IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MARIANAS INSURANCE COMPANY, LTD.,
Plaintiff-Appellant,

v.

COMMONWEALTH PORTS AUTHORITY,
Defendant-Appellee.

SUPREME COURT NO. CV-04-0031-GA
SUPERIOR COURT NO. 01-0269

Cite as: 2007 MP 24

Decided November 7, 2007

F. Matthew Smith, Saipan, Northern Mariana Islands, for Plaintiff-Appellant.
Douglas F. Cushnie, Saipan, Northern Mariana Islands, for Defendant-Appellee.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and JOHN A. MANGLONA, Associate Justice

CASTRO, Associate Justice:

¶ 1 Appellant Marianas Insurance Company ("MICO") appeals the trial court's decision dismissing its amended petition for judicial review. MICO sought judicial review of a Commonwealth Ports Authority ("CPA") administrative decision regarding a proposal request for an insurance brokerage contract, alleging that CPA acted tortiously in disseminating a number of MICO's documents to competitors. We hold that MICO sufficiently alleged tortious conduct in its amended petition, and, as such, the tort claim was properly before the trial court. Hence, the applicable two-year statute of limitations on MICO's tort claim was tolled the day it filed its amended petition, and we find it unnecessary to toll the statute of limitations under 1 CMC § 9112(e) or the equitable tolling doctrine. We therefore REVERSE in part[1] the judgment of the trial court, and REMAND this matter to the trial court to conduct proceedings consistent with this opinion.

I

¶ 2 In 2000, CPA was in search of a suitable insurer for its facilities and operations. As part of that process, CPA requested that insurance companies submit proposals for an insurance brokerage contract for 2001 to 2003. Several insurance companies expressed interest in submitting bids, including MICO, which previously provided insurance coverage for CPA from 1994 to 2000. On June 26, 2000, as a number of insurance companies prepared proposals, CPA's executive director sent prospective bidders a variety of documents related to MICO's previous insurance coverage. The documents included claim histories, vehicle listings, and debit, credit, and cover notes (collectively "documents"), which contained a number of terms and conditions for MICO's insurance coverage. MICO objected to the release of the documents, claiming they were both proprietary and confidential. As such, MICO claimed CPA's unauthorized dissemination of the documents harmed its ability to place a competitive bid, as it gave competitors sensitive information related to MICO's rates and trade services.

¶ 3 On September 26, 2000, CPA informed MICO that AON won the bid for the insurance contract. MICO challenged the award and submitted a formal protest to CPA. CPA's executive director, however, denied MICO's protest. Shortly thereafter, MICO timely appealed the

[1] In issuing its decision, the trial court correctly determined that because AON already completed its insurance contract with CPA, it was no longer possible to divest the contract from AON and award it to MICO, as MICO requested. Nonetheless, the trial court should have ruled on the merits of MICO's tort claim and only dismissed that portion of the petition that sought divestment of the insurance contract from AON.

decision to the CPA Appeals Committee, which subsequently denied MICO's claim. Having exhausted its administrative remedies with CPA, MICO filed a petition for judicial review with the trial court on May 9, 2001, under the Commonwealth Administrative Procedure Act ("APA"), 1 CMC §§ 9112 *et seq*. In its amended petition, filed August 27, 2001, MICO claimed, inter alia, that CPA tortiously disseminated sensitive information related to MICO's insurance coverage. It further claimed that CPA conducted a biased appeals process after MICO objected to CPA's release of the documents. Consequently, MICO requested that the trial court set aside the insurance contract awarded to AON, and instead award the contract to MICO.

¶ 4 Nearly a year after MICO filed its amended petition, the trial court had taken no action. On May 30, 2002, MICO requested a status conference with the trial court to inquire about its case. After the status conference, another year-and-a-half passed without a decision, prompting MICO to move for another status conference. In January 2004, both MICO and CPA requested a third status conference. During the status conference, MICO noted that the trial court had not heard oral arguments and that the parties were anxiously awaiting resolution of the case.

