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Authority for California Cities Excess Liability
Litigation Review and Update
March 1, 2022
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TORT CLAIM REQUIREMENTS

Andrews v. Metro. Transit System, et al.

Docket: D077550 (Fourth Appellate District, First Div.)
Opinion Date: January 31, 2022

Summary Rules:

1. ***Public entities must comply exactly with the tort claim statutes to trigger the SOL limitations contained within the Tort Claims Act.***
2. ***Statutory warnings must be included verbatim regardless of the actual facts in the case.***
    a. ***Thus, even where an attorney is already representing on a claim, the statutory language advising of the right to seek an attorney must always be included in the warning.***
3. ***Claim notices must be sent to the address and individual expressly identified in the tort claim documents. Where no alternate individual and address is identified, the notice must be sent to the claimant.***
    a. ***Therefore, unless the claim expressly identifies the attorney as the only person to receive notices, notices should be addressed to both the claimant and the attorney and sent to both addresses simultaneously.***

Facts:

Plaintiff (80-year-old female) was injured while riding a bus operated by MTS. Andrews alleged that the driver "negligently accelerated" before Andrews was able to take her seat, which caused her to tumble down the aisle and sustain a fractured hip. She retained an attorney who notified MTS of both her representation by an attorney and the injury. The attorney filed a claim for approximately $500,000. The claim form did not expressly indicate that notices should be sent to the attorney. MTS rejected the claim and provided the statutory warning about the time to file a complaint, however, MTS omitted the portion of the statutory warning which contained an advisement that the claimant could seek an attorney. The notice was addressed to the attorney and mailed to the attorney. The attorney denied having received the notice. A complaint was filed more than 8 months later.

MTS demurred on failure to timely file the complaint, but the trial court overruled the demurrer. Later, MTS moved for summary judgment on the same grounds. The trial granted the motion, holding that the warning notice complied substantially with the tort claim statute since it was already clear that Andrews had retained an attorney. Andrews appealed.

Analysis and Holding:
The appellate court reviewed the statutory underpinnings of the required notice and ruled that the language contained in the statute is mandatory. "*A public entity's compliance with section 913 determines the statute of limitations applicable to a claimant's subsequent lawsuit. (citation omitted)…Compliance with section 913 includes providing the warning required by statute*."

MTS's omission of the "right to seek an attorney" language required by statute was improper since such language could have altered claimant's behavior. MTS mailed the notice only to the attorney even though the claim documents did not identify the attorney as the sole intended recipient for notices. MTS should have mailed the rejection notice directly to the claimant. The appellate court held that MTS failed to comply with the notice requirements of the Tort Claim Act, so the applicable SOL was two years.

DANGEROUS CONDITION OF PUBLIC PROPERTY

Rucker v. WINCAL, LLC

Docket: B307964 (Second Appellate District)
Opinion Date: February 4, 2022

Summary Rules:

1. ***A property owner owes no duty of care to individuals entering its property for recreational purposes and is not required to give warnings of hazardous conditions.***

Facts:
Plaintiff was training to run a half-marathon and was jogging on property owned by defendant WINCAL, LLC. While jogging, she encountered a homeless encampment blocking her path so the ran onto the bicycle lane in the street when she was struck and injured by a car. Rucker sued the property owner for negligence and premises liability. Defendant WINCAL filed a motion for summary judgment, which the trial court granted, on the basis of Civil Code section 846 which supported the contention that the property owner did not owe a duty to Ms. Rucker since she was engaged in recreational use of the property. Plaintiff appealed contending that because "jogging" was not expressly included in the list enumerated in Section 846(b), that the trial court erred in granting summary judgment on that section.

Analysis and Holding:
The Court of Appeal affirmed the trial court's grant of defendant's motion for summary judgment in an action alleging claims for negligence and premises liability. The court concluded that jogging to train for a foot race is an activity in which one engages for a recreational purpose under Civil Code section 846, as opposed to jogging because one is late for work, and a property owner generally owes no duty of care to those who enter or use its property for such an activity. The Court likened jogging to "hiking" which is included in the list expressly stated in section 846(b). Because plaintiff failed to demonstrate a triable issue of material fact as to her negligence and premises liability claims, the trial court did not err by granting summary judgment in favor of defendant.

