Recent Court Decisions

For Public Agencies operating in California, the law is ever changing. We are presenting recent Court decision from various California Courts have issued decisions s which will have an effect on how your individual agency operates and manages its risk. Below are a sample of recently decided cases for your information.

Public Agencies and the Recreational Trail Immunity

A tree branch fell off of a eucalyptus tree and struck a woman while she was walking through Mission Bay Park in San Diego. She filed suit against the City of San Diego, alleging the City negligently maintained the eucalyptus tree, creating a dangerous condition of public property. The City asserted it was immune from liability because the injury occurred while the plaintiff was on a trail. Last month, the Fourth District Court of Appeal rejected the City's argument in ***Toeppe v. City of San Diego***, further narrowing the scope of trail immunity. The ruling means less protections for public agencies that open their land for public recreational purposes, particularly where the potentially dangerous conditions are not naturally occurring.

Under Government Code section 831.4, better known as "trail immunity," public entities are generally immune from liability for injuries caused by a condition of a trail used for recreational purposes. The purpose of trail immunity is to encourage public entities to allow their property to be used for such purposes.

In the trial court, the City argued trail immunity applied because the plaintiff was on a trail when she was struck by the tree branch. The trial court agreed with the City and entered judgment in its favor, finding the immunity should apply to the tree and its condition because of the location of the tree to the trail. Following the denial of her motion for new trial, the plaintiff appealed.

On appeal, the plaintiff asserted her claim was not based on a condition of the trail, but on the negligently maintained eucalyptus tree. She alleged the City managed and maintained both Mission Bay Park and the trees within it, and that for nearly 10 years, a City employee negligently trimmed the subject eucalyptus tree's branches. She argued the City created, and was aware of, the tree's dangerous condition and was therefore liable for the resulting harm. She further maintained there was a dispute as to whether she was on the trail when she was struck by the branch. The City countered that the dangerous condition at issue was connected to the trail the plaintiff was on when she was struck by the branch, making the immunity applicable.

The appellate court upheld the plaintiff's position, finding her claim did not give rise to trail immunity. In doing so, the court distinguished the trail immunity cases cited by the City, including *Amberger-Warren v. City of Piedmont* decided in 2006 and *Leyva v. Crockett & Co.,* Inc. from earlier this year. The court noted that in this case, the dangerous condition was not a natural condition of the park and was entirely independent of the trail. There are many eucalyptus trees throughout the park and the trail does not provide the only access to those trees. The court explained that the plaintiff did not have to use the trail to find herself near the dangerous condition; she could have walked across the grass or sat at one of the picnic tables in the park. The court found the dangerous condition did not involve the trail at all, but rather a eucalyptus tree planted by the City with a base 25 feet from the edge of the trail. The court clarified that if the tree was negligently maintained, it was a dangerous condition regardless of the location of the subject trail, further narrowing the seemingly broad scope of trail immunity.

§831.4.
A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a 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 and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.

(b) Any trail used for the above purposes.

(c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

Independent Contractors & Consultants Can be Subject to Conflict of Interest Laws

In a watershed decision, the California Supreme Court held that independent contractors and consultants can be considered "employees" and subject to the conflict of interest provisions of Government Code 1090. This includes the criminal penalties mandated in section 1090, which prohibits personal financial interests in government contracts.

The ***People v. Superior Court (Sahlolbei)*** unanimous decision, handed down June 26, will require all public agencies to assess and re-assess the role and function of their independent contractors and consultants to determine whether they, either by definition under their contract or by reason of their functions, qualify as an "employee" under the statute. This will also have implications for listing these positions in the agency's conflict of interest code and requiring the filing of Statements of Economic Interest (FPPC Form 700) by those individuals. Additionally, it will have a significant impact on the ability of these independent contractors and consultants to obtain "additional work" on projects under a contract in which they had a hand in "making," such as furnishing a design or plan.

Hossain Sahlolbei was retained as a surgeon on an independent contractor basis by Palo Verde Hospital in Blythe, Calif., a public hospital district.1 In addition, he served as co-director of surgery and on the hospital's medical executive committee, composed of members of the medical staff, which was independent of the hospital, but advised the board on operations and physician hiring. He also served as chief and assistant chief of staff with considerable influence over board decisions in those roles.

Sahlolbei recruited an anesthesiologist, Dr. Brad Barth, and negotiated a contract with Barth for Barth to receive $36,000 per month from the hospital and a one-time payment of $10,000 for relocation expenses. Sahlolbei pressured the board to approve the contract, but told the board the rate of pay was $48,000 per month, with a one-time payment of $40,000 for relocation expenses. It was alleged that Sahlolbei threatened to have the medical staff stop admitting patients if the board did not approve the contract. Sahlolbei convinced Barth to have all payments from the hospital deposited into Sahlolbei's account and Sahlolbei then paid Barth the agreed upon $36,000 per month and $10,000 relocation payment and retained the balance.

