

18



# CITY OF SACRAMENTO

CITY MANAGER'S OFFICE  
**RECEIVED**  
APR 29 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. NOCITA  
CHRISTINA PRIM  
DEPUTY CITY ATTORNEYS

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

April 27, 1981

Honorable City Council  
Council Chamber  
City Hall  
Sacramento, California 95814

MAY 5 1981

RE: APPLICATION OF KENNETH JONES FOR LEAVE TO PRESENT  
A LATE CLAIM

Members in Session:

### SUMMARY

Kenneth Jones has 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

Mr. Jones has applied for leave to present a late claim. The claim seeks damages for personal injuries allegedly suffered as a result of an automobile accident which is claimed to have been caused by a defective road condition.

Government Code §911.2 provides that a claim based upon personal injuries shall be presented within 100 days of the accrual of the cause of action. Applicant's cause of action accrued on November 29, 1980. The 100-day filing period expired on or about March 10, 1981. The late claim application and proposed claim were filed on April 10, 1981.

The reasons given for the failure to file a timely claim is the inadvertence and neglect of applicant's attorney, apparently stemming from a shortage of staff which the attorney claims prevented him from having time to present a timely claim.

### ANALYSIS

A person seeking to file a timely claim must show that the failure to present a timely claim was due to mistake, surprise or excusable neglect (Government Code §911.6(b)). In order to obtain relief on any of these grounds it must appear that the matter was pursued in a reasonable manner under the circumstances

El Dorado Irr. Dist. vs. Superior Court (1979) 98 C.A.3d 57; Tammen vs. Courty of San Diego (1966) 66 Cal.2d 468). The inexcusable neglect of a party's attorney does not justify the failure to file a timely claim (Tammen, 66 C.2d at 478).

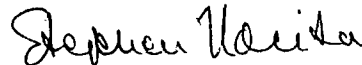
The proposed claim is two pages long. It involves routine allegations of personal injuries based upon a claimed defective road condition. It appears that applicant consulted his attorney regarding this matter sometime in December, 1980. Under the circumstances we cannot agree that the claimed staffing shortages prevented a timely claim from being filed or that the failure to file a timely claim was due to the mistake, inadvertence, surprise or excusable neglect of a reasonably prudent person (Roberts vs. State (1974) 39 C.A.3d 844; Tsingaris vs. State (1979) 91 C.A.3d 312).

## RECOMMENDATION

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

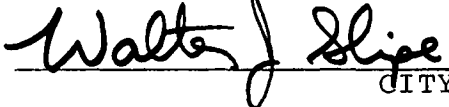
Very truly yours,

JAMES P. JACKSON  
City Attorney



STEPHEN B. NOCITA  
Deputy City Attorney

RECOMMENDATION APPROVED:

  
CITY MANAGER

SBN:GD

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES OF CLYDE O. WEST  
1314 H Street, Suite 100  
Sacramento, California 95814  
Telephone: (916) 441-1891

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF SACRAMENTO  
APR 10 4 25 PM '81

Attorney for Kenneth Jones

In the Matter of the Claim of )  
KENNETH JONES )  
against )  
CITY OF SACRAMENTO )

NO.  
APPLICATION FOR  
LEAVE TO  
PRESENT  
LATE CLAIM

TO THE CITY OF SACRAMENTO:

1. Application is hereby made for leave to present a late claim under Section 911.4 of the Government Code. The claim is founded on a cause of action for personal injury which accrued on November 29, 1980, and for a which a claim was not timely presented. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached hereto as Exhibit "A" and made a part hereof.

2. The reason for the delay in presenting this claim is the mistake, inadvertence, surprise, and excusable neglect of the claimant and CLYDE O. WEST, his attorney, as more particularly shown in the declaration of CLYDE O. WEST attached hereto. CITY OF SACRAMENTO was not prejudiced by the failure to timely file the claim as shown by the declaration of CLYDE O. WEST attached hereto as Exhibit "B" and made a part hereof.

