



# CITY OF SACRAMENTO

CITY MANAGER'S OFFICE  
**RECEIVED**  
JAN 27 1981

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

January 16, 1981

SEARCHED  
SERIALIZED  
INDEXED  
FILED  
FEB 3 1981

Honorable City Council  
Council Chamber  
City Hall  
Sacramento, California 95814

FEB 3 1981

RE: LATE CLAIM APPLICATION OF MARCIA MAE SMITH

### SUMMARY

Marcia Mae Smith 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. Smith has applied for leave to present a late claim. The claim seeks damages for personal injuries incurred in an automobile accident which she claims was 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 accrual of the cause of action. Applicant's cause of action accrued on March 24, 1980. The 100 day filing period expired on or about July 2, 1980. The claim and late claim application were filed on December 29, 1980, nearly six months late.

Applicant states that a timely claim was not filed because she was physically incapacitated during the entire 100 day filing period and because the allegedly defective road condition was not discovered until late December, 1980.

### DISCUSSION

As pertinent herein, a person seeking to file a late claim must show both (1) that the application was presented within a reasonable time not to exceed one year after accrual of the cause of action (Government Code Section 911.4(b)), and (2) either that the applicant was incapacitated during the entire 100 day filing period, or that the

failure to present a timely claim was due to mistake, inadvertence, surprise or excusable neglect. (Government Code Section 911.6(b)). Although the latter requirement appears satisfied in this case, it appears to us that the first requirement has not been met.

On March 24, 1980, applicant was hospitalized as a result of the accident for which she seeks damages. She was discharged on June 27, 1980, 97 days after accrual of the cause of action. Based upon her physical condition as described in the discharge report and the medications prescribed to applicant, as well as applicant's declaration in support of her late claim application, it appears probable that applicant was incapacitated for the entire 100 day filing period.

According to records at the Municipal Court, on July 31, 1980, applicant personally appeared in court on criminal charges relating to the same automobile accident as underlies her claim. By late August, 1980 she had consulted with her present attorney, whom she substituted as her attorney of record in the middle of September, 1980. The charges were dismissed on October 10, 1980. Thus, although applicant was probably incapacitated during the entire 100 day filing period, the records indicate that shortly thereafter she was capable of attending to her affairs, consulted with and retained counsel, and was able to assist him in the handling of her case. Applicant's present claim that she is still physically incapacitated from attending to her affairs is not supported by the evidence.

The application states that the allegedly defective road condition was not discovered until late December, 1980. However, by August, 1980 an accident reconstruction specialist had been retained to assist in the criminal case against applicant. It is thus clear that as early as August, 1980, applicant and her attorney suspected that a defective road condition contributed to the accident. In addition, applicant's attorney states that the investigation continued for several months, culminating in the decision to file a claim and late claim application. Since the criminal charges were dismissed on October 10, 1980, it is clear that the continuing investigation was for the purpose of pursuing a civil case.

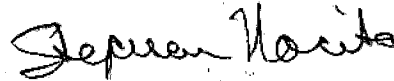
Thus, it appears that both applicant and her attorney were aware of the possibility of a defective road condition and the viability of pursuing a civil action against the responsible parties. In light of these factors a claim unnecessarily delayed more than two months does not appear to us to have been presented within a reasonable time, as contemplated by Government Code Section 911.4(b). (Tsingaris v. State (1979) 91 Cal. App. 3d 312, 314). The intentional decision not to file a claim until further evidence in support of applicant's claim could be obtained does not entitle applicant to the relief sought. (County of Sacramento v. Superior Court (1980) 105 Cal. App. 3d 898, 901.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Marcia Mae Smith 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:a

CITY CLERK'S OFFICE  
CITY OF SACRAMENTO

DEC 29 10 13 AM '80

MARCIA MAE SMITH, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 CITY OF SACRAMENTO. )

APPLICATION FOR LEAVE TO  
PRESENT CLAIM BY CLAIMANT  
(Sec. 911.4 of the Government  
Code)  
OFFICE OF THE  
CITY CLERK

RECEIVED

FEB 3 1981

TO THE CITY OF SACRAMENTO:

1. Application is hereby made, pursuant to Government Code Section 911.4, for leave to present a late claim founded on a cause of action for personal injuries which accrued on March 24, 1980, for which a claim was not presented within the 100-day period provided by Section 911.2 of the Government Code. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached to this application.

