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Authority for California Cities Excess Liability
Litigation Review and Update
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DANGEROUS CONDITION

Maria Ruiz Perez et al. v. Oakdale Irrigation District
Docket: F084621 (Fifth Appellate District)
Opinion Date: January 8, 2024

Applicable Law
This case implicates **Gov. Code section 831.8 (b),** known as "canal immunity," which provides immunity to government entities for injuries caused by the condition of canals, conduits, or drains when the injured person was using the property for any purpose other than that intended by the government entity. Specifically, section 831.8 (b) provides that canal immunity applies "*if at the time of the injury the person injured was using the property for any purpose other than that for which the district of state intended it to be used*."

Facts
Plaintiff and her minor children sued the Oakdale Irrigation District (OID) following the deaths of Hector and Giselle Evangelista (Plaintiff's husband and daughter), who drowned after their vehicle overturned and landed in a drain on August 7, 2018. The complaint alleged that the vehicle, driven by 16-year-old Giselle who did not possess a driver's license, crashed and submerged in irrigation water within the Crane Drain on Patterson Road north of Oakdale, a structure alleged to be in a dangerous condition due to OID's ownership and maintenance practices. OID argued it was immune from liability under section 831.8, as the drain and adjacent roadway where the accident occurred were neither designed nor maintained by it, and the victims were not 'using' the property as intended.

Analysis & Holding
The court affirmed the summary judgment in favor of OID, rejecting plaintiffs' argument that canal immunity should only apply if the injured party *volitionally* used the property. The court interpreted the statute to provide immunity for all injuries not occurring during the use of the property as intended by the government, regardless of whether the interaction with the property was volitional. The court emphasized the legislature's intent to limit government liability to *foreseeable uses* of the property, noting that both intentional and unintentional interactions with the property, if outside the intended use, are subject to immunity. The decision highlights the broad protection provided by section 831.8(b) against liability for injuries related to the condition of water distribution infrastructure, so long as the injured party was *not* using the property for its *intended* governmental purpose at the time of the injury.

Key points include:

1. **Statutory Provision**: Gov. Code § 831.8, subdivision (b) provides immunity to government entities for injuries caused by the condition of canals, conduits, or drains, except when the injured person was using the property for its intended purpose. This is known as "canal immunity."

2. **Interpretation of Immunity**: The appellate court clarified that the statute's immunity applies broadly to all injuries not arising while the property was used as intended by the government. This interpretation encompasses both intentional and unintentional interactions with the property, focusing on whether the interaction was anticipated or intended by the government entity.
3. **Legislative Intent - Foreseeability vs. Assumption of Risk**: The court determined that the legislative intent behind including the clause at the end of subdivision (b) was concerned with the foreseeability of the injury to the government, rather than the injured person's assumption of responsibility. This suggests that section 831.8(b)'s immunity applies based on how foreseeable the use of the property was to the government, regardless of whether the interaction was intentional.
4. **California Law Revision Commission (CLRC) Recommendations**: The CLRC's recommendations highlight that a "dangerous condition" of public property should be defined based on the foreseeability of the property's use by persons exercising due care. This supports the interpretation that immunity should apply to uses of the property that are not intended or foreseen by the government, which could include both intentional and unintentional uses.

VICARIOUS LIABILITY / SCOPE OF EMPLOYMENT

Adams v. California Dept. of Corrections and Rehabilitation
Docket: G062782 (Fourth Appellate District, Third Div.)
Opinion Date: January 9, 2024

Applicable Law

- Government Code section **815.2 (a)** provides for public entity liability "for injury proximately caused by an act or omission or an employee of the public entity within the scope of his employment…"

Facts

In the early hours of August 1, 2018, Gwendolyn Adams was pursued in a high-speed chase by Michael William Becker, a peace officer employed by the California Department of Corrections and Rehabilitation (CDCR). Becker suspected Adams of wrongdoing, although his suspicions were unfounded. The pursuit resulted in a catastrophic accident that caused severe injuries, and ultimately the death of Adams's son. Plaintiff filed a lawsuit against the CDCR, alleging negligence causing wrongful death, assault, and battery, and violation of the Tom Bane Civil Rights Act.

Central to the parties' dispute was whether—at the time of Becker's early morning pursuit of Plaintiff—he was engaged in law enforcement functions as an "outgrowth" of his employment or whether, as CDCR argues, he engaged for purely personal reasons in a "road rage" incident. The CDCR cited evidence that Becker's employment did *not* include typical law enforcement functions inside the prison "let alone outside its walls," because he was assigned to "culinary duty." The CDCR relied on the workplace "coming and going" exclusion rule of *respondeat superior* liability and argued that Becker was acting as a private citizen.

The CDCR sought summary judgment, arguing that Becker was not acting within the scope of his employment during the pursuit. The trial court agreed and entered judgment in favor of the CDCR, followed by Plaintiff's appeal.

Analysis & Holding

On appeal, the court reversed and remanded the case. It found that whether Becker was acting within the scope of his employment when he pursued Plaintiff was a question of fact that should be decided by a jury. The court scrutinized the factual circumstances around Becker's actions, including his decision to pursue plaintiffs based on his role as a peace officer and the implications of his uniform and presence of a firearm. The court also noted that Becker's actions may have been influenced by his role as a peace officer, and it was not clear whether he was acting as a private citizen or a law enforcement officer during the pursuit. The court emphasized that determining whether an employee's actions fall within the scope of employment usually fall to a jury given the potential for various reasonable interpretations of the events. The court also highlighted that the "coming and going" rule and associated statutes defining a peace officer's scope did not conclusively remove Becker's actions from his scope of employment. Therefore, the trial court erred in granting summary judgment to the CDCR.