///

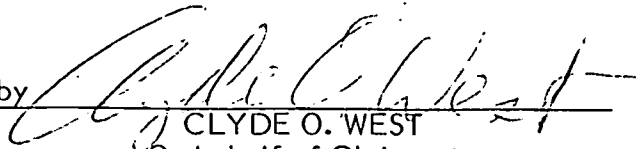
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. This application is presented within a reasonable time after the accrual of the cause of action as shown by the declaration of CLYDE O. WEST attached hereto as Exhibit "B" and made a part hereof.

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

DATED: April 10, 1981

LAW OFFICES OF CLYDE O. WEST

by   
CLYDE O. WEST  
On behalf of Claimant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES OF CLYDE O. WEST  
1314 H Street, Suite 100  
Sacramento, California 95814  
Telephone: (916) 441-1891

Attorney for Kenneth Jones

In the Matter of the Claim of )  
KENNETH JONES )  
against )  
CITY OF SACRAMENTO )  
\_\_\_\_\_ )

NO.  
PROPOSED CLAIM

TO THE CITY OF SACRAMENTO:

KENNETH JONES hereby makes claim against the CITY OF SACRAMENTO for the sum of \$50,000.00 and makes the following statements in support of the claim:

1. Claimant's post office address is 10008 Bromley Way, Sacramento, California 95827.

2. Notices concerning the claim should be sent to the LAW OFFICES OF CLYDE O. WEST, 1314 H Street, Suite 100, Sacramento, California 95814.

3. The date and place of the occurrence giving rise to this claim are November 29, 1980 at 24th Avenue north of Sutterville Road, and southeast of the parking lot located to the south and east of Hughes Stadium.

4. The circumstances giving rise to this claim are as follows: At the above time and place, claimant was walking on the sidewalk which was in a dangerous condition due to the design of the road, curb, and sidewalk, and the

1 location of the guard rail. The design, construction, and placement of the road,  
2 curb, sidewalk, and guard rail was done by, on behalf of, and/or at the request of  
3 the CITY OF SACRAMENTO. Due to the dangerous condition, claimant was struck  
4 by an automobile that failed to negotiate the curve at said location, causing him  
5 serious injuries.

6 5. Claimant's injuries are:

- 7 a. Fracture of the mid shaft of the left clavicle;  
8 b. Separation of the acromioclavicular joint;  
9 c. Compound fractures of the right tibia and fibula;  
10 d. Multiple broken teeth;  
11 e. Lacerations of the face; and  
12 f. Related bruises and contusions related to the aforementioned  
13 injuries.

14 6. The names of the public employees causing the claimant's injuries are  
15 unknown.

16 7. My claim as of the date of this claim is \$50,000.00

17 8. The basis of computation of the above amount is as follows:

18 Medical Expenses  
19 Incurred to Date \$ 6,509.78  
20 Estimated Future  
21 Medical Expenses \$ 4,000.00  
22 General Damages \$39,490.22  
23 Total \$50,000.00

24 DATED: April 10, 1981

LAW OFFICES OF CLYDE O. WEST

25  
26 by 

CLYDE O. WEST  
On Behalf of Claimant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES OF CLYDE O. WEST  
1314 H Street, Suite 100  
Sacramento, California 95814  
Telephone: (916) 441-1891

Attorney for Kenneth Jones

In the Matter of the Claim of )  
KENNETH JONES )  
against )  
CITY OF SACRAMENTO )  
\_\_\_\_\_ )

NO.  
DECLARATION IN  
IN SUPPORT OF  
APPLICATION FOR LEAVE  
TO PRESENT LATE CLAIM

I, CLYDE O. WEST, declare:

1. That I am attorney for the claimant in the above-entitled matter.
2. That the failure to file a claim within the 100 day period subsequent to November 29, 1980 was due to my inadvertence and excusable neglect in that:
  - a. During said period, which included the Christmas holidays, and to the present, I have been engaged in several trials and other matters which claimed my attention, and much of my time;
  - b. One of my two associate attorneys left my employ;
  - c. My remaining associate attorney had much of his time and attention devoted to assisting me in my trials, and post trial briefs, as well as assuming the case load of the departing associate;
  - d. My firm's sole secretary left our employ, necessitating the use of temporary secretarial help for a period of one month, and disrupting our calendaring procedures;

1  
2 e. The secretary hired to replace our departing secretary was  
3 inexperienced in legal secretarial matters, and immediately overburdened by a  
4 backlog of work that the temporary secretarial employees were unable to perform.

