

INVOICE

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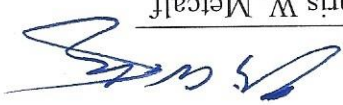
CASE NAME: Diana R. Williams vs. Maryland Occupational Safety and Health, et al.

INDICTMENT No. 24-C-03-006711

DATE(S): 4/28/04

JUDGE: Stuart R. Berger

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Chris W. Metcalf
Official Court Reporter

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

DIANA R. WILLIAMS, Plaintiff, vs. MARYLAND OCCUPATIONAL SAFETY AND HEALTH, et al., Defendants.

CASE NO. 24-C-03-006711

OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Motions Hearing)

Baltimore, Maryland

Wednesday, April 28, 2004

BEFORE:

HONORABLE STUART R. BERGER,
ASSOCIATE JUDGE

APPEARANCES:

For the Plaintiff:

DIANA R. WILLIAMS (PRO SE)

For the Defendants:

JONATHAN R. KRASNOFF, ESQUIRE

RECORDED BY: VIDEOTAPE

CHRISTOPHER W. METCALF, CWR
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P R O C E E D I N G S
(9:33 a.m.)
THE COURT: This is the matter of Diana R. Williams vs. Maryland Occupational Safety and Health, et al., case number 24-C-03-006711.

If I could have all parties please identify themselves for the record.
MS. WILLIAMS: Yes, sir. Good morning, Judge, Your Honor. My name is Diana Williams. THE COURT: Very well. Thank you, Ms. Williams.

MR. KRASNOFF: Good morning, Your Honor. Jonathan R. Krasnoff. I'm an Assistant Attorney General. I represent the Department of Labor Licensing and Regulation.
THE COURT: Very well. Thank you. Please be seated. Let me explain to you the procedure that the Court follows with respect to this docket. The hearing that's scheduled before the Court is on the 20 defendant Maryland Occupational Safety and Health 21 Compliance Unit's motion to dismiss or, in the 22 alternative, motion for summary judgment.

The way argument will go forward is, as follows: I'll allow the movant to argue the reasons why the Court should grant the motion and then, Ms. Williams, I do understand you're appearing pro se. 2 You'll have the opportunity to argue why the Court 3 should not grant the requested relief.

This Court has 12 hearings scheduled today 4 at half-hour intervals. So the hearing may only take a 5 half-hour. So each of you have ten minutes and, Mr. Krasnoff, that includes any rebuttal time that you 6 have. So each of you have ten minutes to present the 7 arguments to the Court. I have reviewed the written 8 filings that have been presented prior to today. 9 Thank you, sir. MR. KRASNOFF: Thank you, Your Honor. 10 Since you have reviewed the filings, I'm not going to 11 dwell on every little detail of the case, but I just 12 want to highlight a few of the important facts and then 13 make my arguments, for dismissal today. 14 As I mentioned at the outset, I represent 15 the Department of Labor Licensing and Regulation and 16 MOSH, the Maryland Occupational Safety and Health unit, 17 is within that department. 18 The plaintiff, Ms. Williams, has filed a 19 tort claim, a multimillion dollar tort claim against 20 MOSH essentially alleging two things: (1) that MOSH 21 mishandled or failed to pursue her MOSH discrimination 22 complaint and (2) that MOSH failed to properly perform

particular, MOSH, and it stems from a discrimination 1 complaint she filed against her former employer, and 2 under Labor and Employment Article Section 5-604, MOSH 3 has an obligation to receive such complaints of 4 discrimination based on an employee's exercise of their 5 safety and health rights under the MOSH act. 6 And what happened in this case was that 7 MOSH fully investigated the matter and essentially 8 determined that they didn't have jurisdiction to handle 9 it, and this is an important factor in this entire case 10 because what happened was the essence of the case came 11 down to this, that Ms. Williams complained about lead 12 in drinking water at the Baltimore City schools, which 13 we all know that that's been a well-publicized 14 situation, and MOSH's conclusion was that this didn't 15 have to do with occupational safety exposure; in other 16 words, it wasn't employees being exposed, it was the 17 children. Certainly, that doesn't minimize the risk or 18 the potential hazard there, but MOSH's obligation is to 19 pursue cases where there's occupational exposure to 20 hazards and an employee's exercise of rights based on 21 those hazards. 22 Eventually, what happened was Ms. Williams 23 did pursue a whistle-blower case under a Federal 24 statute, the Safe Drinking Water Act, and I'll talk

