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Government tort claims

AN OVERVIEW OF THE PROCESS FROM FILING A CLAIM TO THE BEGINNING OF LITIGATION

At some point, every personal-injury attorney comes across a case where a potential defendant in your client's motor-vehicle accident case is a governmental entity or governmental employee. This is especially true and is likely seen more frequently when dealing with clients who live or work in large cities, such as Los Angeles. Regardless of the type of case, whether stemming from an automobile accident or a premises case involving a defective sidewalk, when dealing with a governmental or "public entity" defendant, every personal-injury attorney must comply with the filing requirements set forth in the California Tort Claims Act to ensure that their client's claim is properly preserved.

A governmental Tort Claims Act exists on both the federal and state levels. However, for the purposes of this article, only the requirements of the California Tort Claims Act will be addressed.

California's Tort Claims Act

California's Tort Claims Act can be found in Government Code sections 810-996.6. While these code sections lay out the specific statutory requirements applicable to the government claim process, the overall takeaway of the California Tort Claims Act is that before filing a lawsuit seeking damages of any kind against a public entity (and absent limited exceptions provided by the code or otherwise by law), all claimants must first file a government tort claim with each potential public entity defendant. Under the California Tort Claims Act, a public entity generally consists of all state, county and local government agencies, departments and governmental employees.

The purpose in filing a government claim is to put the public entity on notice of the claim and to provide the public entity with sufficient information so it can properly evaluate and/or investigate the

claim, and thereafter, make an informed decision on whether to attempt to settle the claim prior to a lawsuit being filed.

Statute of limitations

The most common claim asserted against an at-fault party after an automobile accident is a negligence claim. For the most part, general negligence claims in California, including personal-injury and wrongful-death claims, carry a two-year statute of limitations, whereas property damage claims carry a three-year statute of limitations. However, this is not the case when dealing with public-entity defendants.

There are two statutes of limitations periods to be aware of when dealing with a public-entity defendant – the first being the time period in which the government claim must be filed and the second is the time period for filing a lawsuit.

Under the California Tort Claims Act, any person seeking to recover monetary damages for personal injuries, wrongful death and/or personal property, must file a government claim with each public entity defendant within six months of the accrual of the cause of action. (Gov. Code, § 911.2.) Additionally, to the extent you need to amend your claim, any and all amendments to the government claim must also be submitted within the same six-month period. (Gov. Code, § 910.6.)

This shortened statute of limitations does not provide much time for you to investigate your client's claim(s) or to gather the necessary documents and evidence to support the claim. In fact, often, especially in major-injury cases, your client may still be treating and the full extent of their injuries and/or damages are not yet known and may not be known until after the six-month government-claim limitation period has passed. Even if this is the case, you still must comply with the filing requirement

and provide in the claim as much information about the basis of the claim and the alleged injuries and/or damages known at the time of filing.

Failure to comply with the government-claim filing requirement within the prescribed six-month time period could bar your client from being able to file a lawsuit against the public entity defendant(s). Thus, it's extremely important to start early in preparing your government claim and getting it submitted. As a rule of thumb, try to submit your claim at least 60 to 70 days before the six-month deadline. That way you leave yourself sufficient time in the event you need to re-submit your claim for any reason. Some potential reasons for needing to resubmit a claim may include scenarios where a claim somehow got lost in the mail and was never received by the public entity, a claim was rejected due to an error or was rejected due to failure to comply with the filing procedures.

Identifying public-entity defendants

As you would in any case that comes through your door, it's important to identify all potential defendants. But it is extremely important to identify all public-entity defendants *quickly* due to the shorter statute of limitations to file the government claim.

Typically, it is fairly easy to identify certain public-entity defendants, such as the City of Los Angeles or the State of California. By their name alone, these defendants are clearly public entities. However, identifying other types of public-entity defendants can sometimes be tricky. If you are ever unsure about whether a certain defendant is actually a public entity or not, the first thing you should do is either look it up online by visiting its website or simply give it a call and ask (without divulging information about your client's claim).