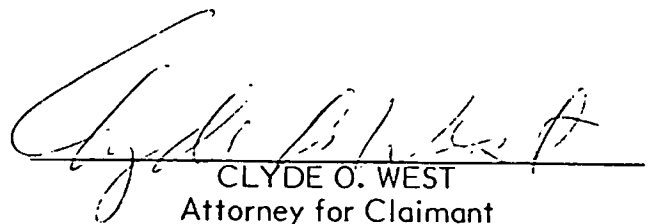
5 3. The CITY OF SACRAMENTO is in no way prejudiced by the late  
6 filing of this claim in that it is being filed only approximately 40 days beyond the  
7 100 day period; no material changes in the design, or physical structure/appearance  
8 of the subject location have been made; photographs of the subject location, as it  
9 appeared at the time of the accident have been taken and are available; and I am  
10 informed and believe that sufficient percipient witnesses to the subject incident  
11 are available to assist the CITY OF SACRAMENTO in its investigation of the  
12 proposed claim.

13 4. The failure of my client, KENNETH JONES, to file a claim within the  
14 100 day period is similarly due to excusable neglect and inadvertence, in that he  
15 was hospitalized for a period of time subsequent to the accident, and that, after  
16 retaining me, he relied upon me to investigate and prosecute all claims on his  
17 behalf, and to my knowledge, had no personal knowledge of time requirements for  
18 filing claims against the city, or that such a claim existed, outside my evaluation in  
19 that regard.

20 5. This claim is presented within a reasonable time after the accrual of  
21 the cause of action, in that: (1) there is no prejudice to the CITY OF  
22 SACRAMENTO, as declared above; and (2) had this claim been filed near the end of  
23 the otherwise required 100 day period, the 45 day period within which the city  
24 would have been required to respond, would not yet have elapsed.

25 I declare under penalty of perjury that the foregoing is true and correct, to  
26 the best of my knowledge.

27 DATED: April 10, 1981

28   
CLYDE O. WEST  
Attorney for Claimant



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES OF CLYDE O. WEST  
1314 H Street, Suite 100  
Sacramento, California 95814  
Telephone: (916) 441-1891

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF SACRAMENTO  
APR 10 4 25 PM '81

Attorney for Kenneth Jones

In the Matter of the Claim of )  
KENNETH JONES )  
against )  
CITY OF SACRAMENTO )  
\_\_\_\_\_ )

NO.  
APPLICATION FOR  
LEAVE TO  
PRESENT  
LATE CLAIM

TO THE CITY OF SACRAMENTO:

1. Application is hereby made for leave to present a late claim under Section 911.4 of the Government Code. The claim is founded on a cause of action for personal injury which accrued on November 29, 1980, and for a which a claim was not timely presented. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached hereto as Exhibit "A" and made a part hereof.

2. The reason for the delay in presenting this claim is the mistake, inadvertence, surprise, and excusable neglect of the claimant and CLYDE O. WEST, his attorney, as more particularly shown in the declaration of CLYDE O. WEST attached hereto. CITY OF SACRAMENTO was not prejudiced by the failure to timely file the claim as shown by the declaration of CLYDE O. WEST attached hereto as Exhibit "B" and made a part hereof.

///

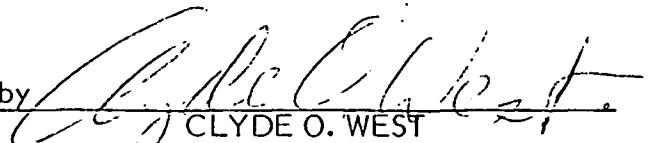
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. This application is presented within a reasonable time after the accrual of the cause of action as shown by the declaration of CLYDE O. WEST attached hereto as Exhibit "B" and made a part hereof.

