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CITY OF SACRAMENTO



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

CITY MANAGER'S OFFICE
RECEIVED
JAN 25 1982

January 21, 1982

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
STEPHEN B. NOCITA
DIANE B. BALTER
CHRISTINA PRIM
DEPUTY CITY ATTORNEYS

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

APPROVED
BY THE CITY COUNCIL

FEB 2 1982

RE: LATE CLAIM APPLICATION - FARMERS INSURANCE GROUP OFFICE OF THE CITY CLERK

Members in Session:

SUMMARY

Farmers Insurance Group has filed an application 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

Farmers Insurance Group has applied for leave to present a late claim. The claim is based upon property damages allegedly suffered in an automobile accident involving a City police vehicle and applicant's insured, Mr. Arthur Ashton. Applicant states that its cause of action accrued on June 4, 1981. The 100 day filing period therefore expired on or about September 12, 1981. The claim and late claim application were filed on January 8, 1982, approximately sixteen weeks late.

The reasons given in support of the application are the alleged inability to determine the department responsible for the accident and the Police Department's statement to the applicant that it has no record of an accident involving Mr. Ashton occurring on June 4, 1981. The Police Department states that it has no record of Arthur Ashton having been involved in an accident at any time in May or June of 1981.

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 vs. State (1971) 39 C.A.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 C.A.3d 57). It does not appear to us that this standard has been met in the present case.

Applicant is aware of the 100 day claim filing requirement. Applicant was told by its insured, in early June, 1981, that a City police vehicle was involved in the accident. Applicant should have filed a claim with the City shortly thereafter.

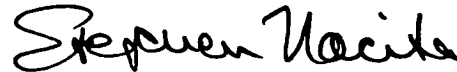
The fact that the Police Department has no record of Mr. Ashton having been involved in an accident on June 4, 1981, does not alter this result. Applicant has no more information now than it had in June, 1981, and yet applicant now feels able to file a claim. Clearly applicant had adequate information to file a claim in a timely manner and yet failed to do so. The application contains no facts which demonstrate that this failure was due to the mistake, inadvertence, surprise or excusable neglect of a reasonably diligent person (Roberts, supra; El Dorado Irr. Dist., supra).

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Farmers Insurance Group for leave to present a late claim be denied.

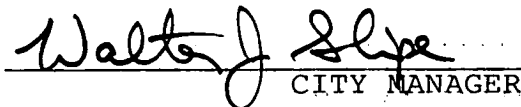
Very truly yours,

JAMES P. JACKSON
City Attorney



STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

SBN:GD

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William L. Plexico
Bevins, Medders & Williams
10014 Fair Oaks Blvd.
Fair Oaks, Calif. 95628
916/962-0845

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

JAN 8 9 14 AM '82

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

FEB 2 1982

Claim of:

FARMERS INSURANCE GROUP

APPLICATION TO PRESENT
LATE CLAIM

vs.

SACRAMENTO CITY POLICE DEPT.

TO: SACRAMENTO CITY COUNCIL

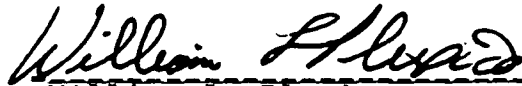
Application is hereby made for leave to present the attached Claim for Property Damage late. The reason for the delay in presenting the claim is our inability to determine the department responsible for the accident. Our insured originally stated that the vehicle was from the Sacramento Police Dept. request to the Sacramento Police Dept. on 6/9/81 and on or about 10/21/81 for a copy of the accident report resulted in denial that the City, County or Ashton was involved in a reported accident on that date.

Our insured has been out of the state driving a long haul truck with his father so we have been unable to confirm the identity of the department responsible for causing the accident. On December 22, 1981 we were finally able to confirm with our insured that the Sacramento City Police Dept. was in

1 fact the Department responsible for causing the damages.

2 The City should not be prejudice by the delay in filing
3 our claim in any way. According to Mr. Ashton, the officer
4 driving the Police vehilce completed a report of the accident
5 and the circumstances surrounding it at the scene.

6 DATED: Januray 5, 1982

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8 William L. Plexico
9 Attorney for Claimant

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RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

JAN 8 9 14 AM '82

1 William L. Plexico
2 Bevins, Medders & Williams
3 10014 Fair Oaks Blvd.
4 Fair Oaks, Calif. 95628
5 916/962-0845

8 CLAIM AGAINST THE SACRAMENTO CITY BOARD OF SUPERVISORS

10 FARMERS INSURANCE GROUP

CLAIM IN SUBROGATION FOR
INSURED'S PROPERTY DAMAGE

11 vs.

12 SACRAMENTO CITY POLICE DEPT. /

13 TO: SACRAMENTO CITY COUNCIL

14 Your are hereby notified that FARMERS INSURANCE GROUP,
15 whose address is 10014 Fair Oaks Blvd., Fair Oaks, Calif. 95628,
16 claims damages from the Sacramento City Police Dept. in the
17 amount, computed as of the date of presentation of this claim,
18 of \$6,626.73.

19 This claim is based on damages to vehicle owned by
20 Arthur Ashton, claimants insured, on or about 6/4/81 in the
21 vicinity of Northgate Blvd. and Silver Eagle Rd. under the
22 following circumstances:

23 Claimants insured was forced off of Silver Eagle Rd.
24 into an adjoining ditch by a Sacramento City Police Dept. patrol
25 unit crossing into claimants insured lane of traffic forcing him
26 off the highway. Claimant thereafter on 8/17/81 paid its
27 insured the amount of \$6,426.73 for damage to claimants insured's
28 vehicle: The names of the public employees causing claimants

1 injuries under the discribed circumstances are unknown to claim-
2 ant and Sacramento City Police Dept. denies that any of its
3 vehicle were involved in any such accident on that day.

