



CARL WARREN

eUpdate

CALIFORNIA LAW UPDATE

MARCH 2017

Government Claims Act - Minor's suit against school district barred because of failure to comply with requirements of Government Claims Act. *J.M. v. Huntington Beach Union High School District*. (No. S230510, Ct.App. 4/3 G049773, Orange County Super. Ct. No. 30-*2013-00684101, California Supreme Court, March 6, 2017)

In this matter, the California Supreme Court concluded that a plaintiff minor's lawsuit was barred because he failed to comply with the requirements of the Government Claims Act. In a belated claim presented to defendant school district, plaintiff alleged he was injured in a high school football game. Although a trainer advised the coach that plaintiff might have suffered a concussion, he was allowed to participate in full-contact practice several days later. He was subsequently diagnosed with double concussion syndrome. On the facts alleged, plaintiff's personal injury action accrued on October 31, 2011, the date of his diagnosis. Plaintiff did not file a claim until six months, as required by *Government Code* Section 911.2, subdivision (a). He retained counsel after that period elapsed and counsel presented the school district (district) with an application to file a late claim on October 24, 2012, nearly a year after the claim accrued. The application was timely under Section 911.4. The district took no action. Section 11.6, subdivision (c) provides that if a public entity does not act on a late claim application, it is deemed denied on the fortieth day after it was presented. Thus, by operation of law, plaintiff's application was deemed denied on December 8, 2012. On October 28, 2013 counsel petitioned the Superior Court for relief from the obligation to present a claim before bringing suit. Under Section 946.6 subdivision (b), such a petition must be filed within six months after a late claim application is either denied or deemed denied. The trial court rejected plaintiff's petition, noting that it should have been filed by June 9, 2013.

The Court of Appeal affirmed. It disagreed with *E.M. v. Los Angeles Unified School District* (2011) 194 Cal. App. 4th 736, under which plaintiff's suit would have been allowed to proceed. The California Supreme Court affirmed the Court of Appeals judgment, and disapproved of the *E.M. v. Los Angeles Unified School District* decision.

Update courtesy of Scott Buchholz, Dummit, Buchholz & Trapp
Tel: 619-231-7738 | Email

Carl Warren is an employee-owned Third Party Administrator with 20+ locations nationwide and specializes in property and casualty claims management and subrogation services.

Contact Us: Richard McAbee, Chief Marketing Officer
Tel: 602-485-8228 x101 | Email

