

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

Renee Estill, Plaintiff/Appellant

vs.

County of Shasta, et al., Defendants and Appellants

Appeal from an Order Granting Motion for New Trial
Superior Court of California, County of Shasta
Hon. Stephen Benson, Dept. 3 (Case No. 12 CVC017563); (530-
245-6789)

**[PROPOSED] AMICI CURIAE BRIEF OF THE CALIFORNIA
STATE ASSOCIATION OF COUNTIES AND THE LEAGUE OF
CALIFORNIA CITIES IN SUPPORT OF APPELLANTS COUNTY OF
SHASTA, ET AL.**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

In accordance with California Rules of Court, Rule 8.208, there are no interested entities or persons that must be listed under Rule 8.208. The Association of Counties and the League of California Cities are non-profit organizations with no parent corporations and no stock.

Dated: February 12, 2016

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PROPOSED AMICI CURIAE BRIEF

INTRODUCTION

This case is about protecting a government entity's right to challenge the sufficiency of a cause of action alleged against it. Timely presentation of a claim is an essential element of a cause of action against a public entity, and the plaintiff carries the burden of proof. The trial court improperly construes the Government Claims Act to require public entities to investigate the timeliness of a claim, even though they do not have available to them the tools of civil discovery to do so. Here, extensive discovery was required before County could ascertain the true date that plaintiff's cause of action accrued. The law neither requires nor authorizes such extensive discovery as a part of an investigation of an otherwise sufficient claim. Therefore, public entities should not be precluded from asserting an independent jurisdictional defense where a claimant submits a time-barred claim that nevertheless appears timely on its face due to the claimant's inaccurate reporting as to the date of the incident and/or its discovery.

A finding that County waived its timeliness defense not only undercuts the purpose of the claims presentation requirement, it

expands County's liability by precluding it from asserting the jurisdictional defense that Estill's complaint fails to state a cause of action. Expansion of public entity liability in this fashion is contrary to public policy which is to confine governmental liability. The consequences of the trial court's ruling to public entities are significant. Amici Curiae therefore respectfully request this Court reverse the order of the trial court, and issue a published decision clarifying the obligations of public entities when reviewing Government Claims.

STATEMENT OF FACTS

Amici adopt, by this reference, the factual statement of County as set forth on pgs 3-15 of its brief.

LEGAL ARGUMENT

I THE GOVERNMENT CLAIMS ACT AND ITS CLAIMS PRESENTATION REQUIREMENTS ARE CRITICAL TO ALL COUNTIES, CITIES, AND OTHER PUBLIC AGENCIES

A. History and Purpose of the Government Claims Act

A critical question before this Court is whether the claims presentation requirements of the Government Claims Act (Government Code section 900 et seq., hereinafter "the Act") may be

construed to prevent public entities, unlike private party defendants, from asserting in litigation that a plaintiff has failed to state a cause of action against it. To answer this question, it is important to understand how the Act developed and its intended purposes.

Historically, as is the case today, the government provided necessary service to the people it governed, a unique and vulnerable position that was found to warrant a higher level of protection against legal claims than private entities. (Calif. Law Rev. Comm., 4 Reports Recommendations and Studies 807 (1963).) This is because of the unique nature of the government's relationship with the public, and the types of services it provides, including the power to issue and revoke licenses, prosecute and incarcerate violators of the law, administer prison systems, and build and maintain thousands of miles of streets, sidewalks, and highways. "...[D]espite limited manpower and budgets, there is much that public entities are required to do. Unlike private enterprise, a public entity often cannot weigh the advantage of engaging in an activity against the cost and decide not to engage in it. Government cannot 'go out of the business' of governing." (Davis v. Cordova Recreation & Park Dist. (1972) 24 Cal.App.3d 789, 797 [discussing immunities afforded public entities under the Act.]

