

S139237

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

THE CITY OF STOCKTON, REDEVELOPMENT AGENCY
OF THE CITY OF STOCKTON,
Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO,
Respondent,

CIVIC PARTNERS STOCKTON, LLC,
Real Party in Interest.

The Court of Appeal, Third Appellate District, No. C048162
Superior Court of California, Sacramento County, No. 03AS00193

APPLICATION TO FILE *AMICUS CURIAE* BRIEF AND
AMICUS CURIAE BRIEF

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APPLICATION TO FILE *AMICUS CURIAE* BRIEF AND
AMICUS CURIAE BRIEF

The Los Angeles Unified School District hereby submits its Application
to File *Amicus Curiae* Brief and *Amicus Curiae* Brief.

Dated: July 26, 2006

ORBACH, HUFF & SUAREZ LLP

By: 

David M. Huff

Ryan W. Baldino

Attorneys for LOS ANGELES

UNIFIED SCHOOL DISTRICT

I.

INTRODUCTION

The Los Angeles Unified School District respectfully requests leave to file the attached brief of *amicus curiae* in support of Petitioners The City of Stockton and The Redevelopment Agency of The City of Stockton. California Rules of Court, rule 29.1(f). This application is timely made within 30 days after the filing of the reply brief on the merits.

II.

THE AMICUS CURIAE

The Los Angeles Unified School District (hereinafter "District") is the largest school district in the State of California and the second-largest in the United States. The District is responsible for the education of students residing in 26 cities and unincorporated areas in Los Angeles County. With over 10 million residents, Los Angeles County is the most populous county in the State. The increase in population over the last ten years has expanded the District's student population by nearly 100,000 students from 647,612 in 1995 to 727,319 in 2005.

In order to provide adequate classrooms for this influx of students, the District embarked on the largest construction program in its history. The New Construction Program is a multi-phased, multi-billion dollar program to deliver more than 150 new schools by 2012. The District is the largest property owner in Los Angeles. It is comprised of more than 13,000 buildings consisting of 72 million square feet of facilities most of which require repairs or

modernization work. As part of this extensive construction program, the District routinely receives contract claims from contractors, subcontractors and suppliers.

III.

THE DISTRICT'S INTEREST IN THIS ACTION

The District submits this amicus brief to correct Real Party in Interest, Civic Partners Stockton, LLC's (hereinafter "Civic"), erroneous assertion that a *Government Code* claim is not required for claims based on contract disputes. Eliminating the requirement to file a timely *Government Code* claim prior to proceeding with litigation will have a direct and profound impact on all local entities and particularly on the District's New Construction Program.

The receipt and review of *Government Code* claims are an important means for the District to become aware of claims arising out of contracts and allows the District an opportunity to efficiently and economically resolve those claims without litigation. As Civic seeks to eliminate this vital process, the District has a substantial interest in the present matter.

IV.

FURTHER BRIEFING

The District is familiar with the issues before the Court and respectfully submits the Court will benefit from further analysis of the case law and legislative history regarding the *Government Claims Act's* requirement that all claims for money or damages first be presented to a state or local agency in the

form of a claim. In addition, the District's practical experience with contract claims provides additional insight into the day to day, procedural application of the *Government Claims Act* by claimants and public entities.

V.

CONCLUSION

For the foregoing reasons, the District respectfully requests that the Court accept the accompanying brief for filing in this case.

Dated: July 26, 2006

ORBACH, HUFF & SUAREZ LLP

By: _____

David M. Huff

Ryan W. Baldino

Attorneys for **LOS ANGELES UNIFIED
SCHOOL DISTRICT**

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AMICUS CURIAE BRIEF

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I.

INTRODUCTION

Among the issues presented to this Court is Civic's assertion that a *Government Code* claim is not required for claims based upon contracts with public agencies. Such a contention is contrary to the plain language of the *Government Claims Act*, recent decisions from the Courts of Appeal interpreting the *Act*, and strong public policy in favor of requiring all claimants seeking money or damages from public agencies to first file a *Government Code* claim. The Court should affirm that the *Government Claims Act* applies as it is plainly written - to *all* claims for money or damages.

In addition, to hold that contract claims are exempt from the claim filing requirements would deal a significant financial blow to all public entities, and for that matter, to the private claimants as well. Allowing contract claims to be filed without compliance with the claims presentation requirement of the *Act* would lead to an inevitable increase in the amount of litigation each public entity must bear. The District's experience of using the statutory claims presentation requirements of the *Government Claims Act* to diligently investigate, analyze and resolve valid contract claims demonstrates the effectiveness of the *Government Claims Act*. If implemented, the financial ramifications that Civic's arguments would have on every public entity in the State are profound.

