

Don't let your civil complaint stray too far from your government claim

Making sure your civil complaint against a public entity is "fairly reflected" in the government claim

By Scott E. Boyer

Before filing suit for damages against a public entity, it is imperative that a plaintiff comply with the government-claim requirements. Failure to comply with these mandatory requirements may lead to dismissal of an otherwise viable complaint. A common challenge by a public entity is based upon a variance between the allegations in the complaint and the government claim.

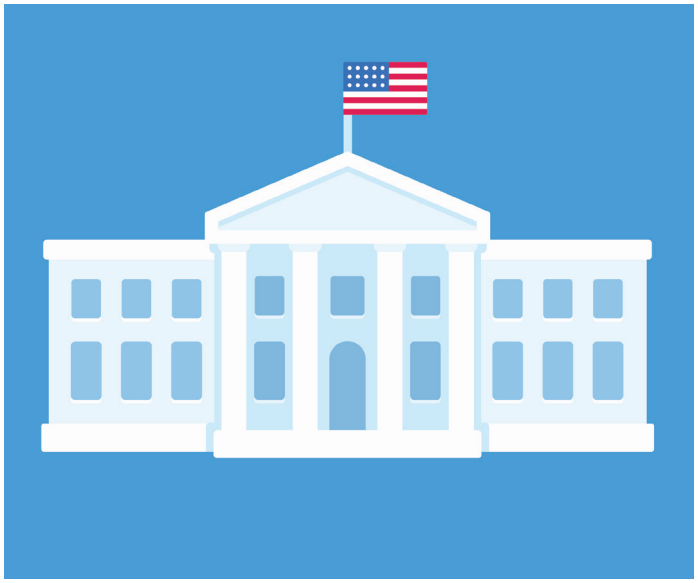
While the Government Claims Act is not intended to "snare the unwary," there are a number of cases in which courts have dismissed civil actions because the civil complaint alleges a basis for liability not fairly reflected in the government claim. This article examines how to include sufficient allegations in a government claim to overcome a later challenge to a complaint that strays too far from the government claim.

Compliance with government-claim requirements

Before bringing suit for money or damages against a public entity, an aggrieved claimant must submit a government claim to that entity and the claim must be rejected by the entity. (Gov. Code, §§ 905, 954.5.) A government claim "shall" include "[t]he date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted," "[a] general description of the … injury, damage or loss incurred so far as it may be known at the time of presentation of the claim," and "[t]he name or name of the public employee or employees causing the injury, damage, or loss, if known." (Gov. Code, § 910, subds. (c)-(e).)

The purpose of the government-claim requirements is "'to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.'" (*Stockett v. Assoc. of Cal. Water Agencies Joint Powers Ins. Auth.* (2004) 34 Cal.4th 441, 446.) "As the purpose of the claim is to give the government entity notice sufficient for it to investigate and evaluate the claim, not to eliminate meritorious actions [Citation.], the claims statute 'should not be applied to snare the unwary where its purpose has been satisfied' [Citation.]" (*Stockett*, *supra*, 34 Cal.4th at 446.)

A government claim need not contain the detail and specificity of a complaint filed in a civil action. However, "[i]f the claim is rejected and the plaintiff ultimately files a complaint against the public entity, the facts underlying each cause of action in the complaint must have been fairly reflected in a timely



claim." (*Stockett*, *supra*, at p. 447.) A civil complaint may elaborate or add further details to a government claim, but the civil complaint may not completely "shift [the] allegations" and premise liability on facts that fundamentally differ from those set forth in the government claim. (*Stockett*, *supra*, at p. 447.) "Only where there has been a 'complete shift in allegations, usually involving an effort to premise civil liability on acts or omissions committed at different times or by different persons than those described in the claim,' have courts generally found the complaint barred. [Citation.] Where the complaint merely elaborates or adds further detail to a claim, but is predicated on the same fundamental actions or failures to act by the defendants, courts have generally found the claim fairly reflects the facts pled in the complaint." (*Stockett*, *supra*, at p. 447.)

Succinctly stated, the factual basis for recovery in the civil complaint must be "fairly reflected" in the government claim. If the factual basis in the civil complaint is not "fairly reflected" in the government claim, the complaint is subject to dismissal. (*Stockett*, *supra*, at 447.)

As the court in *Stockett* noted, "In comparing claim and complaint, 'we are mindful that '[s]o long as the policies of the claims statutes are effectuated, [the statutes] should be given a

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liberal construction to permit full adjudication on the merits.'" "If the claim gives adequate information for the public entity to investigate," the plaintiff can properly include "additional detail and elaboration" in a subsequent lawsuit. (*Id.* at 449-450.)