Substantively, the Act abolished all common law based on the doctrine of absolute sovereign immunity. (Becerra v. County of Santa Cruz (1998) 68 Cal.App.4th 1450.) Instead, under the Act the general rule is that there is no public entity liability unless specifically provided by statute. (Elson v. Public Utilities Commission (1975) 51 Cal.App.3d 577.) Therefore, there exists sovereign immunity for public entities in California, with government liability limited to exceptions specifically set forth by statute. (Wright v. State of Calif. (2004) 122 Cal.App.4th 659.)

The Act was “conceived to strictly limit governmental liability.” (Williams v. Horvath (1976) 16 Cal.3d 834, 842.) This is reflected in the plain language of the Act, which supports a restrictive view of government liability, and in essence confines potential governmental liability to rigidly delineated circumstances. (State of California v. Superior Court (Bodde) (2004) 32 Cal.4th 1234, 1243; Mary M. v. City of Los Angeles (1991) 54 Cal.3d 202, 2229.) “[T]he intent of the [Government Claims Act] is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the Act are satisfied.”

(Brown v. Poway Unified School District (1993) 4 Cal.4th 820, 829 [citation omitted]; Hilts v. County of Solano (1968) 265 Cal.App.2d 161, 170-171.) Statutory liabilities should be construed narrowly as the intent of the Government Claims Act is to confine governmental liability, not expand it. (Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1127.)

B. Purpose of Procedural Requirements of the Act

The claims presentment process in the Act is more than a procedural requirement. It serves an important function in the scheme of public entity liability, and it is part of the careful balancing of competing policies undertaken by the Legislature when it adopted the Act.

All claims for money or damages against public entities must be presented to the entity before a lawsuit is filed. (Gov. Code, § 905.) The purpose of the claims presentation requirement is to afford "...the entity an opportunity to promptly remedy the condition giving rise to the injury, thus minimizing the risk of similar harm to others." (Shirk v. Vista Unified School District (2007) 42 Cal.4th 201, 213 [citations omitted].) It also "...permits the public entity to

investigate while tangible evidence is still available, memories are fresh, and witnesses can be located.” (Id. [citations omitted].) “Fresh notice of a claim permits early assessment by the public entity, allows its governing board to settle meritorious disputes without incurring the added cost of litigation, and gives it time to engage in appropriate budgetary planning.” The importance of the timely notice requirement is “...based on a recognition of the special status of public entities, according them greater protections than nonpublic entity defendants, because unlike nonpublic entity defendants, public entities whose acts or omissions are alleged to have caused harm will incur costs that must ultimately be borne by the taxpayers.” (Id.)

The Act clearly limits public entity liability, and one of the ways it does so is by requiring the filing of a timely claim. Allowing a claimant to misstate an accrual date and then strip a public entity’s jurisdictional defense if the public entity is unable to discover the true date of the accrual of the cause of action within the 45 day window to consider the claim, would thwart public policy. The policy supporting a public entity’s jurisdictional defense, when it is later discovered that a claim was not timely submitted, is critical to Amici and other public agencies.

C. Government Code Section 911.3 Does Not Permit Public Entities to Engage in Discovery in Order to Ascertain the Truth of Whether a Claim that is Timely on its Face is in Fact Late

The basic purpose of discovery is to enable parties to litigation to obtain the evidence necessary to evaluate and resolve their dispute before trial, and to avoid surprises at trial. (Greyhound Corp. v. Superior Court (Clay) (1961) 56 Cal.2d 355, 376.) The Discovery Act enumerates various tools by which information may be obtained, tools that are not otherwise available to parties before litigation is initiated, such as: depositions; interrogatories; inspection of documents, things, and places; physical and mental examinations; requests for admissions; expert witness designations; and business records subpoenas. (See, e.g., Code of Civ. Proc., §§ 2025.010, 2030.010, 2032.010, 2033.010, 2034.010, and 2020.410.) None of these tools are authorized for use by Amici or other public entities during the 45 day claims consideration period. Frequently formal discovery is required in order for public entities to ascertain liability and estimate potential damages.

For example, consider an ordinary trip and fall on a sidewalk case. Assume that claimant states a timely date of incident on her

claim form. There are no witnesses, incident reports, or police reports to corroborate claimant's description of the incident. There is a liquor store nearby where her fall occurred, and that store has video surveillance footage that may have captured the incident. The liquor store refuses to provide its recordings to the public entity. The claim is denied and litigation ensues.