II.

PUBLIC POLICY SUPPORTS THE APPLICATION OF THE GOVERNMENT CLAIMS ACT TO CLAIMS ARISING FROM CONTRACTS

Civic argues that *Government Code* claims based on contract are not necessary because a public entity enters into each contract with board approval, administers all contracts in an organized way, knows how much is owed on each contract, and therefore, when a public contract becomes troubled it will likely attract the early attention of risk management. (Opening Brief, Page 19). These statements disregard the sound public policy reasons for requiring a *Government Code* claim for breach prior to filing any action for money or damages, and misrepresent how breach of contract claims are in reality handled by public agencies.

1. Public Policy Supports Requiring All Claims, Including Contract Claims for Money or Damages, Be Presented As *Government Code* Claims Prior to Commencing Litigation

Courts have held that strong public policy supports applying the *Government Claims Act* to all claims for money and damages, even if the damages are incidental to the relief requested. *TrafficSchoolOnline, Inc. v. Clarke* (2003) 112 Cal.App.4th 736, 742. In *TrafficSchoolOnline*, because a *Government Code* claim had not been filed, the Second District upheld a summary judgment against a suit for incidental damages sought in conjunction with a mandate petition. *Id.* at 738.

Not only did the *TrafficSchoolOnline* court find that the *Government Claims Act* explicitly states “no” damages suit may be pursued unless there is compliance with the claims presentation requirement, it went on to hold that requiring all actions for damages furthers the statutory purpose of the *Act*. *TrafficSchoolOnline, Inc. v. Clarke, supra*, 112 Cal.App.4th at 742.

“The claims filing requirement has several purposes: providing the public entity with sufficient information to ensure a proper investigation; to facilitate settlement of the claim if appropriate; to enable the public entity to engage in fiscal planning for potential liabilities; and to avoid similar liabilities in the future.”
Id.

This Court has held another important purpose of the *Government Claims Act* is to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them without the expense of litigation. *Stockett v. Association of California Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 446.

Civic’s arguments are also unrealistic because not all damages arising from a breach of contract are straightforward or easily determined by a simple review of the contract terms. For example, public entities engaged in large scale public works projects are often subject to multi-million dollar claims for damages based on claims for delay, disruption and extra work. (See e.g. *Howard Contracting, Inc. v. G.A. MacDonald Construction Co., Inc.* (1999) 71 Cal.App.4th 38, 48 [contractor recovered over one million dollars in delay damages from the City of Los Angeles]). By virtue of the receipt and analysis

of a *Government Code* claim, public entities are given the opportunity to investigate and resolve these damages claims before litigation is commenced.

2. The District's Own Experience With Contract Claims Arising From Public Works Contracts Demonstrates That Application of the *Government Claims Act* to Contract Causes of Action Actually Works

The District's Facilities Service Division is responsible for both the construction of the much needed new schools and the maintenance, operation and modernization of all existing schools within the District. In order to provide the necessary pool of resources, the District retains a variety of consultants with expertise in public works projects, including fifteen outside construction management firms.

To manage the sheer volume of *Government Code* claims received by the District, it has implemented a Construction Claims Department which is responsible for the analysis, investigation and, if possible, settlement of *Government Code* claims which arise from the District's New Construction Program. The Construction Claims Department has developed a written set of policies and procedures for the processing and handling of construction-related claims to ensure that claims are addressed as expediently as possible.

All *Government Code* claims filed with the Executive Officer of the Los Angeles Unified School District's Board of Education are handled in the following manner: The Executive Officer officially notifies the Board of the contents of the claim and distributes the claim to the District's General

Counsel office and the Construction Claims Unit. As such, usually it is only after a *Government Code* claim is filed that disputes at the ground level on a public works project rises to the attention of the governing board. At the District, a *Government Code* claim serves the purpose of not only notifying the Board and General Counsel of potential liability arising out of a contract, but begins the District's independent investigation and potential resolution of a claim prior to the need of expensive litigation.

