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presents

Public Law 101 Conference

Tort Liability

Wednesday, November 15, 2023
2:15 p.m. – 3:15 p.m.

Speakers:

Sari Myers Dierking, Assistant City Attorney
Folsom City Attorney's Office

Conference Reference Materials

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Sari Myers Dierking, Assistant City Attorney, City of Folsom –

Sari has been practicing law for 20 years, with 19 of those in public service. Sari started her career in private practice and then went to work for Cal Trans Legal in San Diego and later, at Headquarters in Sacramento. Sari worked for the City of Sacramento City Attorney's Office, and currently serves as Assistant City Attorney for City of Folsom. She has experience in litigation, transactional, and advisory work. Her primary role as Assistant City Attorney is to act in an advisory capacity to city officials including the Planning Commission, Police Department, Fire department, Community Development Department, Human Resources, and others. Sari is an avid reader and a mother of two small children.



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Public Entity Tort Liability

Sari Myers Dierking
November 15, 2023

Agenda

- Brief history of public entity tort litigation
- Anatomy of a tort lawsuit
- Government tort claims
- Common tort causes of action facing public entities
- Example: Dangerous Condition of Public Property x 3
- Pointers for witnesses
- Theories about settlement
- Questions

Litigation History

1963: One lawyer, 10 cases, no payouts

2010: 50 lawyers, 1100 cases, \$54 million paid

Why?

Increase in employee negligence?

NO!

Bad lawyering?

NO!

Laws Changed

- Loss of sovereign immunity
- Loss of defense of contributory negligence
- Doctrine of joint and several liability
 - One percent rule
 - Deep pocket

Government Claims Act

- Eliminated common law liability for public entity torts
- All public entity liability is now statutory, unless based on state or federal constitution
- Immunity provisions prevail over those imposing liability

Anatomy of a Lawsuit

1. Incident / accident / occurrence
2. Claim filed
3. Complaint filed
4. Discovery
 - a. Interrogatories / Requests for Production / Requests for Admission
 - b. Depositions
5. Alternative Dispute Resolution / Mediation
6. Trial
7. Appeal

Events When You May Get Involved

- Accident scene / aftermath
- Claim stage
- Pleadings
- Discovery
- Motion for Summary Judgment
- ADR or Trial

Claims

Plaintiff must present a claim for money or damages to a public entity before filing suit

- Government Code section 945.4
- Mandatory prerequisite to maintaining a tort case against a public entity. Failure to file a claim is fatal to the claimant's cause of action. *State v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1239.
- Must be pled in the complaint to state a valid cause of action

Claims

Two purposes to claims presentation requirements:

1. An opportunity to settle just claims before suit is filed and costs are incurred
2. Allows the public entity to make an early investigation of the claim in order to:
 - a. Defend itself against unjust claims
 - b. Correct any conditions or practices that led to the claim

4 Cal. L Rev'n Comm'n Reports 1008 (1963)

Claims

Two categories of claims: Government Code section 911.2

- 6-month claims: death, personal injury, damage to personal property or growing crops
- 1-year claims: any other cause of action

Late claims

- Application to public entity for leave to present a late claim – Gov. Code 911.4
- Petition to superior court for relief – Gov. Code section 946.6
- Available only for 6-month claims

Content of Claims

- Claim must fairly reflect the facts underlying each cause of action in the complaint
- Other essential contents described in Government Code section 910
- Most public entities have their own claim forms

Response to a Claim

1. If critical information is missing: notice of insufficiency
 - a. Send within 20 days
 - b. Gov. Code section 910.8
 - c. Failure to do so waives the argument in litigation
2. If untimely: return to claimant without taking action – Gov. Code section 911.3
3. If timely:
 - a. Accept
 - b. Reject
 - c. Rejected by operation of law after 45 days – Gov. Code section 912.4(c)
4. Be sure to send written notice of rejection or rejection by operation of law
 - a. Required by Gov. Code section 913
 - b. Triggers 6-month SOL to file suit
 - c. Otherwise 2-year SOL to file suit

Public Entity Liability: Government Claims Act

The main source of public entity tort liability is the Government Claims Act / FKA Tort Claims Act

