



CITY OF SACRAMENTO

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DEPARTMENT OF LAW

812 TENTH ST.
SUITE 201

SACRAMENTO, CALIF. 95814
TELEPHONE (916) 449-5346

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY

LELAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON

WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

CITY MANAGER'S OFFICE

RECEIVED

APR 3 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: BERNICE KRUEGER - LATE CLAIM APPLICATION

Members in Session:

SUMMARY

Bernice Krueger 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

Ms. Krueger has applied for leave to present a late claim. The claim seeks damages for personal injuries allegedly incurred as a result of a fall caused by a defective sidewalk.

Government Code section 911.2 provides that a claim 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 27, 1979, the date of the alleged incident. The 100-day filing period expired on or about January 5, 1980. The instant application and claim were presented on February 29, 1980, approximately eight weeks late.

In support of the application it is stated that an accident report was taken from applicant by the Sacramento Police Department shortly after the alleged incident. It is further stated that applicant was hospitalized from September 30 to November 10, 1979, and that she was unable to drive a car until February 5, 1980. Applicant first consulted an attorney regarding her accident on February 29, 1980.

APPROVED
BY THE CITY COUNCIL
CLAIM DENIED
APR 6 1980

OFFICE OF THE
CITY CLERK

ANALYSIS

A person seeking to file a late claim must show that the failure to file a timely claim was either (1) due to mistake, inadvertence, surprise or excusable neglect (In order to obtain relief on any of these grounds it must appear that applicant acted reasonably under the circumstances, Roberts vs. State of California (1974) 39 C.A. 3d 844) or (2) a result of the applicant's physical or mental incapacity during the entire 100-day filing period.

With respect to the latter of these two, alternative, grounds for relief, applicant's showing does not appear sufficient to justify the requested relief. While possibly incapacitated during the hospitalization, this period ended on November 10, 1979. Although unable to drive a car until February , 1980, there is no indication that applicant's alleged injuries otherwise incapacitated her from attending to her daily affairs or from filing a timely claim during the 100-day filing period.

With respect to the other ground for relief relied upon by applicant (mistake, inadvertence, surprise or excusable neglect), it does not appear that applicant has made the necessary showing. The accident report taken from applicant (attached) does not indicate that she was seeking damages based on the City's alleged negligence. That report does not substantially comply with the claim filing requirements (City of San Jose vs. Superior Court (1974) 12 C.3d 447; Tyus vs. City of Los Angeles (1977) 74 C.A.3d 667). Furthermore, although applicant apparently could not drive (e.g. to consult an attorney) until February 5, 1980, there is nothing to indicate that she could not have consulted an attorney or filed a claim prior to the expiration of the filing period. She apparently realized that she should consult an attorney, as she ultimately did so, on February 29, 1980.

In short, the application does not set forth facts which demonstrate that applicant's failure to consult an attorney until February 29, 1980, was due to the mistake, inadvertence, surprise, or excusable neglect of a reasonable person under the circumstances (Roberts vs. State, supra).

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Bernice Krueger to file a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen B. Nocita

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Dipe
CITY MANAGER



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

MEMORANDUM

TO:

FROM:

RE: Bernice Krueger 9-27-79 ZM.
12-27-79
Name of Claimant and Date of Accident

Enclosed is a copy of the ^{LATE} claim which was received by the Sacramento City Clerk on 2-29-80. The enclosed document was served on
date

on the City as follows:

() Personal service

() Received in mail

DATED: 2-29-80

LORRAINE MAGANA
CITY CLERK

BY: Jovir Lion

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CITY OF SACRAMENTO
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LAW OFFICES
EUGENE C. TREASTER
1010 FOURTH STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 444-2622

ATTORNEY FOR Claimant.

