Dangerous condition of public property liability exposures

When a public entity opens up its recreational facilities or is responsible for the maintenance of public roads, the primary theory of liability against a public entity is the Dangerous Condition of Public Property statute. California Government Code §830 states:

AS USED IN THIS CHAPTER:

(a) "Dangerous condition" means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.

(b) "Protect against" includes repairing, remedying or correcting a dangerous condition, providing safeguards against a dangerous condition, or warning of a dangerous condition.

(c) "Property of a public entity" and "public property" mean real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity.

§835.

Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

Two recent cases confirmed the statutory immunities that public agencies can take advantage of in the defense of these type of injury claims.

Supreme Court Approves Public Entity Design Immunity Defense

Randall Keith Hampton, et al. v. County of San Diego

Supreme Court of California
(December 10, 2015)

In California, a public entity can be liable for injuries caused by dangerous conditions of public property – including roads. However, the public entity may sidestep liability by asserting design immunity. In order to successfully assert this defense, three elements must be proven: (1) there is causal relationship between the design and the accident; (2) the entity made a discretionary approval of the design; and (3) substantial evidence supports the reasonableness of the plan, as discussed in Government Code § 830.6.

In Hampton v. County of San Diego, the Court addressed the second element, concluding that the discretionary approval element "does not implicate the question whether the employee who approved the plans was aware of design standards or was aware that the design deviated from those standards." The public entity is not required to prove in its case that the employee

who made the discretionary approval had authority to disregard applicable design standards. The Court's discussion is a broad affirmation of the discretionary approval provided by a qualified official (often a design engineer) of a reasonable design.

In Hampton, the plaintiff was injured in a collision between his vehicle, which was attempting a left turn, and another vehicle on a two-lane thoroughfare. The claim against the County, a public entity, was that the design and construction of the intersection where the accident occurred afforded inadequate visibility and failed to meet applicable county design standards because it did not describe, depict, or account for an embankment along the thoroughfare that impaired visibility. The County presented evidence that the design standards contemplated that drivers would "creep forward" after stopping at the stop line to improve visibility before making a turn, thus eliminating the impairment caused by the embankment.

The County moved for summary judgment. Plaintiff contested whether the County had met the requirements for discretionary approval because the design did not depict the embankment and visibility did not meet county standards. The trial court granted summary judgment to the County, and the appellate court affirmed. The Supreme Court also affirmed, holding that, in evaluating discretionary approval, trial courts are not to consider whether the approving engineer was aware of design standards or that the design in question met those standards. The rationale for this lies with the legislative intent of avoiding having a jury re-examine and second-guess governmental design decisions at trial. Allowing such a re-examination would defeat the purpose of the design immunity, i.e., giving the jury the power to make its own decisions where public officials have been vested with authority to act.

For both legal and practical reasons, a trial court can consider whether the approving official, knowingly or unknowingly, approved the plans under the third element — the reasonableness of the design. On a practical point, the Court recognized that the reasons and motivation of the approving official would likely be unavailable, as design immunity defenses often occur many years after approval, forcing the entity to rely on distant memories. Furthermore, the allegation that the officials applied the wrong standard does not divest an entity of a discretionary choice, but goes to the reasonableness of the design.

COMMENT

For public entities, this case serves two purposes. First, it is a strong affirmation and endorsement of design immunity. The Court's approval signaled that the public entity's deliberative process and decision making is not open to interpretation and second-guessing by the jury. Second, the design immunity defense is only available if the entity has design plans and as-built plans that reflect what was actually constructed, and plans show that there was discretionary approval by the entity.

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Recreational Trail Immunity

Teresa Burgueno, et al. v. The Regents of the University of California

Court of Appeal, Sixth Appellate District (Certified for Publication: Jan. 13, 2016)

A public entity is generally liable for an injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury and the public entity had actual or constructive notice of the dangerous condition. (Government Code §§ 835, 835.2) Section 831.4[3] however, precludes governmental liability for injuries caused by the condition of (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas or (b) Any trail used for the above purposes. The purpose of immunity for recreational activities on public land is to encourage public entities to open their property for public recreational use. This case addresses whether the immunity applies to a trail on public land that is used for both recreational purposes and non-recreational purposes.