Government Code sections 810 – 996.6

Other Common Sources of Public Entity Tort Liability

Vehicle Code section 17001:

- Public entity is liable for damages caused by negligent or wrongful operation of a motor vehicle

Civil Code sections 3479 – 3503:

- Public entity liable for nuisance
- *Nestle v. City of Santa Monica* (1972) 6 Cal. 3d 920, 931-938

Civil Code section 2100:

- Common carrier liability
- *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780

Government Claims Act: Paths to Public Entity Liability

1. Vicarious liability:

- a. Public entity is liable for acts / omissions of public employees within the scope of employment pursuant to Government Code section 815.2(a)
- b. But see Government Code section 815.2(b) – public entity not liable if employee is immune
- c. Examples
 - i. Police / correctional activities: immunities
 - ii. Fire / paramedic activities: immunities
 - iii. Motor vehicle accidents involving public entity vehicles

Government Claims Act: Paths to Public Entity Liability

2. Independent Contractors:

- a. Public entity is liable for acts / omissions of independent contractors pursuant to Government Code section 815.4
- b. Commonly addressed in contracting process – strong indemnity and insurance provisions
- c. Examples
 - i. Roadway paving / striping work
 - ii. Landscape maintenance

Government Claims Act: Paths to Public Entity Liability

3. Breach of Mandatory Duty:

- a. Public entity is liable for an injury caused by the breach of a mandatory duty imposed by an enactment designed to protect against the risk of that particular kind of injury, pursuant to Government Code section 815.6
- b. No liability if public entity establishes that it exercised reasonable diligence to discharge the duty
- c. Examples - highly fact specific
 - i. Ensure building permit applicants have workers' compensation insurance
 - ii. *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490

Government Claims Act: Paths to Public Entity Liability

4. Dangerous Condition of Public Property:

- a. Public entity is liable for a “dangerous condition” of its property.
 - i. Gov. Code sections 830 – 831.8: general concepts and immunities
 - ii. Gov. Code sections 835 – 835.4: liability of public entities
 - iii. Gov. Code sections 840 – 840.6: liability of public employees

- b. Examples
 - i. Sidewalk case
 - ii. Catastrophic injury cases

CACI 1100: Dangerous Condition of Public Property – Essential Factual Elements

Plaintiff claims that [he/she/*nonbinary pronoun*] was harmed by a dangerous condition of Defendant's public property. To establish this claim, Plaintiff must prove all of the following:

1. That Defendant owned [or controlled] the property;
2. That the property was in a dangerous condition at the time of the injury;
3. That the dangerous condition created a reasonably foreseeable risk of the kind of injury that occurred;
4. That negligent or wrongful conduct of Defendant's employee acting within the scope of employment created the dangerous condition; [or] That Defendant had notice of the dangerous condition for a long enough time to have protected against it;
5. That Plaintiff was harmed; and
6. That the dangerous condition was a substantial factor in causing Plaintiff's harm.

Dangerous Condition of Public Property?

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.