CLAIM AGAINST THE CITY OF SACRAMENTO

In the Matter of the Claim of)
)
BERNICE KRUEGER) CLAIM FOR PERSONAL INJURIES
) (Government Code §910)
against the CITY OF SACRAMENTO.)
)
)

TO: THE CLERK OF THE CITY OF SACRAMENTO, TO THE CITY COUNCIL
OF THE CITY OF SACRAMENTO, AND ITS ATTORNEYS:

YOU ARE HEREBY NOTIFIED that BERNICE KRUEGER, whose
address is 5530 - 36th Avenue, Sacramento, California, 95825, claims
damages against the CITY OF SACRAMENTO in the amount, computed as
of the date of presentation of this claim, of ONE HUNDRED THOUSAND
DOLLARS (\$100,000.00).

This claim is based upon personal injuries sustained by
claimant on September 27, 1979, on a public sidewalk under the
control, management, maintenance, and inspection program of the
CITY OF SACRAMENTO on the sidewalk near the intersection of 8th
and N Streets, City of Sacramento, which occurred under the
following circumstances:

(a) A dangerous and defective condition was present upon

1 a City sidewalk because of a defect in the sidewalk, maintenance
2 upon the sidewalk, installation of certain signaling devices,
3 failure to inspect, failure to warn and other acts of negligence
4 causing personal injuries and damages as hereinafter alleged.

5 (b) The City, and its employees, knew or should have
6 known in the exercise of reasonable care of the dangerous and
7 defective condition which was present upon the City sidewalk
8 because of the defect in the sidewalk.

9 The names of the public employees causing the claimant's
10 injuries under the described circumstances are unknown to the
11 claimant at this time.

12 The CITY OF SACRAMENTO had prior notice of this injury
13 and the fact that the claimant was alleging a defective and danger-
14 ous condition upon the City property, and that the sidewalk should
15 be repaired.

16 Nonetheless, no formal claim through a lawyer was made
17 heretofore.

18 This claim is to act as an amendment of the claim made
19 to the CITY OF SACRAMENTO heretofore and is to be amended herein-
20 after to conform to proof.

21 In short, the claimant herein asserts that the filing of
22 a late claim is, in fact, unnecessary and that this Claim augments,
23 supplements, amends and specifies, as far as possible, at this point,
24 the claim made heretofore with the CITY OF SACRAMENTO, said claim
25 having been filed within the time provision set forth as 100-day
26 period in Government Code §911.2.

1 The injuries sustained by claim, as far as known as of the
2 date of presentation of this claim, consist of loss of wages, bodily
3 injuries and medical expenses, including general damages.

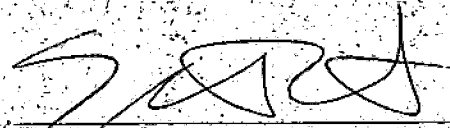
4 The amount claimed as of the date of presentation of this
5 claim is computed as follows:

6	Damages incurred to date:	
7	Expenses for medical care and hospital care	\$ Unknown
8	Loss of earnings (approx.)	\$ 7,000.00
9	Special damages for treatment	\$ Unknown
10	General damages	\$23,000.00
11	Estimated prospective damages as far	
12	as known:	
13	Future expenses for medical and hospital	
14	care	\$ Unknown
15	Future loss of earnings	\$15,000.00
16	Other prospective special damages	\$ Unknown
17	Prospective general damages	\$55,000.00

18 Total amount claimed as of date of presentation
19 of this claim - - - - - \$100,000.00

20 All notices or other communications with regard to this
21 claim should be sent to claimant at the Law Offices of EUGENE C.
22 TREASTER, 1010 - 4th Street, Sacramento, CA 95814.

23 DATED: February 29, 1980.

24 
25 _____
26 EUGENE C. TREASTER
Attorney for Claimant.

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CITY OF SACRAMENTO
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LAW OFFICES
EUGENE C. TREASTER
1010 FOURTH STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 444-2622

ATTORNEY FOR Claimant.

CLAIM AGAINST THE CITY OF SACRAMENTO

In the Matter of the Claim of)
BERNICE KRUEGER)
against the CITY OF SACRAMENTO.)