inspections in her former employer's workplace, the 1 Baltimore City School System. 2 As you may know, procedurally what 3 happened in this case is Ms. Williams had filed an 4 almost identical lawsuit that was previously dismissed 5 by Judge Matricciani. Basically, that was dismissed 6 because, at the time, although Ms. Williams had filed a 7 claim with the Treasurer's Office, the claim had not 8 yet been denied. So that action had to take place; 9 either it had to be denied or granted as a precursor to 10 this particular lawsuit. 11 THE COURT: And my understanding is she 12 has filed a claim and it has been denied by the 13 Treasurer at this point in time. 14 MR. KRASNOFF: That is correct, Your 15 Honor. It was denied on or about July 16th, 2003, and 16 we're here today on a motion to dismiss the new 17 allegations, which are essentially the same, although 18 they did include two other state defendants who have 19 been dismissed from this case because Ms. Williams did 20 not oppose their dismissal. So it would be the State 21 Department of Education and the Treasurer's Office. 22 They're no longer in this matter. 23 As I mentioned, Ms. Williams has filed a 24 96 million dollar lawsuit against the State, in

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1 about that in a little bit more detail, but as it
 2 turned out, although that case was ultimately found not
 3 in her favor, that was the appropriate statute to
 4 pursue and she pursued that at the federal level before
 5 an administrative law judge.
 6 THE COURT: And my understanding is that
 7 is presently on appeal to the 4th Circuit.
 8 MR. KRASNOFF: That's correct and I
 9 confirmed with Ms. Williams this morning that that
 10 appeal is still pending.
 11 The key inquiry in this case has to do
 12 with the letter sent August 29th, 2000, by Keith
 13 Goddard, the assistant commissioner for MOSH, where he
 14 rejected Ms. Williams' discrimination complaint. That,
 15 as I will outline to you in a few minutes, is the
 16 alleged date of injury; in other words, that is the
 17 date from which any injury Ms. Williams is alleging
 18 stems.
 19 THE COURT: And, again, the date, you said
 20 in your papers it was September 1 of 2000. You now
 21 given an August --
 22 MR. KRASNOFF: Well, yes, the letter was
 23 dated August 29th, 2000. So I have used the date
 24 September 1, on or about, because that would have been
 25 delivery within a few days.

1 THE COURT: Very well.
 2 MR. KRASNOFF: So that's really the
 3 discrepancy there. It's important to note that under
 4 5-604, the commissioner does have the discretion -- and
 5 I emphasize "discretion" -- to file suit if, after an
 6 investigation, there is a sufficient basis to do so.
 7 So the statute doesn't compel the commissioner to file
 8 suit on behalf of complainants such as Ms. Williams.
 9 In this case, the agency exercised its discretion in a
 10 manner that obviously was unfavorable for Ms. Williams,
 11 but I think it's difficult to say that that should give
 12 rise to any claim of either negligence or intentional
 13 infliction of emotional distress.
 14 Essentially, the State's argument is that
 15 there are four bases for dismissing this case. The
 16 first has to do with sovereign immunity and it's a
 17 clear-cut statutory issue. With respect to the State
 18 Government Article which gives certain plaintiffs the
 19 right to sue in tort, there's a condition precedent
 20 which, of course, is filing a claim under the Tort
 21 Claims Act within one year of the date of the injury,
 22 and, specifically, that's under Section 12-106B.1 of
 23 the State Government Article and it says "within one
 24 year after the injury to person or property that is the
 25 basis of the claim." There is no good cause exception

1 to that requirement. It's a condition precedent. And,
 2 of course, here, there is a factual dispute, or
 3 arguably a factual dispute whereas Ms. Williams is
 4 saying, "Wait a minute. I was injured the date Federal
 5 OSHA sent a letter critical of MOSH's handling of the
 6 case," and I would submit to you that that's really not
 7 the appropriate date to look at. The appropriate date
 8 of injury, based on Ms. Williams' knowledge that she
 9 felt MOSH had done something wrong was the date she was
 10 told by MOSH, "we're not going to handle your case."
 11 THE COURT: That was the July date.
 12 MR. KRASNOFF: The August 29th letter --
 13 THE COURT: The August 29th date is the
 14 date that you say applies and the way I understand from
 15 Ms. Williams is the July 2002 date.
 16 MR. KRASNOFF: 2002, right. So,
 17 obviously, if we go with the September 1, or August
 18 29th-September 1, 2000, time frame, Ms. Williams' claim
 19 is late by almost two full years. And, again, I want
 20 to emphasize -- I made the point in my brief -- that
 21 using the date of injury of when she was told by
 22 somebody else that MOSH did something wrong is
 23 analogous to waiting until a year or two after an
 24 accident investigation and somebody saying, "Oh, we're
 25 pinning blame now." Well, once that accident occurs,

