



CITY OF SACRAMENTO

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DEPARTMENT OF LAW
812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

CITY MANAGER'S OFFICE
RECEIVED
SEP 18 1981

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOGITA
CHRISTINA PRIM
DEPUTY CITY ATTORNEYS

September 17, 1981
RECEIVED
BY THE COUNCIL
OFFICE OF THE
CITY CLERK

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

SEP 29 1981

RE: LATE CLAIM APPLICATION OF LORENZO HEAROD, CHRISTOPHER
HEAROD, AND BARBARA HEAROD

Honorable City Council:

SUMMARY

Lorenzo, Christopher and Barbara Hearod have applied for leave to present a late claim. We are of the opinion that the application does not fall within those circumstances under which relief must be granted.

BACKGROUND

The Hearods have applied for leave to present a late claim. The claim seeks damages allegedly suffered as a result of an automobile accident claimed to have been caused by a defective road condition.

Government Code Section 911.2 provides that a claim of this type shall be filed within 100 days of accrual of the cause of action. Applicants' cause of action accrued on November 28, 1980. The 100-day filing period expired on or about March 8, 1981. Applicants' claim was filed on March 12, 1981, only four days late.

Because it was untimely, the claim was returned to applicants' attorney, with an advisory note that a late claim application could be filed and that this should be done promptly. However, the claim was not resubmitted with a late claim application until September 8, 1981, a delay of approximately six months.

The reason given for the failure to file a timely claim is that applicants were not aware that an allegedly defective road condition existed until the other driver in the accident raised this as a defense in a separate action against her. Applicants maintain that the claim was filed shortly thereafter. No explanation is given for the six month delay in submitting the late claim application.

ANALYSIS

A person seeking to file a late claim must show both: (1) that the application was presented within a reasonable time not to exceed one year after the accrual of the cause of action (Government Code §911.4(b)); and (2), that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.6(b)(1)). In order to obtain relief on any of these grounds it must appear that the applicant acted with reasonable diligence under the circumstances (Roberts vs. State (1971) 39 Cal. 3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 Cal.App.3d 57). It does not appear to us that this standard has been met in the instant case.

Applicants apparently consulted their attorney regarding the accident well before the 100-day filing period had expired. Applicants' attorney is held to be familiar with the claim filing requirements and the procedure for presenting a late claim application. "It is not the purpose of the remedial statutes to grant relief from defaults which are the result of inexcusable neglect of parties or their attorneys in the performance of the latter's obligations to their clients." (Tammen vs. County of San Diego (1966) 66 Cal.2d 486, 478).

Based upon the facts as stated in the application it appears that the initial failure to file a timely claim may have been due to a mistake, inadvertence, surprise or excusable neglect within the meaning of Government Code Section 911.6(b)(1). However, in our opinion the six month delay in filing the late claim application was both unreasonable and inexcusable, and demonstrates a lack of due diligence in pursuing the matter. (Government Code §911.4(b); Roberts vs. State, supra).

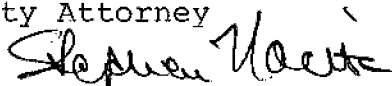
Applicants were represented by counsel. He had been advised that a late claim application could be submitted, and that if he wanted to pursue the matter he should do so promptly. Instead, six months were allowed to elapse; no facts are offered to explain or justify this delay. In our opinion this does not appear to be the conduct of a reasonably diligent person under the circumstances (Roberts vs. State, supra; El Dorado Irr. Dist. vs. Superior Court, supra).

RECOMMENDATION


For the foregoing reasons it is recommended that the application of Lorenzo, Christopher and Barbara Heard for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney


STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

RAND AND GOODCHILD
A PROFESSIONAL LAW CORPORATION
SUITE 1210
15233 VENTURA BOULEVARD
SHERMAN OAKS, CALIFORNIA 91403
(213) 907-1500 - (213) 872-2400

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CITY OF SACRAMENTO

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Attorneys for Claimants

RECEIVED

CITY ATTORNEY'S OFFICE

LORENZO HEAROD, CHRISTOPHER)	
HEAROD and BARBARA HEAROD,)	
)	APPLICATION FOR LEAVE TO
Claimants;)	PRESENT LATE CLAIM ON BEHALF
)	OF CLAIMANTS, LORENZO HEAROD,
vs.)	CHRISTOPHER HEAROD AND BARBARA
)	HEAROD (Section 911.4 of the
CITY OF SACRAMENTO, et al.,)	Government Code)
)	
Defendants.)	

