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May 30, 2013

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VIA FEDERAL EXPRESS

The Honorable Chief Justice Tani Cantil-Sakauye
and Honorable Associate Justices of the
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783

Re: *Centex Homes v. Superior Court (City of San Diego)*

Case No. : S210486
Our File No. : 9999.009

Letter Brief of the League of California Cities in Support of Petition for Review

To the Honorable Chief Justice and Associate Justices of the Supreme Court:

The League of California Cities respectfully submits this letter brief in support of the petition for review filed by the City of San Diego in this case. The League urges the Court to review *Centex Homes v. Superior Court* because the case negatively affects cities and other public entities throughout California, regarding both the issue raised in San Diego's petition (application of Government Code section 901 to cases involving SB

800) and the larger issue outlined in Centex Home's opposition to the petition: Under section 901, when does a cause of action against a public entity for equitable indemnity accrue?

Before *Centex*, case law established a bright-line rule that a defendant's time to present a claim for equitable indemnity started running when the plaintiff served the defendant. That law served two of the goals of the Government Claims Act: Eliminating uncertainty in the claims process; and permitting public entities to investigate potential claims and liabilities early. In direct conflict with those cases, *Centex* holds that the time starts running at the time a complaint can be interpreted as stating a cause of action against a public entity that gives rise to a claim for indemnity. Not only does that interpretation render the date of accrual ambiguous, but it permits parties to draw public entities into lawsuits years after the suits' filing -- which is exactly what happened in *Centex*. The League therefore urges the Court to review and reverse *Centex*.

The League of California Cities' Interest in this Case

The League is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance.

The Committee has identified this case as having statewide significance. Any California city -- indeed, any California public entity -- may be sued for equitable indemnity by a defendant in a lawsuit. Almost anything a city does, builds, or regulates can give rise to a cross-claim from a private defendant sued in tort or contract. Further, because a plaintiff may be granted leave to amend a complaint at any time, up to and including trial (Code Civ. Proc., §§ 576, 473, subd. (a)(1)), any city faces the possibility of being pulled into ongoing litigation years after a lawsuit's inception -- a danger that *Centex*' interpretation of Government Code section 901 has greatly increased.

This Case Merits Review to Settle Important Questions of Law And Secure Uniformity of Decision

Not only does this decision affect the interests of public entities state wide, but as explained below the Fourth District Court of Appeal, Division One's decision conflicts with the First District, Division Five's decision in *State of California v. Superior Court (Shortstop)* (1983) 143 Cal.App.3d 754 and the Sixth District's decision in *Greyhound Lines, Inc. v. County of Santa Clara* (1987) 187 Cal.App.3d 480. It therefore warrants review under rule 8.500(b)(1) of the California Rules of Court.

Discussion

1. *The Government Claims Act's Statutes Must Be Interpreted in Light of their Plain Language and the Act's Goals, Including Eliminating Confusion and Giving Public Entities Prompt Notice of Claims*

In *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, this Court explained how to interpret the claim-presentation requirements set forth in the Government Claims Act, Government Code sections 901 et seq. Courts must interpret the Act's statutes both according to the plain language of the statutes (which courts cannot rewrite under the "guise of construction") and the goals of the Act. (*Id.* at pp. 992-993.) Those goals include "eliminat[ing] confusion and uncertainty resulting from different claims procedures" and "eliminating uncertainty in the claims-presentation requirements." (*Id.* at pp. 990, 997.) They also include "provid[ing] the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation." (*Id.*at pp. 990-991.)

Those rules come into play when interpreting the statute at issue here -- Government Code section 901, as amended in 1981. As discussed below, the pre-*Centex* cases that interpreted that amendment followed the rules. *Centex* did not.

2. *Pre-*Centex *Cases: the Time to Present Equitable Indemnity Claims Starts Running when the Defendant Is Served with the Original Complaint*

Government Code section 901, as amended in 1981 (in response to this Court's interpretation of former section 901 in *People ex rel. Dept. of Transportation v. Superior Court (Frost)* (1980) 26 Cal.3d 744, 748), provides that

> "the date upon which a cause of action for equitable indemnity or partial equitable indemnity accrues shall be the date upon which a defendant is served with the complaint giving rise to the defendant's claim for equitable indemnity or partial equitable indemnity against the public entity."

