Garo Mardirossian
MARDIROSSIAN & ASSOCIATES

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
November 2018 Issue

Dangerous conditions of public property

DODGING THE IMMUNITIES AND DEADLINES IS THE TRICK WITH A GOVERNMENT TORT CLAIM

Whenever serious injury or death occurs on public property, one of the issues for analysis is whether a dangerous condition of public property was a substantial factor in causing the harm. This article addresses the statutory bases for a cause of action in dangerous condition of public property, the elements that plaintiff must prove to obtain recovery, and the many unique immunities that may eliminate liability on the part of the public entity.

Dangerous condition of public property is a governmental tort claim and is subject to statutory 'notice' requirements

It is important to recognize that a claim for dangerous condition of public property is a Governmental Tort Claim subject to all statutory notice requirements and other statutory mandates.

As mandated by Government Code secction 911.2(a), a claim for dangerous condition of public property (as with any other governmental tort claim) must be presented directly to the public entity **"***not later than six months*" after accrual of the cause of action (i.e., within six months of the date of the incident that caused harm). This notice requirement "must be satisfied even in the face of the public entity's actual knowledge of the circumstances surrounding the claim." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738.) A failure to present a timely claim to the proper public entity will bar an action against that public entity, and will render any complaint vulnerable to a demurrer for failure to state a cause of action. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1240.)

Section 911.2(a)'s requirement that notice be given to the public entity within six months cannot be extended by provisions outside the Government Claims Act. As a result, minors are subject to the Government Claims Act requirements, even though minors would otherwise have a far longer statute of limitations. (*Martell v. Antelope Valley Hospital Medical Center* (1998) 67 Cal.App.4th 978, 983.) Additionally, each claimant must be named in or file his or her own governmental tort claim. When multiple persons suffer separate and distinct injuries from the same act or omission, each person must be named as a claimant in a governmental tort claim. One claimant cannot rely on a claim presented by another. (*California Restaurant Management Systems v. City of San Diego* (2011) 195 Cal.App.4th 1581, 1592;

See Mardirossian, Next Page

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
November 2018 Issue

Castaneda v. Department of Corrections and Rehabilitation (2013) 212 Cal.App.4th 1051, 1062-1063.)

The six-month notice requirement imposed by the Government Claims Act makes it essential that the complex issue of dangerous condition of public property be evaluated as soon as possible after the incident has taken place. This time constraint is so severe that in multiple-vehicle-major-crash events on our highways, the six-month notice limit will expire before the Traffic Collision Report is even completed or available for review.

What is a dangerous condition of public property?

A "dangerous condition" of public property is defined by Government Code section 830(a) as "…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."

There is no hard-and-fast rule as to what constitutes a dangerous or defective condition, and each case must depend upon its own facts. (*Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 206.)

A dangerous condition of public property can present itself in many forms and may be based on an "amalgam" of factors. (*Constantinescu v. Conejo Valley Unified School Dist.* (1993) 16 Cal.App.4th 1466, 1476.)

A dangerous condition of public property may arise from its damaged or deteriorated condition, from "the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use." (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 149.)

A survey of the case law discloses many instances in which the involved condition of public property has been held to be not dangerous as a matter of law. For example, in *Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719, 732, a judgment for plaintiff was reversed on appeal when the court found that a three-quarter-inch depression in the sidewalk causing plaintiff's trip and fall was not dangerous as a matter of law. In *Lompoc Unified School District v. Superior Court* (1993) 20 Cal.App.4th 1688, 1697, the denial of summary judgment in favor of the public entity was reversed by writ of mandate. The court explained: "We hold that, as a matter of law, District owed no duty to the users of an adjacent street to shroud the athletic field so that its activities could not be seen or heard by passing motorists." In *Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225, 240, a summary judgment in favor of the City was affirmed where a cement fire ring pit on a beach containing hot coals that had been covered with sand was not a dangerous condition as a matter of law. And in *Mixon v. State of California* (2012) 207 Cal.App.4th 124, 131-133, a summary judgment in favor of the State was affirmed because a public entity has no duty to provide street lights.