TO THE CLERK OF THE CITY OF SACRAMENTO:

1. Application is hereby made pursuant to Government Code Section 911.4 for leave to present a claim founded on a cause of action for personal injuries and wrongful death of decedent, Lisa Hearod, which claim accrued on November 28, 1980, for which a claim was not presented within the 100 day period provided by Section 911.2 of the Government Code. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached to this application.

2. Through inadvertance and mistake, this claim was presented to the Clerk of the City of Sacramento, on or about the

1 102nd day following accrual of the aforesaid cause of action.

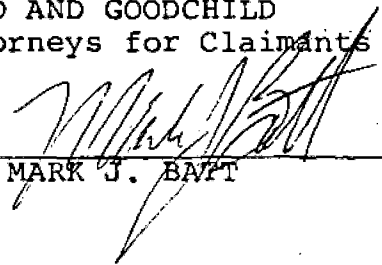
2 However, the City of Sacramento has not been prejudiced by the two-
3 day delay in filing the required claim, all is more particularly
4 shown by the attached Declaration of Mark J. Batt.

5 3. This Application is being presented within a reasonable
6 time after the accrual of this cause of action, as more particularly
7 shown by the attached Declaration of Mark J. Batt.

8 WHEREFORE, it is respectfully requested that this
9 Application be granted and the attached proposed claim be received
10 and acted upon in accordance with Sections 912.4, et seq of the
11 Government Code.

12 DATED September 3, 1981

RAND AND GOODCHILD
Attorneys for Claimants

By: 
MARK J. BATT

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DECLARATION OF MARK J. BATT

I, Mark J. Batt, declare as follows:

I am an attorney at law, duly licensed to practice before all Courts of the State of California and am associated with the law firm of Rand and Goodchild, counsel of record for the claimants herein, Lorenzo Hearod, Christopher Hearod and Barbara Hearod. The within claim relates to an occurrence which occurred on or about November 28, 1980 in the vicinity of 24th Street near Sutterville Road near Hughes Stadium in the City of Sacramento. At that time and place, an automobile went out of control on a sharp curve and struck a number of pedestrians approaching Hughes Stadium on a sidewalk. Among those pedestrians struck was the decedent, Lisa Hearod, who died within hours of the incident.

The decedent, Lisa Hearod, was seventeen years of age at the time of her death. She was the student body president of her high school and was actively employed. Of course, Lisa's death had a devastating effect upon her parents and family. Understandably, a substantial period of mourning and grief followed the incident. In fact, a substantial portion of the 100 day claim period had passed before counsel were consulted. Thereafter, investigation was commenced, which was quite extensive by reason of the aggravating nature of the incident. Interestingly, the Sacramento Police Department conducted an intensive investigation into the incident and presented the matter to the District Attorney's Office which proceeded to file a criminal complaint alleging vehicular manslaughter against the driver of the vehicle.

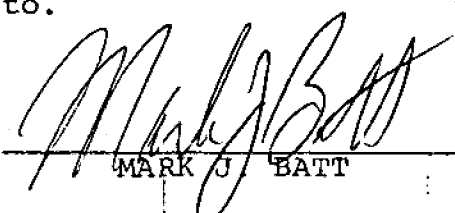
Thereafter, claimant's counsel learned that the defendant

1 driver would possibly contend in defense of the criminal action that
2 she lost control of the vehicle due to a defective and dangerous
3 condition of the roadway at or about the point of the accident.
4 That was the first indication that a dangerous condition on property
5 owned by a public entity could possibly be a proximate cause of
6 Lisa Hearod's death and other injuries asserted by these claims.
7 Immediately thereafter, on March 9, 1981, claims were prepared and
8 submitted to the City Clerk's office in Sacramento. Attached
9 hereto is a copy of said claim. Thereafter, on March 20, 1981,
10 the City Clerk responded, indicating that the claim had been received
11 on March 12, 1981, a few days after the 100 day claim period had
12 passed. A copy of that letter is attached hereto.

13 Inasmuch as claimant's have attempted to comply with the
14 provisions of Government Code Section 911.2 and did, in fact, submit
15 a claim within a few days after notice of a possible cause of
16 action against the City of Sacramento and, also, within a few days
17 after the 100 day period had lapsed, and, furthermore, inasmuch as
18 there can certainly be no prejudice to the City of Sacramento by
19 this delay because of the Sacramento Police Department and District
20 Attorney's office have conducted an extensive investigation into the
21 incident, it is respectfully submitted that there can be no preju-
22 dice shown by this responding entity and that this Application for
23 leave to present a late claim should be received and acted upon in
24 accordance with applicable provisions of the Government Code.