1 somebody has both actual and constructive knowledge
 2 that, in fact, they were harmed, or in their own mind
 3 that they were harmed, and, in fact, that's why Ms.
 4 Williams filed the complaint with Federal OSHA.
 5 And I don't want to take time today and I
 6 didn't get into my brief the response to Federal OSHA's
 7 letter. Hopefully, we're not going to come to that.
 8 There are good, plausible explanations there, but I
 9 think it's important to note that that September 1,
 10 2000, date is the operative date. That's the date on
 11 which Ms. Williams, if she was in fact harmed as she
 12 alleges, that would be the date of harm and MOSH said,
 13 "We're not taking your case." So, clearly, the
 14 statutory provision would preclude her filing such a
 15 late complaint and that would be grounds for dismissal
 16 because sovereign immunity is still intact.
 17 The second point I want to make with
 18 respect to dismissal concerns -- let me just go back
 19 for a moment. It is in the brief. I've cited Simpson
 20 v. Moore and other cases that stand for that precedent
 21 that, in fact, it's a condition precedent, although
 22 Simpson v. Moore was when the statutory requirement was
 23 180 days rather than a year, but the same holds true
 24 today.
 25 The second reason for dismissal has to do

1 with the fact that Maryland does not recognize a
 2 negligent inspection theory. I've cited in my brief
 3 and I'll talk a little bit about this case of Willow
 4 Tree v. Prince George's County, but essentially what
 5 Ms. Williams is arguing is, "MOSH, you messed up. You
 6 messed up and you've caused me all this grief," to put
 7 it in crude terms, or resulted in emotional distress,
 8 but there's a threshold issue here of whether or not
 9 MOSH or any state agency can be held responsible on a
 10 negligent inspection theory and the Willow Tree case
 11 makes it absolutely clear that there simply is no duty
 12 owed to particular plaintiffs with respect to these
 13 general safety and health statutes.
 14 So, certainly, when you're looking at a
 15 simple negligence analysis, the threshold issue, as the
 16 court said, is is there a duty owed and the court in
 17 Willow Tree clearly concluded there is no duty owed in
 18 this specific case and there is no duty owed to perform
 19 inspections in a particular manner. In addition, there
 20 is no duty owed or obligation on the part of the
 21 commissioner to pursue a discrimination complaint.
 22 That's a purely discretionary matter. So, certainly,
 23 under Willow Tree, provides another grounds for
 24 dismissal in this case.
 25 The third basis is the fact that Ms.

1 Williams' claim, the underlying claim, is that she was
 2 suspended and then terminated for asserting her
 3 complaints about lead in the drinking water. As I
 4 mentioned at the outset, that particular charge was
 5 fully litigated before the Federal Department of Labor.
 6 An administrative law judge issued, I believe it was a
 7 45-page decision, which I attached to my motion, and
 8 specifically addressed all of the issues.
 9 THE COURT: Does the fact that the case is
 10 on appeal to the 4th Circuit affect the argument that
 11 the issues have been addressed previously by another
 12 tribunal?
 13 MR. KRASNOFF: I really don't think so,
 14 Your Honor, because no matter how that case is
 15 concluded, the position of MOSH is that was the proper
 16 remedy for her, a remedy under the Safe Drinking Water
 17 Act to complain about lead in drinking water, which was
 18 not water that was being used by employees, it was
 19 being used by children. It was a general environmental
 20 claim and the position of MOSH is that regardless of
 21 whether that case came out pro or con, those are the
 22 underlying facts and, in fact, that's why MOSH decided
 23 it did not have jurisdiction, because jurisdiction was
 24 proper under another statute.
 25 THE COURT: But that case that was before