But there is also a long line of case law finding dangerous conditions of public property for which the public entity bears liability under Government Code section 835. Examples include *Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 206, which affirmed a judgment for plaintiff where a sidewalk gave way plaintiff, causing her to fall into a hole and fracture her ankle. In *Swaner v. City of Santa Monica* (1984) 150 Cal.App.3d 789, 808, a demurrer sustained without leave was reversed on appeal, where the court found that the absence of a fence or protective barrier was a dangerous condition that was a cause of plaintiffs' injuries on the beach when a motorist drove from the parking lot onto the beach and struck the plaintiffs. In *Peterson v. San Francisco Community College District* (1984) 36 Cal.3d 799, 811, the Supreme Court reversed a dismissal on demurrer where the plaintiff properly alleged that thick and untrimmed trees and bushes in a public parking lot enabled a criminal to assault and attempt to rape her.

Other examples include *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 154 (judgment for plaintiff affirmed: location of bus stop was a dangerous condition of public property where plaintiff was required to walk across busy street at an uncontrolled intersection to reach the bus stop); *Jennifer C. v. Los Angeles Unified School Dist.* (2008) 168 Cal.App.4th 1320, 1334 (summary judgment for public entity reversed on appeal: it was error to decide that a secluded stairway alcove where plaintiff was sexually assaulted was not a dangerous condition of public property); *Lane v. City of Sacramento* (2010) 183 Cal.App.4th 1337, 1346 (summary judgment for defendant reversed on appeal: placement of the city's concrete lane divider can be a dangerous condition of public property); ("the city cites no authority for the proposition that the absence of other similar accidents in *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 768 (summary judgment for defendant reversed on appeal: design of roadway that encouraged drivers to veer into parking area where plaintiff was struck can be a dangerous condition of public property)).

Does negligence of plaintiff or a third party preclude a 'dangerous condition' of public property because the property was not used with due care at the time of the harm? It does not. The Law Revision Committee Comment states that Government Code section 830 "does not require that the injured person prove that he was free from contributory negligence. Contributory negligence is a matter of defense under subdivision (b) of Section 815." Case law is in accord. (*Castro v. City of Thousand Oaks* (2015) 239 Cal.App.4th 1451, 1459 ["the fact the particular plaintiff may not have used due care is relevant only to his or her comparative fault and not to the issue of the presence of a dangerous condition"].) Further, where plaintiff's injury was caused by both a 'dangerous condition' and a third party's negligence, plaintiff is not required to show that the 'dangerous condition' caused or contributed to the third party's negligent conduct. (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1106.)

Thus, the public entity cannot evade liability from its negligence or dangerous condition of public property by asserting that plaintiff's harm would not have

See Mardirossian, Next Page

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
November 2018 Issue

resulted unless a third party had been negligent. (*Baldwin v. State of California* (1972) 6 Cal.3d 424, 428; *Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707, 718-719, ["The state gains no immunity from liability simply because, in a particular case, the dangerous condition of its property combines with a third party's negligent conduct to inflict injury"].)

"Reasonably foreseeable?" Not always

Nor does "reasonably foreseeable" use of the property mean that the property must be used in an entirely proper and negligence-free manner when the harm takes place. The emphasis is upon whether the use was "foreseeable" to the public entity. As the Law Revision Committee Comment to section 830 explains: "A 'dangerous condition' is defined in terms of 'foreseeable use.' This does not change the pre-existing law relating to cities, counties and school districts. These entities are liable under Government Code [former] Section 53051 for maintaining property in a condition that creates a hazard to foreseeable users even if those persons use the property for a purpose for which it is not designed to be used or for a purpose that is illegal." This principle was articulated in *Childs v. County of Santa Barbara* (2004) 115 Cal.App.4th 64, 74, where the court explained, "The County has statutory liability for injuries caused by dangerous conditions of its public property and must maintain sidewalks in a condition that does not create a hazard to foreseeable users. (Gov. Code, § 835.) That duty extends not just to pedestrians but also to other uses of sidewalks that are "neither extraordinary nor unusual."

Ultimately, a determination of whether a condition of public property is dangerous does not rest upon the particular circumstances of the incident, but upon whether the condition of the public property posed a substantial risk of harm to (hypothetical) persons who would use the property in a reasonably foreseeable manner with due care. (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 768.)