¶ 5 On March 31, 2004, the trial court held a hearing on MICO's petition. A decision, however, did not immediately follow. Finally, after a fourth and final status conference, the trial court dismissed MICO's amended petition on November 16, 2004. In dismissing MICO's amended petition, the trial court noted that AON already completed its insurance contract with CPA. As such, it was no longer possible for the trial court to divest the contract from AON and award it to MICO, as MICO requested. Since MICO's requested relief was impossible to grant, the trial court dismissed the petition as moot. In rendering its decision, the trial court acknowledged it allowed MICO's petition to "fall through the cracks." *Marianas Ins. Co. v. Commonwealth Ports Auth.*, Civ. No. 01-0269 (NMI Super. Ct. Nov. 16, 2004) (Order Dismissing Petition at 2). The trial court therefore apologized, stating it "learned a valuable lesson" in issuing its delayed order. *Id.*

¶ 6 In its order, the trial court did not reach the merits of MICO's tort claim, and instead remained silent on the issue of whether CPA's dissemination of sensitive documents relating to MICO's insurance coverage constituted tortious conduct. Although the trial court noted that its ruling did not preclude MICO from filing a civil action against CPA, the trial court stated that it did not believe MICO's petition for judicial review under the APA was the appropriate method of addressing its claims.

¶ 7 Following the trial court's order, MICO sought a tort action against CPA. However, MICO claims the statute of limitations on any potential tort claim expired while its petition languished in the trial court. Thus, on appeal, MICO argues that the trial court, in issuing its

delayed order, should have preserved MICO's rights and potential tort claim via a tolling of the statute of limitations under 1 CMC § 9112(e) of the APA.

II

¶ 8 The standard for judicial review of agency actions requires that reviewing courts give deference to agency decisions. 1 CMC § 9112(f). However, the issue on appeal does not concern the review of an agency action, but rather concerns the trial court's failure to preserve MICO's tort claim via a tolling of the statute of limitations. Therefore, the APA's deferential standard does not bind us in the immediate case. Rather, we review de novo the judicial review of an agency action. *In re San Nicolas*, 1 NMI 329, 333 (1990).

¶ 9 Although the crux of our decision relates to the preservation of MICO's tort claim under the applicable two-year statute of limitations, the issue before us is not as straightforward as it appears. After CPA disseminated a variety of documents to MICO's competitors, there was confusion as to the appropriate course of action MICO should pursue. On the one hand, principles of administrative law require that MICO, as a challenger of an agency action, exhaust all administrative remedies before pursuing a tort action in court. *Reiter v. Cooper*, 507 U.S. 258, 269 (1993). On the other hand, once MICO exhausted its administrative remedies, the trial court refused to issue a ruling on MICO's tort claim, stating it was improper to award damages for a tort as part of a petition for judicial review. *Marianas*, Civ. No. 01-0269 (NMI Super. Ct. Nov. 16, 2004) (Order Dismissing Petition at 2 n.1). Therefore, before addressing whether a tolling of the statute of limitations is warranted, we find it necessary to address the relationship between agency review and judicial review when challenging administrative actions under the APA.

Exhaustion of Administrative Remedies

¶ 10 The Commonwealth has an array of regulatory bodies and agencies that oversee a variety of commercial activities. Consequently, many commercial disputes have at least some connection to a regulated industry, thereby raising the potential for statutorily-defined administrative oversight. As a result, those challenging agency actions and decisions can, and often must, seek redress of their grievances through the agency itself, rather than through the judiciary. In such cases, administrative oversight seemingly appears in conflict with judicial oversight.

¶ 11 Over the years, however, courts created two legal doctrines in hopes of reconciling the apparent conflict: the exhaustion of administrative remedies and the primary jurisdiction doctrines. Although we find the primary jurisdiction doctrine[2] inapplicable to the present case,

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[2] Primary jurisdiction applies when a claim is "originally cognizable in the courts." *United States v. W. Pac. R.R. Co.*, 352 U.S. 59, 63-64 (1956). The doctrine applies when enforcement of a claim requires

there was confusion between the parties regarding the applicability of the exhaustion doctrine prior to MICO's petition for judicial review. We therefore review the exhaustion doctrine as it applies to the present case.

