



School. Ieremia was leaving the school campus with four passengers when he observed a group of 40-50 children, of which Tuavale was a part. At this time, Ieremia was driving 10-15 miles per hour in a 30-mile-per-hour zone, and was honking the horn to warn the group of his approach.

Tuavale ran about six feet into the road in a location where there was no crosswalk, apparently because he was being chased by a group of boys. The Trial Division found that Ieremia diverted his eyes from the road to speak with a passenger in his van at the moment that Tuavale ran into the road. The Trial Division concluded that Ieremia hit Tuavale with the left side of the van. Ieremia put on the brakes, but dragged Tuavale some distance, thus causing Tuavale's injuries. The Trial Division found that the van's wheels did not run over Tuavale. In the Order denying Defendants' Motion for Reconsideration, the Trial Division noted that Tuavale's angle of approach to the vehicle did not diminish the fact that Ieremia was not looking forward when he drove through a group of children.

ASG asserted that Plaintiffs' administrative claim letter (the "Letter") did not comply with American Samoa Administrative Code ("A.S.A.C.") § 43.0105, and that the Trial Division thus lacked jurisdiction over the case. The Trial Division found that it had subject matter jurisdiction because the Letter complied with administrative claim requirements. In particular, the Trial Division noted that the Letter informed ASG: that Ieremia hit Tuavale with an ASG vehicle; of the parties involved; of the date

of the accident; and of a value of the claim. The Trial Division also pointed out that the Letter contained a brief description of Tuavale's medical treatment, along with his medical records.

ASG appeals the Trial Division's findings, maintaining that the Trial Division lacked jurisdiction. ASG further maintains that even if the Trial Division had jurisdiction, the Trial Division erred in concluding that Ieremia was negligent based on the Trial Division's findings of fact.

## DISCUSSION

### I. Standard of Review

Questions of law are reviewed *de novo* by the appellate division. *Roman Catholic Diocese of Pago Pago v. Avegalio*, 20 A.S.R. 2d 70 (App. Div. Mar. 11, 1992). Findings of fact are reviewed under the clearly erroneous standard. A.S.C.A. § 43.0801(b); *TCW Special Credits v. K/V Kassandra Z*, 7 A.S.R.3d 3, 7 (App. Div. 2003). A finding of fact is erroneous when "the entire record produced the definite and firm conviction that the court below committed a mistake, according particular weight to the trial judge's assessment of conflicting and ambiguous facts." *Id.* (internal quotations omitted).

### II. Analysis

#### A. The Trial Division Had Proper Jurisdiction

ASG asserts that the Letter was insufficient as an administrative claim. ASG acknowledges that the Plaintiffs' Letter identified the parties involved, the date of the accident, gave a sum certain of \$1,000,000 in requested compensation, and

stated that the Plaintiff received medical treatment. Tuavale's medical records were provided along with the Letter. ASG maintains the Letter was not a valid administrative claim because the Letter failed to provide: the time of the incident; the address of the parties involved; names and addresses of witnesses; evidence of Tuavale's Attorney's authority to present the claim on the behalf of Plaintiff; the degree of any temporary or permanent disability; a statement of diminished earning capacity; itemized bills for medical expenses; and the necessity of any future medical treatment along with the related expected expenses. None of these alleged deficiencies are required by the GTLA, but are found in the accompanying regulations at A.S.A.C. §§ 43.0104 and 43.0105.

Under the GTLA, the High Court lacks jurisdiction over a case until a claimant has exhausted the administrative remedy set out in A.S.C.A. § 43.1205(a), which provides:

(a) An action may not be instituted upon a claim against the government for money damages for damage to or loss of property, or personal injury or death, caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment unless the claimant has first presented the claim to the Attorney General and his claim has been finally denied by the Attorney General in writing, notice of the denial sent to claimant by certified or registered mail. The failure of the Attorney General to make a final disposition of a claim within 3 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for the purposes of this section.

The presentment requirement therefore withholds jurisdiction from the courts to hear a plaintiff's claim unless the plaintiff

first presents his claim to the Attorney General, and the Attorney General denies the claim or permits three months to elapse without final disposition of the claim. See A.S.C.A. § 43.1205(a). A claim is presented when the Attorney General receives a written notification of an incident accompanied by a claim for money damages for a sum certain. See A.S.C.A. § 43.1203(c) and A.S.C.A. § 43.1205(a); see also *Soloa v. American Samoa Medical Center*, CA No. 77-07, Order Denying Motions for Summary Judgment and to Dismiss and Granting Leave to File Amended Complaint (Trial Div. March 3, 2010), and *Utu v. National Pacific Insurance Co.*, 9 A.S.R.2d 88, 92 (Trial Div. 1988) (denying ASG's motion for summary judgment where GTLA notice failed to list each claimant but nevertheless "adequately notified the government of the nature of the . . . claims"). In addition, the Administrative Code states that a claim is "deemed presented" when the Attorney General receives a written notification of an incident accompanied by a claim for money damages for a sum certain. See A.S.A.C. § 43.0103(a).

ASG relies on regulations that were promulgated pursuant to A.S.C.A. § 43.1205(b), which contains the following provision regarding the Attorney General's settlement of claims:

(b) The Attorney General shall, in accordance with regulations prescribed by the Governor, consider and determine, compromise or settle any claim for money damages against the government for damage to or loss of property, or personal injury or death, caused by the negligent or wrongful act or omission of any employee of a government agency while acting within the scope of his office or employment, under circumstances where the government, if a private person, would be liable to the claimant in accordance with the law of the place where

the act or omission occurred.

