

CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

CITY MANAGER'S OFFICE
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July 14, 1981

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JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
CHRISTINA PRIM
DEPUTY CITY ATTORNEYS

Honorable City Council
Council Chambers
City Hall
Sacramento, California 95814

APPROVED
BY THE CITY COUNCIL

JUL 21 1981

OFFICE OF THE
CITY CLERK

RE: LATE CLAIM APPLICATION OF HAROLD GLOECKLER

Members in Session: SUMMARY

Harold Gloeckler 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. Gloeckler has applied for leave to present a late claim. The claim is based upon personal injuries suffered in a vehicular accident allegedly 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 June 25, 1980. The claim and late claim application were filed on June 24, 1981, one day short of a year after accrual of the cause of action.

The reason given for the failure to file a timely claim is that applicant was physically and mentally incapacitated throughout the 100-day filing period. It is further stated that applicant continues to this date to suffer from impaired physical and mental capacity, including a loss of memory from the day of the accident to about three weeks following the accident.

ANALYSIS

A person seeking to file a late claim is entitled to relief if he shows both that (1) he was incapacitated during the entire 100-day filing period (Government Code §911.6(b)(3)) and (2) the application was presented within a reasonable time not to exceed one year after accrual of the cause of action (Government Code §911.4(b)).

The application indicates that applicant was unable to attend to his ordinary business affairs for a period well in excess of 100 days following the accident. This incapacity satisfies the first criterion necessary for granting the application. However, it appears to us that the second criterion has not been met.

Applicant consulted with his attorney in January, 1981. However, the claim and late claim application were not presented until June, 1981. Some of this delay is clearly reasonable in light of the need to investigate the accident and because applicant's condition prevented his providing full and accurate information to assist such investigation. Nonetheless, the delay of five months in presenting the claim and late claim application does not appear reasonable.

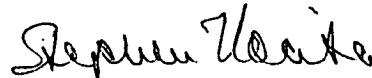
That applicant and his counsel were aware of a potential cause of action against the City is amply demonstrated by the fact that the cost of a five month investigation was incurred to investigate the facts underlying the claim. Thus, in our view the application was not presented within a reasonable time. A delay of a shorter period has been held unreasonable (Martin vs. Madera (1968) 256 C.A.2d 76).

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Harold Gloeckler 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 CLERK'S OFFICE
CITY OF SACRAMENTO
JUN 24 3 57 PM '81

HAROLD C. GLOECKLER III)
)
against)
)
CITY OF SACRAMENTO)
_____)

APPLICATION FOR LEAVE
TO PRESENT
LATE CLAIM

TO CITY OF SACRAMENTO;

1. Application is hereby made for leave to present a late claim under Section 911.4 of the California Government Code. The claim is founded on a cause of action for personal injury, which accrued on June 25, 1980, 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 that the claimant was physically and mentally incapacitated during all of the period when claim should have been presented, and by reason of the disability failed to timely present the claim as shown by the declarations attached hereto as Exhibit B and made a part hereof by reference.

3. This application is presented within a reasonable time after the accrual of the cause of action as shown by the declarations attached hereto as Exhibit B and made a part hereof.

WHEREFORE, it is respectfully requested that this application be granted and that the attached claim be received and

acted upon in accordance with Sections 912.4-912.8 of the
California Government Code.

DATED: _____

By _____
SHARYN J. VANTASSELL

PROPOSED
CLAIM AGAINST THE CITY OF SACRAMENTO

TO: City of Sacramento
City Clerk
City Hall
Sacramento, CA 95814

HAROLD C. GLOECKLER III hereby makes claim against the City of Sacramento for the sum of \$300,000.00, and makes the following statements in support of the Claim:

1. Claimant's address is 5805 Rosario Blvd., North Highlands, Sacramento, County, California.

2. Notices concerning Claim should be sent to:
VANTASSELL, FORNASERO & VANTASSELL, INC., Attorneys at Law,
917 G Street, Sacramento, California 95814. 444-8633

3. Date and place of the accident giving rise to this Claim are: June 25, 1980, at Roseville Road westerly approach to its intersection with Longview Drive, Sacramento, California.

