



Early identification of dangerous conditions in intersections and highways

COMBINE ONLINE TOOLS WITH A SCENE INSPECTION TO NARROW YOUR SEARCH FOR A DANGEROUS CONDITION

You have a difficult conversation ahead. Your client was severely injured by a judgment-proof driver with a minimal policy and the insurance carrier has offered the \$15,000 limit to settle. Before you look your client in the eyes and say, “Well, this is it,” you want to make sure you truly covered all possible roads to recovery.

As soon as you sign the case, start analyzing the facts to determine if you have a viable government claim. Do not wait until you realize that your defendant has a minimal policy before you start your analysis and begin securing key evidence. By then, much of the evidence of dangerous conditions that may have contributed to or caused the collision can disappear.

Dangerous condition

Dangerous condition is “a condition of property that creates a substantial 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.” (Gov. Code, § 830 subd. (a).) “Public property is in a dangerous condition within the meaning of section 835 if it ‘is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself.’” (*Cordova v. City of L.A.* (2015) 61 Cal.4th 1099, 1105.)

There is no bright-line rule as to what constitutes a dangerous condition and each case depends upon its facts. (*Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 206.) Nevertheless, a review of prior findings of dangerous conditions illustrates the types of facts that should red-flag your case.

In *Morris v. California* (1979) 89 Cal.App.3d 962, a vehicle crossed through a damaged median barrier on a freeway and collided with the plaintiffs’ vehicle, which was traveling in the opposite direction. The court found that the function of the barrier was to protect

motorists from the intrusion into their lanes of vehicles crossing the median out of control, and concluded that the unrepaired median could constitute a dangerous condition if it did not prevent such crossovers.

In *Mamola v. Dept. of Trans.* (1979) 94 Cal.App.3d 781, the court held that an unbarricaded ravine adjacent to a roadway could be a dangerous condition as it may result in drivers plunging forty feet into the ravine.

In *Erfurt v. California* (1983) 141 Cal.App.3d 837, the plaintiff was proceeding in the center lane of a freeway when, blinded by the sun, she drove directly into a guardrail in front of a concrete pillar supporting an overcrossing of the freeway. The court held that the effect of the blinding sun combined with the lack of devices to guide and warn a driver around the guardrail and pillar could constitute a dangerous condition.

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In *Baldwin v. State of California* (1972) 6 Cal.3d 424, the plaintiff's vehicle was struck from behind by another vehicle as he was stopped to make a left-hand turn. The court held that the intersection could constitute a dangerous condition for motorists desiring to turn left because of the absence of a left-turn lane, the heavy traffic, and the high speeds.

In *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, the court held that the location of a bus stop on an uncontrolled busy intersection could be a dangerous condition as a pedestrian could be struck by cars while attempting to get to the bus stop.

In *Bakity v. County of Riverside* (1970) 12 Cal.App.3d 24, the court held that a stop sign located at a point far from the place where a stop was actually required may confuse motorists and could be a dangerous condition.

In *Dudum v. City of San Mateo*, (1959) 167 Cal.App.2d 593, the court held that a stop sign obscured by a tree could constitute a dangerous condition, even though the tree was located on private property.

There is no definitive list of factors that may constitute a dangerous condition. Some aspects of a perfectly safe intersection may constitute a grave danger just a few blocks ahead. The key is how the different aspects of a roadway or intersection interact with each other.

Secure your client's evidence

Start with your client. You should have a detailed conversation about everything that the client recalls regarding the incident as early as possible. Your client may want to direct the conversation toward the incident itself and the reason why the defendant driver is at fault. Yet without realizing it, your client may provide critical information to help you identify potentially viable government claims. Have your client visualize and describe the road as he or she approached, flesh out details such as construction signs, blocked lanes, overgrown hedges or confusing traffic signals. Use this information as a springboard to conduct further investigation. Naturally, the

longer you wait, the fewer details will be recalled *and* the more likely the conditions will have changed.

Visit the scene to locate cameras and witnesses

There really is no shortcut to this. Either you or someone on your behalf, who knows what to look for, should visit the scene as soon as possible. Google Earth images are great, but do not make the mistake of over-relying on them. The satellite and street-view images from months or years ago are stale and will not show the conditions of the intersection at the time of your incident. Much may have changed and will change again. A visit to the scene, a drive traveling in the direction of each party, may reveal issues you will not be able to see with satellite images. Nor will they always show newly installed Ring doorbell cameras of adjacent homes, or all security cameras. A visit is the best way to identify issues quickly and secure evidence.

Safety permitting, visit at the same time and day of the week as your incident. Talk to the shop owners, individuals walking their dogs, or waiting for the bus. We are creatures of habit and you will be surprised how often you can find one or two people who walk through, work in, or travel the area at the same time every day, who witnessed your incident. You may even identify individuals who not only witnessed the incident but also snapped a few photos or video themselves. In the age of smartphones everyone carries a high-definition camera in their pocket and everyone loves to share what they see with their network of friends. This assignment can be done, and is often handled, by capable and knowledgeable private investigators.

