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CITY OF SACRAMENTO

CITY MANAGER'S OFFICE
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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

June 18, 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: APPLICATION OF MAUREEN, LISA AND KIRK MARCHE
FOR LEAVE TO PRESENT A LATE CLAIM

Members in Session:

SUMMARY

Maureen, Lisa and Kirk Marche have 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

The Marches have applied for leave to present a late claim. Their claim seeks money damages for injuries allegedly incurred in an automobile accident.

Government Code §911.2 provides that a claim for injury to person shall be presented within 100 days of the accrual of the cause of action. In this case, applicants' claim accrued on February 9, 1980, the date the accident allegedly occurred. The applicants filed a timely claim with the County of Sacramento on May 1, 1980. On June 4, 1980 applicants learned that their claim should have been filed with the City of Sacramento. They thereafter filed their claim and application for leave to present a late claim with the City Clerk on June 6, 1980, approximately 18 days late. Applicants state that a timely claim was not filed because they mistakenly filed their claim against the County.

A person seeking to file a late claim must show that the failure to file a timely claim was due to mistake, inadvertence, surprise

APPROVED
BY THE CITY COUNCIL

JUL -1 1980

OFFICE OF THE
CITY CLERK

*Late Claim
granted &
Claim referred
to Claims Adjuster*

June 18, 1980

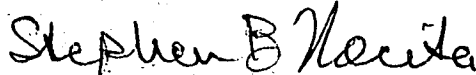
or excusable neglect (Government Code §911.6(b)(1)). The applicant must state facts sufficient to show that the mistake was reasonable under the circumstances. Roberts v. State, 39 Cal. App.3d 844 (1974). In this case, applicants state that the alleged accident occurred near the intersection of Exposition Boulevard, Ethan Way and Arden Way. Said location is very near the City-County boundary line. Given the close proximity of the accident to the boundary line, it appears that the applicants acted reasonably in filing a timely claim with the County. We are therefore of the opinion that the instant application should be granted.

RECOMMENDATION

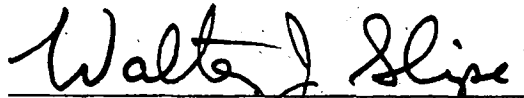
For the reason stated above, we recommend that the application of Maureen, Lisa and Kirk Marche for leave to present a late claim be granted, and the claim itself be forwarded to the City's claim representative for evaluation and recommendation.

Very truly yours,

JAMES P. JACKSON
City Attorney


STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


City Manager

SBN:mb

1 ASAKAWA & McCLOSKEY
2 909A Eighth Street
3 Sacramento, CA 95814
4 (916) 443-8222

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
JUN 6 2 47 PM '80

4 Attorneys for Claimants

7 In the Matter of the Claims of)
8 MAUREEN, LISA, and KIRK MARCHE)
9 against)
10 CITY OF SACRAMENTO)

APPLICATION FOR LEAVE
TO PRESENT LATE CLAIM

(Gov. C. § 911.4)

12 TO CITY OF SACRAMENTO:

13 1. Application is hereby made for leave to present a late
14 claim under Section 911.4 of the Government Code. The claim is
15 founded on a cause of action for personal injuries and property
16 damage, which accrued on February 9, 1980, and for which a claim
17 was not timely presented. For additional circumstances relating
18 to the cause of action, reference is made to the proposed claim
19 attached hereto as Exhibit A and made a part hereof.

20 2. The reason for the delay in presenting this claim is the
21 mistake, inadvertance, surprisè, and excusable neglect of the
22 claimants and their attorney, BILL C. ASAKAWA, as more particularly
23 shown in the declaration of BILL C. ASAKAWA, attached hereto as
24 Exhibit B and made a part hereof. The CITY OF SACRAMENTO was not
25 prejudiced by the failure to timely file the claim, as shown by
26 said declaration of BILL C. ASAKAWA.

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1 3. This application is presented within a reasonable time
2 after the accrual of the cause of action as shown by said declara-
3 tion of BILL C. ASAKAWA.

4 WHEREFORE, it is respectfully requested that this application
5 be granted and that the attached claim be received and acted upon
6 in accordance with Sections 912.4 through 912.8 of the Government
7 Code.

8
9 DATED: JUNE 5, 1980

10 ASAKAWA & McCLOSKEY

11
12 Bill Asakawa

13 BILL C. ASAKAWA
14 Attorneys for Claimants
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CLAIM AGAINST THE CITY OF SACRAMENTO

You are hereby notified that (1) MAUREEN, LISA, and KIRK MARCHE, whose Post Office address is (2) 6201 Templeton Drive, Carmichael, CA 95608

claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) \$20,016. This claim is based upon: (4) () Personal injury; () Property damage or loss; () Other, specify payment to third parties, which occurred on or about (5) 2 / 9 / 80, in the vicinity of (6) Exposition Blvd/

Arden Way/Ethan Way under the following circumstances: (7) Driver MAUREEN MARCHE was eastbound on Exposition Blvd. and attempted to make a left turn onto Ethan Way from the inside lane which was marked with left turn indicators. Indicators were erroneous because left turn is not allowed. Collision resulted with vehicle proceeding west on Exposition Blvd.

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

or 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) Lacerations and bruises to all claimants; concussion sustained by LISA MARCHE.