1 the ALJ had as the respondent the Baltimore City Public
 2 Schools.
 3 MR. KRASNOFF: Correct.
 4 THE COURT: And, so, in order -- the
 5 argument, as I understand it from your filing, is that
 6 there were the same issues and, therefore, it's
 7 collaterally estopped. I follow in terms of some of
 8 the same issues, but as I understand it, her
 9 allegations in this complaint are different than what
 10 was addressed before the proceeding before the
 11 administrative law judge. That's the difficulty I'm
 12 having reconciling with the argument of collateral
 13 estoppel.
 14 MR. KRASNOFF: I understand that, Your
 15 Honor, and I think, you know, your point is well-taken.
 16 I mean, here, she's alleging that there's severe
 17 emotional distress and there's a tort that we didn't
 18 take her. She's not saying, "MOSH, I want you to take
 19 the case."
 20 THE COURT: Independent of whether or not,
 21 you know, the facts exist to satisfy the tort and
 22 that's a whole other issue. I just struggle with
 23 whether or not they're really the same issues that were
 24 addressed extensively by the administrative law judge.
 25 MR. KRASNOFF: And I think that's a fair

1 criticism. I think, you know, to the extent that that
 2 case supports the Agency's position, certainly, that
 3 they were correct in what they did -- and maybe that's
 4 the more appropriate way to use that decision -- to
 5 say, "Hey" -- I mean, this was a very difficult,
 6 complex case -- "we exercised -- we, the Agency,
 7 exercised our discretion a particular way. (A) How can
 8 that be negligence? (B) How could that possibly be
 9 intentional infliction of emotional distress?" So
 10 maybe that is the more appropriate argument to make
 11 from that and I do understand your point there, which
 12 brings me finally to the final reason for dismissal of
 13 the case.
 14 As I mention in section "D" of my brief,
 15 plaintiff's complaint fails to state the necessary
 16 facts to establish a claim for intentional infliction
 17 of emotional distress. As I'm sure the Court is well
 18 aware, there are certain specific elements of that
 19 tort: that the conduct must be intentional or reckless,
 20 the conduct must be extreme and outrageous, and there
 21 must be some causal connection between the wrongful
 22 conduct, and, finally, of course, the emotional
 23 distress must be severe.
 24 And I think, certainly, I'm not going to
 25 argue the emotional distress being severe or not.

Def says

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1 That's beyond our scope today, but, clearly, there are
2 no specifically pleaded facts in this case that would
3 lend a reasonable court to conclude that MOSH's conduct
4 was anything approaching intentional or reckless, let
5 alone extreme and outrageous; and, in fact, I would
6 submit to you that it was entirely appropriate what
7 MOSH did, despite the criticism from Federal OSHA, who
8 I fear, you know, didn't quite understand the law
9 themselves and went ahead with the case under a
10 different statute.
11 So, under that theory of recovery, I don't
12 believe the plaintiff has specifically pled the facts
13 that are necessary to allow her to recovery on that
14 basis, and for those four reasons, Your Honor, I
15 believe that the case should be dismissed in its
16 entirety with respect to the defendant, the Maryland
17 Occupational Safety and Health Agency.
18 THE COURT: Very well.
19 MR. KRASNOFF: Thank you, Your Honor.
20 THE COURT: Thank you, sir.
21 Ms. Williams, I'm happy to hear from you.
22 Mr. Krasnoff went a little bit over his time. So I'll
23 give you the same additional three minutes if you wish
24 to use that time in terms of presenting your issues.
25 Thank you.

1 MS. WILLIAMS: Good morning again, Judge,
2 Your Honor.
3 THE COURT: Good morning.
4 MS. WILLIAMS: If this Honorable Court
5 does not allow the plaintiff to have a hearing relevant
6 to the complaint alleged against the defendant, MOSH,
7 as a result of the July 10th, 2002, and July 11th, 2002
8 -- and the attachments -- investigation, findings, and
9 recommendations of Federal OSHA, then OSHA's
10 investigation, findings, and recommendations relevant
11 to the plaintiff's complaint of discrimination against
12 MOSH, namely, the Casper complaint, has no purpose and
13 is a waste of federal dollars and MOSH will have gotten
14 away with murder in that the investigation, findings,
15 and recommendations by OSHA clearly and precisely spell
16 out the fact that MOSH acted irresponsibly,
17 negligently, demonstrated instances of an appearance of
18 being biased and/or otherwise discriminating against
19 the plaintiff in relation to MOSH's investigation of
20 the complaint -- of the plaintiff's complaint against
21 Baltimore City Public Schools, and although the
22 plaintiff believed that MOSH was not handling her
23 complaint of discrimination against Baltimore City
24 Public Schools properly, the plaintiff was unlearned in
25 the procedures for ensuring that her complaint of