2. The reason that no claim was presented during the period of time provided by Section 911.2 of the Government Code is that the claimant, MARCIA MAE SMITH, was and still is physically incapacitated during all of the 100-day period specified by Section 911.2 for presentation of the claim.

3. In addition to paragraph 2 stated above, the failure to present this claim within the 100-day period specified by Section 911.2 of the Government Code is that Claimant's attorney became aware of the modification of the scene of the accident in late November, 1980. Said attorney immediately thereafter retained the services of an accident reconstruction specialist who on De-

1 cember 23, 1980, advised Claimant's attorney that various design  
2 and maintenance features of the highway at the point of the acci-  
3 dent may have significantly contributed to the seriousness of the  
4 Claimant's injuries sustained in the instant claim. The CITY OF  
5 SACRAMENTO was not prejudiced by this failure, all as more parti-  
6 cularly shown by the attached declaration of Dr. William Newman.

7 The claimant's attorney was initially consulted to  
8 defend the claimant from criminal prosecution. In the course of  
9 said investigation, said attorney retained Dr. William Melnicoe  
10 on or about August, 1980. Dr. Melnicoe's initial impression of  
11 the criminal investigation was that the roadway did not contri-  
12 bute to the accident. The initial investigation of the accident  
13 by the California Highway Patrol indicated 100 percent operator  
14 error as the cause of this accident. Only after months of inves-  
15 tigation did it become apparent that the accident had multiple  
16 causations, including but not limited to the design maintenance  
17 and repair of the roadway in question.

18 4. This application is being presented within a reasonable  
19 time after the accrual of this cause of action, as more particu-  
20 larly shown by the attached declaration of GREGORY WARD DWYER.

21 WHEREFORE, it is respectfully requested that this appli-  
22 cation be granted and the attached proposed claim be received and  
23 acted on in accordance with Sections 912.4 - 913 of the Govern-  
24 ment Code.

25 DATED: December 29, 1980

26 ORIGINAL EXECUTED  
27 GREGORY WARD DWYER  
Attorney for Claimant

CLAIM AGAINST THE CITY OF SACRAMENTO

You are hereby notified that MARCIA MAE SMITH, c/o Gregory Ward Dwyer, Esq, 1005 Eighth Street, Sacramento, California 95814, claims damages from the County of Sacramento, computed at presentation of this claim, in the amount of \$500,000.00. This claim is based upon personal injuries sustained on or about March 24, 1980 in the vicinity of Highway 160 and Del Paso Boulevard in the City and County of Sacramento, California, under the following circumstances:

Claimant was operating an automobile on Highway 160 near the Del Paso Boulevard offramp when she was involved in a traffic accident in which she sustained severe and permanently crippling injuries. Evidence now indicates that the design, maintenance, and repair of said Highway significantly contributed to the accident and the severity of Claimant's injuries.

The injuries to the Claimant, as far as known at the date of presentation of the claim consist of broken femur, emotional distress, contusions, abrasions and loss of future earning capacity. The exact nature and extent of injuries is still being determined.

The amount of damages claimed as of the date of this claim is computed as follows:

DAMAGES INCURRED TO DATE:

Medical Expenses

(Medi-Cal Lien still accruing)

79,379.34

ESTIMATED PROSPECTIVE DAMAGES AS FAR AS KNOWN:

Loss of future earning capacity	unknown at this time
General damages	to be determined


TOTAL AMOUNT CLAIMED AS OF DATE OF PRESENTATION OF CLAIM:

\$ 500,000.00

All notices and communications with regard to this claim should be sent to Claimant at

Gregory Ward Dwyer, Esq.  
BLOODGOOD & DWYER 915 447-5881  
1005 Eighth Street, #403  
Sacramento, CA 95814