Significantly, unless the evidence conclusively establishes that "reasonable minds can come to but one conclusion," the existence of a dangerous condition is a question of fact to be resolved by the jury. (*Peterson v. San Francisco Community College District, supra,* at 36 Cal.3d 810.)

Statutory requirements for proof of a dangerous condition of public property

Government Code section 835 provides:

> [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 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 ... a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

These are the sole conditions upon which a public entity can be held liable for a dangerous condition of public property. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1132.)

Property owned or controlled by a public entity

Plaintiff must prove that the dangerous condition existed on property that is owned or controlled by the public entity. (Gov. Code, § 830, subd.(c).) Although the proof necessary to establish this element may appear self-evident, it is often more complicated than it may appear at first glance. In some instances, a city may have easements over property that is owned by the county, thereby making both the city and the county liable for dangerous conditions on the easement areas.

When investigating a potential dangerous-condition-of-public-property case, it is extremely important that you make an accurate determination of the public entity that owns or controls the location where the incident took place.

Dangerous condition at the time of the incident

Plaintiff must prove that the dangerous condition of public property existed at the time of the incident. The dangerous condition must be manifested by a physical characteristic of the property. However, dangerous conditions are not limited to existing physical characteristics, and may arise from safety measures the public entity did not take, thereby rendering the public property dangerous. (*Swaner v. City of Santa Monica*, *supra,* [failure to erect fence between parking area and beach]; *Ducey v. Argo Sales Co., supra,* [failure to install median on a busy roadway].)

However, a public entity will not be found liable for conditions that present only minor, insignificant or trivial dangers. (Gov. Code, § 830.2.)

Negligence of employee or notice to public entity

Plaintiff must prove *either* that the negligence of a public entity employee created the dangerous condition, *or* that the public entity had actual or constructive notice of the dangerous condition and with sufficient time to have corrected the condition. (Gov. Code, § 835.)

If plaintiff relies on the employee negligence component, then plaintiff must prove that the dangerous condition was actually created by the negligence of an employee of the public entity who was acting "in the scope of employment." It will not be inferred from the accident itself that a government employee was negligent. It has been held that plaintiff cannot rely upon res ipsa loquitor to meet plaintiff's burden of proof under Government Code section 835. (*Brown v. Poway Unified School District* (1993) 4 Cal.4th 820, 838.)

When the negligence of public entity employees has created the dangerous condition, then the public entity is

See Mardirossian, Next Page

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
November 2018 Issue

presumed to have knowledge that the dangerous condition exists. (*Brown v. Poway Unified School District, supra,* at p. 834.)

"Actual notice" means that the public entity knew of the condition and knew or should have known that it was dangerous. (Gov. Code, § 835.2(a).) In *Drummond v. City of Redondo Beach* (1967) 255 Cal.App.2d 715, 720, plaintiff was injured when her car drove across a washed-out portion of roadway and went into a ditch. City employee Ayers testified that when he inspected the area earlier on the day "no undue risk of injury to the public" existed. The trial court granted defendant's motion for judgment notwithstanding the verdict, and this ruling was affirmed on appeal. The *Drummond* court held that: "In the instant case the City may be charged with notice of an apparent defect, but there is no substantial evidence to support the inference that the condition diagnosed by Mr. Ayers was 'dangerous,' i.e., that it created a substantial hazard to members of the public engaged in the customary, reasonably foreseeable use of the roadway." (*Id.*)

Additionally, plaintiff must prove that the public entity had notice of the actual dangerous condition that caused plaintiff's harm. The public entity's prior actual notice of a generally hazardous condition is not sufficient. (*State of California v. Superior Court (*1968) 263 Cal.App.2d 396, 398.)

To establish constructive notice of a dangerous condition, plaintiff must prove that the condition existed for a long enough time and was so obvious that the public entity should have discovered the condition and its dangerous character. (Gov. Code, § 835.) A plaintiff must also prove how long the dangerous condition existed prior to the incident. (*Strongman v. Kern County* (1967) 255 Cal.App.2d 308, 313.)

