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CITY OF SACRAMENTO



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

CITY MANAGER'S OFFICE
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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

September 15, 1982

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: LATE CLAIM APPLICATION OF WINEGARDNER C. HAMMONS, INC., dba
HOLIDAY INN

Members in Session:

SUMMARY

Winegardner & Hammons, Inc., dba Holiday Inn has applied for leave to present a late claim. We are of the opinion that the application falls within those circumstances under which relief must be granted.

BACKGROUND

Winegardner & Hammons, Inc., dba Holiday Inn has applied for leave to present a late claim. The claim seeks an unascertained amount as indemnification for damages resulting from personal injuries suffered by a third party as a result of an alleged fall on the K Street Mall in front of the Holiday Inn. The third party has filed suit against both the City and the applicant.

Government Code §911. 2 provides that a claim relating to a cause of action for personal injury shall be presented within 100 days of the accrual of the cause of action. Applicant originally mailed a claim to the City Clerk on March 24, 1982, but that claim was not received. Subsequently, the applicant learned the first claim had not been received, and filed another claim on July 13, 1982, which was rejected as untimely. The application for leave to file a late claim followed on August 23, 1982.

ANALYSIS

Government Code §901, in a provision which became effective January 1, 1982, provides that a cause of action for indemnity accrues on the date a defendant is served with the complaint giving rise to his claim for indemnity.

APPROVED *late claim*
BY THE CITY COUNCIL *appl. granted;*
OCT 5 1982 *referred to*
OFFICE OF THE *adjuster*
CITY CLERK
10-5-82

Prior to January 1, 1982, the date on which the above-described provision of §901 became effective, the 100-day period for filing a claim for indemnification did not begin to run until the defendant claiming indemnity actually paid damages on the underlying cause of action. People vs. Superior Court (Frost) (1980) 26 C.3d 744. The effect of §901's adoption was to hasten the time when the 100-day period began to run, in effect shortening the time in which a defendant could act.

The recognized rule is that when a period of limitation is shortened by legislation before it has expired, the claimant is entitled to at least a reasonable time within which to act. Witkin, California Procedure, Actions, §243 (2d Ed., Vol. p. 1099). It is our view that it is reasonable to allow 100 days from the effective date (January 1, 1982) for filing any claim of indemnification which was affected by new §901.

A proof of mailing filed with applicant's application for leave to file a late claim shows that applicant's claim was originally mailed on March 24, 1982, only 83 days after January 1, 1982. This was mailed early enough to have been received within the 100-day period. When applicant learned that the claim had not been received, another was filed. When that claim was rejected as untimely on July 13, 1982, applicant filed this application some 40 days later.

A person seeking to file a late claim must show: (1) that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.6(b)(1)); and (2) that the application was presented within a reasonable time not to exceed one year after the accrual of the cause of action (Government Code §911.2(b)). In order to obtain relief it must appear that the applicant acted with reasonable diligence under the circumstances (Roberts vs. State (1971) 39 C.A.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 C.A.3d 5). Applicant's proof of service dated March 24, 1982 demonstrates that applicant acted with reasonable diligence in attempting to file a claim within the relevant 100-day period. Although applicant presents no strong justification for the 40-day delay between rejection of his second claim and the instant application, we conclude that applicant's diligent attempt to file within the 100-day period justifies relief.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Winegardner & Hammons, Inc., dba Holiday Inn for leave to present a late claim be granted and the claim itself referred to the City's claims adjusters for evaluation.

Very truly yours,

JAMES P. JACKSON
City Attorney

Diane B. Balter
DIANE B. BALTER
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Slize
CITY MANAGER

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CITY OF SACRAMENTO

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ROBERT W. BARKER
A Professional Corporation
P.O. BOX 1301
AUBURN, CALIFORNIA 95603

TELEPHONE (916) 823-1970

Attorney for Defendant
Winegardner & Hammons, Inc.,
dba Holiday Inn

In the Matter of the Claim of
WINEGARDNER & HAMMONS, INC.,
doing business as HOLIDAY INN,

against

THE CITY OF SACRAMENTO

APPLICATION FOR LEAVE
TO PRESENT LATE CLAIM

[Gov. C. §911.4]

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 indemnification, which accrued on January 1, 1982, and for 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, inadvertance, surprise, and excusable neglect of the claimant and claimant's attorneys, Robert W. Barker, A Professional Corporation, as more particularly shown in the

APPROVED
BY THE CITY COUNCIL

OCT 5 1982

OFFICE OF THE
CITY CLERK

1 declaration of Robert W. Barker attached hereto. The City of
2 Sacramento was not prejudiced by the failure to timely file the
3 late claim as shown by the declaration of Robert W. Barker
4 attached hereto as Exhibit B and made a part hereof.

