

CITY OF SACRAMENTO



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

CITY MANAGER'S OFFICE
RECEIVED
FEB 2 1982

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

February 1, 1982

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

RE: LATE CLAIM APPLICATION OF NORMAN LIM

Members in Session:

SUMMARY

Norman Lim 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. Lim has applied for leave to present a late claim. The claim seeks damages for personal injuries and property damage allegedly suffered in an automobile accident which he claims was caused by a dangerous condition on public property.

Government Code §911.2 provides that a claim based upon personal injuries or property damage shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on September 29, 1981. The 100 day filing period expired on or about January 7, 1982. The claim and late claim application were presented January 19, 1982.

The application states that a timely claim was not presented because applicant did not consult an attorney until January 12, 1982. It is further stated that applicant was incapacitated for six (6) weeks following the accident.

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 Cal.App.3d 844; El Dorado Irr.Dist. vs. Superior Court (1979) 98 Cal.App.3d 57). It does not appear to us that this standard has been met in the instant case.

February 1, 1982

The failure to consult an attorney within the 100 day filing period does not excuse the failure to file a timely claim (Bennett vs. City of Los Angeles (1970) 12 C.A.3d 116 [claim filed 19 days late]). The fact that applicant was allegedly incapacitated for part of the claim filing period does not alter this result because ample time remained available to consult an attorney and file a claim in a timely manner. The fact that applicant consulted an attorney reveals that he was aware that he had a compensable claim. The application contains no information which would take this case out of the general rule cited above (Bennett vs. L.A., supra); consequently, applicant is not entitled to the relief requested.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Norman Lim 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
attachment

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CITY CLERKS OFFICE
CITY OF SACRAMENTO

JAN 19 8 37 AM '82

1 BLACKMAN & BLACKMAN
2 A Professional Corporation
3 701 - 12th Street, Suite 200
4 Sacramento, CA 95814
5 (916) 441-1320

6 Attorneys for Claimant

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

FEB 9 1982

10 In the Matter of the)
11 Claim of)

12 NORMAN T. LIM,)

13 Claimant,)

14 v.)

15 CITY OF SACRAMENTO.)

APPLICATION TO FILE A LATE CLAIM

[Gov. Code §911.4]

16 TO: THE CITY OF SACRAMENTO.

17 The name of the claimant is NORMAN T. LIM who hereby
18 petitions to file a late claim against the City of Sacramento for
19 the sum of \$1,000,000.00 and makes the following statements for the
20 late claim:

21 1. Claimant's post office address is:

22 1121 Derick Way
23 Sacramento, California

24 2. Notices concerning the claim should be sent to:

25 BLACKMAN & BLACKMAN
26 A Professional Corporation
27 701 - 12th Street, Suite 200
28 Sacramento, CA 95814

29 3. Dates and places of the occurrence giving rise to
30 this claim are:

Six ~~the~~ weeks

1 On or about September 29, 1981, claimant was driving his
2 1980 Kawasaki motorcycle east on Sutterville Road when he was
3 struck by a driver driving a 1970 Oldsmobile traveling north on
4 Mulberry Lane. As a result of that collision, claimant suffers
5 massive personal injuries and loss of wages and has incurred
6 medical bills. Based upon information and belief, the southerly
7 side of Sutterville Road going east to its intersection with
8 Mulberry Lane is so littered with growing debris, trees and other
9 obstructions that a vehicle traveling north on Mulberry Lane at
10 the intersection of Mulberry and Sutterville Road would be unable
11 to see oncoming or eastbound traffic on Sutterville Road due to
12 brush, shrubbery and growing debris on the southerly side of
13 Sutterville Road. Additionally, based upon information and belief,
14 the City has constructed a dangerous roadway in that the offramp
15 from Riverside Blvd is so close to the intersection of Sutterville
16 Road and Mulberry Lane, that a vehicle turning from Riverside Blvd.
17 onto and upon Sutterville Road could not be observed by a vehicle
18 pulling out from Mulberry Lane and Sutterville Road. That said
19 construction of said highway constitutes a dangerous and defective
20 condition of public property. That based upon information and
21 belief, the City has a duty to maintain said roadway in a reasonable
22 state of repair and has a further duty to keep growing debris
23 trimmed so that it does not cause a dangerous condition to public
24 property. It has a further duty to maintain public property so
25 that it is constructed and maintained not causing a dangerous
26 condition of public property.

27 That as a proximate result of the City's failure to main-
28 tain the above mentioned roadway, claimant was injured in his health

1 as more fully set forth infra.

2 4. Claimant's injuries among other things, are massive
3 brain damage and facial paralysis. He has been off work since the
4 accident and is still undergoing brain surgeries.

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

7 6. The claim as of this date is \$1,000,000.00.

8 7. The basis for computation of the above amount is
9 as follows:

10 That claimant has suffered massive and permanent brain
11 injury as well as total loss of motor control of his face which
12 has caused total paralysis. The extent of claimant's special
13 damages and hospitalization bills are unknown, however, at the
14 present time they do exceed \$35,000.00.

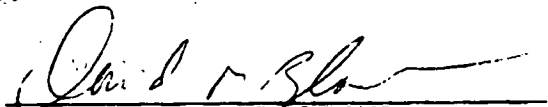
15 8. That pursuant to Government Code §911.4 claimant's
16 claim is presented within one year of the accrual of the cause
17 of action.