¶ 12 Exhaustion of administrative remedies is a judicially-created doctrine requiring that challengers of agency actions and decisions exhaust all administrative remedies before seeking judicial review. *Myers v. Bethlehem Shipbuilding*, 303 U.S. 41, 50-51 (1939). Where relief is available from an administrative agency, a claimant must typically pursue that avenue of redress before proceeding to litigation. *Reiter*, 507 U.S. at 269. Until that recourse is exhausted, a lawsuit is premature and must be dismissed. *Id*.

¶ 13 Exhaustion serves two important purposes. First, it protects administrative agency authority as it gives an agency "an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into . . . court." *McKart v. United States*, 395 U.S. 185, 195 (1969). Exhaustion also protects agency authority in that it discourages people from disregarding agency procedures. *Id*. Second, exhaustion promotes judicial efficiency. *Id*. Claims are generally resolved much more quickly and economically in agency proceedings than in drawn-out judicial proceedings. *Id*. Judicial economy is served by reducing court docket loads, in that a favorable decision for a claimant keeps the dispute out of the courts altogether. *Andrade v. Lauer*, 729 F.2d 1475, 1484 (D.C. Cir. 1984). But agencies also play an important fact-finding role. *McKart*, 395 U.S. at 195. When a claimant exercises the right to judicial review after exhausting the available administrative remedies, courts benefit from the existing administrative record. *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992). Likewise, judicial deference to administrative remedies promotes efficiency by ensuring a more uniform approach to issues within an agency's jurisdiction. *See Weinberger v. Bentex*, 412 U.S. 645, 654 (1973).

¶ 14 In 1993, the United States Supreme Court determined that the exhaustion doctrine was a statutory requirement for all suits brought under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, the federal equivalent of the Commonwealth's APA. *See Darby v. Cisneros*, 509 U.S. 137, 153-54 (1993) (holding that, with respect to actions brought under the APA, Congress effectively codified the doctrine of exhaustion in 5 U.S.C. § 704; also holding, however, that exhaustion continues to apply as a matter of judicial discretion in cases the APA does not cover). That same year, this Court also recognized the exhaustion doctrine as a prerequisite to proceeding to court. *Rivera v. Guerrero*, 4 NMI 79, 84 n.37 (1993). When exhausting administrative

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the "resolution of issues which, under a regulatory scheme, have been placed under the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views." *Id*.

remedies, claimants must comply with an agency's deadlines and other critical procedural rules. *Woodford v. Ngo*, 548 U.S. 81, 90-91 (2006) ("no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings"). Additionally, the exhaustion doctrine requires that claimants raise issues with the agency or lose the right to challenge those issues in court. *Unemployment Comp. Comm'n v. Aragon*, 329 U.S. 143, 155 (1946). *But see Hormel v. Helvering*, 312 U.S. 552, 556-59 (1941) (holding that although claimants waive all issues on judicial review that are not raised with the agency first, the requirement should not be given "rigid and undeviating" construction).

¶ 15 The APA provides for judicial review of final agency actions. 1 CMC § 9112(d). An aggrieved party may seek judicial review within thirty days after an administrative agency issues its final decision. *Id.* § 9112(a)-(b). Subject to several procedural requirements, any person suffering a legal wrong because of an agency action is entitled to judicial review in the trial court. *Id.* § 9112(b). Judicial review provides a broad spectrum of appellate review of agency actions, *Bowen v. Massachusetts*, 487 U.S. 879, 904 (1988), and encompasses any matter arising when an agency action is challenged in court, *Shields v. Utah Idaho Central Railroad Co.*, 305 U.S. 177 (1938). The standards for judicial review are set forth in 1 CMC § 9112(f).

¶ 16 MICO followed the admonition of both this Court and the United States Supreme Court in exhausting all administrative remedies before seeking judicial review. Unfortunately for MICO, however, its administrative exhaustion morphed into its judicial detriment. After CPA disseminated a number of MICO's sensitive documents to competitors, and awarded the insurance contract to AON, MICO began exhausting its administrative remedies. First, MICO filed a complaint with CPA's executive director, claiming CPA engaged in tortious conduct. After CPA's executive director dismissed the complaint, MICO appealed the decision to the CPA Appeals Committee. When the CPA Appeals Committee affirmed the decision of its executive director, MICO filed a petition for judicial review pursuant to Section 9112(d) of the APA, claiming CPA's actions were illegal and tortious. As a result, MICO requested that the trial court review CPA's actions, divest the insurance contract from AON, award the contract to MICO, and provide all other remedies that it deemed just and equitable.