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

DATED: April 10, 1981

LAW OFFICES OF CLYDE O. WEST

by   
CLYDE O. WEST  
On behalf of Claimant





1 location of the guard rail. The design, construction, and placement of the road,  
2 curb, sidewalk, and guard rail was done by, on behalf of, and/or at the request of  
3 the CITY OF SACRAMENTO. Due to the dangerous condition, claimant was struck  
4 by an automobile that failed to negotiate the curve at said location, causing him  
5 serious injuries.

6 5. Claimant's injuries are:

- 7 a. Fracture of the mid shaft of the left clavicle;  
8 b. Separation of the acromioclavicular joint;  
9 c. Compound fractures of the right tibia and fibula;  
10 d. Multiple broken teeth;  
11 e. Lacerations of the face; and  
12 f. Related bruises and contusions related to the aforementioned  
13 injuries.

14 6. The names of the public employees causing the claimant's injuries are  
15 unknown.

16 7. My claim as of the date of this claim is \$50,000.00

17 8. The basis of computation of the above amount is as follows:

18 Medical Expenses  
19 Incurred to Date \$ 6,509.78  
20 Estimated Future  
21 Medical Expenses \$ 4,000.00  
22 General Damages \$39,490.22  
23 Total \$50,000.00

24 DATED: April 10, 1981

LAW OFFICES OF CLYDE O. WEST

25  
26 by 

CLYDE O. WEST

On Behalf of Claimant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES OF CLYDE O. WEST  
1314 H Street, Suite 100  
Sacramento, California 95814  
Telephone: (916) 441-1891

Attorney for Kenneth Jones

In the Matter of the Claim of )  
KENNETH JONES )  
against )  
CITY OF SACRAMENTO )  
\_\_\_\_\_ )

NO.  
DECLARATION IN  
IN SUPPORT OF  
APPLICATION FOR LEAVE  
TO PRESENT LATE CLAIM

I, CLYDE O. WEST, declare:

1. That I am attorney for the claimant in the above-entitled matter.
2. That the failure to file a claim within the 100 day period subsequent to November 29, 1980 was due to my inadvertence and excusable neglect in that:
  - a. During said period, which included the Christmas holidays, and to the present, I have been engaged in several trials and other matters which claimed my attention, and much of my time;
  - b. One of my two associate attorneys left my employ;
  - c. My remaining associate attorney had much of his time and attention devoted to assisting me in my trials, and post trial briefs, as well as assuming the case load of the departing associate;
  - d. My firm's sole secretary left our employ, necessitating the use of temporary secretarial help for a period of one month, and disrupting our calendaring procedures;

1  
2 e. The secretary hired to replace our departing secretary was  
3 inexperienced in legal secretarial matters, and immediately overburdened by a  
4 backlog of work that the temporary secretarial employees were unable to perform.

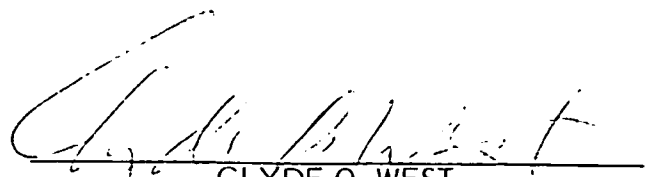
5 3. The CITY OF SACRAMENTO is in no way prejudiced by the late  
6 filing of this claim in that it is being filed only approximately 40 days beyond the  
7 100 day period; no material changes in the design, or physical structure/appearance  
8 of the subject location have been made; photographs of the subject location, as it  
9 appeared at the time of the accident have been taken and are available; and I am  
10 informed and believe that sufficient percipient witnesses to the subject incident  
11 are available to assist the CITY OF SACRAMENTO in its investigation of the  
12 proposed claim.

13 4. The failure of my client, KENNETH JONES, to file a claim within the  
14 100 day period is similarly due to excusable neglect and inadvertence, in that he  
15 was hospitalized for a period of time subsequent to the accident, and that, after  
16 retaining me, he relied upon me to investigate and prosecute all claims on his  
17 behalf, and to my knowledge, had no personal knowledge of time requirements for  
18 filing claims against the city, or that such a claim existed, outside my evaluation in  
19 that regard.