Then, during discovery, the public entity subpoenas the video recordings from the liquor store. The recordings establish that the incident did not take place on the date alleged by claimant. In fact, it was so stale that it would have made her claim time-barred. Under the trial court's ruling in this case, a stale claim nonetheless leaves the public entity without a timeliness affirmative defense in the litigation because the claim was timely on its face. The plaintiff would be excused from having to establish an element of a cause of action against the public entity, i.e., the timely presentation of a claim, even though she carries the burden of proof.

Applying the trial court's ruling to this hypothetical shows how this ruling strips a public entity of its affirmative defense. Because the public entity did not discover the true date of the incident during the 45 day claim review period, and it did not return her claim as it

was timely on its face, it has unknowingly waived its defense. Thus, what should public entities do to avoid this untenable result? The only method to preserve this critical defense is to return every claim as untimely. This thwarts the purpose of the Act, and administratively burdens public entities and claimants alike.

D. Because Discovery is Not Authorized During the Claim Evaluation Period, Public Entities Must Accept as True All Facts on the Face of the Claim

The same legal standard that applies to a public entity's review of the sufficiency of a claim under Government Code section 911 should apply to a public entity's review of a claim's timeliness under Government Code section 911.3. The provisions of the Act do not operate to strip a public entity of affirmative defenses, or to eliminate a plaintiff's burden of proof, in a subsequent lawsuit when the defenses were not apparent from the face of the claim. Both Government Code section 911 and Section 911.3 contain a waiver provision if the public entity fails to serve a notice of a defect in the contents or form of a claim, or of the untimeliness of the claim, respectively.

The rationale and rule formulated in cases interpreting whether a public entity has waived a defense by failing to provide

the required notice under Government Code section 911 should apply equally to claims that are facially timely, and therefore not returned under Government Code section 911.3. Public entities should be able to accept as true all facts on the face of the claim. This approach supports the position of Amici that if a claim on its face is timely and contains the required contents, a public entity has not waived all jurisdictional statute of limitations defenses by rejecting the claim on the merits.

1. Sufficiency under Government Code section 910

Government Code section 910 sets forth the essential contents of a claim. If the essential contents are not included, the claim is insufficient. (Govt. Code, §910.08.) Information to be included in a claim in order to be sufficient are: (1) the names and addresses of claimant and the person to be sent notices; (2) a statement of the date, place, and other circumstances of the occurrence or transaction; (3) a description of the indebtedness, obligation, injury, damage or loss incurred; (4) the name of the public employee who caused the injury, if known; and (5) the amount claimed if less than \$10,000, or if more than \$10,000 no dollar

amount is to be included but the claim must state whether the claim is to be a limited civil case. (Govt. Code, §910.)

If one or more of the foregoing five elements are not included in the claim, it is insufficient, and the public entity must provide a notice of such insufficiency and return the claim, or else it waives any defense based upon a defect or omission within the claim. (Govt. Code, §911; Martinez v. County of Los Angeles (1978) 78 Cal.App.3d 242, 245.) Such notice must be provided within 20 days after a claim has been presented. (Govt. Code, §910.8.) The purpose of providing the notice and the possibility of waiver encourages public entities to investigate claims promptly, to the extent they can, and to make and notify claimants of their determinations, thus enabling the claimants to perfect their claims. (Mandjik v. Eden Township Hospital District (1992) 4 Cal.App.4th 1488, 1503.) In this way, the Government Code balances the equities between the public entity's need for complete, informative claims, and the claimant's right to pursue valid claims.

The test as to whether a claim has substantially complied with Government Code section 910 is whether sufficient information is alleged to "enable a public entity to investigate and evaluate the

claim to determine whether settlement is appropriate.” (Phillips v. Desert Hospital District (1989) 49 Cal.3d 699, 706.) Sufficiency of the claim is judged in light of that purpose.