Preservation-of-evidence letter

Recent decrease in availability, ease-of-use, and cost of surveillance cameras, such as doorbell cams, and WiFi surveillance security cams, means you may find surveillance cameras in businesses and surrounding homes. Yet, often no one will be present to allow you to see or secure the footage, so act quickly to send

a preservation-of-evidence letter. This is especially important because most recording systems erase/record over after a certain amount of time. Your letter should include sufficient detail regarding the incident to allow the receiver to understand what exactly you are asking them to preserve. Include the location, time, date, and a description detailed enough so that a lay person will know what to look for as video is reviewed. Remember, odds are at this point that your letter is not going to be received by an attorney or trained specialist, but a business manager or homeowner.

The goal is cooperation and early disclosure of evidence, so be firm but not overly threatening in your demand. You also want to make it as painless as possible, so offer to send a technician to assist in the retrieval of data and offer to cover the costs associated with retrieval. Note that the duty of third parties to preserve evidence does not arise until served with a deposition subpoena. (*New Albertsons Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1430). Nevertheless, assertive but not overly threatening language in your letter will likely result in compliance. For example:

Our intent is to secure necessary and essential evidence and make it as painless as possible for you to produce it in accordance with the requirements of the law. Be advised, negligent or intentional altering, changing, modification, tampering, destruction or loss of this evidence may subject you to damages for spoliation of evidence and punitive damages should you become a party to this pending action. (*Smith v. Superior Court* (1984) 151 Cal.App.3d 491.) Further, California Penal Code section 135 makes it a misdemeanor to willfully destroy evidence in addition to any civil liabilities.

Traffic collision report

Take steps to acquire the traffic collision report as soon as possible. Ideally, your client will have the agency and report number, but if not, the easiest thing to do is call the California Highway

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Patrol office closest to your incident location by searching <https://www.chp.ca.gov/find-an-office>. Ask if they prepared the report or if they can direct you to the correct local agency. California Highway Patrol has jurisdiction over all California state routes, U.S. highways, Interstate highways and all public roads in unincorporated and incorporated parts of a county. Local police or the local sheriff's department are primarily responsible for investigating incidents in incorporated cities and counties.

Once you identify the correct agency and acquire the report number, request the traffic collision report online at <https://policereports.lexisnexis.com>. If the agency is not listed, call their records department and follow the instructions to request by mail. Some agencies will allow you to get a copy over the counter with a letter of representation, designation, and copy of your client's California driver's license.

The key sections of the traffic collision report will be the defendant's statement and the officer's description of the scene. The statement attributed to the defendant is a critical indicator of possible dangerous conditions because it may allege contributing factors such as blocked traffic signs, street construction, and so forth. Likewise, the officer's description may identify malfunctioning lights or curvatures in the road. Also, be sure to request any photographs, video, or other evidence noted by the officer as retained within the report, and any noted additional reports.

SafeTREC

SafeTREC system is part of the University of California, Berkeley, affiliated with the Institute of Transportation Studies. This database allows you to pull CHP and local agency traffic collision data on a map, which allows for the easier identification of patterns. Register at <https://tims.berkeley.edu/> and play with the visual collision mapping system to get comfortable. You can limit the search to a particular type of incident and use it

to map out incidents and spot patterns. Your search can be limited to bicycle or pedestrian only, for example, and it can map the exact location of impact identified in the corresponding traffic collision reports.

SWITRS

The Statewide Integrated Traffic Records System (SWITRS) is a database that collects and processes data gathered from collision scenes, either by CHP or local agencies. You can contact CHP at <https://www.chp.ca.gov/programs-services/services-information/switrs-internet-statewide-integrated-traffic-records-system> to initiate requests for traffic collision data of your intersection. Once you receive the report, review the manual provided with CHP with each report to get comfortable with the abbreviations used. Review the report to identify incidents similar to yours and to look for a pattern. The information regarding each incident will not be particularly detailed, but you will be able to identify sufficient information to spot similarities with your incident (pedestrian vs. auto, direction of each party) and once you do so, you can use this to request more detailed information for each incident via subpoena.

CPRA Request

The California Public Records Act (Gov. Code, § 6250 through 6276.48) requires inspection or disclosure of governmental records to the public upon request, unless exempted by law. The Act requires a response within 10 business days.

Submit CPRA requests to local agencies that may have detailed analysis of the area where your incident occurred. City Council meeting minutes, demands for investigations from residents regarding the area of your incident, requests for service or maintenance of roadways or intersections from residents will help identify potential government claims and establish notice of the dangerous condition. For example, the Los Angeles Department of Transportation has forms

residents complete when they report street light malfunctions, tree-trimming requests, pot holes, and any issues residents believe need attention.

The request may be submitted in letter format to the custodian of records of the agency that has potentially relevant information. Include "California Public Records Act § 6250 et seq. Request" in the subject line and proceed to describe the records with sufficient detail for the agency to identify what you want. If your request is too broad you will be responsible for the costs associated with the agency's retrieval, so consider placing a cost limit on your request such as "if there are fees associated with this request, please inform me if the costs will exceed \$___ prior to proceeding with this request."

You may also face an objection if the request is too vague. The agency may argue that the public interest served by your request is minimal compared to the public resources needed to comply. (Gov. Code, § 6255.) The Act requires a response within 10 business days. (Gov. Code, § 6253, subd. (c).) However, the time limit to respond may be extended by written notice setting forth the reasons for the extension and the date on which a determination is expected to be made, not to exceed an additional 14 days.

Conclusion

Early identification of potential dangerous conditions will allow you to secure necessary evidence while it is still available. Combining online tools with a scene inspection is an essential method to narrow your search for a dangerous condition.

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