¶ 17 When the trial court finally held oral arguments three years later, it realized that CPA's insurance contract could no longer be awarded to MICO because AON already completed the contract. *Marianas*, Civ. No. 01-0269 (NMI Super. Ct. Nov. 16, 2004) (Order Dismissing Petition at 1). As a result, the trial court dismissed the case without addressing the merits of MICO's tort claim, stating it was improper to award damages for a tort as part of a petition for judicial review. *Id*. at 2 n.1.

¶ 18 CPA contends that the trial court's dismissal of MICO's claim was proper, as MICO did not vigilantly pursue its alleged tort claim. CPA specifically argues that MICO neither alleged a tort in its amended petition for judicial review, nor filed a separate tort action in civil court. In short, CPA claims, and the trial court held, that after CPA rendered its final decision and dismissed MICO's complaint, MICO should have filed a separate tort action in addition to its petition for judicial review. CPA's arguments are unpersuasive.

¶ 19 First, contrary to CPA's claims, MICO alleged tortious conduct in both its formal protest with CPA and in its amended petition for judicial review. On October 4, 2000, MICO sent a letter to CPA's executive director, which supplemented its formal protest, alleging that CPA illegally and tortiously disseminated MICO's confidential business records. Likewise, in its amended petition for judicial review, MICO again alleged that CPA's release of its documents constituted "illegal and tortiuous [sic] conduct." Appellant's Excerpts of Record ("ER") at 57. Additionally, MICO claimed CPA released "privileged work product" and "business trade secrets," which "greatly disadvantaged MICO's competitive position . . . ." *Id.* at 49. In fact, CPA apparently had enough information to decipher a tort claim from MICO's amended petition, as CPA devoted a significant portion of its responsive brief defending against MICO's tort claims. *See* Defendant-Appellee's Responsive Br. at 7-13.

¶ 20 Second, contrary to CPA's contention and the trial court's holding, MICO was not required to file a separate civil action in addition to its petition for judicial review in order to pursue its tort claim. After CPA engaged in allegedly tortious conduct, MICO had limited options. As a challenger of an agency action, MICO could either seek redress of its grievances through the CPA, or it could find an exception to the exhaustion doctrine and file a tort action in civil court. MICO chose the exhaustion route. As such, MICO protested with CPA, and later filed a petition for judicial review, as opposed to filing a civil tort action. Under the circumstances, MICO's course of action was appropriate, as we only tepidly embrace exceptions to the exhaustion doctrine.

¶ 21 Although there are a number of narrow exceptions to the exhaustion doctrine, the United States Supreme Court determined that most exceptions fit into one of three categories. *McCarthy*, 503 U.S. at 146-49. First, a claimant may circumvent the administrative process and go directly to court when the exhaustion requirement would cause undue prejudice to a subsequent assertion of a court action. *Id*. at 146-47. For example, prejudice might result from an unreasonable or indefinite timeframe for administrative action, resulting in a conflict with a statute of limitations. *Id*. at 147. Second, an agency's lack of authority or inability to provide adequate relief may prompt an exception. *Id*. at 147-48. For instance, a claimant may forego the exhaustion

requirement when an agency lacks the institutional competence to resolve the issue in dispute, such as determining the constitutionality of a statute. *Id.*; *see also Reid v. Engen*, 765 F.2d 1457, 1461 (9th Cir. 1985) ("We may decide an issue not raised in an agency action if the agency lacked either the power or the jurisdiction to decide it."). Third, an exception may arise when the adequacy of the administrative procedure itself is challenged, as opposed to the merits of a particular decision. *McCarthy*, 503 U.S. at 148-49.

¶ 22 None of the above exceptions to the exhaustion doctrine apply to the present case. Since neither the trial court nor the individual parties claim that MICO was exempt from the exhaustion process, we find it unnecessary to discuss in-depth the inapplicability of the above exceptions. However, we do note that the second exception, which is arguably the most relevant, is inapplicable because CPA had the authority and ability to provide the relief MICO originally requested — divestment of the insurance contract from AON. MICO apparently realized that the exceptions to the exhaustion doctrine were inapplicable, as it properly exhausted its administrative remedies with CPA before seeking judicial review in accordance with Section 9112(d) of the APA. The trial court, however, held that MICO should have filed a separate civil action after CPA rendered its final decision and dismissed MICO's complaint. We disagree.