For example, the plaintiff in Crow v. State of California (1990) 222 Cal.App.3d 192, unsuccessfully raised a waiver argument. In the Crow case, the plaintiff included in his complaint a cause of action for breach of contract that was not reflected in his government claim. Crow argued that because the state did not return his claim as insufficient, the state had waived its defense as to the new breach of contract cause of action. The court rejected plaintiff’s argument and determined that the notice of insufficiency and waiver “...statutes have no applicability to these circumstances. The state does not assert the claim has some inherent flaw; rather, it simply does not support the complaint...” (Id. at p. 202.) The court held that the state “...acted in timely fashion to assert this defense, with no waiver taking place.” (Id. at 203).

Indeed, like the plaintiff in Crow, Estill’s claim was not facially flawed. County did not assert that the claim was insufficient because it facially complied with Government Code section 910. Estill’s claim did not omit the date of the incident, nor did it state an

untimely date. Here, as there was in Crow, there is disharmony between the facts alleged to meet the Government Code section 910 claim content requirements, and the actual facts necessary to prove a cause of action against a public entity. Claimants cannot play hide the ball and then use Government Code section 910 to their benefit. The same holds true for facially timely claims.

The case of Donohue v. State of California (1986) 178 Cal.App.3d 795, is also instructive. Donohue holds that a lack of notice of defects and omissions does not result in a waiver when the flaw was not apparent on the claim and could not be discovered until the complaint was filed. In Donohue, plaintiff's car was struck by a car driven by a minor who was taking the driving portion of his California driver's license examination. (Id. at p. 798.) Plaintiff's claim alleged that defendants had negligently performed their duties so as to permit an uninsured motorist to take a driver's test and drive on a public street then causing a collision with plaintiff's vehicle. (Id. at p. 799.) The civil complaint, however, alleged in addition that the Department of Motor Vehicles negligently instructed, directed, and controlled the examinee in his driving test, failed to keep a proper lookout for oncoming traffic, and failed to warn the examinee of such traffic. (Id.) The State of California demurred on the ground that the

plaintiff failed to state a cause of action because the defendant's liability as pled in the complaint was premised on facts not set forth in the plaintiff's claim. (Id. at p. 802.) In other words, the description of the negligence set forth in the government claim differed materially from the allegations contained in the civil complaint.

The court correctly noted that the filing of a proper claim is a condition precedent to the maintenance of an action against the state for damages caused by tort. "If a plaintiff relies on more than one theory of recovery against the State, each cause of action must have been reflected in a timely claim. In addition, the factual circumstances set forth in the written claim must correspond with the facts alleged in the complaint; even if the claim were timely, the complaint is vulnerable to a demurrer if it alleges a factual basis for recovery which is not fairly reflected in the written claim." (Donohue, *supra*, at p. 802 [citations omitted].)

The primary function of the claims act is to appraise the governmental body of imminent legal action so that it may investigate and evaluate the claim and where appropriate, avoid litigation by settling meritorious claims. [Citations]

[...]

Plaintiff notes that the State Board of Control could have given him written notice of any insufficiency in his claim and argues that the board's failure to do so resulted in the waiver of any defense as to the sufficiency of the claim. [Citations] This contention lacks merit. The insufficiency of plaintiff claim lies in its failure to set forth the factual basis for recovery alleged in the complaint; defendant could not have discovered such defect until plaintiff filed his complaint. Defendant raised the defense of insufficiency of the claim at the earliest opportunity by demurring to the complaint on that ground. (Id. at p. 804-805.)

Here, too, County moved for summary judgment after discovery revealed the true date that Estill learned of the accrual of her cause of action. The rationale in cases interpreting the wavier provision of Government Code section 911 should apply equally to the instant case and in interpreting the wavier provision of Government Code section 911.3.