1 discrimination against Baltimore City Public Schools
2 was being investigated fairly and without partiality.
3 Consequently, it was only after OSHA had
4 rendered their investigation, findings, and
5 recommendation regarding the plaintiff's Casper
6 complaint MOSH that the plaintiff was truly able to
7 specify the discriminatory practices used against her
8 by MOSH.
9 THE COURT: Well, that's the key. You say
10 "truly able" at that point in time. At that point in
11 time, that was, as you allege, in July of 2002; is that
12 correct? The timing is critical to me.
13 MS. WILLIAMS: Yes, sir.
14 THE COURT: As I understand it, a letter
15 was forwarded to you from Keith Goddard sometime in
16 August, August 29th --
17 MS. WILLIAMS: Yes, sir.
18 THE COURT: -- that the Agency would not
19 pursue a claim on your behalf; is that correct?
20 MS. WILLIAMS: Yes, sir.
21 THE COURT: So, at that point in time, you
22 knew that, in fact, MOSH would not pursue a claim on
23 your behalf, did you not?
24 MS. WILLIAMS: Yes, sir.
25 THE COURT: Well, why shouldn't that be

1 the triggering date for the one-year time frame for you
2 to file with the Treasurer's Office if, in fact, you
3 are proceeding against the State?
4 MS. WILLIAMS: Okay. First of all, Judge,
5 Your Honor, I had no idea of the process of filing with
6 the Treasurer. I know ignorance of the law is no
7 excuse.
8 THE COURT: And I understand it and I
9 respect that and you're representing yourself, but in
10 that context, you're required to --
11 MS. WILLIAMS: In fact, what I did, as
12 soon as MOSH had rendered their decision, I called the
13 Federal OSHA trying to find the next process by which I
14 could deal with that and the federal investigator told
15 me that I could file the Casper complaint in terms of
16 the next level. So my presumption was that that was
17 the next phase to go through.
18 So, again, I was trying to pursue the
19 correct course. Therefore, again, that's why I used
20 their date, because I figured their findings --
21 THE COURT: When you say "their date,"
22 that is the date from the OSHA date in July of 2002
23 because that was the date, as you say, that you
24 actually -- that you truly realized the extent, but you
25 would agree that you had knowledge of the action of

1 MOSH that they would not pursue the claim on your
 2 behalf as of the August 2000 date; is that correct?
 3 MS. WILLIAMS: Oh, yes, sir, it was
 4 clearly stated in the letter. So, for me to stand here
 5 and say, no, I didn't --
 6 THE COURT: No, I understand that and I
 7 respect it. Thank you.
 8 MS. WILLIAMS: Okay. Again, therefore, in
 9 September of 2002, the plaintiff had filed her initial
 10 civil suit against MOSH, which was within the time
 11 frame, the one-year time frame.
 12 Further, if this Honorable Court does not
 13 enforce the findings and recommendations by OSHA, MOSH
 14 will continue to feel that they are above the law and
 15 is not held accountable to anyone. In other words,
 16 MOSH has yet to respond to in any way the findings and
 17 recommendations by OSHA relevant to the plaintiff's
 18 Casper complaint against MOSH. The plaintiff has yet
 19 to be made whole by MOSH, Baltimore City Public
 20 Schools, or anyone relevant to her being discriminated
 21 against and suspended without pay and terminated from
 22 her teaching position with Baltimore City Public
 23 Schools, even though the original finder of fact and
 24 OSHA concluded that Baltimore City Schools was wrong in
 25 their decision to suspend the plaintiff without pay and

1 terminate her, MOSH has completely ignored the findings
 2 and recommendations of OSHA, even though OSHA provides
 3 nearly half of the state's operating funds.
 4 MOSH is aware of the fact that OSHA does
 5 not have the authority to enforce any of their
 6 recommendations. Thus, from MOSH's perspective, they
 7 don't have to answer to anyone and, therefore, enjoy
 8 the privilege of going unpunished for the horrific
 9 injustices that they have partaken in and contributed
 10 to by causing the plaintiff to be stripped of her
 11 livelihood, caused her to drain her savings, publicly
 12 be defamed and humiliated, and to endure emotional
 13 distress and depression simply because she publicly
 14 exposed lead-based paint and/or asbestos hazards and
 15 lead-contaminated drinking water in the workplace. In
 16 fact, although the plaintiff --
 17 THE COURT: Ms. Williams, let's let the
 18 siren pass and then -- I want to make sure that all of
 19 your comments are heard by me and recorded
 20 appropriately. Thank you.
 21 MS. WILLIAMS: In fact, although the
 22 plaintiff has undergone such tremendous injustices, she
 23 continues to publicly expose specific health and safety
 24 hazards in the workplace, and on 4/14, the plaintiff
 25 filed a complaint with MOSH -- I'm sorry -- on 4/14/04,

