

Design Immunity for Public Entities: Best Practices for Avoiding Liability

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Government Code 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.

Government Code 835.2

(a) A public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character. (b) A public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. On the issue of due care, admissible evidence includes but is not limited to evidence as to: (1) Whether the existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property. (2) Whether the public entity maintained and operated such an inspection system with due care and did not discover the condition.

Salas v. California Department of Transportation (2011)

Facts:

A pedestrian was struck and killed by a car at an intersection in Victor, California. Plaintiffs, survivors of the decedent, sued CalTrans, claiming, among other things, a lack of proper signage and failure to follow recommended standards as to the location of the crosswalk.

CalTrans moved for summary judgment, arguing the physical nature of the intersection and the lack of vehicle versus pedestrian collisions at the accident location showed no dangerous condition existed. Plaintiffs opposed, showing that there were 23 prior accidents at and around the intersection, all of which were vehicle collisions. Plaintiffs' expert opined that the accidents at the intersection could be controlled through the installation of an all-way stop sign or traffic signal.

Salas v. California Department of Transportation (2011)

Holding:

Appellate court affirmed the lower court's ruling of summary judgment in favor of CalTrans.

No dangerous conditions existed because:

§ Intersection had no obscured sightlines or unusual condition that made the road unsafe,

§ The marking and signage at the intersection were sufficient (marked crosswalk and 3 signs notifying motorists of an approaching intersection and crosswalk), and

§ Accident history indicated no other collisions involving pedestrians had occurred in the ten years preceding the accident.

- The 23 prior accidents were not considered because they were *not substantially similar* to the subject accident, i.e. – there were no prior vehicle-pedestrian accidents at the intersection.

Government Code 830.4

A condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code.

Government Code 830.8

Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.

Government Code 831

Neither a public entity nor a public employee is liable for an injury caused by the effect on the use of streets and highways of weather conditions as such. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such effect if it would not be reasonably apparent to, and would not be anticipated by, a person exercising due care. For the purpose of this section, the effect on the use of streets and highways of weather conditions includes the effect of fog, wind, rain, flood, ice or snow but does not include physical damage to or deterioration of streets and highways resulting from weather conditions.

Concealed Trap Exception

A public entity may be liable for accidents approximately caused by its failure to provide a signal, sign, marking or device to warn of a dangerous condition which endangers the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care. (Gov. Code § 830.8).

Examples of Concealed Traps:

1. The public entity fails to post signs warning of a sharp or poorly banked curve ahead on its road or of a hidden intersection behind a land mass (small hills). (*Cameron v. State of California* (1972)).
2. A design defect in the roadway causes moisture to freeze and create an icy road surface, a fact known to the public entity but not to unsuspecting motorists. (*Flournoy v. State of California* (1969)).
3. Roadwork is being performed on a highway. (*Kessler v. State of California* (1988)).

Government Code 830.6

Neither a public entity nor a public employee is liable . . . 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, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefor or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor [T]he immunity provided by this section shall continue for a reasonable period of time sufficient to permit the public entity to obtain funds for and carry out remedial work necessary to allow such public property to be in conformity with a plan or design In the event that the public entity is unable to remedy such public property because of practical impossibility or lack of sufficient funds, the immunity provided by this section shall remain so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of the condition not conforming to the approved plan or design[.]

Changed Physical Conditions

Design immunity is not perpetual; once the public entity has actual or constructive notice that the plan or design has, under changed *physical* conditions, produced a dangerous condition of public property, the entity must act reasonably to correct or alleviate the hazard. (*Cornette v. Department of Transportation* (2001)).

Elements of Changed Physical Conditions:

1. The plan or design has become dangerous because of a change in physical conditions;
2. The public entity had actual or constructive notice of the dangerous condition thus created; and
3. The public entity had a reasonable time to obtain the funds and carry out the necessary remedial work to bring the property back into conformity with a reasonable design or plan, or the public entity, unable to remedy the condition due to practical impossibility or lack of funds, had not reasonably attempted to provide adequate warnings.

Mirzada v. Department of Transportation (2003).

- When a design, which has been reasonably approved, produces a changed ***physical*** condition in its operation and causes injury, the public entity will not retain design immunity. (*Cornette v. Department of Transportation* (2001)).
- Design immunity is not lost simply because the design is operating under changed physical conditions. There must be evidence that the design, under changed physical conditions, has ***produced*** a dangerous condition of which the public entity is aware. (*Alvarez v. State of California* (1999)).
- There must be a factual showing that the current conditions differed from the conditions prevailing when the plan was approved. (*Compton v. City of Santee* (1993)).

Examples of Changed Physical Conditions:

1. Increase in accidents at the subject location. (*Grenier v. City of Irwindale* (1997)).
2. Increased traffic volume may constitute changed physical conditions. (*Bane v. State of California* (1989) [intersection averaged twice as many accidents as similar intersections in the state; in the previous 18 months, 47 accidents resulted in five deaths and 89 injuries]). However, increase in traffic alone is insufficient to establish changed physical conditions. (*Higgins v. State of California* (1997)).
3. An improvement may come to constitute a dangerous condition if increased traffic at the site, coupled with an aberrant accident history, indicates its dangerousness. (*Baldwin v. State of California* (1972) [13 accidents in six months; intersection accounted for 14 % of all traffic fatalities in the city]).

Examples of No Changed Physical Conditions:

1. City's undisputed knowledge that a street flooded during storms was not a change in conditions because the flooding was something that existed from the day the improvements were first implemented. (*Grenier v. City of Irwindale* (1997)).
2. Traffic volume/width warrants mandate an investigation of a particular site. The warrants do not reflect a determination that the lack of a sign or traffic control device creates a dangerous condition. (*Alvarez v. State of California* (1999)).
3. Increase in traffic remained within the design capacity of a highway. (*Mirzada v. Department of Transportation* (2003)).







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