

DEFENDING HIGH EXPOSURE DANGEROUS CONDITION LAWSUITS

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2:00 o'clock PM

WILLIAM C. HAGGERTY, J.D.

NEIL TARDIFF, J.D.

KEVIN FISHER

Steve Mauck – County of Monterey (Moderator)

DANGEROUS CONDITION CLAIMS: The Basics

GOVERNMENT CLAIMS ACT

- ▶ Government Code § 810, et seq.
 - ▶ Comprehensive statutory scheme
- ▶ Government Code § 815
 - ▶ Does not allow common law form of liability, liability can only be found as allowed by statute.
- ▶ CACI No. 1100
 - ▶ Provides the Essential Factual Elements for a Dangerous Condition on Property Claim

Control of Property

- ▶ CACI Instruction 1100: To establish a claim of harm by a dangerous condition on public property, plaintiff must prove that the public entity owned or controlled the property.
- ▶ CACI Instruction 1101: In deciding whether the public entity controlled the property, the jury should consider whether the public entity had the power to:
 - Prevent
 - Fix, or
 - Guard against the dangerous condition.
- ▶ The jury should also consider whether the public entity treated the property as if it were its property.

Dangerous Conditions

Government Code § 830 (Defines Dangerous Condition)

- ▶ Dangerous Condition is present when there is a substantial (not a minor, trivial or insignificant) risk of injury when the property (or adjacent property) is used with due care and in a reasonably foreseeable manner. Whether the claimant (or a third party) personally used reasonable care, is not to be considered.
 - ▶ Public property **IS** in a dangerous condition if it is physically damaged/deteriorated/defective in such a way as to foreseeably endanger those using the property itself.
- ▶ NOTE:
 - ▶ Evidence of the absence of a similar incident is relevant to the determination of the existence of a dangerous condition, but it is not dispositive.
 - ▶ A jury could find the existence of a dangerous condition even if there had been no prior similar accidents.
 - ▶ *Lane v. City of Sacramento* (2010) 183 Cal.App.4th 1337

Government Code § 835

Beyond usual tort requirements, Claimant needs to show

- ▶ (a) A public employee in the scope of that employment created the dangerous condition
 - ▶ or

- ▶ (b) The public entity had notice of the dangerous condition and enough time to have taken measures to fix it.
 - ▶ This includes when the condition existed for enough time before the incident and was so obvious that the public entity reasonably should have discovered the condition and known that it was dangerous.

Inspection Systems (CACI No. 1104)

- ▶ In determining whether an inspection system is reasonable, you may consider the practicality and cost of the system and balance those factors against the likelihood and seriousness of the potential danger if no such system existed
 - ▶ and/or
- ▶ If defendant had a reasonable inspection system but did not detect the dangerous condition, you may consider whether it used reasonable care in maintaining and operating the system.

Hypothetical No. 1

QUESTION:

- Can a public entity be liable for a dangerous condition of public property when the immediate cause of plaintiff's injury is a third party's negligent or illegal act?

▶ **EXAMPLE:**

- A drunk driver veers off the road, killing a passenger. Claim is that public entity should have had a guardrail, could the claim still be viable?

▶ **ANSWER:**

- Yes! If some physical characteristic of the property exposes its users to increased dangers from third party negligence or criminality, a public entity can be held liable.
 - *Castro v. City of Thousand Oaks* (2015) 239 Cal.App.4th 1451

DEFENSES

Condition Created by Reasonable Act/Omission (Govt Code § 831.4(a) and CACI 1111)

- Basically the creation of the dangerous condition was reasonable effectively because it would have been too costly and impractical to have remedied the condition.
 - In determining whether the public employee's conduct was reasonable, a jury must weigh the likelihood and seriousness of the potential injury against the practicality and cost of either:
 - (a) taking alternative action that would not have created the risk of injury; OR
 - (b) protecting against the risk of injury

Reasonable Act or Omission to Correct (Govt Code § 835.4 (b) and CACI 1112)

- Basically the failure to take sufficient steps to protect against the risk was reasonable.
- In determining whether the public entity's conduct was reasonable, the jury must consider:
 - how much time and opportunity the entity had to take action; AND
 - weigh the likelihood/seriousness of the potential injury against the practicality/cost of protecting against the risk of injury.
- Can argue that because of financial or political constraints, it could not accomplish what would reasonably be expected.