20 5. This claim is presented within a reasonable time after the accrual of  
21 the cause of action, in that: (1) there is no prejudice to the CITY OF  
22 SACRAMENTO, as declared above; and (2) had this claim been filed near the end of  
23 the otherwise required 100 day period, the 45 day period within which the city  
24 would have been required to respond, would not yet have elapsed.

25 I declare under penalty of perjury that the foregoing is true and correct, to  
26 the best of my knowledge.

27 DATED: April 10, 1981

28   
CLYDE O. WEST  
Attorney for Claimant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

e. The secretary hired to replace our departing secretary was inexperienced in legal secretarial matters, and immediately overburdened by a backlog of work that the temporary secretarial employees were unable to perform.

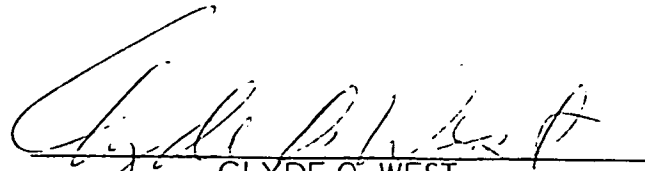
3. The CITY OF SACRAMENTO is in no way prejudiced by the late filing of this claim in that it is being filed only approximately 40 days beyond the 100 day period; no material changes in the design, or physical structure/appearance of the subject location have been made; photographs of the subject location, as it appeared at the time of the accident have been taken and are available; and I am informed and believe that sufficient percipient witnesses to the subject incident are available to assist the CITY OF SACRAMENTO in its investigation of the proposed claim.

4. The failure of my client, KENNETH JONES, to file a claim within the 100 day period is similarly due to excusable neglect and inadvertence, in that he was hospitalized for a period of time subsequent to the accident, and that, after retaining me, he relied upon me to investigate and prosecute all claims on his behalf, and to my knowledge, had no personal knowledge of time requirements for filing claims against the city, or that such a claim existed, outside my evaluation in that regard.

5. This claim is presented within a reasonable time after the accrual of the cause of action, in that: (1) there is no prejudice to the CITY OF SACRAMENTO, as declared above; and (2) had this claim been filed near the end of the otherwise required 100 day period, the 45 day period within which the city would have been required to respond, would not yet have elapsed.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

DATED: April 10, 1981

  
CLYDE O. WEST  
Attorney for Claimant



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES OF CLYDE O. WEST  
1314 H Street, Suite 100  
Sacramento, California 95814  
Telephone: (916) 441-1891

RECEIVED  
COUNTY CLERKS OFFICE  
CITY OF SACRAMENTO  
APR 10 4 25 PM '81

Attorney for Kenneth Jones

In the Matter of the Claim of )  
KENNETH JONES )  
against )  
CITY OF SACRAMENTO )  
\_\_\_\_\_ )

NO.  
APPLICATION FOR  
LEAVE TO  
PRESENT  
LATE CLAIM

TO THE CITY OF SACRAMENTO:

1. Application is hereby made for leave to present a late claim under Section 911.4 of the Government Code. The claim is founded on a cause of action for personal injury which accrued on November 29, 1980, and for a which a claim was not timely presented. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached hereto as Exhibit "A" and made a part hereof.

2. The reason for the delay in presenting this claim is the mistake, inadvertence, surprise, and excusable neglect of the claimant and CLYDE O. WEST, his attorney, as more particularly shown in the declaration of CLYDE O. WEST attached hereto. CITY OF SACRAMENTO was not prejudiced by the failure to timely file the claim as shown by the declaration of CLYDE O. WEST attached hereto as Exhibit "B" and made a part hereof.

///

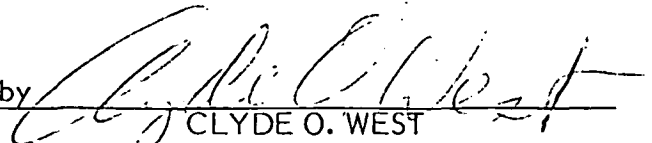
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. This application is presented within a reasonable time after the accrual of the cause of action as shown by the declaration of CLYDE O. WEST attached hereto as Exhibit "B" and made a part hereof.