¶ 23 In *Zhang v. Commonwealth*, 2001 MP 18 ¶ 18, we determined that a plaintiff "should not be expected to commence simultaneously two separate actions, premised on the same facts, in both state and federal courts, since duplicate proceedings are inefficient, awkward and laborious." (citation and quotation omitted). We likewise find that MICO was not expected to simultaneously commence both a petition for judicial review and a tort action when the petition for judicial review alone was sufficient to resolve the dispute. Although agency decisions are afforded a certain degree of deference in accordance with 1 CMC § 9112(f), nothing would have precluded the trial court from making a ruling on the merits of MICO's tort claim during its judicial review. MICO's amended petition detailed CPA's allegedly tortious conduct, and requested that the trial court award the insurance contract to MICO, along with all other remedies the court deemed equitable. The trial court had enough information to make a ruling on the merits of MICO's tort claim. Furthermore, under the facts of this case, it seems both inefficient and counterintuitive for us to require that MICO file a separate tort action. Such a requirement would render Section 9112(d) of the APA useless while adding an unnecessary step in the administration of justice. We therefore find it puzzling that the trial court requested that MICO file a separate tort claim when the trial court had all the information it needed to issue a ruling.

¶ 24 Accordingly, we find that MICO properly exhausted its administrative remedies with CPA before filing for judicial review. The trial court, however, did not properly conduct its

judicial review, which took far too long and resulted in far too little. Thus, we now focus our attention on MICO's request that this Court toll the statute of limitations in order to preserve its tort claim.

Tolling of the Statute of Limitations

¶ 25 MICO claims CPA tortiously disseminated proprietary documents to its competitors on June 26, 2000. But after the trial court took three years to dismiss MICO's amended petition, MICO claims it could no longer file a tort claim against CPA because the applicable two-year statute of limitations expired. Therefore, MICO argues that the trial court, in issuing its delayed order, should have preserved MICO's rights and tort claim via a tolling of the statute of limitations under 1 CMC § 9112(e) of the APA.

¶ 26 Before discussing our statutory authority under Section 9112(e) of the APA, we must decide whether a tolling of the statute of limitations is even necessary. Consequently, we must determine when the statute of limitations began to run on MICO's tort claim, and whether MICO's subsequent actions tolled the applicable two-year statute of limitations.

¶ 27 In administrative law, the statute of limitations period begins to run when an agency issues a "final agency action." 1 CMC § 9112(d); *see Ga. Power Co. v. Teleport Commc'n Atlanta, Inc.*, 346 F.3d 1047, 1050 (11th Cir. 2003) ("Only final agency actions can be subject to judicial review.") Two requirements must be satisfied for an agency action to be considered final. First, the action "must mark the consummation of the agency's decisionmaking process - - it must not be of a merely tentative or interlocutory nature." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citations and quotations omitted). Second, the action "must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Id.* (citations and quotations omitted).

¶ 28 CPA rendered a final agency action on April 23, 2001, when its Appeals Committee dismissed MICO's protest, and denied that dissemination of MICO's documents constituted tortious conduct. CPA satisfied both finality requirements because the CPA Appeals Committee is the final arbiter within the agency, and because its dismissal precluded MICO from obtaining redress of its legal grievances within CPA. As such, the statute of limitations period on MICO's tort claim began to run on April 23, 2001.

¶ 29 On May 9, 2001, MICO filed a petition for judicial review. On August 27, 2001, MICO filed an amended petition claiming that CPA engaged in illegal and tortious conduct, in that CPA was not authorized to release MICO's documents, which contained privileged and sensitive business trade information. Additionally, the amended petition provided a number of facts in support of MICO's allegations. Consequently, the trial court had both the authority and the

necessary information to make a ruling on the merits of MICO's tort claim during its judicial review. MICO essentially filed a tort claim through its amended petition for judicial review approximately four months after CPA dismissed MICO's protest. Thus, the applicable two-year statute of limitations was tolled as of August 27, 2001, and the trial court is not precluded from making a ruling on the merits of MICO's tort claim. Therefore, we find it unnecessary to toll the statute of limitations under our equitable powers.