2. Timeliness under Government Code section 911.3

As a matter of law, a public entity is required to accept the claimant's asserted date of accrual in the absence of clear and specific evidence that the date was incorrect. (Mandjik, *supra*, at p. 1500; Rason v. Santa Barbara City Housing Authority (1988) 201 Cal.App.3d 817, 829; Scott v. County of Los Angeles (1977) 73 Cal.App.3d 476.) Thus, a claim which on its face is timely, and contains sufficient information for a public entity to investigate and

evaluate the claim, meets the minimum criteria required by Government Code section 910. Under such circumstances, the public entity's right or duty to return the claim under Government Code section 911.3 is not triggered, and, therefore, a waiver defense is not available to claimants such as Estill.

In Mandjik, *supra*, the court determined that “[s]ince plaintiffs’ Claim was timely on its face under a six-month presentation period and since defendant failed to give specific written notice of rejection under section 913, plaintiffs had two years from the accrual of their cause of action to file their complaint.” (Id. at p. 1504 [citations omitted].) The court in Mandjik noted:

A public entity cannot assume that a claim is not timely presented just by the fact that a claim and an application for leave to file a late claim are presented at the same time. [citation omitted]. Nor is a public entity permitted to make factual determinations relating to the timeliness of a claim; to permit the public entity to do so would be to deny the claimant his right to a jury trial on a disputed factual issues. Rather, where a claim submitted along with an application for leave to present a late claim alleges facts which, if true, would make the claim timely, the public entity must give specific written notice of rejection under section 913. If the public entity fails to do so, the claimant has two years from the accrual of his cause of action to file his complaint. (Id. [citations omitted].)

Applying the holding in Mandjik to the instant case, County properly rejected the claim, which appeared to be timely on its face. A public entity should be able to rely on a claimant's sworn statement on the face of a claim as to the date a cause of action accrued, without losing the ability to later challenge the sufficiency of a cause of action if it turns out the timeliness element has not been met. (See *also* Martinez v County of Los Angeles (1978) 78 Cal.App.3d 242, 246 [assuming without deciding, that the public entity is entitled to know from the face of the claim that it is timely].) Otherwise, the only safe course of action would be for a public entity to return every claim based on timeliness – a result that would lead to increased inefficiency and cost for public agencies, and ultimately, the tax-paying public.

3. The Filing of a Timely Claim is a Jurisdictional Prerequisite to Filing a Complaint Against a Public Entity

Government Code section 945.4 states the general rule that “no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented...until a written claim therefor has been presented to the public entity” and has been rejected in whole or in part. Presentation

of a claim is a mandatory prerequisite to maintaining a cause of action against a public entity, and failure to file a claim is fatal to the claimant's cause of action. (State v. Superior Court (Bodde) (2004) 32 Cal.4th 1234, 1239.)

Timely claim presentation is not merely a procedural requirement, but is, ... 'a condition precedent to plaintiff's maintaining an action against a defendant'." (Shirk, *supra*, at p. 209, *quoting* State v. Superior Court (Bodde) (2004) 32 Cal.4th 1234, 12340.) A timely claim is an essential element of a cause of action. (Wood v. Riverside General Hospital (1994) 25 Cal. App.4th 1113, 1119.) Failing to allege facts demonstrating or excusing compliance with the Government Claims Act subjects a complaint to a general demurrer. (State v. Superior Court (Bodde) *supra*, at p. 1239.) Compliance with the Government Claims Act is an integral part of plaintiff's cause of action, and a defendant may assert plaintiff's failure to comply at any stage of the proceeding. (Taylor v. Mitzel (1978) 82 Cal.App.3d 665.)

Under Government Code section 945.5, failure to present a timely claim bars suit against the public entity, and subjects it to general demurrer under Code of Civil Procedure section 430.10(e)

for failure to state a cause of action. (State v. Superior Court (Bodde), *supra*, at p. 1239.)

The burden of proof is on the plaintiff to demonstrate either satisfaction of the statutory claim presentation prerequisites or sufficient facts to justify noncompliance based on excuse, waiver, or estoppel. (State v. Superior Court (Bodde) (2004) 32 Cal.4th 1234, 1239.) A public entity defendant may assert the plaintiff's failure to prove compliance or excuse at any stage of the proceeding, even for the first time on appeal. (Smith v. County of Los Angeles (1989) 214 Cal.App.3d 266, 280.) Indeed, the trial court's ruling eliminated Estill's burden of proving this element, thereby expanding public entity liability.