25 I declare under penalty perjury that the foregoing is
26 true and correct and that if called as a witness herein I could and
27 would competently testify thereto.

28 Executed on September 3, 1981
at Sherman Oaks, California.



MARK J. BATT



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

815 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

March 20, 1981

Gary Rand
Law Offices of Schermer & Rand
15233 Ventura Blvd, Suite 1210
Sherman Oaks, CA 91403

RE: LORENZO HEAROD, CHRISTOPHER HEAROD and BARBARA HEAROD, Claimants

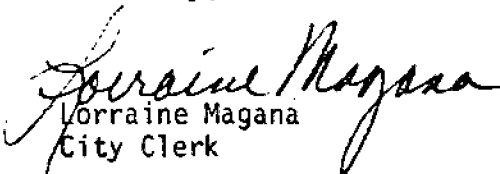
Dear Sir or Madam:

We are returning the aforementioned claim against the City of Sacramento which was received in this office on 3-12-81.

California State law requires claims against a public entity be filed within one hundred days from the date of action giving rise to the claim. The City Attorney's Office has advised us that the aforementioned claim's cause of action accrued on or before 11-28-81. Therefore, the aforementioned claim was not timely filed.

If you wish to refile this claim, you must also submit an application for leave to present a late claim stating why your claim was not timely filed. If you wish to do so, you should act promptly in order to preserve other rights under the California Government Code.

Sincerely,


Lorraine Magana
City Clerk

LM/mm

cc: City Attorney
Finance Admin (2)

Enclosure

CLERK'S OFFICE
CITY OF SACRAMENTO
1 54 PM '01

CLAIM AGAINST THE CITY OF SACRAMENTO

Lorenzo Hearod, Christopher Hearod

You are hereby notified that (1) and Barbara Hearod, whose Post Office address is (2) 3415 Grasswood Drive, El Sobrante, Ca. 94803

claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) \$excess of \$15,000.00. This claim is based upon (4)

Personal injury; () Property damage or loss; Other, specify for themselves and deceased daughter's personal injury which occurred on or about (5) 11 / 28 / 80, in the vicinity of (6) 24th Street near Sutterville Rd. Bypass under the following

circumstances: (7) Deceased (Lisa Hearod DOB: 9/2/63) was walking with friends and relatives at above location. While walking towards Hughes Stadium and at all times remaining on the northern sidewalk, a motor vehicle attempting to negotiate the 118'.27" radius curve struck a guard rail and then left the roadway and entered the sidewalk at the point the guard rail ended killing Ms. Lisa Hearod

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) while still under investigation, the public officials or employees responsible are those who have a duty to properly design roadways, post proper warning signs and protect pedestrians from known risk of harm or is unknown to the claimant.

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) medical bill from U.C. Davis Medical Center (2799.97) paramedic (bill unknown), funeral expenses (unknown), personal clothing (\$200.00), pain and suffering, loss of consortium

The amount of damages claimed as of the date of this claim is computed as follows:

Damages incurred to date (Itemized):

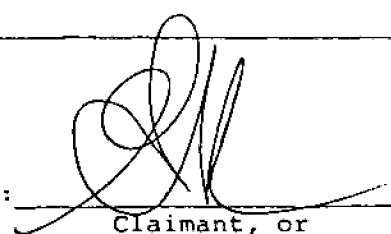
- (10) U.C. Davis Medical Center (\$2,799.97, funeral \$ 5,299.97 approximately \$2,500.00 paramedic (approx. \$150), clothing (\$200) \$ 500.00 psychiatrist, Drs. Jenkins & Hoag

Estimate prospective damages as far as known:

- (11) future medical \$ 2,000.00
- loss to family, pain and suffering \$ within Superior Court Jurisdiction
- (12) TOTAL AMOUNT CLAIMED as of presentation date of claim \$ in excess of \$15,000.00

All notices and communications with regard to this claim should be sent to claimant at (13) Gary Rand, Esq., Law offices of Schermer and Rand, Inc., 15233 Ventura Boulevard, Suite 1210, Sherman Oaks, Ca. 91403

DATED: (14) March 9, 1981

(15) SIGNED: 
Claimant, or
Attorney for Claimant
Gary Rand of Schermer and Rand, Inc.



