



CITY OF SACRAMENTO

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CITY MANAGER'S OFFICE
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MAR 11 1980

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

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

March 10, 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, California

RE: LATE CLAIM APPLICATION OF BEVA JUNE,
BECKY AND CHRIS RUSSELL

Members in Session:

SUMMARY

Beva June, Becky and Chris Russell have applied for leave to present a late claim. We are of the opinion that the application falls within those circumstances under which leave must be granted.

BACKGROUND

The Russells have each applied for leave to present a late claim. Their claims seek damages for personal injuries and losses which resulted from an automobile accident. Applicants allege that the accident was caused in part by a malfunctioning traffic signal.

Government Code Section 911.2 provides that a claim for damages based upon personal injuries shall be presented within 100 days of the accrual of the cause of action. In this case applicant's cause of action accrued on September 11, 1979, the date of the alleged incident. The 100-day filing period expired on or about December 20, 1979. The claim and late claim application were presented on January 28, 1980, approximately five weeks late.

The application states that the claim was prepared by claimant's attorney, or or about December 12, 1979, for presentation to both the City and County. It is further stated that, although the claim was thereafter presented in a timely fashion to the County, due to clerical errors within claimant's attorney's office it was not presented to the City as intended. This omission was not determined until shortly before the instant application was filed.

APPROVED
BY THE CITY COUNCIL

MAR 18 1980

OFFICE OF THE
CITY CLERK

GRANTED + REFERRED
TO CITY'S CLAIMS
REPRESENTATIVE

MAR 18 1980

ANALYSIS

A person seeking to file a late claim must show that the failure to file a claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code Section 911.6(b)(1)). In order to obtain relief on any of such grounds it must appear that the conduct on behalf of applicant was reasonable under the circumstances (Roberts v. State of California (1974) 39 Cal. App. 3d 844).

Although the purpose of the late claim relief statutes is not to grant relief from defaults which are the result of the unexcusable neglect of parties or their attorneys, the circumstances of the present late claim indicate that the neglect in mailing the claim to the City is excusable. The claim was timely prepared and given to a legal secretary for mailing. This secretary had little more than two months experience at the time. The office administrator who was experienced in these matters was injured and so unavailable to supervise this new personnel. The secretary was asked whether the claims had been mailed, but misunderstood the question and incorrectly answered in the affirmative. When the error was detected, steps were promptly taken to present the instant application.

The courts have granted relief in similar cases of internal clerical errors (Lane v. Pacific Greyhound (1947) 39 Cal.2d 941; City of Los Angeles v. Board of Supervisors (1930) 105 Cal.App. 199; Flores v. Board of Supervisors (1970) 31 Cal.App.3d 48). In light of the foregoing cases the standard of excusable neglect appears to be satisfied in this case, and the applications for leave to present a late claim should be granted.

RECOMMENDATION

For the foregoing reasons it is recommended that the applications of Beva June, Becky and Chris Russell for leave to present a late claim be granted and the claims themselves be referred to the City's claims representative.

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen B. Nocita

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Slize
CITY MANAGER

SBN:mb

1 DANIEL E. WILCOXEN
A Law Corporation
2 1451 River Park Drive - Suite 200
Sacramento, CA. 95814
3 Telephone: (916) 9256492

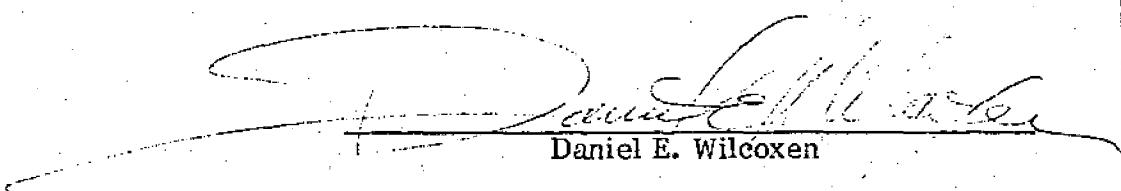
4 Attorneys for Claimant
5
6

7 SUPPLEMENTAL DECLARATION IN SUPPORT OF
APPLICATION FOR PERMISSION
8 TO FILE LATE CLAIM OF BEVA JUNE RUSSELL,
9 BECKY RUSSELL and CHRIS RUSSELL, CLAIMANTS
VS. THE CITY OF SACRAMENTO

10
11 Attached hereto please find the declarations of Dawn Hagins, Legal Secretary, in
12 the offices of Daniel E. Wilcoxen, A Law Corporation and Patrick Lanius, Attorney in
13 said law office in support of the prior hereto filed application for permission to file late
14 claim.