APPLICATION TO PRESENT LATE
CLAIM *

TO: THE CLERK OF THE CITY OF SACRAMENTO, THE CITY COUNCIL OF THE
CITY OF SACRAMENTO, AND TO ITS ATTORNEYS:

1. Claimant, BERNICE KRUEGER, takes the position that this Application to Present Late Claim is unnecessary; however, it is made and founded on a cause of action for personal injuries which occurred on September 27, 1979, and for which a Claim was not presented to the City Clerk within the 100-day period provided by §911.2 of the Government Code. The Claim was made to the

*Claimant, BERNICE KRUEGER, and her counsel EUGENE C. TREASTER, ESQ., contend that the Application to Present Late Claim is unnecessary. An application was made heretofore putting the City on notice that a negligent condition existed and that the claimant asserted injuries therefrom when she fell as a result of the dangerous and defective condition on City property, which was known or should have been known in the exercise of reasonable care, on September 27, 1979.

Said Claim was made with the Police Department of the City of Sacramento and contained all essential allegations of claims which are filed pursuant to Government Code §910. Said report was deemed "accident report".

1 Police Department of the CITY OF SACRAMENTO, an agency of said City,
2 within the 100-day period. For additional circumstances relating
3 to the cause of action, reference is made to the Claim attached to
4 this application.

5 2. Failure to present this claim within the 100-day
6 period specified by §911.2 of the Government Code to the City Clerk
7 rather than to the Police Department, was through mistake, inad-
8 vertence, surprise and excusable negligent, and the City of
9 Sacramento is not prejudiced by this failure.


10 3. Failure to present this claim within the 100-day
11 period specified by §911.2 of the Government Code to the City Clerk,
12 but rather to the Police Department, was also on account of the
13 claimant's loss of physical or mental capacity, hospitalization,
14 inability to move during all of the times specified by §911.2 of
15 the Government Code for presentation of this Claim, and by reason
16 of such inability failed to present a Claim during such time
17 period. For additional circumstances relating to the tolling of
18 the 100-day time period, supplemental Memorandum of Points and
19 Authorities, grounds for estoppel against the City of Sacramento
20 to assert the filing of a timely claim to the City Clerk, and
21 affidavits of claimant, her attorney and others shall be attached
22 hereto as promptly as possible, in addition to those attached
23 hereto at this time.

24 4. In fact, City of Sacramento knew of said Claim. This
25 application is presented within a reasonable time after the
26 accrual of the cause of action.

1 5. If necessary, further declarations of evidence and
2 affidavits will be available.

3 WHEREFORE, claimant respectfully requests that this
4 Application be granted and that the attached proposed Claim be
5 received and acted upon in accordance with Government Code §912.4
6 and §912.6.

7 DATED: February 29, 1980.

8
9 
10 EUGENE C. TREASTER
11 Attorney for Claimant.

LAW OFFICES

EUGENE C. TREASTER

1010 FOURTH STREET

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 444-2622

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CITY CLERKS OFFICE
CITY OF SACRAMENTO

FEB 29 4 23 PM '80

ATTORNEY FOR Claimant.

CLAIM AGAINST THE CITY OF SACRAMENTO

In the Matter of the Claim of)
)
BERNICE KRUEGER)
)
against the CITY OF SACRAMENTO.)

DECLARATION OF BERNICE KRUEGER

I, BERNICE KRUEGER, say:

1. I am a widow.

2. I live alone.

3. I lived alone during all periods from September 27, 1979, to the present.

4. An accident report was filed by me from the hospital (when I could not get out) to the Police Department of the City of Sacramento, within the time prescribed in Government Code §911.2.

5. I was hospitalized from about September 30, 1979, to about November 10, 1979. I will obtain the precise dates.

6. Following my release from the hospital, I was unable physically (I was incapacitated during all periods of hospitalization and immediately thereafter) for a period up until approximately early February 1980, from driving a car.

1 7. At this time, I walk with a cane with difficulty.
2 It was very difficult for me to talk to the attorney's office. I
3 was disabled to the extent that I was unable to attend to business
4 affairs with care and diligence ordinarily expected of persons in
5 average good health.

6 8. I first consulted EUGENE C. TREASTER, ESQ., upon the
7 advise of friends on February 29, 1980. I have not seen an
8 attorney, a para-legal, representative, or anyone else familiar
9 with the law until this date.