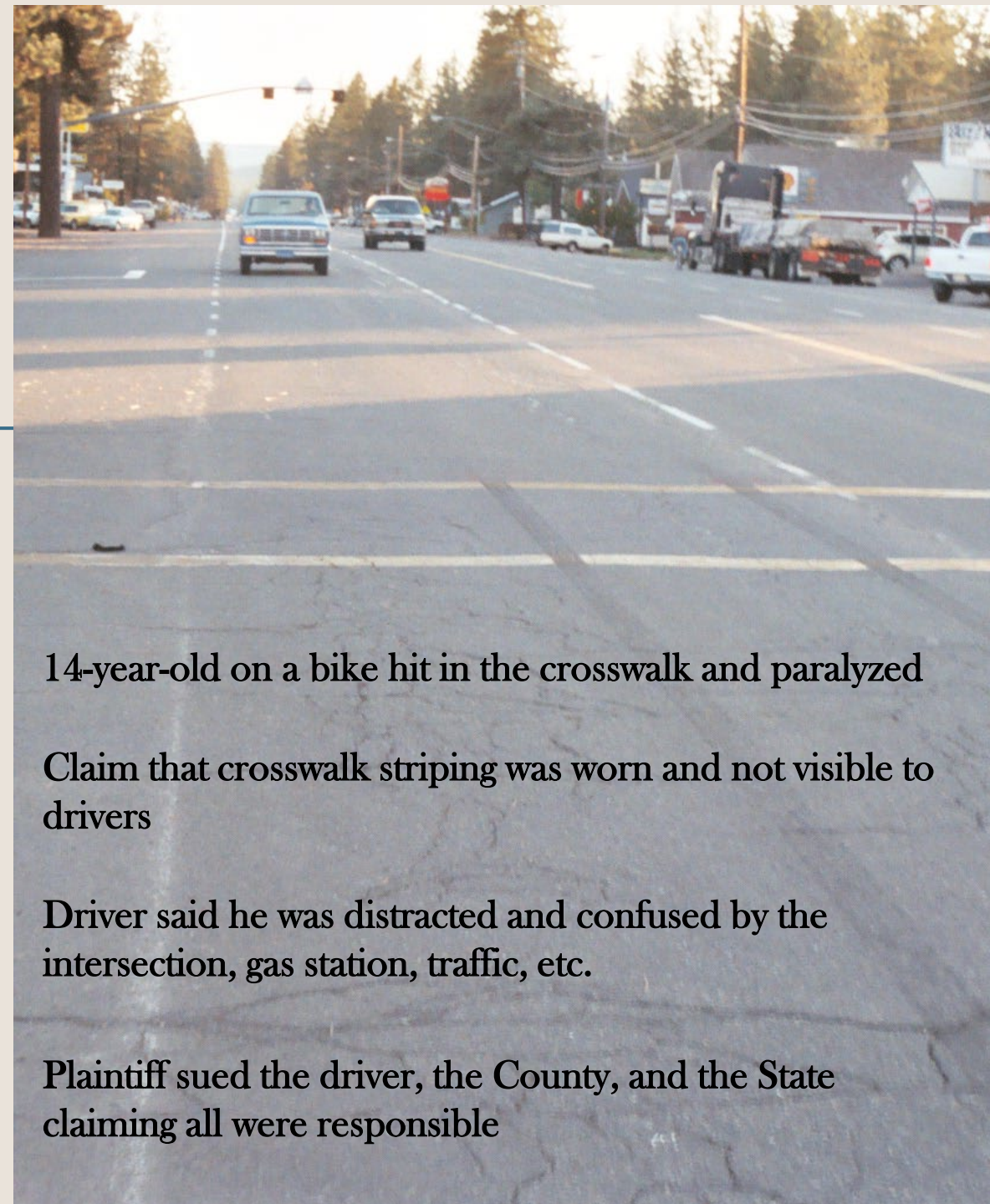
Government Code section 830(a)



Dangerous Condition of Public Property?

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.

Government Code section 830(a)



14-year-old on a bike hit in the crosswalk and paralyzed

Claim that crosswalk striping was worn and not visible to drivers

Driver said he was distracted and confused by the intersection, gas station, traffic, etc.

Plaintiff sued the driver, the County, and the State claiming all were responsible

The Case of the Distracting Intersection

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The driver: \$30K insurance policy



The County: \$350K settlement



The Plaintiff:???



The State: MSJ no DC, upheld on appeal

Constructive Notice?

A public entity had constructive notice of a dangerous condition 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.

Government Code section 835.2



Constructive Notice?

Did the public entity have notice of the dangerous condition for a long enough time to have protected against it?

6 Yes 6 No

CACI VF-1100, Question 4



Witness Pointers

Make sure to prep your witnesses

- Most public employees are not professional witnesses
- Most public employees have limited knowledge of litigation and its processes
- Most public employees want to be helpful
- Meet with your witnesses early and often

Theories about settlement

- Resolve meritorious cases early if possible
- Weed theory of settling nuisance value cases
- Settlement as a business decision

Resources

- Government Code sections 810 – 996.6
- CACI Series 1100 – Jury instructions and verdict forms
- California Government Tort Liability Practice, CEB

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Questions?