DATED: December 29, 1980

  
GREGORY WARD DWYER, Esq.  
Attorney for Claimant

**BLOODGOOD & DWYER**

ATTORNEYS AT LAW

1005 EIGHTH STREET

SUITE 403

SACRAMENTO, CALIFORNIA 95814

TEL: (916) 447-5891 & 441-4374

GREGORY WARD DWYER, INC.  
CHARLES F. BLOODGOOD

OF COUNSEL  
DAVID M. WALTERS

January 6, 1980

RECEIVED  
JAN 7 1980  
CITY ATTORNEY'S OFFICE

Steven B. Nocita, Esq.  
Deputy City Attorney  
812 Tenth Street  
Sacramento, CA 95814

RE: Claim of Marcia Smith  
Personal Injury Accident of 3/24/80

Dear Mr. Nocita,

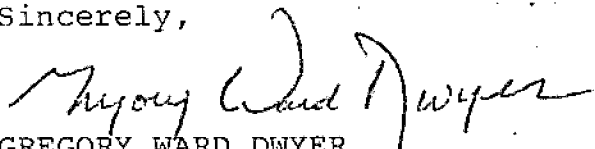
Pursuant to our recent telephone conferences, enclosed please find additional documentation to support the Petition for late claim of Marcia Mae Smith.

If necessary, a medical report can be secured from the attending physician, however no such report is currently in file. The nature and extent of Ms. Smith's injuries is so severe that to-date, medical records alone seem to sufficiently document her incapacity.

Please notify us if additional documentation is required in order to facilitate your evaluation of this matter.

Thank you for your cooperation and professional courtesy with regard to this petition.

Sincerely,

  
GREGORY WARD DWYER

GWD:dm

Enclosures: Five exhibits, with cover explanation



**BLOODGOOD & DWYER**

ATTORNEYS AT LAW  
1005 EIGHTH STREET  
SUITE 403

SACRAMENTO, CALIFORNIA 95814

TEL: (916) 447-5881 & 441-4374

GREGORY WARD DWYER, INC.  
CHARLES F. BLOODGOOD

OF COUNSEL  
DAVID M. WALTERS

THE FOLLOWING EXHIBITS ARE SUBMITTED IN SUPPORT OF  
PETITION TO FILE LATE CLAIM AGAINST GOVERNMENT ENTITY:

- EXHIBIT A: Discharge Summary and Discharge Abstract  
Indicating cause of injuries, severity  
of injuries, and physical state at time  
of discharge from first hospitalization.
- EXHIBIT B: Documentation of medications prescribed at  
time of discharge and through July 18, 1980.  
Also indicates physical condition as of  
July 18, 1980.
- EXHIBIT C: Progress Report of Dr. Rab, and rationale  
for 9-2-80 hospitalization; also 9-9-80  
discharge summary for this hospitalization.
- EXHIBIT D: Affidavit of Marcia Mae Smith.  
Certifying Claimant's physical and emotional  
incapacity from date of accident.
- EXHIBIT E: Report of William R. Neuman, Professional  
Engineer, citing highway design and mainten-  
ance features which contributed to the  
severity of Claimant's injuries.

UNIVERSITY OF CALIFORNIA, DAVIS  
 MEDICAL CENTER  
 SACRAMENTO, CALIFORNIA

NAME SMITH, MARSHA	AGE	ADMISSION: 3/24/80
UNIT NUMBER 29 61 40	NURSING STATION	DISCHARGE: 6/27/80
REFERRING PHYSICIAN	ADDRESS:	DICTATION: 8/28/80
		TRANSCRIPTION: 9/8/80

This 31-year-old was involved in a high speed motor vehicle accident early on the morning of admission and was brought to the Emergency Room in hypotension. She was taken immediately to the operating room for an Emergency laparotomy after initial X-rays were done. At operation, the patient was found to have a perivesicular hematoma, and no other intra-abdominal injury. The patient was also found to have an open laceration of the right knee and a severely comminuted open supracondylar and T condylar fracture of the right femur as well as a closed comminuted right acetabular fracture with medial displacement of the femoral head. Attempt at an open reduction and internal fixation of the condylar fractures of the right femur failed because of the severity of comminution. The right knee laceration was cleaned and the joint was irrigated and closed. The acetabular fracture was treated with lateral traction through Steinmann pins in the proximal aspect of the right femur. The supracondylar femoral shaft fracture was treated with casting. The patient's hospital course was prolonged because of the severity of her fractures. At the time of discharge her right hip was stable, however, the femur fracture was ununited. The patient was discharged to her home with plans to follow her in the Outpatient Clinic.