Section 910 requires that each *Government Code* claim contain basic information in order to put a public entity on notice of each claim and allow for an investigation of the alleged claim for damages. In addition to identifying the claimant, each individual within the District responsible for causing the damage, and providing a general description of the damages, Section 910 requires the date, place and other circumstance of the **transaction** which gave rise to the claim. Armed with this information, the District's Contract Claims Unit performs its due diligence and investigates the validity of each claim. The District's own project staff, including the District's outside construction management teams, architects and consultants, are interviewed during this process. A meeting is arranged between the District's Contract Claims Unit and the claimant in an effort to reach a resolution of all valid claims. The District routinely enters into tolling agreements extending the statutory six month deadline for filing an action in order to continue to work with a claimant towards a successful resolution.

This program initiated by the District's Contract Claims Unit has resulted in a dramatic reduction in legal actions filed against the District in the last five years. Since July of 2001, the District's Contract Claim Unit received

and reviewed 464 *Government Code* claims for money or damages arising out of the District's various public works contracts. Out of these claims, the District has **successfully resolved 307** claims prior to the commencement of any legal action. **As such, 66% of all *Government Code* claims presented to the District on its public works projects have been successfully investigated and resolved without the need or wasted expense of litigation.**

Without the requirement that all claims for contract damages be submitted pursuant to the *Government Claims Act*, the District would not have had this same mandated ability to investigate and resolve claims prior to a claimant initiating litigation. Indeed, without the *Government Claims Act*, the District's first indication of a potential contract claims could be receipt of a complaint filed and served on the Board.

By successfully utilizing the claims presentation requirements of the *Government Claims Act* as a triggering event to conduct an investigation into contract claims, it is an undeniable and compelling fact the District has eliminated the need to litigate over 300 breach of contract lawsuits in the last five years. This dramatic reduction in legal fees results in an enormous cost savings to the public. In addition, through the *Government Code* claim process, the claimant is allowed to present its case without the need of retaining an attorney to file an action. When these costs savings are extrapolated to include every public entity in the State and not just the District's unique and successful experience, the benefit of requiring all claims for money or damages to the procedural requirements of the *Government Claims Act* cannot be overstated.

III.

GOVERNMENT CODE SECTION 814 IS A LIMITATION ON SOVEREIGN IMMUNITY AND NOT A LIMITATION ON THE CLAIMS PRESENTATION REQUIREMENTS

Civic argues Section 814 applies to every corner of the public entity's *Government Claims Act* and therefore contract claims are exempt from the claims presentation requirements set forth in Sections 900 et seq. (Opening Brief, Page 19). To build this argument, however, Civic has suggested a reading that contradicts the plain meaning of the statute. Further, Civic unconvincingly relies upon authority which dealt only with sovereign immunity, and not questions of claims presentation. While at a glance there may appear to be a disagreement among the appellate courts regarding the application of *Government Claims Act* claims presentation requirements for contract claims, when given scrutiny the propositions suggested by Civic ultimately fail.

1. The Limitations in Section 814 Only Apply to Part 2 of the *Government Claims Act* Regarding Sovereign Immunity.

Division 3.6 is entitled "Claims and Actions Against Public Entities and Public Employees" and encompasses both aspects of governmental liability and the presentation of claims based upon the government's liability. Division 3.6 is divided into three parts. Part 1 contains the applicable definitions of Division 3.6. Part 2 is entitled "Liability of Public Entities and Public Employees" and as explained in the title of Chapter 1, Part 2 contains general provisions relating to liability of public entities. Part 3 is entitled "Claims

Against Public Entities” and sets forth the claims presentation requirements of the statute.

According to the plain language of Section 814, the limitations provided in Section 814 only pertain to Part 2 of the *Act*. Section 814 states:

“814. Effect upon liability based on contract or right to relief other than money or damages

Nothing in this part affects liability based on contract or the right to obtain relief other than money or damages against a public entity or employee.”

Contrary to the assertions of Civic, the title of Section 814 as published by West Publishing Co. does not reference the entire statute. (Civic’s Opening Brief, Page 25). However, even assuming *in arguendo* that the title of a statute given by the publisher of California code sections would provide insight into this Court’s interpretation of a statute, the plain language of the statute itself expressly limits its effect to Part 2.