1 the plaintiff filed a complaint with MOSH relevant to
 2 the fact that she could unequivocally prove that there
 3 is lead in the drinking water at Old Court Middle
 4 School in Baltimore County where she is presently
 5 employed. And here is Exhibit A for my --
 6 THE COURT: Has that been presented
 7 before?
 8 MS. WILLIAMS: No, this is new. I have a
 9 copy for both of you.
 10 THE COURT: Okay. You can provide it to
 11 my law clerk. Typically, I do like to receive
 12 everything with the papers in advance so that I can
 13 consider it, but go ahead.
 14 MS. WILLIAMS: I'm sorry, sir.
 15 THE COURT: That's okay.
 16 MS. WILLIAMS: I apologize.
 17 THE COURT: No problem. Thank you.
 18 MS. WILLIAMS: In a letter dated November
 19 5th, 2003, the executive director of the facilities for
 20 the Baltimore County Public Schools, Dr. Krimple
 21 (phonetic), substantiated the plaintiff's allegations
 22 that there is lead in the drinking water in Baltimore
 23 County Public Schools. And here is Exhibit B.
 24 And although the plaintiff has forwarded
 25 this document to MOSH, as well as approximately 44

1 pages of evidence to support the fact that there is
 2 lead in the drinking water at Old Court Middle School,
 3 that her employer and/or agents have continuously
 4 discriminated against her since her publicly exposing
 5 the lead paint and drinking water at the school, just
 6 as in the past, MOSH has shooed or neglected their
 7 responsibility as clearly outlined in the MOSH Act of
 8 1973, which includes properly investigating the
 9 complaint of health and safety hazards in the workplace
 10 in order to protect employees from being exposed to
 11 specific health and safety dangers.
 12 In fact, on 4/16/04, MOSH sent the
 13 plaintiff a letter which stated, and I quote, "MOSH
 14 does not have jurisdiction over the lead in the
 15 drinking water" and recommended that the plaintiff
 16 contact another state agency that is not responsible
 17 for ensuring the health and safety of employees in the
 18 workplace, namely, the Baltimore County Public Schools.
 19 The MOSH Act of 1973 states that MOSH should provide
 20 job safety and health protection for workers through
 21 the promotion of safe and healthful working conditions
 22 throughout the state and the MOSH commissioner of Labor
 23 and Industry has the primary responsibility for
 24 administering the act and issuing occupational safety
 25 and health standards; that MOSH safety and health

1 the plaintiff prays that this Honorable Court does not
 2 grant MOSH's motion to dismiss the case, but allows the
 3 case to move forward so that the plaintiff can prove to
 4 a jury of her peers that MOSH acted irresponsibly by
 5 not fulfilling the obligation to protect her from being
 6 suspended without pay and terminated from her teaching
 7 position because she was (inaudible) who publicly
 8 exposed lead-based paint and asbestos hazards and/or
 9 lead-contaminated drinking water in the workplace.
 10 Thank you, sir.
 11 THE COURT: Very well. Thank you very
 12 much.
 13 Mr. Krasnoff, if you wish to respond very
 14 briefly, I'll give you a minute.
 15 MR. KRASNOFF: Thank you, Your Honor. I
 16 won't really reiterate anything other than just for the
 17 record mention that I would object to the admission of
 18 these exhibits, in particular, the first three, only
 19 because they don't deal with this case. They deal with
 20 a complaint, obviously, that Ms. Williams has filed
 21 just recently, but other than that, you're well aware
 22 of my position and the points on which we would like to
 23 see dismissal.
 24 Thank you, Your Honor.
 25 THE COURT: Very well. Thank you. The

1 inspectors conduct job site inspections and ensure
 2 compliance with the act; that during the inspection,
 3 the representative by the employer be given an
 4 opportunity to accompany the MOSH inspector for the
 5 purpose of aiding the inspection; and that an employee
 6 has a right to file a complaint with MOSH, request an
 7 inspection if he or she believes unsafe and unhealthy
 8 conditions exist in the workplace, and that the
 9 employee may not be discharged or discriminated against
 10 in any way for filing a safety and health complaint or
 11 otherwise exercising his or her rights under the act.
 12 MOSH also cites other responsibilities.
 13 The MOSH act -- I apologize -- also cites other
 14 responsibilities of the MOSH commissioner, including
 15 issuing citations and proposing penalties against
 16 employers. Still, too, MOSH is cognizant of the fact
 17 that EPA is the federal agency that is responsible for
 18 handling issues relevant to lead in the drinking water
 19 in the workplace. Consequently, MOSH does have
 20 jurisdiction over lead-contaminated drinking water that
 21 is being consumed by employees and should have informed
 22 the plaintiff that they were going to also refer her
 23 complaint of lead in the drinking water to EPA instead
 24 of just recommending that the plaintiff refer her
 25 complaint to the Baltimore County Public Schools. And