5 3. This application is presented within a reasonable time
6 after accrual of the cause of action as shown by the declaration
7 of Robert W. Barker attached hereto as Exhibit B and made a
8 part hereof.

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

13 DATED: August 5, 1982

14 
15 _____
16 Robert W. Barker, On Behalf of
17 Claimant, Winegardner & Hammons,
18 Inc., dba Holiday Inn

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CITY CLERK'S OFFICE
CITY OF SACRAMENTO

You are hereby notified that (1) Winegatcher & Hammons, Inc., dba Holiday Inn whose Post Office address is (2) c/o P.O. Box 1301, Auburn, CA 95603

claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) unknown. This claim is based upon (4)

() Personal injury; () Property damage or loss; (x) Other, specify indemnification

which occurred on or about (5) 4 / 3 / 81, in the vicinity of (6) Capitol Plaza, 300 J Street under the following circumstances: (7) Plaintiff allegedly fell on stairs owned by the City of Sacramento in front of the Holiday Inn, allegedly sustaining injuries.

Claimant was not served, but voluntarily filed an answer to the plaintiff's Complaint on November 10, 1981.

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) _____

_____ is unknown to the claimant.

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) unknown, claimant's damages are dependent upon the outcome of litigation brought against by the plaintiff, Sheri Milner

The amount of damages claimed as of the date of this claim is computed as follows:
Damages incurred to date (Itemized):

(10) costs of suit together with potential liability \$ _____
in an undetermined amount \$ _____

Estimate prospective damages as far as known:

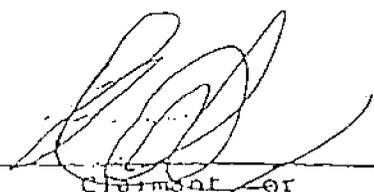
(11) _____ \$ UNKNOWN
_____ \$ _____

(12) TOTAL AMOUNT CLAIMED as of presentation date of claim \$ UNKNOWN

All notices and communications with regard to this claim should be sent to claimant at (13) c/o Robert W. Barker; P.O. Box 1301, Auburn, CA 95603

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CITY CLERK'S OFFICE
CITY OF SACRAMENTO

DATED: (14) March 24, 1982

(15) SIGNED: 

Attorney for Claimant
Robert W. Barker
Attorney for Claimant

EXHIBIT A

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CITY OF SACRAMENTO
DECLARATION OF ROBERT W. BARKER

1
2 I, Robert W. Barker, declare that I am an attorney at
3 law licenses to practice before all court of the State of
4 California, and am the attorney of record for Winegardner &
5 Hammons, Inc., doing business as Holiday Inn.

6 A complaint was filed by Sheri Milner on September 4,
7 1981, against the City of Sacramento and Winegardner & Hammons,
8 Inc., dba Holiday Inn, for personal injuries as the result of
9 an alleged fall on a stairway on K Street Mall in front of the
10 Holiday Inn. Winegardner & Hammons, Inc., was never served with
11 this complaint, but voluntarily filed an answer on November 10,
12 1981.

13 Due to time required for discovery as to respective
14 responsibility of the named defendants in the above action,
15 and to oversight, Winegardner & Hammons, Inc., did not make
16 claim for cost of suit together with potentially liability for
17 the allegations of Sheri Milner, until March 24, 1982. That
18 claim was sent to the City of Sacramento on that date as shown
19 by the attached proof of service. However, the City of Sacramento
20 has no record of receipt of the claim and denied a subsequent
21 claim submitted on July 13, 1982.