Additionally, you can also check the “Roster of Public Agencies,” which is maintained with the California Secretary of State’s office. The Roster of Public Agencies is a comprehensive list of registered public entities within the State of California that are required to register. But be aware that some public entities are not contained on this list because not all public entities are required to register. Government Code section 53050 sets forth which types of public entities are required to register and appear on the Roster of Public Agencies. Whenever you are in doubt about a given entity’s status as a public entity, checking the Roster of Public Agencies is a safe place to begin your research. Unfortunately, the Roster of Public Agencies is not made available online so you will either need to call the Secretary of State’s office – Special Filings Department or submit a written request and pay a fee. Calling is generally the quickest way to go.

Preparing the government claim form

Preparing the government-claim form is pretty straightforward and is typically not a very difficult process. Most public entities will have their own personalized claim form available on their website for you to download and use. The form itself is usually about one to two pages long and indicates what information is being sought pertaining to your client’s claim. If the public entity provides you the option to submit the claim electronically online, the online claim portal will generally mirror their written government claim form.

Keep in mind that while most public entities provide their own government claim form, many of them do not. Be aware that, pursuant to Government Code section 910.4, if the public entity provides a specific government claim form, you must use it to complete your client’s claim. Failure to do so could result in the claim being rejected for failure to comply with the procedural requirements.

If the public entity does not have its own claim form, you will need to create your own and it must contain all of the

following information: (a) the claimant’s name and address; (b) the address where the claimant would like to receive notices (which should be their attorney’s office); (c) the date, location and facts of what happened and circumstances surrounding the claim; (d) the name of the public entity’s employee(s) who caused the injuries or damages (if known); (e) a general description of any injuries suffered and any damages being claimed (i.e., medical expenses, wage loss, property damage, etc.); (f) if you are asking for less than \$10,000 in damages, then the dollar amount being claimed and an explanation of how that amount was calculated; and (g) if you are asking for more than \$10,000 in damages, then you must state such and further indicate whether your lawsuit will be filed in limited or unlimited jurisdiction. (Gov. Code, § 910.)

In addition to the above, you should submit with the claim any supporting evidence that may help establish your client’s claim(s)/damages. This typically includes, but is not limited to, a traffic collision report (if available), property damage and injury photos, property damage estimates, medical bills and records, wage-loss documentation, etc. Keep in mind that given the short period of time to submit the claim, your client may still be treating for their injuries and accordingly, the full extent of their damages are not yet known and/or certain medical bills and records are not yet available. Make sure to state this in your claim form and provide all supporting documents available at the time. You can always provide additional documentation to the public entity’s adjuster at a later date.

Submitting the government claim

Written government-claim forms are to be submitted by mail to the clerk of the public entity or by personally delivering it to the clerk of the public entity. (Gov. Code, § 915.) If the public entity defendant has its own specialized claim form, then submission instructions will usually be contained on the front of

the claim form letting you know the exact address and department to mail or deliver your claim to. Written government claims submitted by mail are typically deemed submitted the day they are mailed. (Gov. Code, § 915.2.)

For many years, submitting a written government claim (either by mail or personal delivery) was the only submission option available to claimants. However, over the years, more and more public entities are beginning to provide claimants with an option to submit their claim and supporting documents electronically through their website. This tends to be the case with larger public entities such as city governments like the City of Los Angeles. However, whether electronic claim submission is an available option will of course depend on the public entity, so make sure to check and see if your public entity defendant provides this as an option.

If electronic claim submission is available to your client, always use that option. The most significant benefit of electronic submission is having the peace of mind in receiving confirmation very quickly that your client’s claim was actually received by the public entity. Once you press the submit button online, within a few minutes you will usually receive a confirming email indicating that the claim was submitted and received and further providing you with a claim number. You will not get this same-day peace of mind if you submit your government claim by mail, as you will have to wait to check the mail tracking number to confirm your claim was delivered and then wait for written confirmation from the public entity that they received your claim.

Late claims

If you fail to file a government claim within six months of the date of accrual, you are generally time barred from filing a lawsuit against the public entity and its employee(s), absent certain exemptions set forth under the code or pursuant to case law. However, where no exemption or law applies, Government Code section

911.4 does permit the filing of a late claim in certain circumstances. Under this code section, if the claim was not filed within six months of accrual of the cause of action, but is still within one year of accrual, then you can submit a written application directly to the public entity seeking leave to file a late claim. The application must contain a proposed copy of the claim and set forth the reasons for failing to timely file the claim within the six-month filing period. If more than one year has passed since the accrual date of the cause of action, there is little to nothing that can be done and your client is likely barred from filing a lawsuit against the public entity defendants, absent applicable exceptions.