Evidence of other similar incidents

Plaintiff can offer evidence of "substantially similar" prior incidents to prove that the public entity had notice of the dangerous condition. When a stricter degree of substantial similarity can be established, evidence of such prior accidents can be offered to prove a dangerous condition. (*Salas v. California Dept. of Transp.* (2011) 198 Cal.App.4th 1058, 1072 ["While there must be substantial similarity to offer other accident evidence for any purpose, a stricter degree of substantial similarity is required when other accident evidence is offered to show a dangerous condition"].)

In addition, to offer other similar incidents in evidence, plaintiff must prove that there has been no substantial change in the physical condition of the location between the time of the prior accidents and the incident at issue. (*Ceja v. Department of Transportation.* (2011) 201 Cal.App.4th 1475, 1482.)

Investigation and discovery of other similar accidents at the location can be critical to proving notice of the dangerous condition and, in some cases, to proof of the dangerous condition itself.

Evidence of inspections or lack thereof

Alternatively, constructive notice of a dangerous condition may be established if plaintiff proves that reasonable inspection by the public entity would have disclosed the dangerous condition, but the public entity failed to have a reasonable inspection system or failed to operate its inspection system with due care. (Gov. Code, § 835.2(b)(1), (2).)

Once plaintiff establishes the length of time the dangerous condition existed, it becomes a question of fact for the jury to decide whether a reasonable inspection system would have discovered and corrected the dangerous condition. (*Strongman v. Kern County*, *supra*, at p. 313.)

Plaintiff must prove that the dangerous condition of public property was a substantial factor in causing plaintiff's harm. (Gov. Code, § 835; *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439-441.)

Governmental immunities from liability

The Government Code affords public entities with numerous statutory bases upon which they are immune from liability. In evaluating a potential claim for dangerous condition of public property (as when evaluating any potential governmental tort claim), it is extremely important that you be aware of the statutory immunities that may shield the public entity from liability. Some of the more commonly relied upon statutory immunities are discussed below.

Public entity immunity for injuries caused by "natural conditions" on "unimproved public property"

Public entities and their employees have an absolute immunity from liability for any injuries that are caused by a "natural condition" of "unimproved public property." (Gov. Code, § 831.2.) This immunity from liability expressly includes, but is not limited to, any natural condition of "any lake, stream, bay, river or beach."

As a matter of public policy, the cost of making unimproved public property safe and defending claims for injuries on unimproved property is deemed to be unacceptable. The California Legislature has determined that it is reasonable to expect persons who voluntarily use unimproved public property in its natural condition to assume the risk of injuries arising therefrom "as a part of the price to be paid for benefits received." (Legislative Comment to Gov. Code, § 831.2; *Alana M. v. State of Calif.* (2016) 245 Cal.App.4th 1482, 1487.)

Even where a public entity has made improvements in the area, a pre-existing natural condition will continue to give rise to an immunity from liability. (*Tessier v. City of Newport Beach* (1990) 219 Cal.App.3d 310, 313-316 [off-shore sandbar where diver was injured is a natural condition providing immunity from liability, even though the City has installed improvements of the adjacent beach]; *Valenzuela v. City of San Diego* (1991) 234 Cal.App.3d 258, 261-262 [wild animals are considered "natural conditions" for conferring immunity under Gov. Code, § 831.2].)

Trail immunity

In accordance with Government Code section 831.4, subdivisions (a) and (b), both public entities and grantors of public easements are immune from liability for injuries caused by the condition of any *recreational trail* or *unpaved access road* to scenic or recreational areas.

See Mardirossian, Next Page

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
November 2018 Issue

The trail immunity is broadly applied to defeat liability. (*Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074, 1083 [cracked cement sidewalk in a dog park is a trail for immunity purposes under Gov. Code, § 831.4]; *Burgueno v. Regents of University of Calif.* (2016) 243 Cal.App.4th 1052, 1061-1061 [use of bike trail for both recreational purposes and for commuting to employment did not abrogate § 831.4 immunity; *Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924, 932, [trail designed for multiple recreational purposes used by plaintiff for nonrecreational purpose does not undermine § 831.4 immunity]; *Leyva v. Crockett & Co., Inc.* (2017) 7 Cal.App.5th 1105, 1112 [trail immunity applied to golf club that granted easement to county for public unpaved recreational hiking and equestrian trails parallel to golf course].)