10 9. My daughter informs me that she gave me the car to
11 drive on approximately February 5, 1980, for the first time.

12 10. It was on February 29, 1980, that I first learned
13 from anyone (Mr. Treaster informed me) that I might have a Claim
14 against the City of Sacramento.

15 11. I am informed and believe and upon such information
16 and belief allege that the City of Sacramento will not be prejudiced
17 by this late filing of this Claim.

18 12. Further, I seek additional affidavits from my
19 daughter, together with an opportunity for my attorney, EUGENE C.
20 TREASTER, ESQ., to file a Memorandum of Points and Authorities so
21 this Claim can be filed.

22 13. I have no further education than high school.
23 I was under the impression that the State of California (EDD) and
24 the State Compensation Insurance Fund, if necessary, would take
25 care of all matters for me because I received compensation on a
26 temporary-total basis.

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I declare under penalty of perjury that the foregoing is true and correct, except as to those matters alleged on information and belief, and as to those matters I believe them to be true.

Executed this 29th day of February, 1980, at Sacramento, California.


BERNICE KRUEGER

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
FEB 29 4 22 PM '80

LAW OFFICES
EUGENE C. TREASTER
1010 FOURTH STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE 19161 444-2622

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ATTORNEY FOR Claimant.

CLAIM AGAINST THE CITY OF SACRAMENTO

In the Matter of the Claim of)
BERNICE KRUEGER)
against the CITY OF SACRAMENTO.)
DECLARATION OF EUGENE C.)
TREASTER.)

I, EUGENE C. TREASTER, say:

I am an attorney licensed to practice law in the State of California.

Claimant BERNICE KRUEGER first contacted me at approximately 1:00 p.m., on February 29, 1980. She contacted me concerning a workmen's compensation case for which she was receiving benefits from the State of California, as industrial disability leave from September 27, 1979, to the present.

She indicated to me that she had been hospitalized for approximately five weeks during the fall of 1979.

She indicated to me that she had filed a police report, with a "clerk" indicating that the accident was the fault of the City and that she was injured and claimed injuries.

I am informed and believe and upon such information and

1 upon such information and belief allege that the State Compensation
2 Insurance Fund, a public entity, and/or the State of California
3 (Employment Development Department) another public entity, may have
4 filed a claim with the CITY OF SACRAMENTO and/or placed said City
5 of Sacramento upon notice concerning these injuries.

6 This application to file a Late Claim, and Claim, is
7 filed as promptly as possible after BERNICE KRUEGER contacted my
8 office.

9 I have never seen nor heard of BERNICE KRUEGER before
10 this date.

11 I declare under penalty of perjury that the foregoing is
12 true and correct, except as to those matter which, of necessity,
13 must be alleged on information and belief, and as to those matters I
14 believe them to be true.

15 Executed this 29th day of February, 1980, at Sacramento,
16 California.


17
18 EUGENE C. TREASTER
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LAW OFFICES

EUGENE C. TREASTER
1010 FOURTH STREET
SACRAMENTO, CA 95814
TELEPHONE (916) 444-2622



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

April 9, 1980

John E. Virga, Esq.
Attorney at Law
VIRGA & LYONS
721- 11th Street
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF MR. THOMAS SPARACO,
DATE OF ALLEGED INCIDENT: APRIL 23, 1979

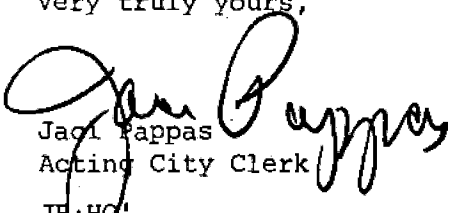
Dear Sir:

You are hereby notified that your application for leave to present a late claim on behalf of Mr. Thomas Sparaco was denied by the Sacramento City Council on April 8, 1980.

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,


Joel Pappas
Acting City Clerk

JH:HC

cc: City Attorney
Finance Administration (2)

Item No. 14

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.