

From the President
Clare Lucich
BENTLEY AND MORE, LLP

OCTLA
ORANGE COUNTY TRIAL LAWYERS ASSOCIATION
TAKE NO CHALLENGE ALONE

Dangerous condition of public property claims

WHAT TO DO FIRST AND WHAT TO LOOK FOR

This month, I'm mixing things up. Instead of updates and events (Top Gun Awards December 5), I want to share some practical guidance on claims against public entities for dangerous conditions of public property, a type of case our office handles often. These cases can create real change, from redesigned intersections to safer roadways. But they also come with strict deadlines, statutory immunities and traps for the unwary.

Start with the law

Government Code section 835 sets the framework. A public entity is liable for an injury caused by a dangerous condition of its property if the plaintiff proves three things: the property was in a dangerous condition at the time of the injury, the condition proximately caused the injury, and the condition created a reasonably foreseeable risk of the kind of injury that occurred.

The plaintiff must also show either that a public employee's negligent or wrongful act or omission, within the scope of employment, created the condition, or that the entity had actual or constructive notice of it long enough before the injury to have taken protective measures.

Section 830 defines a "dangerous condition" as one that creates a substantial, as opposed to a minor, trivial or insignificant, risk of injury when the property is used with due care in a reasonably foreseeable way. It also defines "protect against" broadly to include repairing or correcting the condition, providing safeguards or warning of it.

Act immediately

Identify the right entity immediately. City and county boundaries are not always obvious. Many cities and counties post boundary maps online, and Caltrans publishes resources showing the state highway system. Document what you find, and when in doubt, submit a claim to every entity that may be responsible.

Calendar deadlines and start preparing your government claim quickly. A personal injury claim under Government Code section 910 must be presented within six months of the incident, not the two years you may be used to. That deadline applies even when the injured person is a minor.

Know the rejection rules

If the entity fails to act within 45 days, the claim is deemed rejected by operation of law. (Gov. Code, § 912.4.) Once you receive a proper written rejection, you have six months to file suit. If the entity never provides proper written notice, you have two years. (*Paniagua v. Orange County Fire Authority* (2007) 149 Cal. App.4th 83, 87.) Be careful, though: an entity can still reject a claim after the 45 days run, and the six-month clock then starts from that actual rejection. (*Katelaris v. County of Orange* (2001) 92 Cal.App.4th 1211, 1216.)

Your claim shapes your case

Remember that your complaint must reflect your claim. If your claim does not identify the dangerous condition you ultimately rely on, you may be out of luck.

Every public entity has its own claim form, usually available online, and most leave only a few lines to describe what happened. Don't limit yourself to the form. In our office, we prepare a 20- to 30-page claim that walks through each element required by section 910 and identifies every potential defect and dangerous condition.

What to look for

Road design. Many dangerous roadways date back to the 1950s and were built before modern standards. Look for skewed intersections that don't meet at 90 degrees, which encourage drivers to cut corners and give them less time to see oncoming traffic. Check sight distance, a basic engineering principle: corner sight distance is how far a driver approaching an intersection can see conflicting vehicles before buildings, trees, shrubbery or parked cars block the view.

Failure to take protective measures. Where pedestrians gather, ask whether anything stands between them and traffic, such as bollards or guardrails.

A history of crashes. Request SWITRS collision data for the location, typically 200 feet in each direction. The Transportation Injury Mapping System at tims.berkeley.edu lets you filter for pedestrian and bicycle collisions and plots them on a map. Don't forget police calls-for-service logs, which almost always reveal more incidents than the official reports.

Build the record

In discovery, your toolbox should include the design plans, traffic counts, speed studies, accident history and citizen complaints, including emails sent to the entity. Don't forget to submit a public records act request before filing your claim.

Those records matter, because you can expect the entity to raise design immunity. Under Government Code section 830.6, a public entity can avoid liability when an injury was caused by a plan or design that was approved in advance.

But design immunity can be lost. Under *Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, the plaintiff must show that changed physical conditions made the design dangerous, that the entity had notice of the danger, and that it had a reasonable time to obtain funds and carry out corrective work, or failed to warn if it could not. Accident history, resident complaints and evidence of how the area has changed are often the key to proving each of those points.

The bottom line

Dangerous condition cases reward those who move quickly, dig deep and refuse to take the entity's word for it. Get your claim in on time, make it thorough, and start building the evidence from day one.

See you at our upcoming TOP GUN Awards on December 5th.