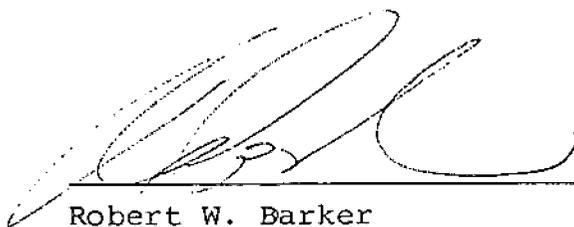
22 Thus, this claim is late due to the time required for
23 discovery, as well as inadvertance and oversight on my part. No
24 prejudice will result to the City of Sacramento since the city
25 was aware of the suit filed by Sheri Milner and is a party to
26 the action.

27 I therefore request that application for leave to present
28 a late claim be granted.

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I declare under penalty of perjury that the foregoing
is true and correct.

Executed this 20th day of August, 1982, at Auburn,
California.



Robert W. Barker

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CITY OF SACRAMENTO
PROOF OF SERVICE BY MAIL - CCP 10139, 2015.5
CITY OF SACRAMENTO

JUL 13 11 08 AM '82

JUN 25 12 12 PM '82

1 I declare that:

2 I am (occidentally/employed in) the county of Placer, California.
(COUNTY WHERE MAILING OCCURRED)

3 I am over the age of eighteen years and not a party to the within cause; my (business/~~residence~~) address is:

4 One California Street, Post Office Box 1301, Auburn, CA 95603

5 On March 24, 1982, I served the within Claim against the City of
(DATE)

6 Sacramento on the City of Sacramento

7 in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the

8 United States mail at Auburn, CA, addressed as follows:

9 Sacramento City Council
10 City Hall
11 915 I Street, Room 205
12 Sacramento, CA 95814

13 Gregory M. Finch
14 Armistead & Finch
15 300 University Ave., Suite 216
16 Sacramento, CA 95825

17 Robert R. Thompson
18 Thompson, Mayhew & Michel
19 P.O. Box 254808
20 Sacramento, CA 95825

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CITY OF SACRAMENTO
JUN 25 9 03 AM '82

23 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on

24 March 24, 1982, at Auburn, California.
(DATE) (PLACE)

26 Teresa Reams
(TYPE OR PRINT NAME)


SIGNATURE

PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5

1 I declare that:
2 I am (~~not~~ employed in) the county of Placer, California.
(COUNTY WHERE MAILING OCCURRED)

3 I am over the age of eighteen years and not a party to the within cause; my (business/~~residence~~) address is:
4 One California Street, Post Office box 1301, Auburn, CA 95603

5 On August 20, 1982, I served the within Application for leave to
(DATE)
6 Present Late Claim on the parties interested

7 in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
8 United States mail at Auburn, CA, addressed as follows:

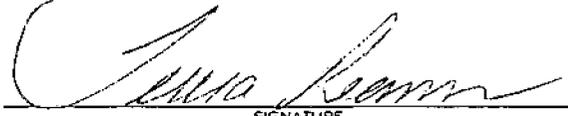
9 Office of the City Clerk
10 City of Sacramento
11 915 I Street, Room 203
Sacramento, CA 95814

12 Gregory M. Finch
13 Armistead & Finch
14 300 University Ave., Suite 216
Sacramento, CA 95825

15 Robert R. Thompson
16 Thompson & Michel
17 3500 American River Drive, Suite 101
18 Sacramento, CA 95825

RECORDS OFFICE
CITY OF SACRAMENTO
AUG 23 3 04 PM '82

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23 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on
24 August 20, 1982, at Auburn, California.
(DATE) (PLACE)

25
26 Teresa Reams 
(TYPE OR PRINT NAME) (SIGNATURE)

October 8, 1982

Robert W. Barker
P O Box 1301
Auburn, CA 95603

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF
WINEGARDNER & HAMMONS, INC., dba HOLIDAY INN, DATE
OF ALLEGED INCIDENT: April 3, 1981

Dear Mr. Barker:

Notice is hereby given that the following application for
leave to present a late claim was allowed on October 5,
1982. Upon allowance of the late filing the City Council
thereupon referred said claim to the City's claims
representative, Brown Brothers Adjusters, 1451 River Park
Drive, Suite 251, Sacramento, California 95815 (phone
916-920-4392), for review and recommendation. You will
be advised of the claim's disposition within 45 days.

Claim submitted by you on behalf of the above named
claimant in an undetermined amount for alleged damages
occurring when plaintiff fell down stairs, and allegedly
occurring on or about April 3, 1982.

Sincerely,

Lorraine Magana
City Clerk

LM/mn/#18
cc: Risk Management (2)