DEFENSES

Natural Conditions (Government Code § 831.2 and CACI 1110)

- A public entity is not responsible for harm caused by a natural condition of an unimproved public property even if it had knowledge of the dangerous condition or failed to give a warning
 - Still applies if injury on improved property but natural condition (tree branch) fell from unimproved property
 - To be Improved there must be some form of physical change in the condition of the property at the location of the injury

Weather Conditions Affecting Streets/Highways (Government Code § 831 and CACI 1122)

- Defense applies if:
 - Weather condition [fog/wind/rain/flood/ice/snow] affecting use of a public roadway was cause of harm; AND
 - Reasonably careful person would notice the weather condition and anticipate effect on the use of roadway.
- Defense does NOT apply if:
 - Weather effects are not reasonably apparent
 - The weather effect combines with other factors to make the road dangerous;
 - Sunlight that blinds drivers;
 - If weather conditions resulted in physical damage to or deterioration of the street or highway.

DEFENSES

Failure to Provide Traffic Control Signals (Government Code § 830.4 and CACI 1120)

- The mere fact that there is a lack of a traffic device or marking is not in and of itself sufficient for finding a dangerous condition
 - BUT, the fact may be taken in accordance with other evidence to determine a dangerous condition

Failure to Provide Traffic Warning Signals/Signs/Markings (Government Code § 830.8 and CACI 1121)

- The lack of a Traffic Warning/Signal/Sign/Marking is only an issue if a reasonably careful person would not notice or anticipate a dangerous condition of property without the Traffic Warning/Signal/Sign/Marking

DEFENSES

Design Immunity (Govt Code § 830.6 and CACI 1123)

- Design immunity requires proof of three elements:
 - (1) a causal connection between the plan or design and the accident;
 - (2) a discretionary approval (i.e. City Counsel or City Civil Engineer) of a plan or design before construction;
 - (3) substantial evidence supporting the reasonableness of the plan or design.


LOSS of Design Immunity (*Cornette v. Dept. of Transportation* and CACI 1124)

- A public entity can lose its design immunity defense because of changed conditions, post approval, that produced a dangerous condition of public property.
 - The public entity must have had notice of the dangerous condition and (1) reasonable time to obtain the funds and carry out the necessary corrective work to conform to the plan; or (2) no correction due to practical impossibility/lack of funds, but without reasonable attempt to provide adequate warning.

Case Study:

Salas v. Department of Transportation

FACTS

- At 7a.m. on October 21, 2006 , Paula and Alberto Salas attempted to cross State Route 12 using a marked crosswalk at the intersection with Bruella Road.
 - As Paula walked across the intersection she departed slightly from the crosswalk to look at a bag that was in the roadway.
 - Defendant Larry Bafford was driving eastbound on SR 12 with his vehicle's headlights on as he approached Bruella Road.
 - The roadway was straight and level with NO sight obstruction.
 - Alberto Salas successfully crossed the highway, but his wife, who had hesitated while crossing was struck and killed.
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Case Study:
Salas v. Department of Transportation



Case Study:

Salas v. Department of Transportation

CLAIM

- The intersection constituted a dangerous condition because it involved a small town street crossing over a busy highway without any proper signage controls, signals or other safety measures.
- Plaintiff found 23 prior accidents at that intersection all of which were vehicle versus vehicle accidents.
- The Speed Limit on SR 12 was 45 miles per hour but was regularly exceeded


RESULT

- Motion for Summary Judgment was GRANTED.
- There was no dangerous condition.
 - The crosswalk was marked with white lines
 - There were three signs warning approaching motorists of the existence of the crosswalk
 - No condition of the property created a substantial risk of injury.

Case Study:

Cordova v. City of Los Angeles

FACTS

- Cristyn Cordova was driving her 2006 Nissan Westbound in the inside (No. 1) lane of Colorado Blvd. in the Eagle Rock neighborhood of Los Angeles, CA, with four passengers.
 - As they approached Highland View Avenue, a vehicle veered into the right side of the Cordova vehicle forcing it to go over the curb and into the grassy median divider. The Cordova vehicle struck one of several magnolia trees planted in the median, approximately seven feet from the inside lane of the roadway.
 - Although all occupants in the Cordova vehicle were wearing seatbelts, four of the five occupants were killed and the fifth was badly injured.
 - Both vehicles involved were travelling in excess of the posted speed limit of 35 miles per hour.
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Case Study: Cordova v. City of Los Angeles



Case Study:

Cordova v. City of Los Angeles

CLAIM

- Wrongful death claims and personal injury claim based on the allegation that the magnolia trees constituted a dangerous condition because they were planted too close to the travel portion of the roadway, posing an unreasonable risk to motorists who might lose control of their vehicles.

