

# Dangerous Condition of Public Property

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# The Elements

- Public Entity Owned or Controlled Property;
- Property was in a Dangerous Condition at the Time of the Incident;
- Dangerous Condition Created a Reasonably Foreseeable Risk of the Kind of Incident that Occurred;
  - Negligent or Wrongful Act of Public Entity Employee Acting Within Scope of His/Her Employment Created Dangerous Condition
  - OR
  - Public Entity had Notice of the Dangerous Condition for a Long Enough Time to have Protected Against it;
- Plaintiff was Harmed; and
- Dangerous Condition was a Substantial Factor in Causing Harm.

# Definition

- “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.”

# Common Examples

- Hazardous road designs, repair or maintenance, including, improper drainage, road drop offs, and poor visibility;
  - (e.g., a sharp drop at the edge of a highway; a boulevard stop sign obscured by foliage; an inadequately maintained road that crumbled)
- Cracked, uneven, defective sidewalks, walkways, crosswalks;
- Inoperable or absent street signs or signals;
- Lack of a warning sign where needed;
  - (e.g., when floors being cleaned, lack of caution cones/wet floor sign)

# Common Defenses

- Comparative Negligence;
- Assumption of Risk;
- Third Party Negligence;
- Minor, Trivial or Insignificant Risk or “Trivial-Defect Doctrine;”
  - *Huckey v City of Temecula* (2019): expended to 1 ½ inches
- “Used with Due Care;”
  - § 830(a) only allows for liability if the public property was being used with “due care” at the time of the injury
- Open and Obvious;

# Statutory Defenses

- Reasonableness of Act or Omission Creating Condition (GOVERNMENT CODE § 835.4(a));
  - May defend where the act or omission that created the condition was reasonable.
- Reasonableness of Protective Measure (GOVERNMENT CODE § 835.4(b))
  - Where notice is provided, public entity may defend by establishing that it was reasonable in taking protective measures or in failing to take such measures.

# Statutory Defenses

- Traffic Warning Signals, Signs, & Markings – GOVT. CODE § 830.8
  - Immune if injury caused by failure to provide traffic or warning signals, signs, markings or devices described in vehicle code. Does not include failure to provide traffic regulatory or warning signals of a type “necessary to warn of a dangerous condition which endangered the safe movement of traffic.”
- Effect of Weather Conditions on Streets – GOVT. CODE § 831
  - Immune from injuries resulting from the effect of weather conditions on the use of streets and highways
  - Expressly covers effect of fog, wind, rain, floods, ice and snow but not physical damage to or deterioration of streets and highways caused by weather conditions

# Statutory Defenses

- Natural Conditions of Unimproved Property – GOVT. CODE § 831.2
  - Unimproved public property includes natural condition of lake, stream, bay, river, or beach
- Unpaved Access Roads and Recreational Trails – GOVT. CODE § 831.4
  - Unpaved road or trail must provide access to fishing, hunting, camping, hiking, riding, water sports and other types of recreational or scenic areas
- Hazardous Recreational Activities – GOVT. CODE § 831.7
  - Broadly defined to include diving, archery, animal riding, boating, skiing, hang gliding, etc.
- Canals, Drains, Unintended Purposes – GOVT. CODE § 831.8(b)
  - Immune if injured party using specific water distribution property for any purposes unintended by state or district



# Design Immunity

- Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved . . .

# Incident Investigation

- Thoroughly document the condition (including law enforcement)
- Preserve documents regarding condition
- Be careful of post-incident communications (emails)
- Review accident history (internal records)
- SWITRS
- Analyze risk transfer opinion
- Consider retaining traffic engineer
- Pending the severity, retain counsel early

# Investigation of Plaintiff

- Social media
- Subrosa
- Hospital Canvas
- Thorough review of medical records
- Depositions of third parties

# Exposure

- Determine injuries early
- Opposing counsel
- Retain damage experts
- Damage discovery
  - Written
  - Deposition of Plaintiff
- Joint and several
- Consider buying lien
- Mediation
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# How to Help Defense Counsel

- Provide defense counsel with the following when the matter is assigned:
  - Contact information for point person
  - Investigation documents/materials (Police Report, statements, etc.)
  - Advise of settlement discussions
  - Any and all information that might be helpful (Claim file)
- Staying on top of the file during litigation will benefit defense counsel
  - Demand regular reporting
  - Ask questions/challenge counsel

# Any Questions

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