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CITY OF SACRAMENTO



DEPARTMENT OF LAW
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DEPUTY CITY ATTORNEYS

December 7, 1982

APPROVED
BY THE CITY COUNCIL

DEC 21 1982

OFFICE OF THE
CITY CLERK

Honorable City Council
Council Chamber
City Hall
Sacramento, Ca. 95814

RE: LATE CLAIM APPLICATION OF JUSTIN KIRSCHENMANN, et al.

Members in Session:

SUMMARY AND RECOMMENDATION

The late claim application of Justin Kirschenmann was filed on November 2, 1982 for an incident which occurred on November 20, 1981. The application and accompanying claim are made on behalf of a three (3) year old minor. We recommend that the late claim application be granted.

DISCUSSION

Under the California Tort Claims Act, a late claim application on behalf of a minor must be granted if the application is made within a reasonable period not to exceed one year after the claim arose. Here the application was presented within one year. Any neglect of adults, including attorneys in not filing the application is not imputable to the minor and the issue is whether the minor exercised reasonable diligence. Here the minor is only three years old and would not therefore be held to a standard of reasonable diligence.

Very truly yours,

JAMES P. JACKSON
City Attorney

Theodore H. Kobey, Jr.
THEODORE H. KOBAY, JR.
Assistant City Attorney

RECOMMENDATION APPROVED:

Walter J. Slizer
CITY MANAGER

December 21, 1982

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CITY OF SACRAMENTO

CLAIM AGAINST PUBLIC ENTITY

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IN RE THE MATTER OF THE CLAIM OF

JUSTIN KIRSCHENMANN, et al.,

vs.

CITY OF SACRAMENTO and the
SACRAMENTO CITY POLICE DEPARTMENT

APPROVED
BY THE CITY COUNCIL

DEC 21 1982

OFFICE OF THE
CITY CLERK

TO: THE CLERK OF THE CITY OF SACRAMENTO:

JUSTIN J. KIRSCHENMANN hereby makes claim against the CITY OF
SACRAMENTO and the SACRAMENTO POLICE DEPARTMENT for the sum of \$500,000 and
makes the following statements in support of the claim.

1. Claimant's post office address is 954 Happy Court, #C, Galt,
Califorina 95632.

2. Notices concerning the claim shall be sent to DALE W. MAHON LAW
CORPORATION, 901 H Street, Suite 307, Sacramento, California 95814.

3. The date of this occurence giving rise to this claim is
November 20, 1981.

4. The circumstances giving rise to this claim are as follows:

On November 20, 1981, claimant's father, Michael Paul Kirschenmann was
involved in a fight with Wesley Otis Stallings at the Bob & Les Club located
at 2110 Del Paso Boulevard, Sacramento, Califorina. During this fight which
occurred in the bar and the surrounding property adjacent thereto, the victim,
Michael Paul Kirschenmann was stabbed by Wesley Otis Stallings.

Upon being stabbed, the victim was able to contact the SACRAMENTO
POLICE DEPARTMENT to request aide and to inform them of the assault that
occurred. A police unit was dispatched to the scene of the incident

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approximately 10 minutes later. However, at that time, despite the victim informing the SACRAMENTO POLICE DEPARTMENT that he was stabbed, no ambulance was dispatched to the scene of the incident. The patrol unit, which contained two officers whose names are unknown at this time, then interviewed and conversed with the victim, Michael Paul Kirschenmann at the scene of the crime. Thereafter, they left without giving, assisting or applying any medical attention to the victim.

It was not until 45 minutes after the police had left the scene that an ambulance did arrive to take the victim to the U.C. Davis Medical Center for medical treatment. Thereafter, on November 28, 1982, due to the injuries sustained, the victim subsequently died. Medical attention was not timely administered to the victim because of the failure of the SACRAMENTO CITY POLICE DEPARTMENT to contact the necessary ambulance service to transport the victim to the emergency facilities at a nearby hospital.

5. Claimants injuries are that for loss of support, comfort and society, since the victim, Michael Paul Kirschenmann, the father of the claimant has died.

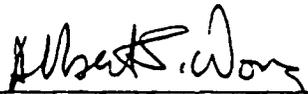
6. The names of the public employees causing the claimant's injuries are unknown at this time.

7. My claim as of the date of this claim is \$500,000.

8. The basis of computation of the amount based on the medical expenses, loss of support and maintenance, and the comfort and society of the victim, Michael Paul Kirschenmann, plus the loss of estimated future earnings that would be going to the support and care of the claimant.

All correspondence with regard to this matter should be addressed to the DALE W. MAHON LAW CORPORATION, 901 H Street, Suite 307, Sacramento, California 95814.

DATED: November 2, 1982.


ALBERT S. WONG, Attorney on behalf of Claimant

RECEIVED
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CITY OF SACRAMENTO
DECLARATION IN SUPPORT OF APPLICATION
FOR LEAVE TO PRESENT LATE CLAIM

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_____ /

I, ALBERT S. WONG, am the attorney of record for the claimant, JUSTIN KIRSCHENMANN, who is a minor child. JUSTIN KIRSCHENMANN is under 14 years of age, and was born, July 20, 1979 in Sacramento, California.