Rose v. County of Fresno

Docket: F079483 (Fifth Appellate District – UNPUBLISHED)
Opinion Date: November 30, 2021

Summary Rules:

1. ***The trial court properly allowed expert testimony solely based upon education and experience even where no sample or testing was conducted in relation to the condition alleged to be dangerous.***
2. ***While a person or entity has no duty to eliminate the risks inherent in a sport, California law recognizes a limited duty to sports participants "not to unreasonably increase the risks of injury beyond those inherent in the activity."***

Facts:

Plaintiff bicyclist was riding in a pace line with several other cyclists. Given the formation of the riders, with plaintiff in the middle and close in proximity to the riders in front of her, her ability to perceive conditions of the roadway was limited. The first few riders in the paceline encountered a sand bar in the bike lane and navigated around it. Plaintiff was unable to see the sand bar due to her position in the pace line and was unable to safely navigate around the sand. As she attempted to move to the left, closer to traffic in the roadway, she encountered the sand, lost control, and then was hit by a passing car. At trial, plaintiff's expert testified how long the sand bar had been in place to prove constructive notice. The expert did not have basis for his explanation other than general principals of erosion, erosion control and sedimentation, which the trial court allowed. The expert testified that since the accident scene photos showed dampness under the sand, and the last rain had moved through the area 27 days prior, that the sand had been present for at least 27 days which was a sufficient time prior to the incident to constitute constructive notice.

The case proceeded to trial and a jury rendered a verdict in the amount of approximately $300,000 finding that the County was 75% at fault for plaintiff's injuries. The County appealed the verdict.

Analysis and Holding:

The appellate court upheld the judgment including admission of the expert testimony which was based on credentials, training and experience, even where no testing was performed, or sample taken, of the sand. The Court ruled that while the County had not created the condition, it held a limited duty "not to unreasonably increase the risk of injury beyond those inhere in the activity." The Court recognized that falling is a risk inherent to cycling as is falling because of roadway obstacles, and also that the presence of the sand increased that risk. The jury decided that the presence of sand for 27 days was the fault of the County and represented an unreasonable increase in the risk of falling while cycling. The appellate court held, "we cannot conclude as a matter of law that there was no unreasonable increase in the risks inherent in road cycling."

Note that the case remains "unpublished" and no appeal has been filed with the Supreme Court. Fortunately, the Court's opinions hold no precedential value but the attorneys and experts involved can be expected to make similar arguments in the future. Of particular concern is the relatively

short time of 27 days as constituting constructive notice, especially in a large rural county with thousands of miles of roadway.

EXCESSIVE FORCE

Williamson v. City of National City, et al. (9th Circuit published)

Docket: 20-55966 (appealed from Southern District)
Opinion Date: January 24, 2022

Summary Rules:

1. ***Analysis of excessive force depends upon the type and amount of force used compared with the risk of harm and public interest to be protected by the use of said force.***
2. ***Even though the public interest being protected is of relatively low importance, such as its need to continue with a public meeting, use of appropriate force may still be warranted.***

Facts:
Plaintiff was physically removed from a city council meeting where she and others were protesting. When the protest prevented the meeting from continuing, after warning from the City Council, police officers warned the protesters that they had to leave the meeting room or would be arrested. After the protestors refused and passively resisted by going limp when the officers attempted to remove them, the officers handcuffed them and carried or pulled them by their arms out of the meeting room. Plaintiff sustained injuries to her shoulder and arms as a result of being pulled from the meeting by her arms.

Analysis and Holding:
The Ninth Circuit reversed the district court's denial of defendants' motion for qualified immunity in an action brought under 42 U.S.C. 1983 and state law, alleging that police officers used excessive force when they removed her. The police officers did not strike plaintiff, throw her to the ground, or use any compliance techniques or weapons for the purpose of inflicting pain on her. Rather, they held her by her arms and lifted her so they could pull her out of the meeting room after she went limp and refused to leave on her own or cooperate in being removed. Furthermore, the inherent risk of two officers pulling someone who has gone limp and refuses to move by her own power is not significant. The panel also concluded that although the City's interest in forcibly removing plaintiff was low, it was not nonexistent, and the balance of interests favors defendants. The panel concluded that the officers did not use excessive force in violation of the Fourth Amendment where the type and amount of force used by the officers was minimal.