Shirk v. Vista Unified School District, *supra*, is useful in analyzing the issue presented to this Court. Shirk presented a government claim on September 12, 2003, alleging sexual abuse by a former teacher. (Id. at p. 205.) Shirk sued the school district on September 23, 2003, and on the complaint she entered the date of the incident as September 12, 2003. (Id.) In other words, Shirk's complaint against the school district alleged timely compliance with

the Government Claims Act. In fact, the alleged sexual abuse occurred in the late 1970s. (Id.)

The six-month statute of limitations, which is triggered following the satisfaction of the claims presentation requirements, for filing a lawsuit against public entity defendants was not implicated by the facts in Shirk. (Id. at p. 209.) Rather, in that case as in the instant one, it was the claim presentation deadline that was at issue. (Id.) The superior court had sustained the school district's demurrer without leave to amend and entered a judgment of dismissal on the ground that plaintiff failed to timely comply with the requirements of the Government Claims Act. The California Supreme Court agreed, finding that the plaintiff's causes of action against the school district were barred by the expiration of the time for presenting a claim to the school district. (Id. at p. 213.) In the litigation, the school district was permitted to attack the lateness of the claim even though the date of the alleged incident as claimed by the plaintiff was timely on its face.

Applying the trial court's rationale in the instant case to the facts in Shirk is illuminating in that it would dictate a result opposite to that reached by the Supreme Court. In the Shirk matter, such

reasoning would mean that the plaintiff could withstand a summary judgment motion and pursue a claim against the school district 25 years late by writing an incorrect, but facially timely, date of accrual of the cause of action on the complaint as long as that date is consistent with the government claim.

E. Estill's Complaint is Time Barred and the Time to Apply for Leave to Present a Late Claim has Long Passed

“A person who fails to file a timely claim may apply to the public entity for leave to present a late claim within a reasonable time not to exceed one year after accrual of the cause of action. (Government Code section 911.4.) “No relief can be granted if the application to file a late claim was filed more than one year after accrual of the cause of action. ‘The reason for the one-year statutory requirement is to ‘protect [] a governmental entity from having to respond to a claim many years after the accrual of the action.’” (County of Los Angeles v. Superior Court (N.L.) (2005) 127 Cal.App.4th 1263, 1272, *citing* County of Los Angeles v. Superior Court (2001) 91 Cal.App.4th 1303, 1314, *quoting* Hernandez v. County of Los Angeles (1986) 42 Cal.3d 1020, 1030.) Estill has no recourse against County, as the time for her to apply for leave to file

a late claim has long since expired. In fact, as detailed in County's brief, it expired prior to the time she presented her claim.

III. CONCLUSION

Suing a public entity in California comes with strict timelines because public policy supports reasonable limitations on public entity liability. Timeliness is a necessary element for any cause of action to make it past the Government claim state, to the civil complaint state. Estill's claim was not timely, and her false statement to the contrary cannot satisfy that required element. Her claim was not only time-barred under the Government Claims Act, but also by the applicable civil statute of limitation. Public entities must be able to rely on a claimant's sworn statement as to the date a cause of action accrues. Otherwise, contrary to the public policy behind the Government Claims Act, the statute of limitation for bringing an action against public entities will be enlarged to the benefit of claimants that write incorrect information on their claims. Public entities will be forced to return facially timely claims as late in order to preserve their defense of timeliness. The trial court's interpretation of the law would require a strained and unworkable result. Therefore, Amici respectfully requests that this Court reverse

the order of the trial court, and issue a published decision clarifying the obligations of public entities when reviewing Government Claims.

Dated: February , 2016

M. Christine Davi
Attorney for Amici California
State Association of Counties
and League of California Cities

CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES
OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Arial typeface. According to the word count feature in my Microsoft Word software, this brief contains 4,627 words.

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

Dated: February , 2016

M. Christine Davi