¶ 30 Nonetheless, the facts of this case are such that even if the two-year statute of limitations expired, as CPA claims, MICO is entitled to equitable relief, although not under 1 CMC § 9112(e) of the APA, as MICO requests. Section 9112(e) of the APA provides:

> When an agency finds that justice so requires, it may postpone the effective date of action taken by it pending judicial review. *On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal* from or on application for certiorari or other writ to a reviewing court, *may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.*

1 CMC § 9112(e) (emphasis added). The issue of whether this Court has the authority to toll the statute of limitations under Section 9112(e) of the APA is a matter of first impression in the Commonwealth. Indeed, the only case MICO cites in support of its argument is *Pacific Coast Federation of Fisherman's Ass'n v. Secretary of Commerce*, 494 F. Supp. 626 (N.D. Cal. 1980). In *Pacific Coast*, a group of fishermen challenged a variety of regulations restricting commercial fishing. *Id.* at 627. The fisherman sought relief under 5 U.S.C. § 705, which contains the exact wording of 1 CMC § 9112(e). *Pacific Coast*, 494 F. Supp. at 628. However, the regulations the fishermen sought to overturn provided that the regulations were subject to judicial review and that 5 U.S.C. § 705 was not applicable. *Id.* MICO argues that the district court in *Pacific Coast* could have used 5 U.S.C. § 705 to grant a tolling of the statute of limitations. This overstates the case, as the *Pacific Coast* court never addressed the issue of whether 5 U.S.C. § 705 can be used to toll the statute of limitations.

¶ 31 In fact, MICO did not present any cases where a court used 5 U.S.C. § 705 to toll the statute of limitations on an action. Rather, 5 U.S.C. § 705 is routinely used to stay the enforcement of an agency action. *See, e.g., In re GTE Serv. Corp.*, 762 F.2d 1024, 1026 (D.C. Cir. 1985) (denying petitioner's request for interim relief). Most litigants availing themselves of a judicial review under 5 U.S.C. § 705 request that the trial court halt the implementation of an agency decision so they are not harmed during the pendency of the judicial review. *See, e.g., Corning Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd.*, 562 F. Supp. 279, 280-81 (E.D. Ark.

1983) (denying plaintiff's request for interim relief). The remedy MICO currently seeks, the tolling of the statute of limitations, is accomplished through a process known as equitable tolling.

¶ 32 Although this Court has never employed the doctrine of equitable tolling, we have on several occasions recognized its validity within the Commonwealth. *See, e.g.*, *Oden v. N. Marianas Coll.*, 2003 MP 13 ¶¶ 20-25; *Zhang*, 2001 MP 18 ¶¶ 18-22. Equitable tolling "relieves a party from the bar of a limitations statute when, possessing several legal remedies, a party reasonably, and in good faith, pursues one designed to lessen the extent of his injuries or damage." *Zhang*, 2001 MP 18 ¶ 18. Equitable considerations dictate that a plaintiff should be able to proceed with a subsequent action, so long as the first action was filed within the applicable statute of limitations and the defendant, having received timely notification, suffers no unfair prejudice. *Id*. Thus, when a plaintiff has several legal remedies but only pursues one, the statute of limitations related to the unpursued remedies may be tolled under the appropriate circumstances.

¶ 33 The application of the equitable tolling doctrine depends on an assessment of three essential elements: "(1) the defendant must receive timely notice of the claims; (2) the defendant must suffer no prejudice from the delay; and (3) the plaintiff must act reasonably and in good faith." *Id*. ¶ 19. The first factor, or the timely notice requirement, means in essence that the first claim was filed within the statutorily required period. *Collier v. City of Pasadena*, 142 Cal. App. 3d 917, 924 (1983). The filing of the first claim must notify the defendant of the second claim of the need to investigate the facts forming the basis of the second claim. *Id*. The second prerequisite, or the "no prejudice to the defendant factor," amounts to a requirement that the facts of the two claims be similar enough that the defendant's investigation of the first claim will put the defendant in a position to fairly defend the second. *Id*. at 685-86. For all practical purposes, however, the defendant typically receives proper notice through the filing of the initial lawsuit, leaving the first two elements generally undisputed and the third element as the determinative factor. *Zhang*, 2001 MP 18 ¶ 19.

