court.

The suit was filed in the 412<sup>th</sup> Judicial District Court of Brazoria County; the Honorable Judge W. Edwin Denman presiding. Petitioner sued respondent for negligence and premises liability claims under the Texas Tort Claims Act.

On March 12, 2008, the 412<sup>th</sup> District Court, Honorable W. Edwin Denman presiding, issued a letter opinion, in which he made a finding that the filing of a lawsuit satisfied the notice requirement. The court signed the formal order denying the respondent's Plea to the Jurisdiction and Motion to Dismiss on March 14, 2008.

Brazoria County filed an interlocutory accelerated appeal which was heard by the Fourteenth Court of Appeals. Brazoria County was the appellant and Glenn Colquitt was the appellee.

The panel that decided the case was composed of Justices Anderson, Frost, and Hudson with Justice Anderson authoring the opinion. The Court rendered its judgment and issued an opinion on, January 27, 2009. The opinion of the court of appeals can be found at ***Brazoria County v. Glenn Colquitt***, 282 S.W.3d 582.

The Fourteenth Court of Appeals reversed and rendered the trial court's order, finding that: (1) appellant did not received the notice required by **TEX. CIV. PRAC. & REM CODE § 101.101(c)**(Vernon 2007); (2) appellant did not have actual knowledge of the information it is entitled to be given under **TEX. CIV. PRAC. & REM CODE §101.101(c)**(Vernon 2007); and (3) appellee did not fulfill the jurisdictional prerequisite to filing suit, thus the trial court did not have jurisdiction.

**REPLY TO ISSUES PRESENTED**

1. **Reply to Issue 1:** The filing of a lawsuit not later than six months after date that the incident giving rise to the claim occurred does not satisfy the statutory notice requirements for filing suit against a government entity found in **TEX. CIV. PRAC. & REM. CODE** § 101.1 (Vernon 2007) and **TEX. GOV'T CODE ANN.** § 311.034 (Vernon 2007).
  
2. **Reply to Issue 2:** There is no conflict between *Cavasos v. City of Mission*, 797 S.W.2d 268, 271 (Tex. App-Corpus Christi 1990, no writ) and *City of Dallas v. Carbajal*, 278 S.W.3d 802 (Tex. App-Dallas 2009, no pet.).
  
3. **Reply to Issue 3:** The Fourteenth Court of Appeals did not construe **TEX. GOV'T CODE ANN.** § 311.034 (Vernon 2007) to conflict with **TEX. CIV. PRAC. & REM. CODE** § 101.101 (Vernon 2007).

## ***STATEMENT OF FACTS***

The opinion of the court of appeals correctly states the facts.

## ***SUMMARY OF THE ARGUMENT***

The common meaning of a prerequisite is that one action must be completed before another can occur. The contention that the filing of a lawsuit satisfies the statutory prerequisite to suit, fails to recognize this common definition of “prerequisite” as well as incorrectly interchanges the denotation of the terms, “claim” (a right to payment) and “suit”, (a proceeding by one party against another in a court of law). It is the occurrence of a claim that gives a party the right to proceed against another in a court of law; the claim precedes the lawsuit.

## ***ARGUMENT***

**Reply to Issue 1:** The filing of a lawsuit not later than six months after the day that the incident giving rise to the claim occurred does not satisfy the statutory notice requirements for filing suit against a government entity found in **TEX. CIV. PRAC. & REM. CODE §101.1(c)**(Vernon 2007) and **TEX. GOV'T CODE ANN. § 311.034** (Vernon 2007).