However, in *Garcia v. American Golf Corp.* (2017) 11 Cal.App.5th 532, 546, an infant being pushed in a stroller adjacent to Brookside Golf Course, in Pasadena, was struck by an errant golf ball and suffered brain injury. The trial court granted summary judgment to the defendant City on the trail immunity. The Court of Appeal reversed, holding that, "The plain language of section 831.4 provides immunity for injuries caused by dangerous conditions of trails, but it does not provide immunity for injuries caused by dangerous conditions of adjacent public properties." The court reasoned that the golf course, which the City operates for profit, was in a dangerous condition because the City failed to provide sufficient barriers (i.e., high nets) to prevent golf balls from flying into pedestrians on adjacent walkways.

Design immunity

A plaintiff case that has strong evidence of a dangerous condition of public property can be devastated by the public entity's assertion of a design-immunity defense. Public entities are immune from liability for injuries caused by a "plan or design of a construction of, or an improvement to, public property" when the design was approved in advance by a public employee or body expressly vested with the authority to approve the plan or design, if the trial court determines that there is any substantial evidence that (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." (Gov. Code, § 830.6.)

"The rationale for design immunity is to prevent a jury from second-guessing the decision of a public entity by reviewing the identical questions of risk that had previously been considered by the government officers who adopted or approved the plan or design." (*Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 69.)

A public entity claiming design immunity bears the burden to prove three elements: (1) a causal relationship between the plan and the accident; (2) discretionary approval of the plan prior to construction; and (3) substantial evidence supporting the reasonableness of the design. (*Grenier v. City of Irwindale* (1997) 57 Cal.App.4th 931, 939.)

The public entity must prove that plaintiff's injuries were caused by the plan or design at issue. (*Sutton v. Golden Gate Bridge, Highway & Transp. Dist.* (1998) 68 Cal.App.4th 1149, 1157-1162; *Fuller v. Department of Transportation* (2001) 89 Cal.App.4th 1109, 1114.) When moving for summary judgment, the public entity may refer to the allegations of plaintiff's complaint to establish a causal nexus between the design and plaintiff's injuries.

In regard to the causation element of the public entity's design immunity burden of proof, it is imperative to appreciate that *design immunity is limited to accidents that were caused by the design*. If negligence independent of the design is even partly responsible for the harm, then the design-immunity defense does not apply. (*Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 575 [negligent maintenance of drainage system defeated design-immunity claim based on design of drainage system].)

Thus, in dangerous condition of roadway cases, it is important to allege and conduct discovery on a negligence theory (e.g., failure to warn) in addition to alleging dangerous condition of public property under Government Code section 835.

The public entity must prove the identity of the person or entity that approved the plan or design and must prove that such person or entity was expressly vested with the power to give such approval. (*Gonzales v. City of Atwater* (2016) 6 Cal.App.5th 929, 953.) As explained in *Martinez v. County of Ventura* (2014) 225 Cal.App.4th 364, 370, "We focus on the discretionary approval element of design immunity**.** *To prove that element, the entity must show that the design was approved "in advance" of the construction "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...."*

The public entity must prove the authorized approval element of design immunity by admissible evidence; "implied" authorized approval is not sufficient. (*Castro v. City of Thousand Oaks,* (2015) 239 Cal.App.4th 1451, 1457.)

In cases in which the design immunity defense is presented to the jury for determination, the jury determines whether the first two elements – 'causation' and advance discretionary approval of the design – have been proven by the public entity. However, the third element – 'reasonableness' of the design – is always a question of law for the court. (*Cornette v. Department of Transportation, supra,* at 26 Cal.4th 72. ["Section 830.6 clearly makes the resolution of the third element of design immunity, the existence of substantial evidence supporting the reasonableness of the adoption of the plan or design, a matter for the court, not the jury"].)

To establish the 'reasonable' element of design immunity, the public entity need only bring forth "any substantial evidence" on which a reasonable public employee could have adopted the plan or design, or a reasonable legislative body or other body or

See Mardirossian, Next Page

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
November 2018 Issue

employee could have approved the plan or design. (Gov. Code, § 830.6.; *Cornette v. Department of Transportation*, *supra,* 26 Cal.4th at 74, fn. 3.) The reasonableness of the design can be established as a matter of law if a civil engineer on behalf of the public entity opines that the design is reasonable. (*Grenier v. City of Irwindale* (1997) 57 Cal.App.4th 931, 941.)