WORKERS' COMP. EXCLUSIVITY RULE • SUITS BETWEEN PUBLIC EMPLOYEES IN DIFFERENT DEPTS.

Matthew Vann v. City and County of San Francisco et al.
Docket: A165231 (First Appellate District, Second Div.)
Opinion Date: December 12, 2023

Applicable Law

This case centers on the exclusivity provisions of the Workers' Compensation Act **(Labor Code, § 3200 et seq.**), which stipulates that workers' compensation is often the sole remedy for employees injured in the course of their employment. The exclusivity rule also extends to injuries caused by co-employees acting within the scope of their employment.

Facts

Plaintiff Matthew Vann, a San Francisco Fire Department firefighter, was injured during an emergency response when a bus, driven by SFMTA driver Louis Yu, ran over a firehose, causing it to detach and strike Plaintiff. Plaintiff sustained severe injuries, including a traumatic brain injury. He was receiving workers' compensation benefits for his injuries but also sought to pursue additional claims against the City and Yu. Plaintiff argued that SFMTA and SFFD are separate entities, suggesting that Yu was not a co-employee.

Analysis & Holding

The trial court sustained a demurrer by the City and Yu, dismissing Plaintiff's lawsuit on the basis of the exclusivity provisions of the Workers' Compensation Act. The appellate court affirmed this decision, ruling that both the City and Yu (as a co-employee) were protected under the exclusivity rule, which bars additional civil claims for work-related injuries when workers' compensation applies. The court rejected Plaintiff's argument that different departments within the City could be considered separate legal entities for the purposes of circumventing the exclusivity rule. In its opinion, the court discussed *Walker v. City and County of San Francisco* in which a firefighter's death resulted from a collision between a fire truck and a streetcar, both operated by city employees. Similarly, in *Colombo v. State of California*, an officer's injury led to a claim against the State and its Department of Transportation. In both cases, the courts affirmed workers' compensation's exclusivity, underscoring that different departments are part of the same government entity.

EXCESS LIABILITY COVERAGE:
'WILFULL ACTS' UNDER INSURANCE CODE § 533 & LABOR CODE 1102.5

City of Whittier v. Everest National Insurance Company
Docket: B321450 (Second Appellate District, First Division)
Filed: December 26, 2023(certified for publication)

Facts
On March 3, 2015, six police officers sued the City of Whittier under Labor Code section 1102.5 alleging they were retaliated against for refusing to participate in an unlawful arrest and citation quota.

The City notified its excess liability insurers, Everest National Insurance Company (Everest) and Starr Indemnity & Liability Company (Starr), about the possibility of a multi-million-dollar judgment implicating their policies, which provided coverage of employment practices liability (EPL) of $10 million per "wrongful act" in excess of a retained limit of $1 million. The underlying lawsuit filed by the City's officers was settled for $3 million on 12/24/19. The City tendered the settlement to Everest and Starr, who then denied coverage based on CA Insurance Code 533. Everest and Starr moved for summary judgment, arguing that because the officers had alleged that the City had engaged in intentional conduct, indemnification was barred by Insurance Code section 533, which disallows coverage for "willful act[s]." The trial court ruled in favor of the insurers, whereupon the City appealed. In addition, Starr contended that the settlement did not constitute liability for damages as required by the insuring agreement in its policies.

Analysis & Holding
The court of appeal overturned the trial court's ruling, finding that Insurance Code section 533, under which "[a]n insurer is not liable for a loss caused by the willful act of the insured," does not *always* bar indemnification for whistleblower claims made under Labor Code section 1102.5 because "not all Labor Code section 1102.5 claims involve necessarily willful conduct." Instead, the court explained, "some involve conduct more akin to negligence." The court's decision rested on two primary justifications:

- *Insurance Code § 533* - First, the court explained that Insurance Code section 533 bars indemnification in two contexts. The most common is where the insured engages in a "willful act," meaning, "an act deliberately done for the express purpose of causing damage or intentionally performed with knowledge that damage is highly probable or substantially certain to result." The other, less common, context arises when the insured seeks coverage for "an intentional, wrongful act that is inherently and necessarily harmful," regardless of "whether or not the insured subjectively intended the harm."

- *Labor Code § 1102.5* – Second, the court determined that not every violation of Labor Code section 1102.5 necessarily involves a "willful act." In fact, an employer could be found liable under Labor Code section 1102.5 "despite making concerted and reasonable efforts to avoid violating the law." For example, an employer could terminate an employee for refusing to participate in a company policy that the employer reasonably believes is legal. If this terminated employee later brought a whistleblower lawsuit and a reviewing court then found the policy illegal, the employer would still be liable under Labor Code section 1102.5, regardless of its subjective good intent.

Applying these principles, the Court of Appeal held that the City's conduct was "closer to negligence than intentional misconduct" because the City "intended the act—the adverse employment action—but not the consequence—a violation of the employee's rights under Labor Code section 1102.5." This is possible because these "rights do not become clear until a court has decided the legality of the conduct in which the employee refused to participate." Therefore, because the policy complained of by the officers was not so obviously illegal that the City's belief it was following the law was unreasonable, the city could not be said to have "willfully acted to violate the law. Insurance Code section 533 would not bar indemnification because the police officers' complaint alleged a theory of recovery that did not require proof of the City's "willful conduct."

Notwithstanding the Court of Appeal's reversal of the trial court's decision based on Insurance Code section 533, in the unpublished portion of its decision, the court found that the settlement of the officers' lawsuit did not constitute "damages" as required by the insuring agreement in the Starr policies.