15 Dated this 7 day of March, 1980.
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17 DANIEL E. WILCOXEN
A Law Corporation

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20 Daniel E. Wilcoxen

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DANIEL E. WILCOXEN

A LAW CORPORATION

1451 RIVER PARK DRIVE, SUITE 200

SACRAMENTO, CALIFORNIA 95815 • TELEPHONE: (916) 925-6492

DECLARATION OF DAWN HAGINS

I, Dawn Hagins, hereby declare under the penalty of perjury as follows:

I am an adult female who is competent to testify to the following. I am a secretary in the office of Daniel E. Wilcoxon, A Law Corporation and was responsible for the mailing of all correspondence from said offices at all times material hereto. I was responsible for the mailing of the claim of Beva June Russell, Becky Russell and Chris Russell arising out of the accident of September 11, 1979 at the intersection of Raley Boulevard and Bell Street, Sacramento, County of Sacramento, California.

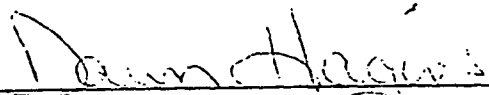
As a result of my mistake, oversight and excusable neglect, I overlooked preparing and mailing the claim for delivery to the City of Sacramento and only prepared and mailed the claim to the County of Sacramento, Board of Supervisors.

Shortly after the time this claim was mailed to the Board of Supervisors for the County of Sacramento, I was questioned by attorney Patrick A. Lanius as to whether the claims had been mailed, I did not realize that the use of the plural claims meant that separate claims had to be mailed to both the City and the County. I responded to the inquiry that the claims had been mailed. As a result of my misunderstanding of the question of Mr. Lanius, he was unable to discover that only one claim had been mailed. Further, shortly after the claim was mailed to the County of Sacramento, the office administrator, Terry Linley, was injured (suffering a broken elbow) and was not able to supervise my office procedures. As a consequence, of all of the above my oversight of failing to mail the claim to the City of Sacramento was not discovered until notice was received by the law offices of Daniel E. Wilcoxon, A Law Corporation, on January 9, 1980 from the Senior Claims Representative for the insurance carrier for the County of Sacramento. Immediately following receipt of said notice from the County's insurance carrier, the original claim was attached to an application to file late claim and immediately mailed to the City of Sacramento.

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I began working as a legal secretary on October 15, 1979 and was being trained then and since by Terry Linley.

Executed this 4th day of February, 1980 in Sacramento, California.


Dawn Hagins

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DECLARATION OF PATRICK A. LANIUS

I, Patrick A. Lanus, declare under penalty of perjury as follows:

I am an attorney in the law office of Daniel E. Wilcoxon, A Law Corporation. I have knowledge of the contents of this declaration and if called upon to testify could competently testify hereto.

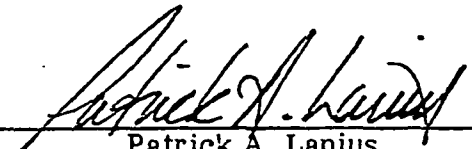
At the request of Daniel E. Wilcoxon I inquired of Dawn Hagins, Legal Secretary, in the law office of Daniel E. Wilcoxon if she had prepared and mailed the governmental entity claims for Belva June Russell, Becky Russell and Chris Russell. I was informed by Ms. Hagins that the claims had been prepared and mailed. At this time I did not specifically inquire if the claims had been mailed to both the City of Sacramento and the County of Sacramento, assuming that my use of the plural terminology and that the title of the document clearly disclosed that the claims meant claims to the City and the County as opposed to plural in persons.

The title of the claim for damages read "The City of Sacramento and the County of Sacramento".

I was unaware until January 9, 1980 that Ms. Hagins' response to my question relating to the claims was misunderstood. I had believed until January 9, 1980 that seperate claims had been mailed to both the City of Sacramento and the County of Sacramento and had so informed Mr. Wilcoxon.

Dated this 4th day of March, 1980.

DANIEL E. WILCOXEN
A Law Corporation



Patrick A. Lanus



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5428

LORRAINE MAGANA
CITY CLERK

March 19, 1980

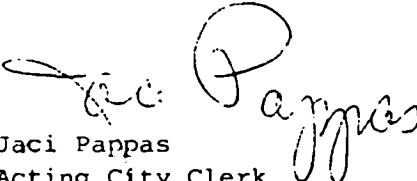
Daniel E. Wilcoxon
A Law Corporation
1451 River Park Drive, Suite 200
Sacramento, CA 95815

Dear Mr. Wilcoxon:

Notice is hereby given that the following application for leave to present a late claim was allowed on March 18, 1980. Upon allowance of the late filing, the City Council thereupon referred said claim to the City's Claims Adjuster, Brown Brothers Adjusters, 1451 River Park Drive, Suite 251, telephone number (916) 920-4392, for review and recommendations. You will be advised of the claims disposition within 45 days.

Claim submitted by you on behalf of Beva June, Becky and Chris Russell, no amount stated, for alleged personal injuries and losses due to an automobile accident, and allegedly occurring on December 12, 1979.

Sincerely,


Jaci Pappas
Acting City Clerk

JP:HO'

cc: City Attorney
Finance (2)

Item No. 17