Once a late-claim application has been submitted, the public entity will have 45 days to accept or deny the application (Gov. Code, § 911.6.) Section 911.6 sets forth the criteria that the claimant must establish for a public entity to accept the late claim. Keep in mind that public entities review late claims on a case-by-case basis and late claims are often denied as a matter of course as many of them fail to establish one or more of the criteria for permitting late claims. If you are ever presented with a situation that requires the filing of a late claim within one year of accrual of the cause of action, make sure your late-claim application clearly and concisely sets forth any and all reasons for granting the late claim. If one or more of the statutorily prescribed criteria set forth in Government Code section 911.6 is established, the late claim application must be approved by the public entity.

Public entity response to claim and limitations period to file a lawsuit

After the government claim has been submitted, the public entity must respond by either accepting or rejecting (in whole or in part) the claim within 45 days, unless otherwise agreed to in writing between the parties. (See Gov. Code, § 912.4.) If a claim is rejected in whole or in part, you will typically receive a rejection letter, often referred to as a

“right to sue” letter. Upon receiving the “right to sue” letter, you are free to file a lawsuit and must do so within six months from the date the “right to sue” letter was either personally delivered or deposited in the mail (i.e., the date it was post-marked). (Gov. Code, § 913.) Be aware of this new limitation period to file a lawsuit and calendar the date accordingly.

If the public entity fails to respond or take any action whatsoever within 45 days from the date your claim was submitted (i.e., you receive no “right to sue” letter or any other form of contact or response from the public entity), then the claimant usually has two years to file a lawsuit from the date of accrual of the cause of action.

Settling your client’s claim vs. filing a lawsuit

After submission of the claim, and assuming the claim was not rejected, the public entity may attempt to settle the claim short of a lawsuit being filed. After all, the purpose and public policy behind the California Tort Claims Act is to put the public entity on notice of the claim and give them an opportunity to attempt to settle it short of a lawsuit being filed.

The claims process on a government claim is typically no different than dealing with an insurance claims adjuster on a non-government claim. The claim may even be assigned to a third-party claims adjuster unless the public entity handles claims in-house. Often, the adjuster will request that you submit a demand letter and provide further supporting documentation of your client’s damages for their consideration.

Whether they ask for a demand letter or not, you should always submit one – especially if your client was still treating and/or all of the supporting documentation (such as medical bills and records) was not yet known or otherwise available at the time the claim was initially submitted. Additionally, a good demand letter can help bring to light the strength of your client’s claim and/or the severity of the damages to hopefully put the public entity in a position to meaningfully try to settle the claim.

Most public entities are self insured, so there is often no insurance money available to settle your client’s claim. So, unlike the claims process in a non-government claim, public entities are negotiating with their own money as opposed to insurance proceeds. This is important to keep in mind because public entities tend to be more frugal and often undervalue claims or try to convince your client to settle cheaply. You will need to consider this when deciding whether it’s in your client’s best interest to settle out of litigation or to proceed to filing a lawsuit. It’s also worth noting that even where a settlement is reached during the pre-litigation phase, public entities routinely take a long time to get the settlement approved and/or to issue payment. This process can take many months after reaching a tentative settlement. This also tends to be the case with any settlement reached in litigation as well.

Once the decision is made to file a lawsuit, make sure to include in your complaint all information pertaining to your client’s compliance with the requirements of the California Tort Claims Act. Make sure to plead in the complaint: (a) the date the government claim was filed against each public entity defendant; (b) state the claim number (if available); and (c) the date the claim was rejected (either by way of a “right to sue” letter or by law due to failure of the public entity to act.) This way you address from the get-go any issue as to whether the claim is timely and avoid any bogus affirmative defense as to statute of limitation and/or failure to comply with the requirements of the California Tort Claims Act. It’s usually a smarter idea to file a lawsuit immediately once you are able to do so, and proceed to litigation of your client’s claim.

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