



DEPARTMENT OF LAW
812 TENTH STREET SACRAMENTO, CA 95814
SUITE 201 TELEPHONE (916) 449-5346

CITY OF SACRAMENTO MANAGER'S OFFICE

RECEIVED

NOV 23 1983

15A

JAMES P. JACKSON
City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
DIANE B. BALTER
RICHARD F. ANTOINE
Deputy City Attorneys

November 18, 1983

Honorable City Council
Council Chamber
City Hall
Sacramento, CA 95814

APPROVED
BY THE CITY COUNCIL

DEC 6 1983

claim denied

OFFICE OF THE
CITY CLERK

Re: LATE CLAIM APPLICATION OF JAMES H. HEDBERG

Members in Session:

SUMMARY

James H. Hedberg has applied for leave to present a late claim. We are of the opinion that his application does not fall within those circumstances under which relief must be granted.

BACKGROUND

Mr. Hedberg's claim seeks recovery for damages to his automobile suffered when he struck a center divider on Howe Avenue, that was of "poor design."

Government Code Section 911.2 provides that a claim for personal injury or property damage shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on November 25, 1982, and the 100-day filing period expired on or about February 28, 1983. The claim was filed on October 27, 1983. His late claim application was presented on November 14, 1983.

The application states that a timely claim was not filed for the novel reason: Mr. Hedberg elected to drive his automobile for a period of time after its repairs to determine if it was properly repaired before presenting a claim to the City.

ANALYSIS

A person seeking to file a late claim must show 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 v. State (1971) 39 C.A.3d 844; El Dorado Irr. Dist. v. Superior Court (1979) 98 C.A.3d 57). It does not appear to us that this standard has been met in the instant case.

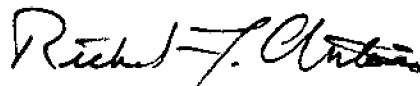
"A deliberate decision not to comply with the claims statutes cannot be considered 'mistake, inadvertence, surprise or excusable neglect'" Rivera v. City of Carson (1981) 117 C.A.3d 718.

RECOMMENDATION

For the foregoing reasons, it is recommended that the application of Mr. Gibson for leave to present a late claim be denied.

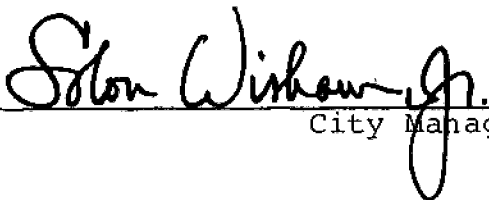
Very truly yours,

JAMES P. JACKSON
City Attorney



RICHARD F. ANTOINE
Deputy City Attorney

RECOMMENDATION APPROVED:



City Manager

RFA:cac

L A T E C L A I M

DATE RECEIVED	CLAIMANTS' NAMES	DATE OF LOSS	RECEIVED		DATE COUNCIL DENIED	DATE COUNCIL GRANTED	ACKN LETR DATE SENT	R.M. 3545 MEMO	FOLLOW-UP		REJECT BY OP OF LAW	DATE SETTLED
			MAIL	PER.					35 DAYS	45 DAYS		
4-1-83	<i>Bruce Nelson</i>	4-26-82		X	4-26-83				6-5-83	6-15-83		
4-26-83	<i>Tommye Leubita & Joyce Overham</i>	4-27-82		X	5-31-83				5-31-83	6-10-83		
4-29-83	<i>Michael K. Harrison</i>	6-22-82		Y	5-31-83				6-3-83	6-13-83		
4-29-83	<i>Michael K. Harrison</i>	5-1-82		Y	5-31-83				6-3-83	6-13-83		
4-29-83	<i>Jason Layton, Wade Layton, Chris Vermont Layton</i>	2-22-83		Y		5-31-83			6-3-83	6-13-83		
5-5-83	<i>Reemaria Ford Inal (Barry Garland)</i>	1-1-82		Y	5-31-83				6-9-83	6-19-83		
5-11-83	<i>Daniel J. Yee</i>	1-19-82		Y					6-15-83	6-25-83		
[REDACTED SECTION]												
7/22/83	MARTIN E. ESTHER OSEGUERA	5/31/82			9-6				8/26/83	9/5/83		
7/25/83	TOM & PERRY PANTELOPOULOS	3/06/83			9-6				8/29/83	9/8/83		
** 7/29/83	CITIZENS UTILITIES CO. OF CALIF.	2/17/83		X					9/2/83	9/12/83		
9-19-83	SANDRA GAYE GEORGE	9-27-83		X	10-11-83 (16)							
9-16-83	ROSE MARIE ZIESMER	3-5-83	X						10/21/83	10/31/83		
9/22/83	EDNA C. DENTON	10/4/82		X	10-11-83 (10)							
10/5/83	ALLEN E. BENDER, INC.	4/4/81		X	10-25-83 (8)							
11/7/83	JOHN MILLER	7/7/83		X								
11/14/83	JAMES H. HEDBERG	11/25/82		X								

*PER DICK ANTOINE'S NOTE OF 5/12/83, YEE'S CLAIM RETURNED TO CURRENT CLAIM LOG SINCE IT WAS INDEED TIMELY FILED./sm)
 **PER CONVERSATION WITH DICK ANTOINE, 10/3/83 SEND THIS CLAIM THROUGH AS CURRENT/mjw

December 12, 1983

Mr. James H. Hedberg
1627 Elsdon Circle
Carmichael, CA 95608

RE: APPLICATION TO FILE A LATE CLAIM
DATE OF ALLEGED INCIDENT: NOVEMBER 25, 1982

Dear Mr. Hedberg:

You are hereby notified that your application for Leave to Present a Late Claim was denied by the Sacramento City Council on December 6, 1983.

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 your application is rejected.

Sincerely,



Anne Mason
Assistant City Clerk

AM/sml/15A

cc: City Attorney
Risk Management

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 (6) months of the date your Application for Leave to Present a Late Claim was denied.

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

file 12/06/83
(ISA)

1627 Elsdon Circle
Garmichael, CA 95608

10 November, 1983

RECEIVED
CLERKS OFFICE
CITY OF SACRAMENTO
Nov 14 10 57 AM '83

Lorraine Magana, City Clerk
City of Sacramento
City Hall, 915 I Street
Sacramento, CA 95814

Dear Ms. Magana,

In response to your letter dated November 3, 1983, I wish to refile the attached claim against the City of Sacramento which you originally received on October 27, 1983.

My application for leave to present a late claim is based upon the fact it took 84 calendar days to repair my automobile to its present condition, which is not as good as before the accident. During this period, the automobile underwent repair on three separate occasions at two different repair facilities for 28 days. After all of this, the automobile still did not "handle" as well as it did before the accident. I did not want to file a claim until I could determine what further steps to take and hence the amount of the claim. The options considered were as follows:

1. Keep the automobile as is.
2. Undertake additional repair which would have increased the amount of the claim.
3. Sell the automobile at a potential loss which could have increased the amount of the claim.

In fairness to both myself and the City of Sacramento, I elected to drive the automobile for a period of time to determine which course of action was proper. During this period, I exceeded the 100 day limit which you cited in your letter dated November 3, 1983. The 16 days remaining after 84 days of trying to get the automobile properly repaired was an inadequate period of time to determine whether to keep the automobile as is (which required driving under various conditions) or complete additional repairs (which may not have been successful) or prudently sell the automobile and then file a claim against the City of Sacramento.

The result was that, even though not satisfied, I decided to keep the automobile as is. Therefore, the amount of the attached claim is less than it would have been with either added repairs or selling the automobile, even though filed late.