RESULT

- City moved for summary judgment claiming NO dangerous condition and accident caused solely by third party negligence.
 - The trial court GRANTED the motion for summary judgment
 - The Court of Appeal AFFIRMED the trial court's decision
 - The California Supreme Court REVERSED the trial court's decision

Case Study:

Cordova v. City of Los Angeles

RESULT

- The California Supreme Court found a governmental entity may be liable for a dangerous condition that existed and caused plaintiff's injuries even though it did not cause the third party conduct that led to the accident.
- The California Supreme Court decision did NOT mean a public entity is liable whenever third party negligence causes a vehicle to strike a stop sign, light post or telephone pole. Even if placed unreasonably, the City is not liable unless it posed a substantial risk that motorists driving a reasonable manner would be injured by striking it. City is immune if object was part of a plan or design for which entity gave its discretionary approval.
- The case was remanded back to the trial court
- The City's motion for summary judgment was GRANTED again finding no triable issue of fact as to (1) a dangerous condition; and (2) causation
- Court of Appeal AFFIRMED. No appeal to the California Supreme Court.

Case Study:

Medina v. City of Fontana

FACTS

- Yadir Castro Rivas (Castro) was an unlicensed 15-year-old high school student caught driving to school. His car keys were taken by school officials and told he was in violation of the law. Despite this, Castro's parents still let him drive.
- On December 3, 2001, Castro was driving home from school southbound on Cypress Avenue. Cypress Avenue is a two-lane road in a residential neighborhood with a 35 mph speed limit. There were no sidewalks adjacent to the roadway.
- Castro decided to pass a vehicle in front of him which was slowing. When he pulled into the opposite lane of traffic, he saw three students walking to the left (east) side of Cypress Avenue. He tried to avoid *these* students by accelerating to 60 miles per hour, passing the vehicle in front of him and swerving to the right. Castro's vehicle went into a skid, he shut his eyes, his brakes locked and he hit two students, killing one, who were on the dirt shoulder of the road on the right side (west) of Cypress Avenue.

Case Study: Medina v. City of Fontana



Case Study:

Medina v. City of Fontana

CLAIM

- The absence of sidewalks along the roadway constituted a dangerous condition and an unreasonable risk of harm because students were forced to share travel lanes on the adjacent roadway with motorists.

VERDICT

- \$37.5 million in favor of plaintiff.
 - The Trial Court granted a limited new trial on the issue of apportionment of liability between Castro and the City of Fontana, as the jury found Castro's conduct a substantial factor in causing the accident but attributed zero percent comparative negligence.
 - The trial court also found the amount of damages excessive.

Case Study:

Medina v. City of Fontana

COURT OF APPEAL

- Plaintiff appealed and the City cross-appealed.
- The order granting a new trial was reversed as to the apportionment issue, but affirmed as to the finding that the damages were excessive. The case was remanded for a new trial on the issue of damages only.

CALIFORNIA SUPREME COURT

- Defendant's petition for review was denied

RETRIAL

- The case was sent back to the trial court for a new trial, which resulted in a \$15 million verdict and apportionment of fault of:
 - 40 percent negligence for the City of Fontana;
 - 20 percent negligence for the driver; and
 - 40 percent negligence for the driver's parents.

PROVING LACK OF DANGEROUS CONDITION

1. Eye Witness testimony
2. Photographs of the scene/skidmarks/damaged vehicles
3. Road Inspection Policies/Accident History/Design
 - TASAS- Statewide Integrated Traffic Records System
 - TSARs - TASAS Selective Accident Retrieval Report
 - SWITRS- Statewide Integrated Traffic Records System
 - California Manual on Uniform Control Devices (CalTrans Highway Design Manual)
 - In-house road surveys and records
4. Experts
 - Traffic Engineer
 - Civil Engineer
 - Accident Reconstructionist
 - Human Factors Expert
 - Biomechanical Expert
 - In-House Budget Expert

CLAIMS CONSIDERATIONS

Determining liability from a juror's perspective:

- Sympathy- catastrophic injury; minors
- Venue-liberal jurisdictions
- Plaintiff's attorney- track record of successful verdicts, reputation and stature

Can a motion for summary judgment be brought on the basis of any governmental immunities?

- Best time to negotiate may be when a motion for summary judgment is pending

Weighing the risks:

- Potential for multi-million dollar verdict-severity of injuries
 - Potential for defense verdict; cost of defending through trial
 - Adverse publicity and the potential for additional lawsuits
 - Settlement versus trial
 - Financial effect of a settlement or a large verdict on the public entity
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