Whether a variance is fatal

The line between whether the variance in a civil action is fatal or not is – like many precepts in the law – based upon the facts and the context of the claim. The arguing points will be whether new facts are "sufficiently related to those alleged in the [government] claim." (*Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, 279.)

The best way to illustrate what has and has not been deemed a fatal variance is to look at how the Court has applied these concepts in key cases, dismissing claims in which the variance was too great and allowing other cases to proceed in which the allegations and causes of action were fairly reflected in the government claim.

Facts and causes of action must be fairly reflected in the government claim

In *Stockett*, the Supreme Court reinstated a verdict for the plaintiff, finding that the government claim stating agents of defendant wrongfully terminated him while giving basic circumstances of the occurrence was sufficient to give notice and include all theories of wrongful termination subsequently stated in the complaint, while finding that a complaint alleging termination in violation of public policies favoring free speech and opposition to public employee conflicts of interest did not constitute "additional causes of action" that need to be separately stated in the government claim. (*Stockett, supra*, 34 Cal.4th at 447.) Instead, the Court found that the free-speech and conflict-of-interest theories simply elaborated and added detail to the claim. (*Id*. at 448.)

In *Blair v. Sup. Ct.* (1990) 218 Cal.App.3d 221, the plaintiff suffered injury as a passenger in a vehicle in which the driver lost control on a highway and struck a tree. The government claim alleged that State had negligently maintained and constructed the surface of the highway, citing specifically State's failure to sand the highway and prevent icing, whereas the complaint alleged the highway and adjoining property was defective because it did not have a required guardrail and there were no warning signs. (*Blair*, *supra*, at 223-224.) The court found that the general claim of "negligent construction" could "reasonably be read to encompass defects in the placement of highway guard rails…presence of hazards adjacent to the roadway or inadequate warning signs," and the plaintiff was not obliged to specify in his notice of claim his particular theories of negligence. (*Id.* at 226.)

In *White v. Sup. Ct.* (1990) 225 Cal.App.3d 1505, the plaintiff submitted a claim to a city, stating a police officer had falsely arrested her and beaten her. She then filed a complaint alleging causes of action for negligent hiring, training and retention and intentional failure to train, supervise, and discipline. (*Id.* at 1507.) The city contended these causes of action were not fairly reflected in the claim filed with the city. (*Id.* at 1508.) The court rejected this contention because both the complaint and the claim were predicated on the same fundamental allegations – the officer's alleged mistreatment of the plaintiff. (*Id.* at 1511.)

In *Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, the court held that a claim of negligent construction of a roadway that caused a landslide and destroyed the plaintiffs' homes supported a cause of action alleging the landslide was also caused by the clearance of slide debris and water runoff over the new roadway. After citing the principle that the government-claim statute should be given liberal construction in favor of merit review, the court reasoned that "[n]ecessary maintenance of the roadway, such as the clearing of slide debris, and conditions resulting from the presence of the road, such as the channeling of water runoff, are matters closely connected with construction of the road." (*Id.* at 280.)

In *Stevenson v. San Fran. Hous. Auth.* (1994) 24 Cal.App.4th 269, the plaintiff alleged in her claim that her father fell in his apartment during an earthquake and was not discovered until seven days later, that he subsequently died, and the defendant "'negligently owned, maintained, managed and operated the premises ....'" Her complaint alleged negligent failure to disclose latent defects in the public building in which the father had lived, breach of the defendant's duty to inspect the premises for safety, and negligent failure to inspect the building. (*Id.* at 276.)

Citing *Blair*, *Smith*, and *White*, the court stated, "Although the legal theories in appellant's complaint were more detailed, the written claim referenced Joseph Stevenson's fall in his apartment during the earthquake and negligent maintenance of the premises. The addition of details regarding the precise condition of the building and the failure to inspect and/or disclose the defective condition of the premises are elaborations on the facts stated in the claim." (*Id.* at 278.) The court concluded that the additional allegations in the complaint "were not based on a different set of facts from those set out in the claim and [were] fairly included within the facts first noticed in the claim." (*Ibid*.)

As these cases demonstrate, a civil complaint may properly elaborate and/or provide additional detail to support theories and factual allegations alleged in a government claim. There is no basis to dismiss a cause of action in these circumstances.

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The variance is fatal

In *Nelson v. State of Calif.* (1982) 139 Cal.App.3d 72, a medical-malpractice action, plaintiff's government claim alleged that he had suffered injuries as the "'result of the failure of the Department of Corrections to diagnose and treat or allow [him] to maintain his ongoing medications.'" The court found the government claim for medical malpractice did not encompass plaintiff's subsequent cause of action based on allegations that personnel at the Chino prison had failed to summon immediate medical care in violation of Government Code section 845.6.