In *Shortstop*, *supra*, 143 Cal.App.3d at 760, the court held that this amendment is "categorical and unambiguous"; and rejected an argument that the time to present an equitable-indemnity claim did not start running until the defendant learned the factual basis for seeking indemnity. Instead, the court held, the claim-presentation period "is . . . triggered by service of the complaint against which indemnity would be sought . . . ." The court noted that the complaint's service should be sufficient to engender any necessary investigation and the decision whether to seek indemnity within the statutory claim-presentation period. (*Ibid.*)

The *Shortstop* court's interpretation therefore adhered to the rules described above: It followed the plain language of section 901, and interpreted the statute in a manner that served the Government Claim Act's goals of eliminating uncertainty and given the entity prompt notice.

In *Greyhound Lines*, *supra*, 187 Cal.App.3d 480, the court applied *Shortstop*'s holding to a situation in which the complaint served on the cross-complainant gave no clue that a public entity was a potential cross-defendant. By the time the cross-complainant discovered that a public entity's medical treatment may have contributed to the plaintiff's injury, the time for the cross-complainant to present a claim or apply for leave to

present a late claim (Gov. Code, § 911.4) had passed. Yet the court held that the equitable indemnity cause of action accrued when the cross-complainant was served with the complaint. (*Id.* at p. 488.)

In reaching that conclusion, the *Greyhound Lines* court analyzed the phrase in section 901 (as amended) that the time to present a claim starts running when "defendant is served with the complaint giving rise to the defendant's claim . . . ." The court acknowledged that the phrase could be construed "through strained construction" to provide that service of a complaint that "does not expose the facts which in turn underlie the defendant's indemnity claim" does not trigger accrual. (*Id.* at p. 485.) "However," the court continued,

> "such an interpretation would probably subvert the intent of the Legislature, which was manifestly to fix a date certain for accrual of equitable indemnity claims against the government for purposes of claims filing requirements. It would introduce uncertainty to require close analysis of the facts of the complaint to determine whether it contained the predicate of the equitable indemnity claim. This is clearly not what this phrase means." (*Id.* at pp. 485-486.)

The *Greyhound Lines* court therefore interpreted the statute in light of both the statute's plain language and the Government Claims Act's goal of eliminating uncertainty and confusion. Further, in analyzing why the Legislature chose that special accrual date, the court noted the Act's goal of permitting an entity to make an early investigation of the facts on which a claim is based. (*Id.*, 187 Cal.App.3d at p. 487.) This interpretation therefore comports with the analysis this Court set forth 27 years later in *DiCampli-Mintz, supra*, 55 Cal.4th at pp. 990-991.

3. Centex *Conflicts with Those Cases*

In contrast to *Shortstop* and *Greyhound Lines*, the *Centex* court neither interpreted the amended section 901 according to its plain language, nor interpreted it to serve the Government Claims Act's goals. In doing so, it arrived at an interpretation of the statute that directly conflicts

with those cases.

Although the *Centex* court stated that it was interpreting the "plain language" of section 901, it interpreted that plain language -- the phrase "the complaint giving rise to the defendant's claim for equitable indemnity" (section 901) -- as something quite different: "the complaint that contains the cause of action for which indemnity is sought." (*Centex, supra,* at p. 1101.) Based on that interpretation, it held that although Centex was served in 2009 with the original complaint on which it sought indemnity, Centex's time to present a claim against the city did not start running until the October 2012 service of the plaintiff's second amended complaint against Centex. (*Id.* at p. 1108.) That was the complaint, the court reasoned, that contained "the precise claim for which Centex seeks indemnity from the City." (*Ibid.*) The court therefore concluded that the March 2012 claim Centex presented to San Diego -- nearly three years after the original complaint's service -- was not only timely, but premature; and that because Centex filed a proposed cross-complaint before its cause of action accrued, Centex did not need to present a claim at all. (*Id.*, at p. 1108, fn. 16.)

That holding conflicts with *Shortstop*'s and *Greyhound Lines*'s holding that the discovery rule does not apply to accrual under section 901. Further, it directly conflicts with *Greyhound Lines*'s holding that the service of a complaint that gives no notice of a cross-claim against a public entity will trigger accrual.

The *Centex* court attempted to distinguish *Greyhound Lines* as applying only when the original complaint contains the claim on which equitable indemnity is sought. (*Centex, supra,* 214 Cal.App.4th at p. 1106.) But that argument relies upon the *Centex* court's interpretation of section 901's accrual date as the date the complaint containing a specific claim/cause of action is served. As explained above, that is not what section 901 says.

