Spring Safety/Claims Education Day and Legal Update

On Tuesday, March 20th the Annual Safety/Claims Education Day was held in Sacramento. There were a total of 175 attendees representing 90 member agencies. 75 attendees registered for the Claims Education presentations. There were 44 attendees at the Safety Specialist presentation and 56 attendees at the SDLF presentation.

- Gordon Graham gave the keynote presentation on Predictable is Preventable – Understanding Real Risk Management;
- Defense Attorney James Ward and CRO Timoney conducted a general session on Understanding Leave Laws for Your Agency;
- David Aranda, SDA conducted the SDLA Governance Foundation Workshop;
- Alan Larson, SDRMA Safety Consultant conducted the Supervisor Specialist Safety Certificate Program.

Concurrent sessions were conducted in the afternoon for both PLP and WCP program attendees.

- Workers' Compensation – FRAUD, Special Investigation Debbie Yokota, SDRMA & Dalene Bartholomew, Probe Information Services
- Property/Liability – What is a Dangerous Condition? Dennis Timoney
- MemberPlus Online New Features Demonstration: SDRMA & The iFish Group
- Workers' Compensation – Return to Work, The Interactive Process: Debbie Yokota
- Property/Liability – Managing the Claims Process: Dennis Timoney

On behalf of the Board and staff of SDRMA, we would like to thank all members who attended and our partners for making another successful workshop possible.

LEGAL UPDATE

Arvizu v. City of Pasadena, Cal. 2nd Appl Dist. Div 3 B277951

One of the topics discussed at our recent Spring Education day was the Recreational Trail Immunity found in the California Government Code. A recent Court decision strengthened a public entities use of this immunity.

Trail immunity has been examined by the appellate courts numerous times over the past 18 months, most recently in *Arvizu v. City of Pasadena*, where the plaintiff entered a public park after hours and injured himself when he slid down a trail and fell over a retaining wall. Granting the City's motion for summary judgment, the trial court held that trail immunity applied—which the Second District appellate court recently affirmed.

Trail immunity protects public entities from liability when would-be plaintiffs suffer injuries while using public property for recreational purposes. In theory, trail immunity seems like a straightforward defense – if a person becomes injured while using public property for recreational purposes, the public entity should be immune. In practice, however, it is not always clear when trail immunity applies and when it does not.

In Arvizu, the court rejected the plaintiff's contention that the trail and the retaining wall constituted a dangerous condition, particularly if used at night. While the court acknowledged that trail immunity deprives would-be plaintiffs of recovery, it further stated that it would not second-guess the Legislature's determination that such immunity should be made available to public entities. The court discussed at length the policy consideration behind the immunity: encouraging public entities to keep trails and parkland open and available for public use without the specter of potential litigation from injuries suffered.

Relying on precedent, the court clarified that the availability of trail immunity depends on the recreational nature of the trail itself, and not how a would-be plaintiff actually uses the trail. In doing so, the court discussed other trail immunity cases, including *Leyva v. Crockett & Co., Inc.* and *Garcia v. American Golf Corp.*, both from early 2017. Here, the Arvizu court quickly distinguished Garcia, stating that unlike the situation in Garcia, the City trail did not involve a golf course or an asset of the City that generated revenue.

Ultimately, the court reasoned that the hill and retaining wall in Pasadena over which the plaintiff fell was a condition arising from the location and design of the trail, and concluded that the City was immune from liability related to the location and design of the trail, including any alleged failure to post warnings or install guardrails. The court also highlighted the fact that the plaintiff had to cross the trail to get to the retaining wall, and would not have suffered any injury if he had not crossed over the trail.

The decision in *Arvizu* appears to be aligned with the bulk of the trail immunity cases, further underscoring practitioners' concerns that Garcia may be an outlier given its particular factual underpinning. However, the California Supreme Court denied review and de-publication of *Garcia*. Accordingly, public trails will retain protection under the law—so long as the claim is not related to a condition of the land independent of a trail or a revenue-generating public enterprise.

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UNIMPROVED NATURAL LAND

The purpose of the natural condition immunity is to encourage public use of unimproved government property by relieving government agencies from being "'put to the expense of making the property safe, responding to tort actions, and paying damages.'" Sounds like a good idea, right? Keep reading to learn how you can be denied damages by a public entity if you camp in an area that is classified as "unimproved."

The natural condition immunity was discussed in the recently published case of *County of San Mateo v. Superior Court of San Mateo County* (2017) 13 Cal.App.5th 724. As shown by *County of San Mateo*, the issue is not straightforward and there are many factors to be considered such that summary judgment is generally not appropriate. Indeed, the lead drafter of the Government Claims Act, Professor Van Alstyne, contemplated that "the distinction between the 'developed' land and the 'undeveloped' sectors of a park might well be difficult to identify in terms of boundary lines on a map, and might have to be treated as a question fact…"

In *County of San Mateo*, plaintiff child brought a lawsuit against the *County of San Mateo* alleging premises liability and dangerous condition of public property after he suffered injuries as a result of a 72-foot tall diseased tree falling on his tent while camping within a County-owned wilderness area. The County moved for summary judgment on the grounds that it was immune from liability under the natural condition immunity.

The trial court denied the County's motion, concluding that there were triable issues of fact as to whether the subject property was "unimproved" within the meaning of the statute. First, the trial court pointed out that the campsite where plaintiff's injuries occurred had been "improved" by a clearing, picnic tables, a fire pit, a barbecue pit, and bumper logs and that in the tree's immediate vicinity, there were two other developed campsites and a paved roadway.

Next, the trial court distinguished the matter from an earlier similar case, *Alana M. v. State of California* (2016) 245 Cal.App.4th 1482. In *Alana M.*, a public entity was found to be immune from liability in a suit

brought against it by plaintiff who had similarly been injured by a falling tree. The Court there explained that the public entity was immune since the tree (and not the plaintiff) was located on unimproved property. The *Alana M.* Court determined that in interpreting Government Code § 831.2, the relevant inquiry should be the character of the property where the natural condition (in *Alana M.*, the tree) is located, and not the location of where the injury occurred. In County of San Mateo however, plaintiff presented expert opinion that the tree at issue had roots which grew underneath the campsite where plaintiff suffered his injuries. As such, the trail court determined that there were triable issues of fact and therefore, summary judgment would not be appropriate.

Last, the trial court considered expert opinion presented by plaintiff that man-made physical alterations contributed to the diseased condition of the tree which ultimately caused it to break and fall onto plaintiff, causing him injuries. The trial court determined that this evidence presented by plaintiff also created a triable issue of fact of whether such man-made contributions caused the subject property to be considered "improved" such that the County would not be entitled to summary judgment.

For further information contact SDRMA Chief Risk Officer Dennis Timoney at dtimoney@sdrma.org.