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

DATED: April 10, 1981

LAW OFFICES OF CLYDE O. WEST

by   
CLYDE O. WEST  
On behalf of Claimant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES OF CLYDE O. WEST  
1314 H Street, Suite 100  
Sacramento, California 95814  
Telephone: (916) 441-1891

Attorney for Kenneth Jones

In the Matter of the Claim of )  
KENNETH JONES )  
against )  
CITY OF SACRAMENTO )  
\_\_\_\_\_ )

NO.  
PROPOSED CLAIM

TO THE CITY OF SACRAMENTO:

KENNETH JONES hereby makes claim against the CITY OF SACRAMENTO for the sum of \$50,000.00 and makes the following statements in support of the claim:

1. Claimant's post office address is 10008 Bromley Way, Sacramento, California 95827.

2. Notices concerning the claim should be sent to the LAW OFFICES OF CLYDE O. WEST, 1314 H Street, Suite 100, Sacramento, California 95814.

3. The date and place of the occurrence giving rise to this claim are November 29, 1980 at 24th Avenue north of Sutterville Road, and southeast of the parking lot located to the south and east of Hughes Stadium.

4. The circumstances giving rise to this claim are as follows: At the above time and place, claimant was walking on the sidewalk which was in a dangerous condition due to the design of the road, curb, and sidewalk, and the

1 location of the guard rail. The design, construction, and placement of the road,  
2 curb, sidewalk, and guard rail was done by, on behalf of, and/or at the request of  
3 the CITY OF SACRAMENTO. Due to the dangerous condition, claimant was struck  
4 by an automobile that failed to negotiate the curve at said location, causing him  
5 serious injuries.

6 5. Claimant's injuries are:

- 7 a. Fracture of the mid shaft of the left clavicle;  
8 b. Separation of the acromioclavicular joint;  
9 c. Compound fractures of the right tibia and fibula;  
10 d. Multiple broken teeth;  
11 e. Lacerations of the face; and  
12 f. Related bruises and contusions related to the aforementioned  
13 injuries.

14 6. The names of the public employees causing the claimant's injuries are  
15 unknown.

16 7. My claim as of the date of this claim is \$50,000.00

17 8. The basis of computation of the above amount is as follows:

18 Medical Expenses  
19 Incurred to Date \$ 6,509.78  
20 Extimated Future  
21 Medical Expenses \$ 4,000.00  
22 General Damages \$39,490.22  
23 Total \$50,000.00

24 DATED: April 10, 1981

LAW OFFICES OF CLYDE O. WEST

25  
26 by 

CLYDE O. WEST

On Behalf of Claimant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES OF CLYDE O. WEST  
1314 H Street, Suite 100  
Sacramento, California 95814  
Telephone: (916) 441-1891

Attorney for Kenneth Jones

In the Matter of the Claim of )  
KENNETH JONES )  
against )  
CITY OF SACRAMENTO )  
\_\_\_\_\_ )

NO.  
DECLARATION IN  
IN SUPPORT OF  
APPLICATION FOR LEAVE  
TO PRESENT LATE CLAIM

I, CLYDE O. WEST, declare:

1. That I am attorney for the claimant in the above-entitled matter.
2. That the failure to file a claim within the 100 day period subsequent to November 29, 1980 was due to my inadvertence and excusable neglect in that:
  - a. During said period, which included the Christmas holidays, and to the present, I have been engaged in several trials and other matters which claimed my attention, and much of my time;
  - b. One of my two associate attorneys left my employ;
  - c. My remaining associate attorney had much of his time and attention devoted to assisting me in my trials, and post trial briefs, as well as assuming the case load of the departing associate;
  - d. My firm's sole secretary left our employ, necessitating the use of temporary secretarial help for a period of one month, and disrupting our calendaring procedures;

1  
2 e. The secretary hired to replace our departing secretary was  
3 inexperienced in legal secretarial matters, and immediately overburdened by a  
4 backlog of work that the temporary secretarial employees were unable to perform.