¶ 34 MICO satisfied the first two prongs of the test when it formally protested with CPA after AON was awarded the insurance contract, and when MICO filed its amended petition. It is undisputed that both the formal protest and MICO's amended petition were filed within the statutorily required period. Additionally, both the formal protest and the amended petition alleged the same facts in support of MICO's claim that CPA acted tortiously when it disseminated a variety of documents related to MICO's insurance coverage.

¶ 35 The third prong of the equitable tolling analysis requires that the plaintiff act in good faith and with reasonable conduct when filing the second claim. *Id.* ¶ 19. The United States

Supreme Court allowed equitable tolling when a claimant actively pursued his judicial remedies by filing a defective pleading during the statutory period. *See Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 435-36 (1965) (allowing equitable tolling where plaintiff timely filed complaint in wrong court); *see also Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 555-56 (1974) (holding that plaintiff's timely filing of a defective class action tolled the limitations period as to the individual claims of purported class members). Likewise, the United States Supreme Court tolled the statute of limitations where a complainant was induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. *See Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 235 (1959) (finding that equitable tolling is justified when adversary's misrepresentation caused plaintiff to let filing period lapse). The United States Supreme Court, however, has been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. *See Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990) (finding that equitable tolling does "not extend to what is at best a garden variety claim of excusable neglect . . . .").

¶ 36 In the present case, MICO exercised good faith and reasonable conduct throughout the exhaustion process and in filing its petition for judicial review. After CPA disseminated a number of MICO's sensitive documents to competitors and awarded the insurance contract to AON, MICO properly exhausted its administrative remedies. MICO faithfully complied with all deadlines and satisfied all of CPA's administrative requirements during the exhaustion process. When the CPA Appeals Committee rendered its final decision and dismissed MICO's formal complaint on April 23, 2001, MICO timely filed a petition for judicial review with the trial court on May 9, 2001, well within the thirty-day filing period.

¶ 37 Upon timely filing its petition for judicial review, MICO continued to pursue its tort claim despite numerous delays on the part of the trial court. In its amended petition for judicial review, MICO requested that the trial court review CPA's actions, divest the insurance contract from AON, award the contract to MICO, and provide all other remedies the court deemed equitable. Had the trial court acted promptly, it likely could have granted MICO's requested relief had it found that CPA acted tortiously. However, prompt judicial action did not occur despite MICO's diligent inquiries.

¶ 38 Following oral arguments, the trial court realized it was no longer possible to divest the insurance contract from AON and award it to MICO as the contract was already completed. The trial court therefore dismissed the petition as moot, despite the fact that the mootness issue came about because of the trial court's inaction. Thus, after plodding through the judicial review

process for three years, MICO's claim was thrown out of court because the judicial review process took too long. We find this inequitable.

¶ 39 We are mindful of the large volume of cases the trial court handles and acknowledge its limited resources. But MICO should not be punished for the numerous delays when MICO complied with all filing and procedural requirements, moved for two status conferences, and urged court action at a total of four status conferences. As such, we find that MICO satisfied the third prong of our equitable tolling analysis, as it acted in good faith and with reasonable conduct in pursuing its tort claim. We therefore find that even if the applicable statute of limitations had expired, the trial court should have preserved MICO's rights and potential tort claim via a tolling of the statute of limitations.

IV

¶ 40 For the foregoing reasons, we hold that because MICO properly alleged tortious conduct in its amended petition for judicial review, the trial court should have ruled on the merits of MICO's tort claim and only dismissed that portion of the petition that sought divestment of the insurance contract from AON. We further hold that because MICO essentially filed a tort claim through its amended petition, the applicable two-year statute of limitations was tolled the day the amended petition was filed on August 27, 2001. Thus, we find it unnecessary to toll the statute of limitations under 1 CMC § 9112(e) or the equitable tolling doctrine. The decision of the trial court is therefore REVERSED in part, and this case is REMANDED to the trial court for proceedings consistent with this opinion.

Concurring:
Demapan, C.J., Manglona, J.