In *Fall River v. Sup. Ct.* (1988) 206 Cal.App.3d 431, the plaintiff was injured at school when a steel door struck his head. His government claim alleged the injury was caused by the school's negligent maintenance of the door. However, the plaintiff's civil complaint additionally alleged that the school had negligently failed to supervise students engaged in horseplay. In holding that the factual divergence between claim and complaint was too great, the court found that the complaint alleged liability "on an entirely different factual basis than what was set forth in the tort claim."

In *Donohue v. State* (1986) 178 Cal.App.3d 431, the Court found that the government claim alleging State's Department of Motor Vehicles negligently permitted an uninsured motorist to take a licensing exam did not give adequate notice of the complaint's allegation that the testing officer negligently supervised and instructed the driver during the examination.

In *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, the court held that a suit against a city based on a former council member/mayor's intentional torts (fraud, extortion, battery and intentional infliction of emotional distress) committed in connection with plaintiff's proposed real estate project was barred where the government claim attributed the failed project to changes in the city council and the city's policies.

The clear distinction in these cases is that the factual variance amounts to a complete shift in allegations. As the court in *Blair* stated, "[i]t is apparent that in each of the decisions the plaintiff did not merely elaborate or add further detail to a claim which was predicated on the same fundamental facts set forth in the complaint. Rather, there was a complete shift in allegations, usually involving an effort to premise civil liability on acts or omissions committed at different times or by different persons than those described in the claim. In contrast, the claim and the complaint in this action are premised on essentially the same foundation, that because of its negligent construction or maintenance, the highway at the scene of the accident constituted a dangerous condition of public property." (*Blair*, *supra*, at 226.)

Allege as many conceivable legal theories as possible

We had a recent case in which we alleged in the government claim that the public entity's actions breached mandatory duties and we identified Government Code section 815.6 as a basis of liability. However, we did not identify specific statutes breached by the public entity, a necessary element on a claim for breach of mandatory duties. (A claim against a public entity for breach of mandatory duties under Government Code section 815.6 requires a showing that an injury was proximately caused by a public entity's failure to discharge a mandatory duty designed to protect against the harm alleged [*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490.].)

Our civil complaint asserted a cause of action for breach of mandatory duties under Government Code section 815.6 and alleged specific statutes imposing mandatory duties that were breached by the public entity. The defendant public entity filed a demurrer to the cause of action on the grounds that we had not identified the alleged statutes imposing mandatory duties in the government claim and therefore, were precluded from asserting them as a basis for mandatory duty liability in the complaint.

There is no case authority addressing this specific issue. Nonetheless, we argued from the available legal authority that the cause of action was fairly reflected in the government claim, including that we had specifically alleged in the government claim that the actions constituted a breach of mandatory duties and identified the Government Code section under which the cause of action arose. More importantly, we argued that even though we did not cite specific statutes in the government claim that were breached, we alleged the same factual basis supporting the cause of action in both the government claim and the complaint. As such, we argued that the complaint was based on the same fundamental actions/failure to act.

Given that a claimant has only six months from the accrual of the cause of action in which to submit a government claim, there is limited time to investigate and timely present a government claim supported by complete legal theories and a factual basis supporting liability against a public entity. Thus, it is important to send out Public Records Act requests and employ applicable experts as soon as possible. Even then, there may be insufficient time to ferret out every liability theory and identify every fact supporting the claim.

The best way to combat an argument of fatal variance is to include in the government claim as many conceivable legal theories as possible and broad allegations supporting the claim. For instance, in a potential claim for dangerous condition of public property, include a cause of action for breach of mandatory duties and public entity liability for independent contractors, supported by broad allegations, such as defective ownership, control, operation, design, planning, engineering, maintenance, management, inspection, repair and failure to warn.

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After the government claim is rejected, additional information supporting the claim may come to light before the due date for filing the complaint. Supporting existing broad theories with this additional information in the civil complaint should not act as a bar to the claim.

Should the public entity challenge a variance in the complaint, be prepared to argue that the additional allegations simply elaborate and add additional detail to the claim, and the information presented in the government claim was sufficient for the public entity to investigate and evaluate the merits.

Conclusion

To prevent dismissal of your civil complaint against a public entity, it is important to allege factual allegations that are "fairly reflected" in the government claim. By making allegations in the government claim that are broad enough to encompass allegations in the complaint, a plaintiff may properly elaborate upon and add further detail to the allegations in the government claim.


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However, a plaintiff must avoid a fatal variance due to a complete shift in allegations supporting the liability theory that caused the alleged injury.

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