DISCHARGE DIAGNOSIS

Closed right acetabular fracture with medial displacement of the femoral head. Open comminuted right supracondylar and intracondylar femur fracture (internal fixation of the condylar fracture was accomplished with two cancellous screws however, the supracondylar fracture was not fixed because of the severity of comminution), perivesical hematoma.

DICTATED BY:

*Berge*  
 DENNIS W. BERGE, M.D.

DATED:

*9/29/80*

DWB/bjs

EXHIBIT A

001/029 61 40 7/2A  
 SMITH MARCIA  
 F 6/11/49  
 ICV AER 6/24/80

UC DAVIS MEDICAL CENTER, SACRAMENTO

DISCHARGE ABSTRACT

This form must be completed by the physician before the discharge order is written.

Name \_\_\_\_\_ Age \_\_\_\_\_ Unit Number \_\_\_\_\_ Sex \_\_\_\_\_

Date of Admission 3-24-80 Date of Discharge 6-27-80

Referring Physician/Hospital \_\_\_\_\_ Phone # \_\_\_\_\_

Referring Physician/Hospital Address \_\_\_\_\_ Zip Code \_\_\_\_\_

Principal Diagnosis	CODE
<u>open Right supra-intra condylar femur fracture</u>	
Additional Diagnoses <u>Right Central Acetabular Fracture</u>	
<u>Left Left radius fracture</u>	
Principal (Major) Operations/Procedures (Give Dates)	
<u>irrigation and debridement <sup>Right</sup> Left femur</u>	<u>5111</u>
<u>Stecher pin insertion <sup>Left</sup> Tibia</u>	<u>8657</u>
<u>Cort Bone Right Leg</u>	<u>1793</u>
Secondary (Minor) Operations/Procedures (Give Dates - - Include Invasive Diagnostic Procedures)	
	<u>23</u>
	<u>02</u>
	<u>07</u>
Complications (Give Dates)	

Condition at Discharge: Improved  Unimproved  Not Treated  Expired

Destination Bayer Hour Expired \_\_\_\_\_ (Dr. Complete Reverse Side)

Discharge Physician [Signature] M.D. Reviewed and found complete in accordance with JCAH standards M.D.

EMERGENCY DEPARTMENT R

UNIVERSITY OF CALIFORNIA - DAVIS  
MEDICAL CENTER  
2315 STOCKTON BLVD  
SACRAMENTO - CALIFORNIA - 95817  
PHONE 453-3790

036/029 61 40 7/5A

SPITH, MARCIA

By *[Signature]* MO

1	IR	ERAS	NOSE	NO
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UNIVERSITY OF CALIFORNIA - DAVIS MEDICAL CENTER - EMERGENCY DEPARTMENT

2315 STOCKTON BLVD. SACRAMENTO  
453-3790

FOLLOW INSTRUCTION SHEET ON

<input type="checkbox"/> WOUND CARE	<input type="checkbox"/> HEAD INJURY	<input type="checkbox"/> PELVIC INFECTION	<input type="checkbox"/> CAST CARE	<input type="checkbox"/> TETANUS
<input type="checkbox"/> THREATENED ABORTION	<input type="checkbox"/> STRAINS & BRUISES	<input type="checkbox"/> ABSCESS	<input type="checkbox"/> LOW BACK STRAIN	

CALL FOR APPOINTMENT TO: *Ortho Clinic* (453) 2700, WHEN *Tomorrow AM*  
 OTHER: *call number above*  
*for ortho clinic Dr Casey or*

I acknowledge receipt of instructions indicated above. I understand that I have had emergency treatment only, and that I may be released before all my medical problems are known or treated. I understand that I am responsible for follow-up care as instructed above. If my condition appears worse, I will contact my physician or go to the Emergency Department.