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Further, as discussed next, the *Centex* court's interpretation of section 901, unlike *Shortstop*'s and *Greyhound Lines*', does not comport with the Government Claims Act's goals of certainty or early notice of claims.

4. *Centex's Holding Injures Cities and Other Public Entities by Eliminating Certainty and Thwarting Early Investigation*

The *Centex* court's reasoning focuses on the "plain language" of the statute (or rather, the court's interpretation of that language) and pays little attention to the goals of the Government Claims Act. In particular, *Centex*'s interpretation of section 901 does exactly what the *Greyhound Lines* case warned about: it "introduce[s] uncertainty" by "requir[ing] close analysis of the facts of the complaint to determine whether it contained the predicate of the equitable indemnity claim." (*Greyhound*, *supra*, 187 Cal.App.3d at pp. 485-486.) *Centex* robs cities and other potential public entity cross-defendants of the certainty that the period they will be exposed to the potential liability of a cross-action will be only six months to a year after the defendants in a lawsuit are served. (See Gov. Code, §§ 911.2 [six-month and one-year claim presentation periods] & 911.4 [one-year deadline to apply for leave to present late claim].) Instead, under *Centex* the accrual period depends on a court's analysis of whether a particular iteration of a complaint sets forth the "precise claim" on which the cross-complainant seeks equitable indemnity.

That is particularly ironic, because one of the goals of the 1981 amendment of section 901 was to eliminate confusion about the date of accrual by fixing on the date when the cross-complainant is served with a complaint. (Legislative History of AB 601[1], p. 129, September 21, 1981 Enrolled Bill Report.) The *Centex* court declined to consider this legislative history when analyzing the bill, deeming it unnecessary because of the

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[1] The *Centex* court took judicial notice of the legislative history of the 1981 amendment to section 901. (*Centex*, 214 Cal.App.4th at p. 1106, fn. 13.)

statute's "plain language." (*Id.*, 214 Cal.App.4th at pp. 1106-1107.) But since the *Centex* court itself departed from the statute's language in interpreting it, the statute's language is apparently subject to more than one interpretation, and the legislative history is relevant to interpreting it. (See *Flannery v. Prentice* (2001) 26 Cal.4th 572, 579.)

Further, the facts of *Centex* show that *Centex* court's interpretation of section 901 does not promote early investigation. Instead, the court permitted Centex to bring San Diego into an ongoing lawsuit *years* after the lawsuit started -- potentially after memories have faded and evidence has dried up. Not only does that subvert the purpose of the claims-limitation periods in the Government Claims Act, but it defeats the purpose of the 1981 amendment to section 901: legislatively overruling the *Frost* decision, which permitted cross-complainants to sue public entities years after the events giving rise to the cross-actions. (See *Greyhound Lines, supra*, 187 Cal.App.3d at p. 486.)

Conclusion

The *Centex* decision creates a conflict in the law on when a cause of action against a public entity for equitable indemnity accrues. Further, its interpretation injures cities and other public entities statewide, by rendering the accrual date uncertain and allowing public entities to be drawn into litigation years after the events giving rise to the lawsuit. For all

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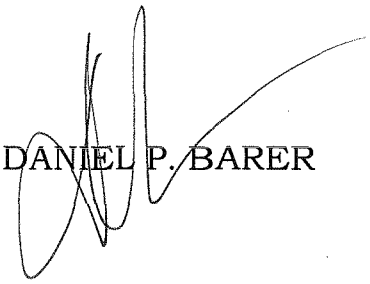
those reasons, the League respectfully requests that the Court grant the City of San Diego's petition for review of *Centex*.

Very truly yours,

POLLAK, VIDA & FISHER



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cc: Attached Service List

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PROOF OF SERVICE

CCP §1013A(3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11150 W. Olympic Boulevard, Suite 980, Los Angeles, California 90064.

On **May 30, 2013**, I served the foregoing document described as **LETTER BRIEF DATED MAY 30, 2013** on the interested parties in this action by placing [ ] the original [X] a true copy thereof enclosed in sealed envelopes (with the exception of the California Supreme Court's copy, as explained below) addressed as follows:

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

Executed on **May 30, 2013**, at Los Angeles, California.

Cindy Bischop

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