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

September 30, 1981

Rand & Goodchild
Professional Law Corporation
15233 Ventura Boulevard, Suite 1210
Sherman Oaks, CA 91403
Attn: Mark J. Batt

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF LORENZO, BARBARA
AND CHRISTOPHER HEAROD, DATE OF ALLEGED INCIDENT: 11-28-80

Dear Mr. Batt:

You are hereby notified that your application for leave to present a late claim on behalf of Lorenzo, Barbara and Christopher Hearod was denied by the Sacramento City Council on September 29, 1981.

The application was reviewed and duly considered. The reasons given for the failure to file a claim within the time period provided by the California Government Code were determined to be insufficient, and did not meet the requirements of the Code for relief from the claim filing requirements.

Accordingly, I must inform you that your application is rejected.

Sincerely,


Lorraine Magana
City Clerk

LM/mm/28
cc: City Attorney

WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.5 (Claims Presentation Requirement). See Government Code Section 946.6. Such a petition must be filed with the court within six months of the date your application for leave to present a late claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

RAND AND GOODCHILD
A PROFESSIONAL LAW CORPORATION
SUITE 1210
15233 VENTURA BOULEVARD
SHERMAN OAKS, CALIFORNIA 91403
(213) 907-1500 - (213) 872-2400

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Attorneys for Claimants

LORENZO HEAROD, CHRISTOPHER HEAROD and BARBARA HEAROD,
Claimants,
vs.
CITY OF SACRAMENTO, et al.,
Defendants.

APPLICATION FOR LEAVE TO PRESENT LATE CLAIM ON BEHALF OF CLAIMANTS, LORENZO HEAROD, CHRISTOPHER HEAROD AND BARBARA HEAROD (Section 911.4 of the Government Code)

TO THE CLERK OF THE CITY OF SACRAMENTO:

1. Application is hereby made pursuant to Government Code Section 911.4 for leave to present a claim founded on a cause of action for personal injuries and wrongful death of decedent, Lisa Hearod, which claim accrued on November 28, 1980, for which a claim was not presented within the 100 day period provided by Section 911.2 of the Government Code. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached to this application.

2. Through inadvertance and mistake, this claim was presented to the Clerk of the City of Sacramento, on or about the

*Council
away
9-29-81*

1 102nd day following accrual of the aforesaid cause of action.
2 However, the City of Sacramento has not been prejudiced by the two-
3 day delay in filing the required claim, all ~~as~~ more particularly
4 shown by the attached Declaration of Mark J. Batt.

5 3. This Application is being presented within a reasonable
6 time after the accrual of this cause of action, as more particularly
7 shown by the attached Declaration of Mark J. Batt.

8 WHEREFORE, it is respectfully requested that this
9 Application be granted and the attached proposed claim be received
10 and acted upon in accordance with Sections 912.4, et seq of the
11 Government Code.

12 DATED September 3, 1981

13 RAND AND GOODCHILD
14 Attorneys for Claimants

15 By: 
16 MARK J. BATT

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DECLARATION OF MARK J. BATT

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The decedent, Lisa Hearod, was seventeen years of age at the time of her death. She was the student body president of her high school and was actively employed. Of course, Lisa's death had a devastating effect upon her parents and family. Understandably, a substantial period of mourning and grief followed the incident. In fact, a substantial portion of the 100 day claim period had passed before counsel were consulted. Thereafter, investigation was commenced, which was quite extensive by reason of the aggravating nature of the incident. Interestingly, the Sacramento Police Department conducted an intensive investigation into the incident and presented the matter to the District Attorney's Office which proceeded to file a criminal complaint alleging vehicular manslaughter against the driver of the vehicle.

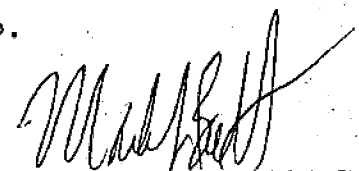
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8 submitted to the City Clerk's office in Sacramento. Attached
9 hereto is a copy of said claim. Thereafter, on March 20, 1981,
10 the City Clerk responded, indicating that the claim had been received
11 on March 12, 1981, a few days after the 100 day claim period had
12 passed. A copy of that letter is attached hereto.