I firmly believe that my reasons for late filing are sound. Furthermore, the facts concerning the accident have not been changed by late filing. Therefore, I submit that the attached claim should be considered on its merits without prejudice because of late filing.

I trust that you will agree so that this matter can be settled.

Sincerely,

James H. Hedberg
James H. Hedberg

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

1627 Elsdon Circle
Carmichael, CA 95608

RECEIVED
OFFICE OF THE MAYOR

OCT 27 2 16 PM '83

The Honorable R. Burnette Miller
Mayor, City of Sacramento
City Hall, 915 I Street
Sacramento, California 95814

OCT 27 - 83
AM PM
7 8 9 10 11 12 1 2 3 4 5 6

Dear Sir:

While traveling south on Howe Avenue on the night of November 25, 1982 at 9:00 P.M., I hit the center divider at Howe Avenue and Cadillac Drive, resulting in substantial damage to my automobile. It was, of course, dark at that time, but visibility was entirely satisfactory for normal nighttime driving. This accident occurred because the City of Sacramento was negligent in installing a divider of such poor design that it created a hazard to motorists; the City was additionally negligent in not providing warning of this hazard in the form of signs and illumination.

There was no sign on this divider, no operating reflectors or other illumination and the painted double yellow lines led directly into the divider on the night of November 25, 1982.

The City of Sacramento obviously was aware of these deficiencies because they have been corrected subsequent to that date. The basic design remains a hazard.

Because this accident resulted from negligence on the part of the City of Sacramento, I hereby demand payment in the amount of \$910.70 to cover my loss caused by this negligence.

Your prompt attention to this matter will be appreciated.

Sincerely,

James H. Hedberg
James H. Hedberg

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
NOV 14 10 57 AM '83

December 12, 1983

Mr. James H. Hedberg
1627 Elsdon Circle
Carmichael, CA 95608

RE: APPLICATION TO FILE A LATE CLAIM
DATE OF ALLEGED INCIDENT: NOVEMBER 25, 1982

Dear Mr. Hedberg:

You are hereby notified that your application for Leave to Present a Late Claim was denied by the Sacramento City Council on December 6, 1983.

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 your application is rejected.

Sincerely,



Anne Mason
Assistant City Clerk

AM/sml/15A

cc: City Attorney
Risk Management

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 (6) months of the date your Application for Leave to Present a Late Claim was denied.

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

15B

CITY OF SACRAMENTO



DEPARTMENT OF LAW
812 TENTH STREET SACRAMENTO, CA 95814
SUITE 201 TELEPHONE (916) 449-5346

CITY MANAGER'S OFFICE
RECEIVED
NOV 29 1983

JAMES P. JACKSON
City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
DIANE B. BALTER
RICHARD F. ANTOINE
Deputy City Attorneys

November 28, 1983

Honorable City Council
Council Chamber
City Hall
Sacramento, CA 95814

APPROVED
BY THE CITY COUNCIL

DEC 6 1983

OFFICE OF THE
CITY CLERK

RE: LATE CLAIM APPLICATION OF GEORGE KNOX

Members in Session:

SUMMARY

George Knox has applied for leave to present a late claim. We are of the opinion that his application falls within those circumstances under which relief must be granted.

BACKGROUND

Six year old George Knox has applied for leave to present a late claim. His claim seeks damages for injuries suffered while using a city-owned swing. Allegedly, one of the chains supporting the swing broke, causing George to fall and break his hip.

Government Code Secion 911.2 provides that a claim for personal injury or property damage shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on July 15, 1983 and the 100-day filing period expired on or about October 23, 1983. The late claim application was presented on November 1, 1983.

The application states that a timely claim was not filed because it was originally believed the swing was owned by a church.

ANALYSIS

A person seeking to file a late claim is entitled to relief if he shows that he was a minor throughout the 100-day filing period (Government Code § 911.6(b)) and the application was presented within a reasonable time not to exceed one year from accrual of the cause of action. (Government Code § 911.4(b)).