When interpreting statutes, courts follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law. *Stephens v. County of Tulare* (2006) 38 Cal.4th 793, 801. In *Stephens*, the Court recently interpreted another section of the *Government Code* and held:

“Because the statutory language is generally the most reliable indicator of that intent, we look first at the words themselves, giving them their usual and ordinary meaning and construing them in context. If the plain language of the statute is clear and unambiguous, our inquiry ends, and we need not embark on judicial construction. If the statutory language contains no

ambiguity, the Legislature is presumed to have meant what it said, and the plain meaning of the statute governs.” *Stephens v. County of Tulare, supra*, 38 Cal.4th at 802, citing *People v. Johnson* (2002) 28 Cal.4th 240, 244.

Applying the same analysis to Section 814, this statute can only be read as “Nothing in [Part 2] affects liability based on contract. . . .” Civic’s arguments that Section 814 applies to every corner of the *Act*, and therefore contract claims are exempt from the claims presentation requirements in Part 3, is an obvious but unpersuasive attempt to “rewrite the statute so as to make it conform to a presumed intention which is not expressed.” *Id.* at 801.

In addition, Civic’s argument that Section 814 exempts contract claims from the procedural claim filing requirements of the *Act* ignores the fact that Section 814 only applies to **liability** for claims. The *Government Claims Act* not only defines the limited areas where public agencies are **liable** for suit, but also sets forth the **procedural requirements** for maintaining an action.

All governmental liability is governed by statute. *Government Code* section 815(a). Public entities “are immune from being sued unless the Legislature has specifically provided otherwise.” *V.C. v. Los Angeles Unified School District* (2006) 139 Cal.App.4th 499, 507. “The [*Government Claims Act*] sets forth the limited circumstances under which the state and other political subdivisions may be sued **and** the applicable procedural requirements.” *Id.* (Emphasis added). As noted by the Second District in *V.C.*, the *Government Claims Act* serves **two** distinct purposes.

First, in Part 2, it sets forth the specific areas of liability for which sovereign immunity does and does not apply (Sections 814-895.8). Second, in Part 3, it sets forth the procedural requirements of submitting a claim prior to maintaining an action against a public agency in court. (Sections 900 et seq.). Therefore, while Section 814 may exempt contract claims from the shield of sovereign immunity provided for in Part 2, it has no effect on the mandatory requirements of filing a timely *Government Code* claim required in Part 3.

2. The Legislative History Demonstrates that the Liability Provisions Contained in Section 2 Do Not Undermine the Claim Filing Requirements of Section 3

Civic theorizes those who drafted the *Government Claims Act* did not appreciate that a single statute would be enacted from the six proposed bills, and due to the Legislature's "inexplicable oversight," courts have not applied Section 814 properly. (Opening Brief, Pages 26-27). The six bills relating to liability of public entities, however, were all drafted and introduced by the same Senator, Senator James A. Cobey (D.-Merced).

Moreover, the Legislature intended the *Government Claims Act* to be a simplification and replacement of multiple government claims statutes which had become too numerous, unduly complex, inconsistent, and difficult to find. *Alliance Financial v. City and County of San Francisco* (1998) 64 Cal.App.4th 635, 641. The *Government Claims Act* simplified the previous statutes by mandating that all claims for money or damages would be subject to the claim filing procedures. *Government Code* section 945.4. This is exemplified in

Section 905 where the Legislature specifically enumerated the type of claims which do *not* require the filing of a timely *Government Code* claim. Adopting Civic's arguments that contract claims are exempted from the claim filing requirements would create a judicial exception to the Legislature's intent to require all claims for money or damages to first file a timely *Government Code* claim.

3. The Court's Decisions in *Morrill* and *Longshore* Only Address the Issue of Sovereign Immunity and Do Not Apply to the Claim Presentation Requirements.

Civic's reliance on this Court's decisions in *E. H. Morrill v. State of California* (1967) 65 Cal.2d 787 and *Longshore v. County of Ventura* (1979) 25 Cal.3d 14 is misplaced. Although cited in other cases as authority for the proposition that claims arising from contracts are not subject to the claim presentation requirements, once read carefully, it is clear these cases involve only an examination and discussion of sovereign immunity.

In *Morrill*, a contractor filed a complaint against the State for damages for the costs incurred performing additional subsurface rock excavation which was not accurately described in the bid documents. 65 Cal.2d at 789. The trial court sustained the State's demurrer after finding that the State could not be liable as a matter of law based upon various disclaimers contained in the contract. *Id.* at 790. This Court reversed the decision below holding that the disclaimers could not be viewed as an effective waiver to the express statements of facts relied upon by the contractor, and therefore, the pleadings stated a cause of action for breach of implied warranty. *Id.* at 791.