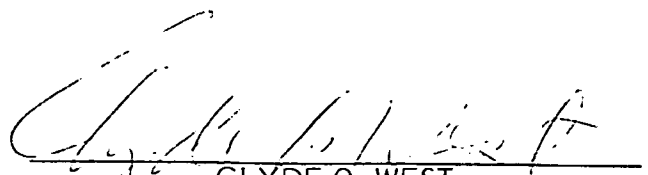
5 3. The CITY OF SACRAMENTO is in no way prejudiced by the late  
6 filing of this claim in that it is being filed only approximately 40 days beyond the  
7 100 day period; no material changes in the design, or physical structure/appearance  
8 of the subject location have been made; photographs of the subject location, as it  
9 appeared at the time of the accident have been taken and are available; and I am  
10 informed and believe that sufficient percipient witnesses to the subject incident  
11 are available to assist the CITY OF SACRAMENTO in its investigation of the  
12 proposed claim.

13 4. The failure of my client, KENNETH JONES, to file a claim within the  
14 100 day period is similarly due to excusable neglect and inadvertence, in that he  
15 was hospitalized for a period of time subsequent to the accident, and that, after  
16 retaining me, he relied upon me to investigate and prosecute all claims on his  
17 behalf, and to my knowledge, had no personal knowledge of time requirements for  
18 filing claims against the city, or that such a claim existed, outside my evaluation in  
19 that regard.

20 5. This claim is presented within a reasonable time after the accrual of  
21 the cause of action, in that: (1) there is no prejudice to the CITY OF  
22 SACRAMENTO, as declared above; and (2) had this claim been filed near the end of  
23 the otherwise required 100 day period, the 45 day period within which the city  
24 would have been required to respond, would not yet have elapsed.

25 I declare under penalty of perjury that the foregoing is true and correct, to  
26 the best of my knowledge.

27 DATED: April 10, 1981

28   
CLYDE O. WEST  
Attorney for Claimant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

e. The secretary hired to replace our departing secretary was inexperienced in legal secretarial matters, and immediately overburdened by a backlog of work that the temporary secretarial employees were unable to perform.

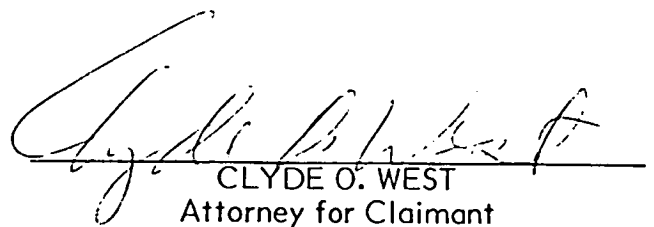
3. The CITY OF SACRAMENTO is in no way prejudiced by the late filing of this claim in that it is being filed only approximately 40 days beyond the 100 day period; no material changes in the design, or physical structure/appearance of the subject location have been made; photographs of the subject location, as it appeared at the time of the accident have been taken and are available; and I am informed and believe that sufficient percipient witnesses to the subject incident are available to assist the CITY OF SACRAMENTO in its investigation of the proposed claim.