A.S.C.A. § 43.1205(b) authorizes the Attorney General to settle claims in accordance with the applicable regulations, found at A.S.A.C. §§ 43.0101-.0108. The Trial Division has previously held that "the regulations set forth in A.S.A.C. § 43.0105 do not augment the jurisdictional prerequisites set forth in A.S.C.A. § 43.1205." *Mageo v. American Samoa Gov't*, CA No. 16-05, Order Denying Defendants' Motion for Summary Judgment (Trial Div., July, 2010). The court explained that "A.S.A.C. § 43.0105 describes the regulations that govern the Attorney General's authority to settle Plaintiffs' claim - a process that is separate from the jurisdictional presentment requirement of A.S.C.A. § 43.1205."

As long as ASG has been adequately apprised of a claim against it, the GTLA's administrative claim process cannot be used to obstruct the court from exercising jurisdiction. *Crispin v. American Samoa Gov't*, 21 A.S.R.2d 60, 65-66 (Trial Div. 1992) (the GTLA's administrative claim process should not be used to obstruct judicial determinations on technicalities). This approach is consistent with the majority of federal courts of appeals' interpretation of the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 *et seq.*, and corresponding regulations. See *Lopez v. United States*, 758 F.2d 806, 809 (1st Cir. 1985); *Tucker v. United States Postal Service*, 676 F.2d 954, 959 (3d Cir. 1982); *Adams v. United States*, 615 F.2d 284, 288 (5th Cir. 1980); *Douglas v. United States*, 658 F.2d 445, 448 (6th Cir. 1981);

*Mader v. United States*, 619 F.3d 996, 1000 (8th Cir. 2010); *Warren v. United States Dep't of Interior Bureau of Land Management*, 724 F.2d 776, 780 (9th Cir. 1984); and *Bush v. United States*, 703 F.2d 491, 494-95 (11th Cir. 1983). Non-compliance with the Attorney General's settlement regulations deprives a plaintiff of the opportunity to settle the claim outside of court. However, such non-compliance cannot operate to deny the court of jurisdiction.

Each of the alleged deficiencies in Plaintiffs' Letter involves requirements under the settlement regulations, not under the jurisdictional requirement found in A.S.C.A. § 43.1205. The Letter identified the parties involved, the date of the accident, gave a sum certain of \$1,000,000 requested compensation, and stated that Tuavale received medical treatment. Further, Tuavale's medical records were provided along with the Letter. ASG was adequately apprised of the claim against it. Plaintiffs' Letter constituted an adequate claim under the GTLA. The Trial Division properly exercised jurisdiction over the case.

B. The Trial Division Properly Concluded Negligence

ASG argues that the Trial Division made inconsistent findings of fact, thereby precluding a legal conclusion of negligence. ASG maintains that the Trial Division first found that: Ieremia hit Tuavale with the left side of the vehicle; Tuavale was found under the vehicle; and the vehicle had not run over Tuavale. ASG contends that because the Trial Division stated upon reconsideration that it could not definitively say if

Tuavale was run over by the tire or approached the van from the left side, the Trial Division's findings of fact could not support its legal conclusion of negligence.

The record substantially supports the Trial Division's finding that Ieremia hit Tuavale with the side of the school van. Anthony Wiberski testified a van hit Tuavale and he saw Tuavale underneath the van. Sergeant Lui Fuifatu testified that another witness said that the vehicle's tire rolled over Tuavale. Other testimony addressed the tire marks at the scene of the accident. Contrary to ASG's assertions, the Trial Division made no new findings of fact upon reconsideration. Rather, by pointing out certain trial testimony the Trial Division rebutted ASG's argument that the evidence definitively proved Tuavale approached the van from the side or the back. Considering the record as a whole, and according appropriate weight to the Trial Division's assessment of the facts, we conclude that there was no clear error in connection with the Trial Division's findings.

The driver of a school vehicle near a school where children have gathered has the duty to "anticipate such thoughtlessness and impulsiveness in the conduct of the children . . . ."  
*Hernandez v. Murphy*, 46 Cal. App. 2d 201, 210-11 (1941). See also *Jones v. Brown*, 176 Cal. App. 2d 184, 188 (1959) ("[I]t is ordinarily necessary to exercise greater care for the protection and safety of young children than for adult persons possessing normal and mature faculties. Their conduct is unpredictable and one operating a motor vehicle should anticipate their



thoughtlessness and impulsiveness . . . ."); *Smith v. Kleinberg*, 49 Ga. App. 194 (1934) ("It being the duty of persons driving automobiles at a place . . . where they know that a crowd of people is accustomed to gather . . . especially in the case of small children in the vicinity of a school, to be vigilant and cautious in exercising under such circumstances the ordinary care which the law requires.")

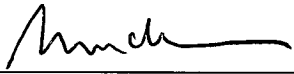
Ieremia was under a special duty as the driver of a school vehicle traveling in an area where children had gathered. Ieremia breached his duty of care when he turned his head to speak with a passenger. Ieremia's breach caused Tuavale's damages to the extent found by the Trial Division.

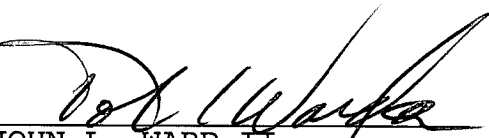
**ORDER**

For the reasons stated above, we AFFIRM.

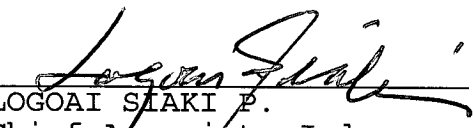
It is so ordered.


Dated: 5/1/10

  
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F. MICHAEL KRUSE  
Chief Justice

  
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JOHN L. WARD II  
Associate Justice

  
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ELVIS R. PILA PATEA  
Acting Associate Justice

  
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LOGOAI SIAKI P.  
Chief Associate Judge

  
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FA'ASUA P. POMELE  
Associate Judge