1 Court is prepared to rule on the motion before the
 2 Court, which is presented by defendant Maryland
 3 Occupational Safety and Health Compliance Unit's motion
 4 to dismiss or, in the alternative, a motion for summary
 5 judgment.
 6 The plaintiff filed a discrimination claim
 7 alleging that she was retaliated against for informing
 8 parents of alleged lead hazards in the drinking water
 9 at a school where she has taught. The plaintiff claims
 10 that she was suspended and eventually terminated due to
 11 those actions.
 12 The defendant Maryland Occupational Safety
 13 and Health Compliance Unit is within the Maryland
 14 Department of Labor Licensing and Regulations, and they
 15 concluded that they did not have jurisdiction to
 16 address the plaintiff's discrimination complaint
 17 because it dealt with drinking fountains used by
 18 children and not the exposure of employees to workplace
 19 hazards, relying on Section 5-103 of the Maryland Labor
 20 and Employment Code in terms of its jurisdiction.
 21 The defendant moves in its motion that the
 22 Court should dismiss or, in the alternative, grant it
 23 summary judgment in this case for several reasons,
 24 including initially that the plaintiff has failed to
 25 file a tort claim against the State under Section 12-

1 here is a copy of the April 16th, 2004, MOSH's response
 2 to my complaint of lead at Old Court Middle School.
 3 In fact, in MOSH's motion to dismiss the
 4 plaintiff's complaint, MOSH erroneously stated that the
 5 plaintiff's complaint to MOSH of lead in the drinking
 6 water at Southeast Middle School in Baltimore City was
 7 concerned about students drinking lead-painted water.
 8 However, the evidence of the plaintiff's complaint of
 9 lead in the drinking water does not even mention the
 10 word "student," but specifically states that the
 11 individuals were being forced to drink lead-
 12 contaminated drinking water from the fountains at
 13 Southeast Middle School. And here's a copy of the
 14 original -- a copy of the original complaint that I
 15 sent relevant to the lead in the water in Baltimore
 16 City Schools and it doesn't even mention anything about
 17 students. It says "individuals."
 18 THE COURT: Fair enough. Ms. Williams, I
 19 am going to ask you to wrap up your remarks. I've
 20 given you five additional minutes, and as I've said,
 21 the Court has many matters and I give each matter the
 22 time period that is provided in notices that are sent
 23 out to you well in advance of the hearing. So you do
 24 need to wrap your remarks up for the Court.
 25 MS. WILLIAMS: Yes, sir. In conclusion,

1 injury to person or property that is the basis of the
 2 claim.
 3 This Court finds that to the extent there
 4 is an injury to the person or property with respect to
 5 the allegations against the Maryland Occupational
 6 Safety and Health Compliance Unit, it stems from that
 7 unit's refusal to pursue Ms. Williams' claim of
 8 discrimination under the MOSH law. That act took place
 9 when Ms. Williams was notified by a letter from Keith
 10 Godard, the assistant commissioner for the Maryland
 11 Occupational Safety and Health Compliance Unit, that
 12 the Agency would not pursue a claim on her behalf and
 13 that took place in or about the end of August, but for
 14 purposes of these proceedings, no later than September
 15 1 of 2000.
 16 In September of 2000, almost immediately
 17 after MOSH notified Ms. Williams that it would not
 18 pursue her discrimination claim, she filed a complaint
 19 with the Federal OSHA regarding the mishandling of her
 20 case by the Maryland Occupational Safety and Health
 21 Compliance Unit.
 22 In order to bring her claim here within
 23 the purview of Section 12-106B.1, the plaintiff asserts
 24 that the date of the injury or loss is July 10th of
 25 2002 when the Federal OSHA sent her a letter