The Riverside County District Attorney charged Sahlolbei with grand theft and violations of Government Code section 1090, which prohibits a government official, officer or employee from having a financial interest in a contract made by them in an official capacity. The trial court dismissed the section 1090 charges, finding that as an independent contractor, Sahlolbei was not an "employee" under the statute, applying the tort law definition of "employee." The District Attorney's office appealed and, in a 2-1 decision, the Fourth District Court of Appeal agreed with the trial court. Prosecutors then took the case to the California Supreme Court.

The Supreme Court held the term "employee" in section 1090 does not have the tort law

Continued on page 36

definition, as it is used in the broadly construed and sweeping conflict statute, meant to prevent corruption and divided loyalties in connection with government contracts. Thus, the form of employment is irrelevant. Making new law, the Court held that the standard to determine whether an independent contractor or consultant qualifies as an "employee" under the statute is to look to see if "they have duties to engage in or advise on public contracting that they are expected to carry out on the government's behalf." And, to determine if they are involved in "making" a contract in their official capacity under the statute, one looks to whether "their position afforded them 'the opportunity to influence execution [of the contracts] directly or indirectly to promote [their] personal interests' and they exploit those opportunities." Prior appellate decisions held that an independent contractor or consultant had to have had "considerable influence" over the contract formation and execution decisions of the public agency to come within the meaning of "employee" under the statute and to be considered to have participated in the "making" of the contract. The Supreme Court clearly lowered that standard.

The Court rejected the argument of the *amicus curiae*, California Medical Association, that physicians should be exempt from the sweep of section 1090 because of their unique relationship with public hospitals and because it would potentially interfere with their treatment of patients. The Court held that section 1090 requires only that a physician's advice in contracting matters be independent from his or her own personal financial interests, not those of the patient.

Where do you Work? Going and Coming Rule – Business Errand Exception

California Jury Instruction No. 3724 sets forth the Going-and-Coming Rule – Business Errand Exception, which states: "in general, an employee is not acting within the scope of employment while traveling to and from the workplace. But if the employee, while commuting, is on an errand for the employer, then the employee's conduct is within

the scope of his or her employment from the time the employee starts on the errand . . . ."

Defendant Modern Alloys Inc. employed Juan Campos as a cement/mason finisher who was paid hourly for an eight-hour shift which began and ended at his worksite where he performed his work. Modern Alloys expected Campos to first arrive at its yard before going to the worksite. Campos would drive one of the company's trucks filled with construction materials and also his co-workers to the worksite. On October 7, 2010, when Campos was driving from his home to Modern Alloys' yard, he collided with plaintiff Michael Sumrall. Sumrall filed a complaint against Modern Alloys, alleging respondeat superior liability for Campos' negligence. The trial court granted Modern Alloys' motion for summary judgment, finding that Campos was commuting to his work and was not acting within the scope of his employment. The Court of Appeal disagreed because it could not state as a matter of law that the employee was not on a business errand when he commuted from his home to the employer's yard. The Court of Appeal reversed the trial court's grant of Modern Alloys' motion for summary judgment.

The Court found a material triable issue of fact as to the location of Campos' workplace. It was undisputed that Campos drove his own vehicle from his home to Modern Alloys' yard, making it reasonable to infer that Campos was on a normal commute. It was also undisputed that Campos drove Modern Alloys' truck, employees and materials from its yard to the worksite, and was not paid until he reached his worksite, making it reasonable to infer that Campos was on a business errand for the benefit of his employer. Since the Court could make two reasonable inferences from the facts, the Court could not affirm the trial court's grant of summary judgment. A jury must consider and weigh all of the facts and circumstances to determine what is considered Campos' workplace, the yard or the actual worksite.

The Court could not state as a matter of law that Campos was not on a business errand for the benefit of Modern Alloys when the collision occurred because a jury needs to answer questions about his "workplace" to determine whether Campos was on a business errand.

There is a genuine issue of fact as to what is the worksite in this case. If a jury determines the worksite was the yard, then the going and coming rule would apply. If a jury determines the worksite was the actual jobsite where the employee performed his work, then the employee's drive to the yard could be considered a business errand, and the employer would be subjected to liability.

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California Civil Jury Instructions (CACI)

3724. Going-and-Coming Rule: In general, an employee is not acting within the scope of employment while traveling to and from the workplace. But if the employee, while commuting, is on an errand for the employer, then the employee's conduct is within the scope of his or her employment from the time the employee starts on the errand until he or she returns from the errand or until he or she completely abandons the errand for personal reasons.

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