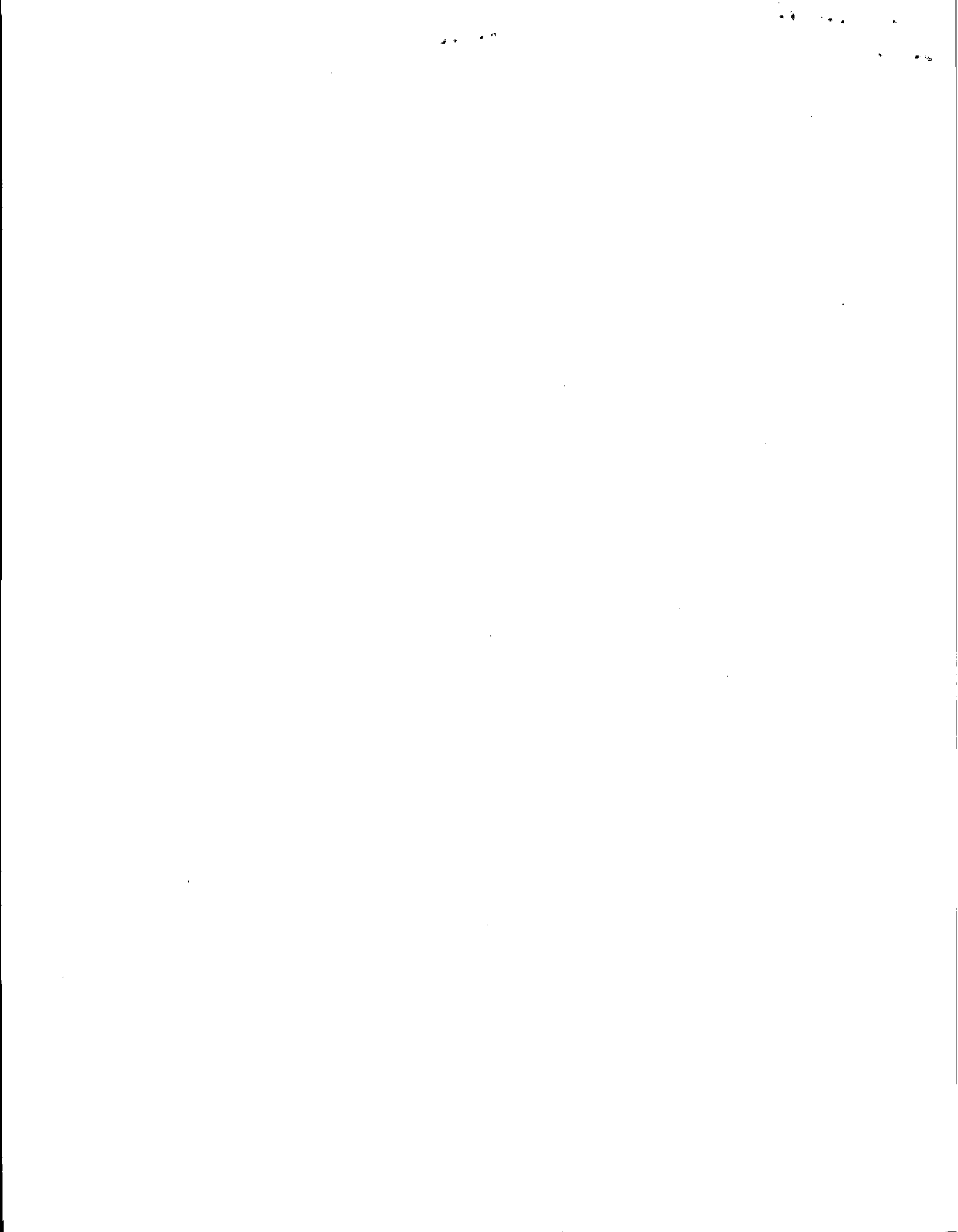
4. The failure of my client, KENNETH JONES, to file a claim within the 100 day period is similarly due to excusable neglect and inadvertence, in that he was hospitalized for a period of time subsequent to the accident, and that, after retaining me, he relied upon me to investigate and prosecute all claims on his behalf, and to my knowledge, had no personal knowledge of time requirements for filing claims against the city, or that such a claim existed, outside my evaluation in that regard.

5. This claim is presented within a reasonable time after the accrual of the cause of action, in that: (1) there is no prejudice to the CITY OF SACRAMENTO, as declared above; and (2) had this claim been filed near the end of the otherwise required 100 day period, the 45 day period within which the city would have been required to respond, would not yet have elapsed.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

DATED: April 10, 1981

  
CLYDE O. WEST  
Attorney for Claimant







# CITY OF SACRAMENTO

## OFFICE OF THE CITY CLERK

915 I STREET

SACRAMENTO, CALIFORNIA 95814

CITY HALL ROOM 203

TELEPHONE (916) 449-5426

May 6, 1981

LORRAINE MAGANA  
CITY CLERK

Mr. Clyde O. West  
1314 H Street, Suite 100  
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF KENNETH JONES  
DATE OF ALLEGED INCIDENT: NOVEMBER 29, 1980

Dear Mr. West:

You are hereby notified that your application for leave to present a late claim on behalf of Kenneth Jones was denied by the Sacramento City Council on May 5, 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.

Very truly yours,

  
Lorraine Magana  
City Clerk

LM:sj

cc: City Attorney  
Finance Administration (2)

18

### 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 an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.