4 The injuries sustained by claimant, as far as known,
5 as of the date of presentation of this claim consist of \$6,626.73
6 consisting generally of claimants payment to its insured plus
7 its insured deductable of \$200.00.

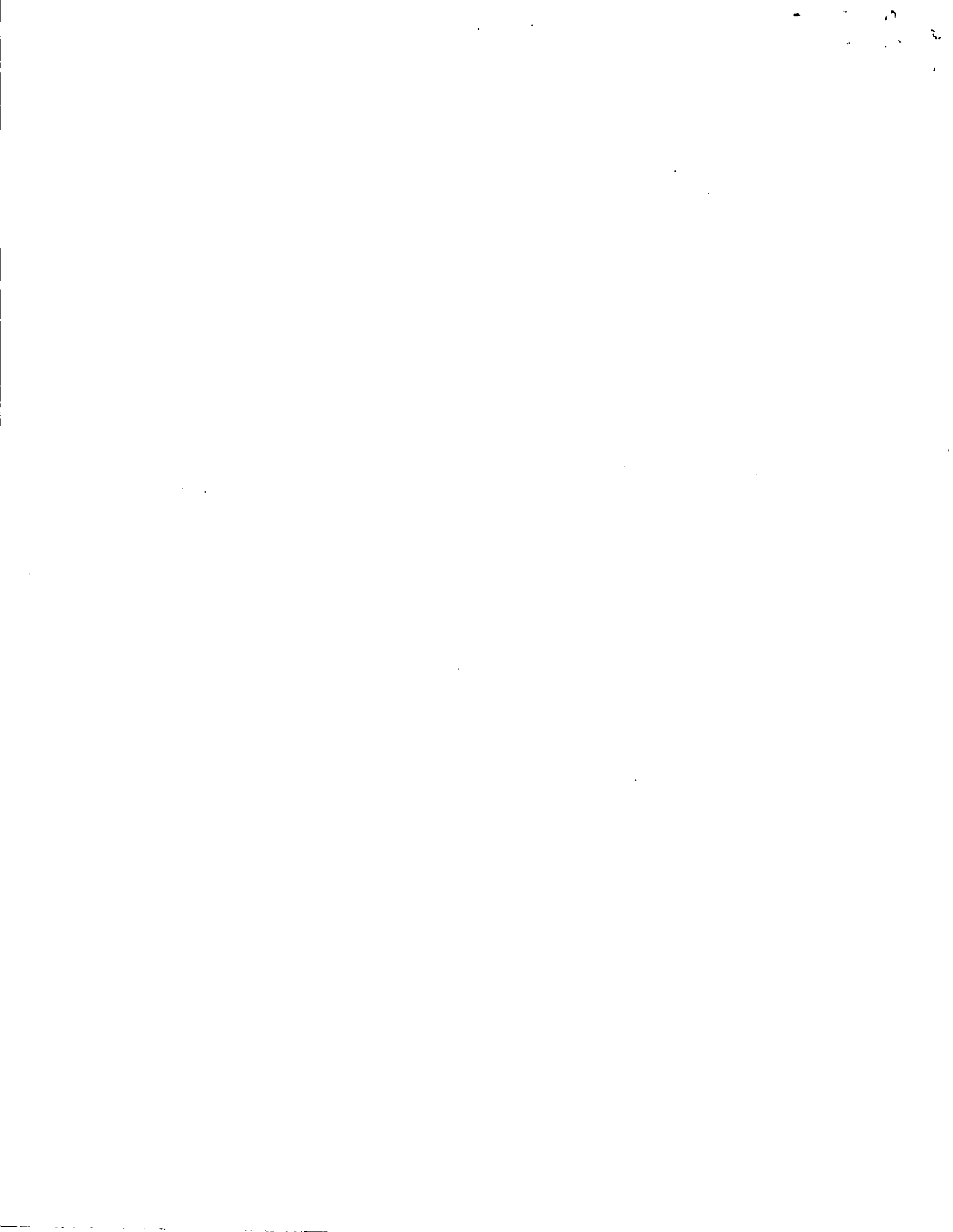
8 The amount claimed as to the date of presentation of
9 this claim is computed as above.

10 All notices or other communications with regard to this
11 claim should be sent to claimant at 10014 Fair Oaks Blvd., Fair
12 Oaks, Calif. 95628

13 DATED: _____

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16 William L. Plexico
17 Attorney for Claimant
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Mailed to :
Sacramento City Council
City Hall
915 I Street, Room 205
Sacramento, Calif. 95814

Declaration of Service by Mail
(Section 1013 to CCP)

I am over 18 years of age and not a party to the within
action. I am employed at 10014 Fair Oaks Blvd. Fair
Oaks, California, and am a resident of Sacramento
County. I served a copy of the foregoing document by
placing a copy in a sealed envelope with postage fully
prepaid, addressed in the manner set forth immediately
above this declaration, which envelope was then
deposited in the United States mail at Fair Oaks,
California.

I declare under penalty of perjury that the foregoing
is true and correct. 1-6-82
Dated at Fair Oaks, California on Debra Williams



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

February 3, 1982

William L. Plexico
Bevins, Medders and Williams
10014 Fair Oaks Boulevard
Fair Oaks, CA 95628

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF FARMERS INSURANCE GROUP. DATE OF ALLEGED INCIDENT: JUNE 4, 1981

Dear Mr. Plexico:

You are hereby notified that your application for Leave to Present a Late Claim on behalf of the above named claimant was denied by the Sacramento City Council on February 2, 1982.

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,


Lorraine Magana
City Clerk

LM/mm/12

cc: City Attorney
Risk Management (2)

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.