PATIENT SIGNATURE <i>Marcia Smith</i>	PATIENT ID#	DATE	PHYSICIAN SIGNATURE <i>[Signature]</i>
--	-------------	------	---

CONSULTANT NOTES: Service *Ortho* TIME

*3/10/84 synovial (P) distal femur  
 of humerus (P) be mach  
 1480. (P) distal femur  
 ball present of SR - cast  
 partially removed*

*drag bar collar for distal femur  
 distal femur of humerus  
 intra condylar fracture  
 N-U distal femur  
 swelling*

*aggressive treatment of distal femur  
 distal femur of humerus  
 intra condylar fracture  
 N-U distal femur  
 swelling  
 distal femur of humerus  
 intra condylar fracture  
 N-U distal femur  
 swelling  
 distal femur of humerus  
 intra condylar fracture  
 N-U distal femur  
 swelling*

036/029 51 40 7/5A

SMITH MARCIA  
F 01/11/1949  
922 2325

TIME REGISTERED 10:00 AM 7/5

INTERN \_\_\_\_\_ RESIDENT OR STAFF (PRINT)

EMERGENCY ( ) YES ( ) NO

19744

BP 120/70	TEMP 97.6	PRESENTING PROBLEM <i>Removal Party ft</i>	LAST TETANUS TOXOID _____
PULSE 100	RESP 20	<i>Cylinder and slates were being a</i>	DRUG ALLERGY _____
HISTORY & PHYSICAL		<i>Lab: Holmer pain less subcut</i>	MEDS <i>Aspirin, Tylenol, Penicillin</i>

discharged 3 wks ago from 3 month hospitalization for severe  
fracture of leg - 2 wks of continued pain + swelling @ leg above  
knee - became frustrated today due to inability to get to clinic  
tomorrow, and removed upper aspect of cast - no leg fever

Also swelling at knee + thigh and distal to remaining cast below knee  
@ the distal swelling at foot  
at 1 heal

PRELIMINARY LAB & X-RAY FINDINGS.

- DIAGNOSES:
1. *cast replacement*
  - 2.
  - 3.
  - 4.

PHYSICIANS ORDERS:  CBC, ESR

INTERN SIGNATURE

DISPOSITION OF PATIENT	HOME	ACUTE	REFERRED	TIME	CONDITION				RESIDENT OR STAFF
	<input checked="" type="checkbox"/> PULSE	<input type="checkbox"/> N.M.	<input type="checkbox"/> TO LWBS		GOOD	FAIR	POOR	EXP	

EMERGENCY BY REPORT

12-10-61 REVISION 01/14/76 228

MEDICAL RECORDS

MARCIA SMITH U#: 29 61 40 7  
DEPARTMENT OF ORTHOPAEDIC SURGERY  
UCDMC OUTPATIENT CLINIC

ORTHOPAEDIC  
FOLLOW-UP

DATE SEEN: September 2, 1980  
SEEN BY: George T. Rab, M.D.  
BIRTHDATE: 1-11-49

PROGRESS:

Patient was walking fairly comfortably in a cast, but removed it because it got wet 11 days ago. Today, she is tender over the fracture site and has a slight toggle of varus valgus motion. Her knee motion is fairly good. Her x-rays show good callus at the proximal fracture site and some callus at the distal site, but I think the distal fragment has displaced posteriorly. The options at this point are to go back with cast bracing or proceed with bone graft. The magnitude of surgery is rather great, and after discussion the patient wishes to continue closed treatment for the time being and I agree. She has a fair amount of edema, so we will plan to admit her to the hospital for elevation for at least 24-36 hrs. prior to application of the cast.

*GTR*

---

George T. Rab, M.D.  
Assistant Professor

GTR:ms

UNIVERSITY OF CALIFORNIA, DAVIS  
 MEDICAL CENTER  
 SACRAMENTO, CALIFORNIA

NAME SMITH, MARSHA	AGE	DATES	
UNIT NUMBER 029 61 40	NURSING STATION	ADMISSION:	9-2-80
REFERRING PHYSICIAN	ADDRESS:	DISCHARGE:	9-9-80
		SCRIPT:	9-9-80
		TRANSCRIPTION:	9-9-80

HISTORY:

The patient is a 26 y/o white female who was treated for a femoral fracture in the past, about 8 mos ago. She was seen in clinic at follow-up where she had removed her cast and was found to have angulated her fracture site and was admitted to the hospital for traction and control of edema and recasting. She was placed initially in a plaster cylinder cast which she could not tolerate because of the weight which was changed to a light weight cast with a heel cup with the leg in a weightbearing position. She is to be followed in clinic in a 3-wk interval to see how she is doing with her weightbearing and we will obtain xrays at that time.