A public entity that was originally entitled to design immunity may lose the immunity when physical conditions have changed in a manner that now causes the design to present a dangerous condition of public property. As explained by our Supreme Court in *Baldwin v. State of California*, *supra*, at 6 Cal.3d 434:

> [D]esign immunity persists only so long as conditions have not changed. Having approved the plan or design, the governmental entity may not, ostrich-like, hide *its head in the blueprints, blithely ignoring the actual operation of the plan. Once the entity has notice that the plan or design, under changed physical conditions, has produced a dangerous condition of public property, it must act reasonably to correct or alleviate the hazard… [W]e conclude that [the Legislature] did not intend that the design immunity provided by section 830.6 would be perpetual.*

(Emphasis supplied).

Weather condition immunity

Public entities are not liable for hazards on streets and highways caused by weather conditions such as fog, wind, rain, flood, ice or snow. (Gov. Code, § 831; *Allyson v. Department of Transportation* (1997) 53 Cal.App.4th 1304, 1317-1318 [no duty to clear icy roadway that caused plaintiff's accident].)

However, this immunity does not apply when the weather conditions create a dangerous condition that would not be apparent to a person exercising due care. (*Id.*) Also, the weather-condition immunity does not apply when weather conditions combine with other independent dangerous conditions to cause harm, or where weather has caused progressive deterioration of roadways. (*Erfurt v. State of California* (1983) 141 Cal.App.3d 837, 845-846.)

Reasonable act or omission immunity

When a public entity has itself created the dangerous condition, it can be immunized from liability if the act or omission creating the condition was reasonable. (Gov. Code, § 835.4(a).) Whether the public entity's conduct was reasonable is determined by weighing the probability and gravity of potential injury against the practicability and cost of taking action. (*Id.*) This includes consideration of financial realities such as conflicting claims upon public funds and political barriers to securing funding or making changes. (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1138-1139.)

This potential reasonableness immunity applies *only* where the public entity did not itself create the dangerous condition, but had prior notice of it in time to take protective action. In those circumstances, if the public entity can prove that the action it took to guard against the risk, or its failure to take such action, was reasonable, then plaintiff's action will be barred. (Gov. Code, § 835.4(b).)

Whether the action or inaction by the public entity was reasonable is a question that is determined by the jury. (*Ducey v. Argo Sales Co., supra*, at 25 Cal.3d 720.)

Immunity for failure to provide traffic control signals or signs

In accordance with Government Code section 830.4, public property cannot be in a dangerous condition "… merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described in the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code."

However, a public entity may be liable for failing to provide warning signs where necessary to warn of a dangerous condition that "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." (Gov. Code, § 830.8.) In *Briggs v. State of California* (1971) 14 Cal.App.3d 489, 497-498, the court held that the State is liable when it knows of a dangerous condition and then places warning signs that cannot easily be seen.

Conclusion

Obtaining compensation for your seriously injured clients, or in a wrongful-death case, may require you to include a claim for a dangerous condition on public property. There are critical procedural and substantive burdens at every step of the journey. In any new case, it is imperative that you evaluate any potential dangerous condition of public property at the earliest possible time. These cases require immediate investigation with all available resources – the scene must be inspected, photographed and documented; all known percipient witnesses must be located and interviewed; expert witnesses must be retained and consulted on the issue of whether a dangerous condition of public property was a substantial factor in causing the harm.

Then, once you have the evidence necessary to evaluate the claim, you will need to master the intricacies of pleading and proving your claim, navigating around the immunities and exceptions contained in the Code and caselaw. It is not a journey for the faint-hearted or the ill-equipped.

Garo Mardirossian is the founder of a law firm in West Los Angeles that specializes in tort cases involving catastrophic injuries. In January 2010, Mr. Mardirossian was installed as President of CAALA. In 2000, he was voted CAALA's Trial Lawyer of the Year. Mr. Mardirossian cemented his reputation as a prominent plaintiff's attorney by obtaining many landmark jury verdicts on behalf of his clients in civil rights, product liability, premises liability, and personal injury negligence cases.