4. Circumstances giving rise to this Claim are as follows: On June 25, 1980, Plaintiff was operating a motorcycle westerly along Roseville Road, approaching the intersection with Longview Drive, which such road was in a dangerous condition due to negligent road design, maintenance, repair, and inadequate warning by City of Sacramento, and, due to the said dangerous condition, Plaintiff lost control of his motorcycle, causing him serious injuries.

5. Claimant's injuries consisted of severe head trauma, premanent brain damage, partial blindness, multiple skull fractures, facial fractures, jaw fracture, multiple lacerations, contusions, abrasions, cerebral contusion, retrograde and

antigrade amnesia, back strain and sprain and vertebral fractures.

6. The names of the public employees causing Claimant's injuries are unknown to Claimant, but the same are well known to the City of Sacramento.

7. The claim as of this date is in the sum of \$300,00.00.

8. The basis of computation is as follows:

| | |
|-----------------------------------|-------------------|
| Medical expenses incurred to date | \$330,000.00 |
| Estimated future medical expenses | 20,000.00 |
| Loss of Wages to date | 25,000.00 |
| General damages | <u>225,000.00</u> |
| Total | \$300,000.00 |

DATED _____

By _____

SHARYN J. VANTASSELL

CITY CLERK'S OFFICE
CITY OF SACRAMENTO
JUN 24 3 57 PM '81

HAROLD C. GLOECKLER III)
)
against)
)
CITY OF SACRAMENTO)
_____)

DECLARATION IN SUPPORT OF
APPLICATION FOR LATE CLAIM

I, SANDY GLOEDCKLER, say,

I am the wife of HAROLD C. GLOECKLER III the Claimant herein,
and was married to him at the time of his automobile on
June 25, 1980. I have been responsible for his care during his
recovery from injuries from that accident, and have resided
with him at all times since his discharge from hospitalizations
resulting from that automobile accident.

Following the accident of June 25, 1980, my husband was
semiconscious, he could not talk sensibly, and had no memory
whatsoever of where he was, what had happened to him, or any
conversations with anyone. This condition lasted until before
he was discharged from the hospital on July 22, 1980. He was
in the hospital for approximately one month following this
accident, and had two major surgeries while in the hospital
for his skull fractures. After he was discharged from the
hospital on July 22, 1980, he had two additional surgeries to
his eye. Those occurred on December 19, 1980 and March 21, 1981.

My husband has total memory loss from the day of the
accident until approximately three to four weeks following the
accident. He cannot remember where he was during that time,
nor any conversations that took place during that time.

He could not talk sensibly nor carry on a conversation nearly the entire time he was in the hospital. After he was released from the hospital, he did not even realize he had been in an accident until at least two months later.

Could not read a written document until after October, 1980, and then only very slowly and with great difficulty. He has been unable to drive a car at all times since the automobile accident of June 25, 1980, and on the date of this declaration my husband is still unable to drive.

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

Executed at Sacramento, California, on this 24th day of June, 1981.


SANDY GLOECKLER

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CITY OF SACRA...
JUN 24 3 57 PM

HAROLD C. GLOECKLER III)
against)
CITY OF SACRAMENTO)
_____)
DECLARATION IN SUPPORT OF
APPLICATION FOR LATE CLAIM

I, SHARYN J. VANTASSELL, state:

I am an Attorney at Law duly licensed to practice in all law in the Courts in the State of California. I am one of the attorneys representing Harold C. Gloeckler III with respect to the automobile accident occurring June 25, 1980.

In the course of such representation I have reviewed medical records pertaining to the cure and treatment rendered by various physicians to Harold C. Gloeckler III as a result of the automobile accident occurring June 25, 1980. Those medical records state that as a result of that automobile accident Harold C. Gloeckler who was admitted to American River Hospital on June 25, 1980, in a stuporous, semiconscious condition. Admitting records by physicians indicate that the patient was totally uncooperative, and not aware of conversations during the course of treatment. He was placed in the intensive care unit until his condition was stabilized enough for him to undergo major surgery, and was confined to the intensive care unit for sixteen days. He then underwent two major surgeries, both for skull fractures, the same occurring on or about July 3 and July 18.