FINAL DIAGNOSIS:

Post right femoral fracture.

MAJOR THERAPY:

Casting:

Dictated by: R. Sorensen  
 RS:cm RUSSELL SORENSEN, M.D.

*GRob for R.S.*  
 Date: 10/2/80

AFFIDAVIT

I, MARCIA MAE SMITH, hereby declare the following:

1. That I was severely injured in an automobile accident on March 24, 1980, and was hospitalized as a result of these injuries.

2. That I was hospitalized a total of ninety-four days until June 27, 1980.

3. That during this hospitalization and the following recuperative period in my home, I have been taking prescription drugs for the purpose of alleviating severe pain. These drugs so strongly affected my emotional and mental capacities that I was unable to rationally consider the possible effects of the passage of time upon my legal rights.

4. That from the date of the accident to the date of this affidavit, and continuing, I am continuing to suffer considerable pain and physical incapacity due to my right femur's failure to mend.

I am informed, believe and thereon allege that I have been and am presently physically incapacitated and thereby am entitled to present a petition for late claim against the governmental entities responsible for my injuries.

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

Executed this 6th day of January, 1981 at Sacramento, California.

*Marcia Mae Smith*  
\_\_\_\_\_  
Marcia Mae Smith  
Claimant



December 28, 1980

Gregory W. Dwyer  
1005 Eighth Street, Suite 403  
Sacramento, CA 95814

Re: Marcia Smith

Dear Mr. Dwyer:

At your request on December 23, 1980 I examined a portion of Highway 160 in Sacramento California where Ms Smith was involved in an accident on March 24, 1980. My preliminary analysis of this location indicates that at least one feature of the highway itself could have contributed to this accident. This is the lack of a modern bridge edge barrier to prevent a vehicle from vaulting off the bridge. There are other elements of the highway design and maintenance which also could have contributed to this accident. They include signs, highway construction and geometry, and traffic control.

Further analysis is indicated, however additional information is required.

Very truly yours,



William R. Neuman  
Civil Engineer

**William R. Nauman**  
PROFESSIONAL ENGINEER

85 Starlit Circle • Sacramento, California 95831 • (916) 421-1050

December 28, 1980

Gregory W. Dwyer  
1005 Eighth Street, Suite 403  
Sacramento, CA 95814

Dear Greg:

I think the letter is sufficient for now. The issues for your complaint or discovery are:

1. Lack of a proper guard rail (Jersey Barrier)
2. Shape of the approach guard rail
3. Condition of the warning signs at the time
4. Possible obscurement of the warning signs at the time
5. Highway geometry: radii, superelevation, lane and shoulder width
6. Traffic volume
7. Accident history
8. Lighting adequacy
9. Condition of or choice of the pavement markings (stripes)
10. Anchor support/strength of the bridge rail in place
11. Height and position of bridge curb
12. Speed limit
13. Curve advisory speed
14. etc.



# CITY OF SACRAMENTO

## OFFICE OF THE CITY CLERK

915 I STREET  
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814  
TELEPHONE (916) 448-5426

LORRAINE MAGANA  
CITY CLERK

February 4, 1981

Mr. Gregory Ward Dwyer  
Bloodgood & Dwyer, Attorneys at Law  
1005 Eighth Street, #403  
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF MARCIA MAE SMITH  
DATE OF ALLEGED INCIDENT: March 4, 1980

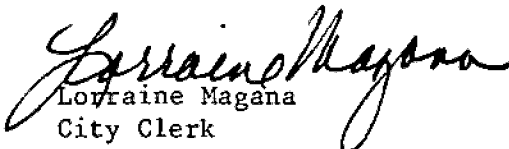
Dear Mr. Dwyer:

