STATE OF MICHIGAN

COURT OF CLAIMS

KILGORE POINT, LLC and BIDDERGY, LLC,

Plaintiffs,

v

Case No. 25-000116-MB

MICHIGAN DEPARTMENT OF TRANSPORTATION,

Hon. Sima G. Patel

Defendant.
_____ /

OPINION AND ORDER GRANTING DEFENDANT'S 10/24/25 MOTION FOR SUMMARY DISPOSITION

Plaintiffs, Kilgore Point LLC and Biddergy LLC, filed this inverse-condemnation action against defendant, Michigan Department of Transportation, based on alleged damages caused by a road redesign and construction project. Plaintiffs did not file notice of their claim within six months of accrual as required under MCL 600.6431(4) of the Court of Claims Act (COCA). Accordingly, the Court must GRANT defendant's unopposed motion for summary disposition and DISMISS plaintiffs' action.

I. BACKGROUND

Plaintiffs are businesses operating at 1919 Kilgore Road in Kalamazoo. They alleged that between 2021 and 2024, defendant rerouted and rebuilt a portion of Kilgore Road near plaintiffs' property. Plaintiffs alleged that defendant performed the work in a negligent manner that caused repeated flooding and damage to plaintiffs' property during the project. Plaintiffs also alleged that

the redesign of their main driveway during the project rendered it unusable for their business operations. Specifically, the turning radius and elevation prevented trucks from safely turning into the lot. Plaintiffs maintained "persistent communication" with defendant seeking correction of the problems in the road construction and design but did not receive satisfactory results. They filed a "Damage Claim Notice" with defendant on November 1, 2024, outlining the various repairs made to their property and identifying the dates on which flood events occurred. Plaintiffs then filed this suit on July 14, 2025, raising a single count of inverse condemnation.

Defendant responded to the complaint with a motion for summary disposition. Defendant noted that plaintiff filed suit in Kalamazoo Circuit Court against the contractors who performed the work on defendant's behalf on December 9, 2024, but waited until July 14, 2025 to file the current action against the State entity. Defendant contended that plaintiffs did not state a legally viable inverse condemnation claim supporting summary disposition under MCR 2.116(C)(8) and did not provide timely notice of their claim supporting summary disposition under MCR 2.116(C)(7).

Plaintiffs did not respond to defendant's motion for summary disposition within 14 days pursuant to Court of Claims LCR 2.119(C)(2). The Court dispenses with a hearing on the motion.

II. ANALYSIS

MCL 600.6431(1) of the COCA provides:

> Except as otherwise provided in this section, a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards, institutions, arms, or agencies.

Subsection (3) provides an exception to this time limit, requiring a plaintiff to file a claim or notice of a claim within six months of accrual "[f]or a claim against this state for property damage or personal injuries." MCL 600.6431(4). The timely notice requirement of the COCA is a condition precedent to "successfully expose the defendant state agencies to liability," *Fairley v Dep't of Corrections*, 497 Mich 290, 298; 871 NW2d 129 (2015), and the failure to comply with the notice requirement mandates dismissal of a case, *Elia Cos, LLC v Univ of Mich Regents*, 511 Mich 66, 68; 993 NW2d 392 (2023).

In *Mays v Governor*, 506 Mich 157, 181-182; 954 NW2d 139 (2020), the Michigan Supreme Court recognized that the six-month notice period of MCL 600.6431(4) applies to inverse condemnation actions. In that case, there remained a question of fact regarding when the plaintiffs' claim accrued, *id*. at 182-186, precluding summary disposition.

There is also a question of fact in this matter regarding when plaintiffs' claims accrued. The Damage Claim Notice attached to plaintiffs' complaint indicates that the flooding issue was corrected by July 22, 2022. No date is ascribed to the improper reconstruction of plaintiffs' main driveway, but plaintiffs allege that the project ended in 2024. Plaintiffs calculated the amount of their damages in the November 1, 2024 Damage Claim Notice, and giving plaintiffs the benefit of all reasonable doubt, the filing of the Damage Claim Notice is the latest date on which plaintiffs' inverse condemnation claim could have accrued.

Plaintiffs were required to file notice of their claim at the latest by June 1, 2025, six months after submitting the Damage Claim Notice to defendant. The Court notes that the Damage Claim Notice was filed with MDOT, not the Clerk of the Court of Claims, and therefore cannot be considered notice for COCA purposes. Plaintiff's first notice of their inverse condemnation claim

for COCA purposes came when they filed their complaint on July 14, 2025. This claim was approximately six weeks beyond the COCA notice deadline. Accordingly, the open question of fact in this case cannot save plaintiffs' action. Plaintiffs did not file a claim or notice of intention to file a claim within six months of the latest possible accrual date and the Court must dismiss their action.

IT IS ORDERED:

1. The Court GRANTS defendant's motion for summary disposition under MCR 2.116(C)(7).
2. The Court DISMISSES plaintiffs' complaint in its entirety and with prejudice.
3. This is a final action resolving all issues in this case.

Date: September 3, 2026

Sima G. Patel
Judge, Court of Claims