1 criticizing the handling of this matter by the Maryland
 2 Occupational Safety and Health Compliance Unit.
 3 However, to the extent that the plaintiff
 4 has a claim, this Court finds under the facts asserted
 5 in this case that it arose on or about September 1 of
 6 2000, the date that she was notified by MOSH that it
 7 would not pursue her discrimination claim.
 8 I have reviewed the papers and the
 9 authorities cited by the parties. Specifically, in
 10 Simpson v. Moore at 323 Maryland 215, the Court of
 11 Appeals has found that there is no good cause excuse
 12 for failing to comply with the filing deadline of one
 13 year, which then was 180 days, which is one of the
 14 conditions precedent to the waiver of sovereign
 15 immunity and the maintenance of a claim against the
 16 State.
 17 Under this record, the Court does not
 18 condone the actions of either the MOSH or the Baltimore
 19 City Public Schools and, clearly, plaintiff is upset
 20 and justifiably so. She has undergone significant
 21 regrettable consequences in connection with this
 22 matter, but based on this Court's finding, the Court
 23 finds that as a matter of law because of a failing to
 24 file a timely claim under State Government Article
 25 Section 12-106B.1 that there is no claim upon which

1 106B.1 of the State Government Article of the Maryland
 2 Annotated Code.
 3 The defendant asserts that the plaintiff
 4 had actual knowledge of the alleged harm in August of
 5 2000 and that is the date that the time period within
 6 the statute runs, that is, the period of time of one
 7 year, for her to note her claim with the appropriate
 8 entity.
 9 Procedurally, the plaintiff's original
 10 claim alleged that MOSH mishandled the discrimination
 11 complaint filed with the Agency in 1999 and that MOSH
 12 did not adequately perform safety and health
 13 inspections in response to the numerous complaints
 14 filed by Ms. Williams. This court, Judge Matricciani,
 15 initially dismissed the claim because the State
 16 Treasury had not ruled on the claim. The State
 17 Treasury did subsequently rule on the claim and denied
 18 the plaintiff's tort claim on July 16th of 2003. As a
 19 result, the plaintiff refilled this action on September
 20 14, 2003, alleging identical facts against the Maryland
 21 Occupational Safety and Health Compliance Unit and
 22 adding further claims.
 23 The plaintiff responds by saying that OSHA
 24 has made a determination that the plaintiff was
 25 involved in a whistle-blower action and was

1 discriminated against by the school system and contends
 2 that OSHA ordered the Maryland Occupational Safety and
 3 Health Compliance Unit to reopen its investigation,
 4 which the plaintiff alleges that MOSH totally ignored
 5 OSHA's findings and recommendations to reopen the
 6 plaintiff's claim.
 7 The plaintiff further states that her
 8 claim to the State Treasury was filed timely because
 9 the findings and the recommendations of OSHA was not
 10 completed until July 10th or 11th of 2002 and that the
 11 date of the one year runs from that date, as opposed to
 12 the September 1, 2000, date, as the defendants allege.
 13 The plaintiff does acknowledge in the filings that, in
 14 fact, OSHA can only make recommendations, but cannot
 15 compel MOSH to reopen the plaintiff's case.
 16 Under the State Government Article,
 17 Section 12-106B.1, a claimant must submit a claim
 18 within one year after the injury to person or property
 19 that is the basis of the claim. The plaintiff contends
 20 that that one year runs from the July 10th, 2002, date
 21 in connection with these proceedings. The question is,
 22 in the context of the statute, when there was a date of
 23 injury or loss and when there was injury to the person
 24 or property. That's the language of the statute, that
 25 the claim must be filed within one year after the

the Government's
claimant's

1 relief can be granted as a matter of law and, so, for
 2 those reasons, the Court will grant the defendant's
 3 motion to dismiss and I'll pass an order accordingly
 4 pursuant to this Court's memorandum discussion that was
 5 discussed at the bench.
 6 Anything further at this point from any of
 7 the participants? Very well.
 8 MR. KRASNOFF: Thank you, Your Honor.
 9 THE COURT: Ms. Williams, I wish you good
 10 luck.
 11 (At 10:09 a.m., the hearing was
 12 concluded.)
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C E R T I F I C A T E

This is to certify that the proceedings in

the matter of Diana R. Williams vs. Maryland

Occupational Safety and Health, et al., 24-C-03-006711,

held on April 28, 2004, were recorded by means of

videotape.

I do hereby certify that the foregoing 30

pages constitute the official transcript as transcribed

by me from said videotaped proceedings in a complete

and accurate manner.

In Witness Whereof, I have hereunto

subscribed my name this 28th day of May, 2004.

CHRISTOPHER W. METCALF, CVR

Official Court Reporter

CHRISTOPHER W. METCALF, CVR

Official Court Reporter

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