13 Inasmuch as claimant's have attempted to comply with the
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15 a claim within a few days after notice of a possible cause of
16 action against the City of Sacramento and, also, within a few days
17 after the 100 day period had lapsed, and, furthermore, inasmuch as
18 there can certainly be no prejudice to the City of Sacramento by
19 this delay because the Sacramento Police Department and District
20 Attorney's office have conducted an extensive investigation into the
21 incident, it is respectfully submitted that there can be no preju-
22 dice shown by this responding entity and that this Application for
23 leave to present a late claim should be received and acted upon in
24 accordance with applicable provisions of the Government Code.

25 I declare under penalty perjury that the foregoing is
26 true and correct and that if called as a witness herein I could and
27 would competently testify thereto.

28 Executed on September 3, 1981
at Sherman Oaks, California.



MARK J. BATT



CITY OF SACRAMENTO

LORRAINE MAGANA
CITY CLERK

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

March 20, 1981

Gary Rand
Law Offices of Schermer & Rand
15233 Ventura Blvd, Suite 1210
Sherman Oaks, CA 91403

RE: LORENZO HEAROD, CHRISTOPHER HEAROD and BARBARA HEAROD, Claimants

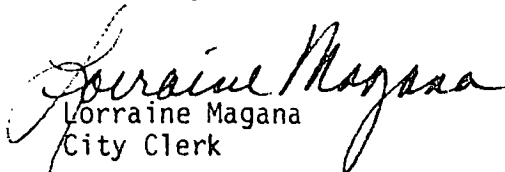
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If you wish to refile this claim, you must also submit an application for leave to present a late claim stating why your claim was not timely filed. If you wish to do so, you should act promptly in order to preserve other rights under the California Government Code.

Sincerely,


Lorraine Magana
City Clerk

LM/mm

cc: City Attorney
Finance Admin (2)

Enclosure

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CLERK'S OFFICE
CITY OF SACRAMENTO
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CLAIM AGAINST THE CITY OF SACRAMENTO

Lorenzo Hearod, Christopher Hearod

You are hereby notified that (1) and Barbara Hearod, whose Post

Office address is (2) 3415 Grasswood Drive, El Sobrante, Ca. 94803

claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) ~~excess of~~ \$15,000.00. This claim is based upon (4)

Personal injury; () Property damage or loss; Other, specify for themselves and deceased daughter's personal injury which occurred on or about (5) 11 / 28 / 80, in the vicinity of (6) 24th Street near Sutterville Rd. / Bypass under the following

circumstances: (7) Deceased (Lisa Hearod DOB: 9/2/63) was walking with friends and relatives at above location. While walking towards Hughes Stadium and at all times remaining on the northern sidewalk, a motor vehicle attempting to negotiate the 118'.27" radius curve struck a guard rail and then left the roadway and entered the sidewalk at the point the guard rail ended killing Ms. Lisa Hearod

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) while still under investigation, the public officials or employees responsible are those who have a duty to properly design roadways, post proper warning signs and protect pedestrians from known risk of harm or is unknown to the claimant.

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) medical bill from U.C. Davis Medical Center (2799.97) paramedic (bill unknown), funeral expenses (unknown), personal clothing (\$200.00), pain and suffering, loss of consortium

The amount of damages claimed as of the date of this claim is computed as follows:

Damages incurred to date (Itemized):

(10) U.C. Davis Medical Center (\$2,799.97, funeral \$ 5,299.97 approximately \$2,500.00 paramedic (approx. \$150), clothing (\$200) \$ 500.00 psychiatrist, Drs. Jenkins & Hoag

Estimate prospective damages as far as known:

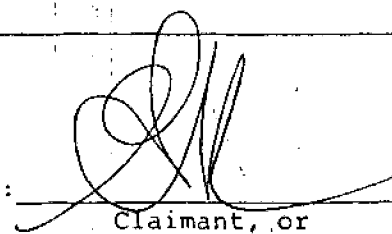
(11) future medical \$ 2,000.00
loss to family, pain and suffering \$ within Superior Court Jurisdiction

(12) TOTAL AMOUNT CLAIMED as of presentation date of claim \$ in excess of \$15,000.00

All notices and communications with regard to this claim should be sent to claimant

at (13) Gary Rand, Esq., Law offices of Schermer and Rand, Inc., 15233 Ventura Boulevard, Suite 1210, Sherman Oaks, Ca. 91403

DATED: (14) March 9, 1981

(15) SIGNED: 
Claimant, or
Attorney for Claimant
Gary Rand of Schermer and Rand, Inc.