Adrian Burgueno was a full-time student at the University of California, Santa Cruz ("UCSC") in February, 2011. He lived in an off-campus apartment and commuted to the university on his bicycle. His route to campus included traveling on the Great Meadow Bikeway (the "Bikeway"), a paved bike path than runs through a portion of the UCSC campus. Constructed in 1973, the purpose of the Bikeway is bicycle transportation to and from the central campus that is separate from automobile traffic. Some bicyclists use the Bikeway for recreation. Members of the Santa Cruz County Cycling Club use the Bikeway to access mountain bike paths in the redwood forests above the university campus. There have been a number of bicycle accidents on the Bikeway. On February 10, 2011, Adrian rode his bicycle to his photography class. As he was leaving the campus that evening on his bicycle, he was fatally injured in a bicycle accident on the downhill portion of the Bikeway. Adrian's mother and sister filed a wrongful death lawsuit against the Regents of the University

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District **Snapshots**

The Nipomo Community Services District Board of Directors presented students from local elementary schools with awards recognizing their efforts in the district's Conservation Poster Contest. Through a partnership with Science Discovery, the district provided conservation education in 3rd through 6th grade classes. The students were given an opportunity to portray what they learned and submitted hand-drawn posters. The goal of the poster contest was to encourage the wise use and conservation of water.

of California (the "Regents"), alleging that Adrian's death was due to the dangerous condition of the Bikeway. The trial court granted the Regents' motion for summary judgment on the ground that the action was barred under the recreational trail immunity provided by Government Code § 831.4.

Plaintiffs appealed, arguing that the Regents had actual knowledge that students used the Bikeway for commuting to campus at night, and knew or should have known that the Bikeway was unsafe due to its downhill curve, sight limitations, lack of runoff areas, lack of adequate signage, lack of appropriate roadway markings, and lack of physical barriers to prevent nighttime use of the Bikeway. Plaintiffs also alleged that the Regents failed to warn the public and UCSC students of the Bikeway's dangerous condition.

In response, the Regents argued that the Bikeway is a trail within the meaning of § 831.4 because that section has been construed to apply to bike paths; the Bikeway is itself scenic; and it is undisputed that the Bikeway is used by recreational bicyclists. They also asserted that the Bikeway must be treated as a trail under § 831.4 in order to serve the statute's purpose of encouraging public entities to open their property for public recreational use without exposure to liability. In addition, the Regents maintained that it is immaterial that Adrian was not using the Bikeway for a recreational purpose at the time of his accident.

In its analysis, the Court of Appeal considered several cases that had addressed the application of the trail immunity in the context of a bicycle accident on a public trail or path, including Armenio v. County of San Mateo, (1994) 28 Cal.App.4th 413. In Armenio, the plaintiff was injured while riding his bicycle in a county park on a paved trail used for hiking and riding. The appellate court ruled that trail immunity under § 831.4 applies to paved trails on which recreational activity takes place, as well as trails that provide access to recreational activities. (Id. at pp. 417-418.) The court concluded that it is now well-established that §831.4 applies "to bike paths, both paved and unpaved, to trails providing access to recreational activities, and to trails on which the activities take place." The Burgueno Court was not persuaded by plaintiffs' argument that the decisions in Armenio and related cases were distinguishable because the bikeways in those cases were intended and used for recreation, unlike the Great Meadow Bikeway.

In the Court's view, the use of a trail for both recreational and non-recreational purposes does not preclude the trail immunity under § 831.4. The evidence showed that it was undisputed that the Bikeway is primarily used for its intended purpose as a route for bicycle commuting to and from the UCSC campus. It was also undisputed that the Bikeway is used for recreation. Since the Bikeway has mixed uses that undisputedly include recreation, the Regents have trail immunity under § 831.4 (b) from claims, such as the plaintiffs' claims, that arise from the condition of the Bikeway. Moreover, plaintiffs did not dispute the evidence showing that recreational bicyclists used the Bikeway as part of their route to access the mountain biking paths in the redwood forests above the UCSC campus.

For these reasons, the Court held that the causes of action for dangerous condition of public property and wrongful death were barred as a matter of law because the Regents had absolute immunity from claims arising from Adrian's tragic accident on the Bikeway pursuant to § 831.4. Thus, the trial court did not err in granting the Regents' motion for summary judgment.

COMMENT

This case confirms that a bikeway with a dual use – recreational and non-recreational – may be immune from suit under § 831.4, even if it is primarily used for its non-recreational purpose.

Public agencies can move to have these cases dismissed early on in the litigation process through the use of a Motion for Summary Judgement (MSJ) and avoid unnecessary litigation expense. For further information, please contact SDRMA Chief Risk Officer Dennis Timoney at 800.537.7790 or dtimoney@sdrma.org.