In analyzing the retroactive effect of the *Government Claims Act*, this Court held that “[w]hen the state makes a contract it is **liable** for a breach of its agreement and the doctrine of governmental immunity does not apply.” *Id.* at 794. (Emphasis added). The requirement to file a timely *Government Code* claim, as required by Part 3 of the *Act*, was never addressed by this Court nor was it ever raised. As such, Civic’s reliance on *Morrill* is unavailing. The decision is not authority for a proposition not considered in the Court’s opinion. *Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 308.

In *Longshore*, this Court recognized the dual purpose of *Government Claims Act* to set the boundaries of sovereign immunity and provide a claims presentation requirement for all claims against public entities. 25 Cal.3d at 22. The plaintiffs in *Longshore* were sheriffs who sued the county for compensation of overtime performed which were not being honored pursuant to a salary ordinance. *Id.* at 20. Under a section entitled “*The Claims Statue and Sovereign Immunity*,” this Court analyzed both the sovereign immunity and the claim presentation requirements of the *Act*. *Id.* at 22.

In response to the county’s arguments that the sheriffs failed to allege prior presentation of a *Government Code* claim, this Court held that a claim was not required because Section 905(c) specifically excluded claims by public employees for wages. *Id.*

Turning to the sovereign immunity portion of the *Act*, the Court next addressed the county’s claim that the *Government Claims Act* granted immunity from liability for adopting the ordinance pursuant to Section 818.2,

for the misrepresentation of public employees pursuant to Section 818.8, and for discretionary acts pursuant to Section 820.2. *Id.* In response to these arguments, the Court held that the “shield provided by the *Tort Claims Act* expressly excludes actions arising on contract.” *Id.* Again, this holding only refers to the **liability** of a public entity and does not touch upon the broader question of a claimant’s requirement to file a timely claim as required by the *Act* unless expressly exempted.

The *Pitchess/Gonzales* line of cases relied upon by Civic impermissibly expand Section 814 beyond Part 2 of the *Act* and hold that all contract claims are exempt from the procedural requirements of a timely submission of a *Government Code* claim as required by Part 3. These cases were analyzed and distinguished by the Second District in *Baines Pickwick*, which concluded even “a cursory review of the statutory scheme makes it obvious the Legislature did not intend to exempt contract claims from the claims presentation requirements.” 72 Cal.App.4th at 304. Only by applying the claims presentation requirements to all claims for money or damages, including claims arising from contracts, are the public policy reasons behind the *Government Claims Act* satisfied.

IV.

CONCLUSION

By arguing that contract claims, restitution claims, or any claims for incidental damages are exempt from the claim presentation requirements of the *Government Claims Act*, Civic is asking this Court to create a judicial exception which is not supported by the plain language of the statute. In

addition, such a holding would undermine the strong public policy behind requiring claims as it would rob public entities of the chance to investigate and resolve valid claims without the expense of litigation. Unequivocally, the District's documented success within this process validates the foresight of the Legislature when it enacted in such plain terms the *Government Claims Act*.

Thus, the *Government Claims Act* applies to all claims, whether sounded in tort, contract, restitution or otherwise, which seek money or damages. As such, the District respectfully requests the Court affirm the decision below and hold that contract claims are subject to the *Government Claims Act* unless otherwise exempted by Section 905.

Dated: July 26, 2006

ORBACH, HUFF & SUAREZ LLP

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 14(c)(1))

The text of this brief consists of 3401 words as counted by the WordPerfect word processing program used to generate the brief.

Dated: July 26, 2006



Ryan W. Baldino

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Miriam Lopez, am an employee in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1901 Avenue of the Stars, Suite 575, Los Angeles, California 90067-6007.

On July 26, 2006, I served the foregoing document described as:

**APPLICATION TO FILE AMICUS CURIAE BRIEF
AND AMICUS CURIAE BRIEF**

on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

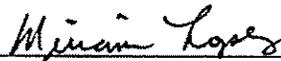
SEE ATTACHED SERVICE LIST

X (By Mail) I placed the envelope for collection and mailing on the date shown above, at this office, in Los Angeles, California, following our ordinary business practices.

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. It is deposited with the United States Postal Service in a sealed envelope with postage fully prepaid on the same day that the correspondence is placed for collection and mailing in the ordinary course of business. I am aware that a motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing of affidavit.

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

Executed on July 26, 2006, at Los Angeles, California.



Miriam Lopez

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California Supreme Court Case No. S139237

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