15B

Because George Knox is a minor, the only issue remaining for determination on his application is whether the application was presented within a reasonable time (not to exceed one year). Tammen v. San Diego (1967) 55 C.2d 468, 479; William v. Mariposa Sch. Dist. (1978) 82 C.A.3d 843, 851.

The delay and neglect of adults, including attorneys, should not be attributed to applicant (Williams, supra); only the diligence of applicant is in issue. Given applicant's age, there is nothing to suggest a lack of diligence in this case.

RECOMMENDATION

For the foregoing reasons, it is recommended that the application of George Knox for leave to present a late claim be granted, and the claim be referred to the City's claim adjuster for evaluation and recommendation.

Very truly yours,

JAMES P. JACKSON
City Attorney



RICHARD F. ANTOINE
Deputy City Attorney

RFA:cac

RECOMMENDATION APPROVED:


City Manager

Attachments

December 13, 1983
All Districts

L A T E C L A I M

DATE RECEIVED	CLAIMANTS' NAMES	DATE OF LOSS	RECEIVED		DATE COUNCIL DENIED	DATE COUNCIL GRANTED	ACKN LETR DATE SENT	R.M. 3545 MEMO	FOLLOW-UP		REJECT BY OP OF LAW	DATE SETTLED
			MAIL	PER.					35	45		
4-1-83	Bruce Nelson	4-26-82		X	5-26-83				5-5-83	5-15-83		
4-26-83	Thomas Gulbrite & Joyce Dumbrowski	4-27-82		X	5-21-83				5-31-83	6-18-83		
4-29-83	Michael R. Harrison	6-28-82		Y	5-21-83				6-3-83	6-13-83		
4-29-83	Michael R. Harrison	5-1-82		Y	5-21-83				6-3-83	6-17-83		
4-29-83	Jason Lytton, Wade Lytton, Lisa Lytton, & Virginia Lytton	2-22-83		Y	5-21-83				6-3-83	6-18-83		
5-5-83	Guerman's Fund Inc (Barry Garland)	1-1-82		Y	5-21-83				6-9-83	6-19-83		
5-7-83	Daniel J. Yee	1-18-82		X					6-15-83	6-25-83		
[REDACTED]												
7/22/83	MARTIN & ESTHER OSEGUERA	7/AUG			9-6				8/26/83	10/5/83		
7/25/83	TOM & PENNY PANTOLOPOULOS	3/06/83			9-6				8/29/83	9/8/83		
7/29/83	CITIZENS UTILITIES CO. OF CALIF.	2/17/83							9/2/83	9/12/83		
9-19-83	SANDRA GAYE GEORGE	9-27-83		X	10-4-83 (16)							
9-16-83	ROSE MARIE ZIESMER	3-5-83		X	11-5-83 (18)				10/21/83	10/31/83		
9/27/83	EDNA C. DENTON	10/4/82		X	10-11-83 (10)							
10/5/83	ALLEN E. BENDER, INC.	4/A/81		X	10-25-83 (8)							
11/7/83	JOHN MILLER	7/7/83		X								
11/14/83	JAMES H. HEDBERG	11/25/82		X								
11/3/83	JACQUELINE COOPER/GEORGE KNOX	7/15/83		X								

*PER DICK ANTOINE'S NOTE OF 5/12/83, YEE'S CLAIM RETURNED TO CURRENT CLAIM LOG SINCE IT WAS INDEED TIMELY FILED./sm)
 **PER CONVERSATION WITH DICK ANTOINE, 10/3/83 SEND THIS CLAIM THROUGH AS CURRENT/mjw

CLAIM AGAINST THE CITY OF SACRAMENTO

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
Nov 3 10 33 AM '83

You are hereby notified that (1) Jacqueline Cooper/George C. Knox, whose Post Office address is (2) 4401 36th Street, Sacramento, Ca 95820 claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) \$25,000. This claim is based upon (4)