There are sound reasons to begin with the plain language of a statute before resorting to rules of statutory construction. For one, it is a fair assumption that the Legislature tries to say what it means; therefore, the words it chooses should be

the surest guide to the legislative intent. *Addison v. Holly Hill Fruit Prods., Inc.*, 332 U.S. 607, 618, 64 S.Ct. 1215, 88 L.Ed. 1488(1944). The plain language of **TEX. GOV'T CODE ANN. 311.034** (Vernon 2007), is that notice of the claim is a prerequisite to filing suit. The U.S. Supreme Court defined the term “claim”, to mean a right to payment ... recognized under state law. *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 451, 127 S.Ct. 1199, 167 L.Ed.2d 178 (2007) (citations and internal quotations omitted). *Cf. Chapman v. Currie Motors, Inc.*, 65 F.3d 78 (7th Cir.1995). A suit, although not defined by statute, is a common word and common words should be interpreted as they are commonly used. *Elgin Bank v. Travis County*, 906 S.W. 2d 120, 121 (Tex. App-Austin 1995, writ denied). Black's Law Dictionary defines a “suit” as “any proceeding by a party or parties against another in a court of law.” BLACK'S LAW DICTIONARY 1475 (8th ed.2004). Thus, under the plain language of the **TEX. CIV. PRAC. & REM. 101.101(c)**(Vernon 2007) and **TEX. GOV'T CODE ANN. 311.034** (Vernon 2007), a governmental entity must receive notice of a party's right to payment (claim) prior to any proceeding by that party against the governmental entity in a court of law (suit).

### ***ARGUMENT AND AUTHORITIES***

**Reply to Issue 2:** There is no conflict between *Cavasos v. City of Mission*, 797 S.W.2d 268, 271 (Tex. App.-Corpus Christi 1990, no writ) and *City of Dallas v. Carbajal*, 278 S.W.3d 802 (Tex. App.-Dallas 2009, no pet.).

Although the court in *Carbajal*, found that the police investigation and subsequent report met the actual notice requirements of **TEX. CIV. PRAC. & REM. CODE §101.1(c)**(Vernon 2007), they limited their finding by stating, “not every police investigation will result in actual notice sufficient to satisfy section **TEX. CIV. PRAC. & REM. CODE §101.1(c)**(Vernon 2007), nor will every police report constitute evidence of such notice” *Carbajal*, 278 S.W.3d 805. The appellate court did not extend its ruling to any document, in fact, it quantified its ruling by delineating police reports specifically and narrowed the scope of those reports by stating that not all police reports would meet the notice requirement of **TEX. CIV. PRAC. & REM. CODE §101.1(c)**(Vernon 2007).

3. **Reply to Issue 3:** The Fourteenth Court of Appeals did not construe **TEX. GOV'T CODE ANN. 311.034** (Vernon 2007) to conflict with **TEX. CIV. PRAC. & REM. CODE §101.1(c)**(Vernon 2007).

**TEX. CIV. PRAC. & REM. CODE §101.1(c)**(Vernon 2007) requires that a claimant give notice of its claim to the governmental entity within six months of the incident giving rise to the claim. **TEX. GOV'T CODE ANN. 311.034** (Vernon 2007), simply further clarifies this by stating that the prerequisites (such as notice) to filing suit are jurisdictional. The Texas legislature added this language to **TEX. GOV'T CODE ANN. 311.034** (Vernon 2007) to clarify its intent regarding the relationship between statutory prerequisites to a suit and sovereign immunity. *See Tex. Dep't of Criminal Justice v. Thomas*, 263 S.W.3d

212, 217-18 (Tex. App.-Houston [1<sup>st</sup> Dist.] 2007, pet. denied). Construing that the two provisions conflict because the filing of a suit provides notice, totally fails to recognize the plain language of the **TEX. GOV'T CODE ANN. 311.034** (Vernon 2007), “statutory prerequisite to a suit”. Although not defined by statute, prerequisite necessarily implies that the requirement is to be fulfilled before a suit is filed. *County of Bexar v. Bruton*, 256 S.W.3d 345, 348 (Tex. App-San Antonio 2008, no pet.).

***PRAYER***

The plain language of the statute is clear; any party wishing to sue a governmental entity must comply with the notice provisions of the Tort Claims Act. This means they must provide notice of the claim prior to filing their lawsuit. The filing of a lawsuit is not notice of a claim.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this Response to Petition was sent to the following on this the 2<sup>nd</sup> day of July, 2009:

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