X-ray and computer scanning reports in said medical records indicate air was found in the intracranial vault of Harold Gloeckler's skull due to frontal facial fractures. The attending neurosurgeon states in medical records the full brunt of the blow when he fell off his motorcycle was to the frontal and facial bones, thus sparing lethal intracranial damage. X-ray and computer scans indicate multiple comminuted fractures of frontal bones of the skull, extending into the sinuses, and down to the facial bones, with the maxilla and entire jaw free floating and unattached from fractures. Computer scanning tests given three times during June and July indicate decreased absorption of the brain to stimuli in both frontal lobes, representing a cerebral edema to both sides of the brain. The multiple linear fractures to his frontal skull were depressed, with small bone fragments throughout the region. Displacements of the fractures were found, and surgery to reduce the fractures, explore into the orbital region where the fractures extended, and correct displaced fractures was undergone only after delays because of pulmonary embolisms developed in the patient. Facial wiring was performed in surgery of July 2, 1980.

The patient was diagnosed as having cerebral contusions, including both retrograde and anterograde amnesia, which persists to date.

Executed in Sacramento, California, June 24, 1981. I declare under penalty of perjury the foregoing is true and

correct, except as to those matters stated on information and belief, and as to those matters, I believe it to be true.

By SHARYN J. VANTASSELL

VanTassell, Fornasero & VanTassell, Inc.

Vance J. VanTassell
Sharyn J. VanTassell
Joseph M. Fornasero

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
917 G STREET, SACRAMENTO, CALIFORNIA 95814
TELEPHONE 916/444-8633

Gervase M. Flick, M.D.
Of Counsel

July 6, 1981

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JUL 10 1981
CITY ATTORNEY'S OFFICE

Mr. Steve Nocita
Deputy Counsel
Sacramento City Attorney
City Hall
Sacramento, CA 95814

Dear Steve:

This will confirm our telephone conversation regarding the Late Claim Application on behalf on my client, Harold Gloeckler.

As I related to you by telephone, I have had no contact with Mr. Gloeckler's wife wherein she attempted to represent his interest during his period of disability. My first contact on the matter was with Mr. Gloeckler directly. My contact with him was on January 13, 1981, as I can best estimate from our records at this time. At no time was I contacted by anyone during the 100 day period within which to file timely claims. The timely filing period had clearly lapsed at the time I was initially contacted.

Investigation was then commenced on the matter, and investigation was extremely lengthy, prolonged, and protracted. This was because much of the information relayed by our client was erroneous, or information which he did not know do, to his amnesia.

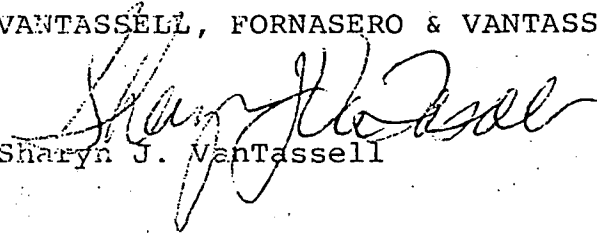
Disclosure of the above information is not intended to waive the attorney-client privilege which maybe asserted in this action. This information is relayed to you, pursuant to our telephone conversation, to assist you in evaluating whether Mrs. Gloeckler or myself had timely notice of a potential claim. You have my assurance we did not. Mrs. Gloeckler has taken no action on behalf of her husband with respect to his potential claim, and any actions taken by our office have been prolonged and extended due to our client's brain damage.

Mr. Steve Nocita
July 6, 1981
Page 2

We trust this information is sufficient to permit you to complete your evaluation, and trust we will receive notification on the matter shortly.

Sincerely yours,

VANTASSELL, FORNASERO & VANTASSELL, INC.


Sharyn J. Vantassell

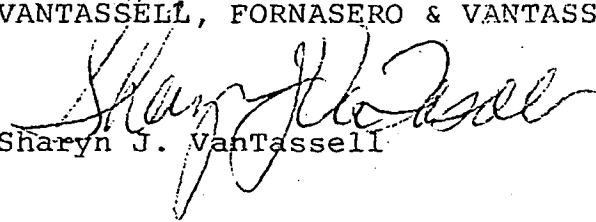
sue

Mr. Steve Nocita
July 6, 1981
Page 2

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Sincerely yours,

VANTASSELL, FORNASERO & VANTASSELL, INC.


Sharyn J. Vantassell

sue