Personal injury; Property damage or loss; Other, specify _____

_____, which occurred on or about (5) 7/15/83, in the vicinity of (6) United Methodist Church, Sacramento * under the following circumstances: (7) Six year old George Knox was playing on a swing set on premises. He was being pushed by two friends. While on the back-swing motion, one chain supporting seat of swing broke. George fell, breaking his hip. the swing set is owned and maintained by the city. The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) City of Sacramento (unknown)

_____ 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) broken hip.

The amount of damages claimed as of the date of this claim is computed as follows:
Damages incurred to date (Itemized):

- (10) Sutter General Hospital \$ Unknown
- Dr. Khasagian, M.D. \$ Unknown

Estimate prospective damages as far as known:

- (11) Continuing Medical Expenses \$ 2,000
- _____ \$ _____

(12) TOTAL AMOUNT CLAIMED as of presentation date of claim \$ 25,000

All notices and communications with regard to this claim should be sent to claimant at (13) John B. Renwick, c/o James L. Stevens, Jr., Inc., 930 G Street, Suite 201, Sacramento, CA 95814

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
Nov 8 3 27 PM '83

(14) November 1, 1983 *3600 Fifth Avenue, Sacramento, CA

(15) SIGNED: [Signature]
Claimant, or JOHN B. RENWICK
Attorney for Claimant

JAMES L. STEVENS, JR., INC.

A PROFESSIONAL LAW CORPORATION

930 G STREET, SUITE 101

SACRAMENTO, CALIFORNIA 95814

OFFICE

CITY OF SACRAMENTO AREA CODE 916

TELEPHONE 441-2526

JAMES L. STEVENS, JR

NOV 3 10 37 AM '83

November 1, 1983

City Clerk
915 I Street, Room 203
Sacramento, California

Re: George C. Knox, III

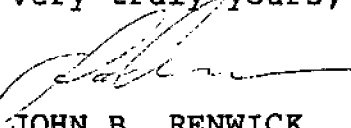
Gentlemen:

This office represents Mrs. Jacqueline Cooper and her minor child, George C. Knox with respect to injuries he received on the playground of United Methodist Church, located at 3600 Fifth Avenue, Sacramento, California on July 15, 1983. I have this date had a conversation with Mr. Jeff Tonkf of GAB Business Services, the adjuster for the insurance company insuring said property. He indicated to me that the swing set, which was the subject of the injury to George Knox is owned and maintained by the City. As you can see, the accident happened 109 days from the date of this letter and the purpose herein is to request permission to file a late claim against the city based on negligence in the maintenance of this swing set.

On July 15, 1983, George, while a student in the day care center, was on a swing, being pushed back and forth by two fellow school children. On a back swing, one of the chains broke and George fell out of it, breaking his hip. His claim against the city will be based upon negligence in the maintenance of the swing set along with products liability for a defective chain. Permission is hereby requested to file formally a written claim against the City of Sacramento.

Your attention to this matter is appreciated.

Very truly yours,



JOHN B. RENWICK

JBR/pp

Enclosures

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
NOV 8 3 37 PM '83

December 12, 1983

John B. Renwick, Esq.
c/o JAMES L. STEVENS, JR., INC.
930 "G" Street
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF GEORGE KNOX, DATE OF ALLEGED
INCIDENT: JULY 15, 1983

Dear Mr. Renwick:

Notice is hereby given that the following application for leave to present a late claim was allowed on December 6, 1983. Upon allowance of the late filing the City Council thereupon referred said claim to the City's claims representative, Adjustco, Inc., 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 \$25,000 for alleged damages occurring when claimant fell from a swing when the chain supporting the seat broke which resulted in the claimant sustaining a broken hip, and allegedly occurring on or about July 15, 1983.

Sincerely,



Anne Mason
Assistant City Clerk

AM/sm/15B

cc: Risk Management

~~Adjustco, Inc.~~

City Attorney