18 9. The reason for failure to file the claim within
19 100 days is that claimant, among other things, had not sought
20 the services of an attorney until January 12, 1981. Additionally,
21 claimant suffered a brain injury and was hospitalized for a
22 substantial period of time and for that period unable physically to
23 retain services of counsel. Immediately upon obtaining the services
24 of an attorney claimant's attorney sent his investigator to
25 investigate the scene of the accident and determined for the first
26 time the City maintained the road where the accident occurred and
27 upon further investigation by claimant's attorney's investigator,
28 it was determined that visability is poor at that intersection and

1 that the construction of the roadway may be a defective and
2 dangerous condition. That immediately upon finding out those
3 facts a petition for filing late claim was presented.

4 10. Attached hereto, marked Exhibit "A" and incorporated
5 herein by reference is a Claim for Damages pursuant to Government
6 Code §910.

7 DATED: January 18, 1982.



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9 DAVID M. BLACKMAN
On behalf of Claimant
10 NORMAN T. LIM

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1 BLACKMAN & BLACKMAN
A Professional Corporation
2 701 - 12th Street, Suite 200
3 Sacramento, CA 95814
(916) 441-1320

4 Attorneys for Claimant

10 In the Matter of the)
11 Claim of)
12 NORMAN T. LIM,) CLAIM FOR DAMAGES
13 Claimant,) [Gov. Code §910 et seq]
14 v.)
15 CITY OF SACRAMENTO)

16 TO: CITY OF SACRAMENTO.

17 The name of the claimant is: NORMAN T. LIM, who hereby
18 makes claim against the City of Sacramento for the sum of
19 \$1,000,000.00 and makes the following statement for the claim:

20 1. Claimant's post office address is:
21 1211 Derick Way
22 Sacramento, California

23 2. Notices concerning the claim should be sent to:
24 BLACKMAN & BLACKMAN
25 A Professional Corporation
26 701 - 12th Street, Suite 200
Sacramento, CA 95814

27 3. The dates and places of the occurrence giving rise
28 to this claim are:

1 On or about September 29, 1981, claimant was driving
2 his 1980 Kawasaki motorcycle east on Sutterville Road when he was
3 struck by a driver driving a 1970 Oldsmobile traveling north on
4 Mulberry Lane. As a result of that collision, claimant suffered
5 massive injuries and loss of wages and has incurred medical bills.
6 Based upon information and belief, the southerly side of Sutterville
7 Road going east to its intersection with Mulberry Lane is so littered
8 with growing debris, trees and other obstructions that a vehicle
9 traveling north on Mulberry Lane at the intersection of Mulberry
10 and Sutterville Road would be unable to see oncoming and eastbound
11 traffic on Sutterville Road due to brush, shrubbery and growing
12 debris on the southerly side of Sutterville Road prior to impact
13 with the motorcycle. Additionally, based upon information and
14 belief, the City has constructed a dangerous roadway in that
15 the offramp from Riverside Blvd. is so close to the intersection
16 of Sutterville Road and Mulberry Lane, that a vehicle turning
17 from Riverside Blvd. onto and upon Sutterville Road could not be
18 observed by a vehicle pulling out at Mulberry Lane and Sutterville
19 Road. That said construction of said highway constitutes a
20 dangerous and defective condition of public property. That
21 based upon information and belief, the City has a duty to maintain
22 said roadway and a reasonable state of repair and that it has a
23 further duty to keep growing debris trimmed so that it does not
24 cause a dangerous condition to public property and has a further
25 duty to maintain public property so that it is constructed and
26 maintained so that it does not cause a dangerous condition.

27 That as a proximate result of the City's failure to
28 maintain the above mentioned debris, claimant was injured in his

1 health, as more fully set forth infra.

2 4. Claimant's injuries among other things, are massive
3 brain damage and facial paralysis. He has been off work since
4 the accident, and is still undergoing brain surgeries.

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

7 6. The claim as of this date is \$1,000,000.00.

8 7. The basis for computation of the above amount is
9 as follows:

10 That claimant has suffered massive and permanent brain
11 injury as well as total loss of motor control of his face which
12 has caused total paralysis. The extent of claimant's special
13 damages and hospitalization bills are unknown, however, at the
14 present time they do exceed \$35,000.00.

15 8. That pursuant to Government Code §911.4 claimant's
16 claim is presented within one year of the accrual of the cause
17 of action.

18 9. The reason for failure to file the claim within
19 100 days is that claimant, among other things, had not sought
20 the services of an attorney until January 12, 1981. Additionally,
21 claimant suffered a brain injury and was hospitalized for a
22 substantial period of time and for that period unable physically to
23 retain services of counsel. Immediately upon obtaining the services
24 of an attorney claimant's attorney sent his investigator to
25 investigate the scene of the accident and determined for the first
26 time the City maintained the road where the accident occurred and
27 upon further investigation by claimant's attorney's investigator,
28 it was determined that visibility is poor at that intersection and

1 that the construction of the roadway may be defective and a
2 dangerous condition. That immediately upon finding out those
3 facts a petition for filing late claim was presented.

4 DATED: January 18, 1982.



5
6 DAVID M. BLACKMAN
7 On Behalf of Claimant
8 NORMAN T. LIM

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maintain the above...

file



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 10, 1982

David M. Blackman
Blackman and Blackman
701 Twelfth Street, Suite 200
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF NORMAN T. LIM.
DATE OF ALLEGED INCIDENT: SEPTEMBER 29, 1981

Dear Mr. Blackman:

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 9, 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
Lorraine Magana
City Clerk

LM/mm/9

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.