You are hereby notified that your application for leave to present a late claim on behalf of Marcia Mae Smith was denied by the Sacramento City Council on February 3, 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)

15

### 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.

*Denial*

RECEIVED  
CITY CLERKS OFFICE  
CITY OF SACRAMENTO # 15

Dec 29 4 55 PM '80

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MARCIA MAE SMITH,	)	
	)	APPLICATION FOR LEAVE TO
Petitioner,	)	PRESENT LATE CLAIM BY CLAIMANT
	)	(Sec. 911.4 of the Government
v.	)	Code)
	)	
CITY OF <u>SACRAMENTO.</u>	)	

TO THE CITY OF SACRAMENTO:

1. Application is hereby made, pursuant to Government Code Section 911.4, for leave to present a late claim founded on a cause of action for personal injuries which accrued on March 24, 1980, for which a claim was not presented within the 100-day period provided by Section 911.2 of the Government Code. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached to this application.

2. The reason that no claim was presented during the period of time provided by Section 911.2 of the Government Code is that the claimant, MARCIA MAE SMITH, was and still is physically incapacitated during all of the 100-day period specified by Section 911.2 for presentation of the claim.

3. In addition to paragraph 2 stated above, the failure to present this claim within the 100-day period specified by Section 911.2 of the Government Code is that Claimant's attorney became aware of the modification of the scene of the accident in late November, 1980. Said attorney immediately thereafter retained the services of an accident reconstruction specialist who on De-

1 cember 23, 1980, advised Claimant's attorney that various design  
2 and maintenance features of the highway at the point of the acci-  
3 dent may have significantly contributed to the seriousness of the  
4 Claimant's injuries sustained in the instant claim. The CITY OF  
5 SACRAMENTO was not prejudiced by this failure, all as more parti-  
6 cularly shown by the attached declaration of Dr. William Newman.

7 The claimant's attorney was initially consulted to  
8 defend the claimant from criminal prosecution. In the course of  
9 said investigation, said attorney retained Dr. William Melnicoe  
10 on or about August, 1980. Dr. Melnicoe's initial impression of  
11 the criminal investigation was that the roadway did not contri-  
12 bute to the accident. The initial investigation of the accident  
13 by the California Highway Patrol indicated 100 percent operator  
14 error as the cause of this accident. Only after months of inves-  
15 tigation did it become apparent that the accident had multiple  
16 causations, including but not limited to the design maintenance  
17 and repair of the roadway in question.

18 4. This application is being presented within a reasonable  
19 time after the accrual of this cause of action, as more particu-  
20 larly shown by the attached declaration of GREGORY WARD DWYER.

21 WHEREFORE, it is respectfully requested that this appli-  
22 cation be granted and the attached proposed claim be received and  
23 acted on in accordance with Sections 912.4 - 913 of the Govern-  
24 ment Code.

25 DATED: December 29, 1980

**ORIGINAL EXECUTED**

\_\_\_\_\_  
GREGORY WARD DWYER  
Attorney for Claimant

27

CLAIM AGAINST THE CITY OF SACRAMENTO

You are hereby notified that MARCIA MAE SMITH, c/o Gregory Ward Dwyer, Esq, 1005 Eighth Street, Sacramento, California 95814, claims damages from the County of Sacramento, computed at presentation of this claim, in the amount of \$500,000.00. This claim is based upon personal injuries sustained on or about March 24, 1980 in the vicinity of Highway 160 and Del Paso Boulevard in the City and County of Sacramento, California, under the following circumstances:

Claimant was operating an automobile on Highway 160 near the Del Paso Boulevard offramp when she was involved in a traffic accident in which she sustained severe and permanently crippling injuries. Evidence now indicates that the design, maintenance, and repair of said Highway significantly contributed to the accident and the severity of Claimant's injuries.

The injuries to the Claimant, as far as known at the date of presentation of the claim consist of broken femur, emotional distress, contusions, abrasions and loss of future earning capacity. The exact nature and extent of injuries is still being determined.