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

Damages incurred to date: (Itemized)

- (10) Medical expenses, property damage and personal injuries (MARCHE's) \$ 15,000
- Payments for property damage and personal injuries to owner and occupants of other vehicle. \$ 4,016

Estimated prospective damages as far as known:

- (11) Medical and related expenses \$ 1,000
- \$

(12) Total amount claimed as of date of presentation of claim: \$ 20,016

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

(13) ASAKAWA & McCLOSKEY, 909A Eighth Street, Sacramento, CA 95814

Attn: BILL C. ASAKAWA

DATED: (14) JUNE 5, 1980

(15) SIGNED: Bill C. Asakawa
Claimant or Attorney for Claimant

1 ASAKAWA & McCLOSKEY
2 909A Eighth Street
3 Sacramento, CA 95814
4 (916) 443-8222

5 Attorneys for Claimants

6
7
8 In the Matter of the Claims of)
9 MAUREEN, LISA, and KIRK MARCHE)
10 against)
11 CITY OF SACRAMENTO)

DECLARATION IN SUPPORT OF
APPLICATION FOR LEAVE TO
PRESENT LATE CLAIM

12
13 I, BILL C. ASAKAWA, declare:

14 1. I am the attorney for claimants MAUREEN, LISA, and KIRK
15 MARCHE.

16 2. This is a claim for personal injuries and property
17 damages incurred at the intersections of Exposition Boulevard,
18 Ethan Way and Arden Way. Claimant MAUREEN MARCHE was eastbound,
19 in the inside lane on Exposition Boulevard, and attempted to make
20 a left turn onto Ethan Way. Said inside lane was marked with left
21 turn indicators but a left turn was apparently not allowed. A
22 collision resulted with a vehicle traveling west on Exposition
23 Boulevard. Personal injuries were sustained by the three occu-
24 pants of the Marche vehicle and the two occupants of the other
25 vehicle. The owner and the occupants of the other vehicle were
26 reimbursed in the amount of \$4,016 for their damages.

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1 3. A claim was filed against the County of Sacramento on
2 May 1, 1980, in the belief that the County was responsible for
3 the maintenance of this intersection. This belief was excusable
4 in that an investigator employed by me was informed by an
5 employee of the City of Sacramento Traffic Department that the
6 County maintained records for the intersection in question. I
7 subsequently called County Counsel, Al Guetling, to obtain these
8 records. Mr. Guetling refused to provide the records but at no
9 time indicated to me that the County was not responsible for this
10 intersection.

11 4. On June 4, 1980, I received a letter from Gallagher
12 Bassett Insurance Service, on behalf of the County of Sacramento,
13 informing me that the County has no jurisdiction over this inter-
14 section. A true and correct copy of said letter is attached
15 hereto as Exhibit C.

16 5. This application for leave to present a late claim was
17 prepared and filed within two days after being informed that the
18 CITY OF SACRAMENTO has jurisdiction over the intersection in
19 question. Approximately 118 days have elapsed from the time the
20 cause of action arose to the filing of this claim.

21 6. The CITY OF SACRAMENTO was not prejudiced by the late
22 filing of this claim because it has taken no action to its
23 detriment in the intervening 18 days between the statutorily
24 required 100 days for filing this claim and the actual date of
25 filing.

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

Executed on JUNE 5, 1980, at Sacramento, California.

Bill Asakawa

BILL C. ASAKAWA
Attorney for Claimants



GALLAGHER BASSETT INSURANCE SERVICE

June 2, 1980

Asakawa & McCloskey
Attorneys at Law
909A Eighth Street
Sacramento, CA. 95814

Re: D/L: 2/9/80
Our File: 2612 G/H 790280
Claimant: Marche' Maureen, Lisa &
Kirk

Dear Mr. Asakawa:

Your claim against Sacramento County on behalf of your client, Maurene, Lisa and Kirk Marche', has been referred to this office for investigation by the County Counsel.

Initial investigation indicated your client's injury was in no way connected with the activities of the County of Sacramento. The location of the accident is within the limits of the City of Sacramento. The County of Sacramento has no jurisdiction or control over the City of Sacramento.

We are this date recommending that the County Counsel deny this claim. Should you have information of which we are unaware and/or wish to discuss this matter further, please feel free to telephone this writer at the number listed.

Very truly yours,

John C. O'Donnell
Senior Claims Representative

JOD/kb

cc: A.J. Guetling
Deputy County Counsel

Exhibit C



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

July 2, 1980


Asakawa & McCloskey
Attorneys at Law
909A Eighth Street
Sacramento, CA 95814

Gentlemen:

Notice is hereby given that the following application for leave to present a late claim was allowed on July 1, 1980. Upon allowance of the late filing the City Council thereupon referred said claim to the City's Claims Adjuster, Brown Brothers Adjusters, 1451 River Park Drive, Suite 251, Sacramento, CA 95815, telephone number (916) 920-4392, for review and recommendations. You will be advised of the claims disposition within 45 days.

Claim submitted by you on behalf of Maureen, Lisa and Kirk Marche in the amount of \$20,016 for alleged vehicle accident, and allegedly occurring on February 9, 1980.

Sincerely,


Lorraine Magana
City Clerk

LM:sj

cc: City Attorney
Finance Administration (2)

Item No. 26