On November 20, 1981, the father of the claimant, Michael Paul Kirschenmann, was stabbed by WESLEY OTIS STALLINGS at the BOB & LES CLUB located at 2110 Del Paso Boulevard, Sacramento, California. On November 28, 1981 as a result of the injuries sustained during the stabbing, Michael Paul Kirschenmann died at the U.C. Davis Medical Center.

It was not until March 7, 1982 that the claimant's attorney was able to obtain a probation report concerning the incident surrounding the Michael Kirschenmann stabbing.

In this probation report it does not state the misconduct of the SACRAMENTO CITY POLICE that claimant now alleges to have arisen which establishes the potential liability of the City of Sacramento for the negligence of his agents, that is the police officers who responded to the scene of the crime on November 20, 1981.

On November 1, 1982, claimant's attorney Albert S. Wong had an interview with Rodney Roberts, one of the witnesses to the events at the Bob & Les Club on November 21, 1981. During this conversation it was the first time

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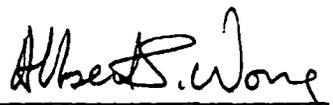
that the claimant's attorney was aware of the potential liability of the CITY OF THE SACRAMENTO and its officers and agents working for the SACRAMENTO CITY POLICE DEPARTMENT. Consequently, the claimants were unable to discover the liability of the CITY until this date. Said discovery was not due to mistake and inadvertence but due to surprise of the facts surrounding the CITY'S liability.

In addition, the claimant, JUSTIN K. KIRSCHENMANN is a minor under the age of 14 born on July 20, 1979. Consequently at this date the claimant is only three years of age and we assert that the 100 day statutory claim notice requirement should be tolled due to the minority of the claimant.

Furthermore, the victim of the stabbing, Michael Paul Kirschenmann died due to the subsequent injuries he sustained during the fight on November 20, 1981. Consequently, this is another reason for the delay in presenting this claim.

Upon learning of the potential liability of the SACRAMENTO CITY POLICE DEPARTMENT, the claimant has filed this Application for Leave to File a Late Claim pursuant to Government Code Secs. 912.4 et seq.

I declare under penalty of perjury the foregoing is true and correct.
EXECUTED at Sacramento, California this 2nd day of November, 1982.


ALBERT S. WONG
Attorney for Claimant

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CITY OF SACRAMENTO

APPLICATION TO PUBLIC ENTITY FOR LEAVE
TO PRESENT LATE CLAIM
GOV. CODE SEC. 911.4

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IN RE THE MATTER OF THE CLAIM OF

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vs.

CITY OF SACRAMENTO and the
SACRAMENTO CITY POLICE DEPARTMENT

TO: THE CLERK OF THE CITY OF SACRAMENTO:

1. Application is hereby made for leave to present a late claim under Section 911.4 of the Government Code. Claim is filed on a cause of action for wrongful death, which occurred on November 28, 1981, and for which a claim was not timely presented. For additional circumstances relating to the cause of action, a reference is made to the proposed claim attached hereto.

2. The reason for the delay in presenting this claim is, mistake, inadvertence, surprise and excusable neglect on the claimant is more particularly shown in the Declaration of Albert S. Wong attached hereto. The CITY OF SACRAMENTO was not prejudiced by the failure to timely file the claim.

3. The reason for the delay in presenting this claim is that the claimant was a minor during all of the period when the claim should have been presented as shown by the Declaration of Albert S. Wong attached hereto as Exhibit "B" and made a part hereof.

4. The reason for the delay in presenting this claim is that the person who sustained the injury described in the claim attached hereto died. The claim could not have been presented as shown by the Declaration of Albert

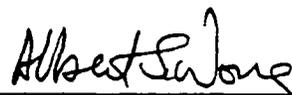
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Wong attached hereto.

5. This application is presented within a reasonable time after the accrual of the cause of action as shown by the Declaration of Albert S. Wong attached hereto.

WHEREFORE, it is respectfully requested the this Application be granted and that the attached Claim be received and acted upon in accordance with Sections 912.4 - 912.8 of the Government Code.

November 2, 1982.



ALBERT S. WONG, Attorney on
behalf of Claimant

January 4, 1983

Dale W. Mahon Law Corporation
901 H Street, Suite 307
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF JUSTIN KIRCHENMANN,
DATE OF ALLEGED INCIDENT: NOVEMBER 20, 1981

Dear Mr. Mahon:

Notice is hereby given that the following application for leave to present a late claim was allowed on December 21, 1982. Upon allowance of the late filing the City Council thereupon referred said claim to the City's claims representative, Brown Brothers Adjusters, 1451 River Park Drive, Suite 251, Sacramento, California 95815 (phone 916-920-4392), for review and recommendation. You will be advised of the claim's disposition within 45 days.

Claim submitted by you on behalf of the above named claimant in the amount of \$500,000. for alleged damages occurring when medical attention was not timely administered to claimant's father after he sustained injuries during a fight causing him to later die, and allegedly occurring on or about November 20, 1981.

Sincerely,

Lorraine Magana
City Clerk

LM/emm
cc: Risk Management (2)