The amount of damages claimed as of the date of this claim is computed as follows:

DAMAGES INCURRED TO DATE:

Medical Expenses

(Medi-Cal Lien still accruing)

79,379.34

ESTIMATED PROSPECTIVE DAMAGES AS FAR AS KNOWN:

Loss of future earning capacity          unknown at this time  
General damages                                  to be determined


TOTAL AMOUNT CLAIMED AS OF DATE OF PRESENTATION OF CLAIM:

\$ 500,000.00

All notices and communications with regard to this claim  
should be sent to Claimant at

Gregory Ward Dwyer, Esq.  
BLOODGOOD & DWYER          916 447-5881  
1005 Eighth Street, #403  
Sacramento, CA 95814

DATED: December 29, 1980

  
\_\_\_\_\_  
GREGORY WARD DWYER, Esq.  
Attorney for Claimant

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MARCIA MAE SMITH, )  
 )  
Petitioner, ) APPLICATION FOR LEAVE TO  
 ) PRESENT LATE CLAIM BY CLAIMANT  
 ) (Sec. 911.4 of the Government  
v. ) Code)  
 )  
CITY OF SACRAMENTO. )

TO THE CITY OF SACRAMENTO:

1. Application is hereby made, pursuant to Government Code Section 911.4, for leave to present a late claim founded on a cause of action for personal injuries which accrued on March 24, 1980, for which a claim was not presented within the 100-day period provided by Section 911.2 of the Government Code. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached to this application.

2. The reason that no claim was presented during the period of time provided by Section 911.2 of the Government Code is that the claimant, MARCIA MAE SMITH, was and still is physically incapacitated during all of the 100-day period specified by Section 911.2 for presentation of the claim.

3. In addition to paragraph 2 stated above, the failure to present this claim within the 100-day period specified by Section 911.2 of the Government Code is that Claimant's attorney became aware of the modification of the scene of the accident in late November, 1980. Said attorney immediately thereafter retained the services of an accident reconstruction specialist who on De-



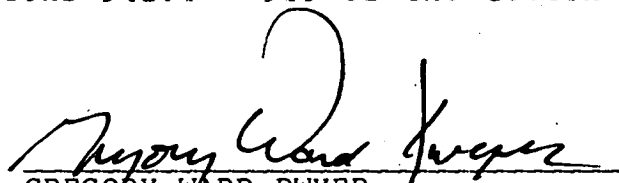
1 cember 23, 1980, advised Claimant's attorney that various design  
2 and maintenance features of the highway at the point of the acci-  
3 dent may have significantly contributed to the seriousness of the  
4 Claimant's injuries sustained in the instant claim. The CITY OF  
5 SACRAMENTO was not prejudiced by this failure, all as more parti-  
6 cularly shown by the attached declaration of Dr. William Newman.

7 The claimant's attorney was initially consulted to  
8 defend the claimant from criminal prosecution. In the course of  
9 said investigation, said attorney retained Dr. William Melnicoe  
10 on or about August, 1980. Dr. Melnicoe's initial impression of  
11 the criminal investigation was that the roadway did not contri-  
12 bute to the accident. The initial investigation of the accident  
13 by the California Highway Patrol indicated 100 percent operator  
14 error as the cause of this accident. Only after months of inves-  
15 tigation did it become apparent that the accident had multiple  
16 causations, including but not limited to the design maintenance  
17 and repair of the roadway in question.

18 4. This application is being presented within a reasonable  
19 time after the accrual of this cause of action, as more particu-  
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21 WHEREFORE, it is respectfully requested that this appli-  
22 cation be granted and the attached proposed claim be received and  
23 acted on in accordance with Sections 912.4 - 913 of the Govern-  
24 ment Code.

25 DATED: December 29, 1980

  
GREGORY WARD DWYER  
Attorney for Claimant

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General damages                                  to be determined


TOTAL AMOUNT CLAIMED AS OF DATE OF PRESENTATION OF CLAIM:

\$ 500,000.00

All notices and communications with regard to this claim  
should be sent to Claimant at

Gregory Ward Dwyer, Esq.  
BLOODGOOD & DWYER                      916 447-5881  
1005 Eighth Street, #403  
Sacramento, CA 95814

DATED: December 29, 1980

  
\_\_\_\_\_  
GREGORY WARD DWYER, Esq.  
Attorney for Claimant