Hyde v. City of Wilcox (9th Circuit published opinion)

Docket: 21-15142; Opinion Date: January 6, 2022
U.S. District Court for the District of Arizona

Summary Rules:

1. ***Excessive Force claims can be established by evidence that the officers continued to use force after a detained individual was restrained and therefore posed no significant threat.***

2. ***In establishing a Monell claim, the happening of a single instance does not infer inadequate training policy or procedures.***

Facts:
Hyde, a 26-year-old with bipolar disorder, schizophrenia, and ADHD, took six prescription medications. After his arrest on suspicion of DUI, Hyde submitted to a blood draw. He tested negative for alcohol but positive for amphetamines, consistent with his prescriptions. After several hours without his medications, Hyde charged the door, fell, and injured his head. Hyde emerged from his cell calmly, then sprinted away. He reached a dead end, Officers deployed their Tasers multiple times, then tackled Hyde. After Hyde was in a restraint chair, Pralgo again used his Taser. Callahan-English used her arms to force Hyde's head into a restraint hold. Minutes later Hyde rolled his head back, gasping for air, as officers passed by. He stopped breathing. Officers tried to revive him. Days later, Hyde died. Hyde's causes of death included blunt force injuries, kidney damage caused by muscle breakdown, enlarged heart, and coronary artery atherosclerosis.

Analysis and Holding:
The Ninth Circuit affirmed in part the denial of a motion to dismiss a 42 U.S.C. 1983 suit. Officers Pralgo and Callahan-English were held to have used excessive force and violated clearly established law when they used a Taser and put Hyde in a head restraint after Hyde, handcuffed and shackled, posed no threat. Other officers reasonably used force when Hyde resisted during the incident but prior to him having been restrained. The Ninth Circuit held that the two officers cannot shield themselves by invoking qualified immunity since they clearly knew Hyde was restrained at the time the continued to use force.

The Court also ruled that the complaint did not adequately allege that the officers knew of Hyde's mental health condition or that he was in distress after the altercation. It held that qualified immunity barred the claim that they violated Hyde's right to adequate medical care because they did not have the requisite knowledge. Finally, with respect to the failure-to-train and municipal liability claims, the court stated that an inadequate training policy itself cannot be inferred from a single incident.

PUBLIC RECORDS ACT

Getz v. Super. Ct. (County of El Dorado, real party-in-interest)
Docket: C091337 (Third Appellate District);
Opinion Date: December 13, 2021

Summary Rules:
1. ***A public entity may still be required to produce voluminous records in response to a PRA request and cannot rely on a claim that such review and production is "overly burdensome" unless it can establish the presence of actual exempt or privileged information within the documents requested which would justify extended and detailed review.***

Facts:
Concerned about the management of a homeowners' association of which he was a member, Plaintiff Getz sought records regarding the County's contacts with the homeowners' association and a development company. Because they were electronic records, the County was able to quickly locate e-mails potentially responsive to the request. But believing he had not obtained all the information available; Getz expanded the scope of the request to include all e-mails from January 2013 to August 1, 2018, between four e-mail domain names associated with the development company and its representatives and any department of the County. The County complained about the volume of e-mails responsive to the request, totaling 42,852, and speculated many of the documents were not likely to relate to the conduct of official business. The County claimed that many of the documents would not be "public" records, and indeed might fall within various exemptions from disclosure. The trial court agreed with the County that the request was overbroad and unduly burdensome.

Analysis and Holding:
The issue this case presented for the Court of Appeal's review centered on the application of rules calculated to reduce the administrative burden posed by public records requests for electronic records made by petitioner Dean Getz to real party in interest the County of El Dorado (the County), under the California Public Records Act (the Act). The Court of Appeal concluded it could reasonably be assumed that records in the custody of a public agency were public records; a claim to the contrary had to be made by the agency and be supported by substantial evidence. Further, the burden to assert and establish exemption from disclosure was on the agency, "which would be well advised to segregate privileged documents from others." The petition was granted in part and respondent court was ordered to vacate that portion of its order denying Getz's request under the Act for production of e-mails to and from four enumerated e-mail domains and order the County to produce the text of e-mails and any attachments on the County's index of 42,852 responsive e-mails.

CIVIL RIGHTS AND COVID-19

McDougall v. County of Ventura (9th Circuit published opinion)
Docket: 20-56220;
Opinion Date: January 20, 2022

Summary Rules:

1. ***The County orders posed a significant burden on the plaintiffs' 2nd Amendment Rights and therefore were subjected to strict scrutiny. The Court held that the County orders also would have failed under the less stringent Intermediate Scrutiny.***
2. ***The County failed to establish that firearm related stores and businesses posed a greater risk of spreading COVID-19 than did other business which were permitted to remain open.***
3. ***The County failed to establish that it considered less restrictive means.***

Facts:
Under California law, citizens can only obtain firearms and ammunition in person at government-approved gun and ammunition shops. After purchasing a firearm, they must wait a minimum of

10 days to obtain it. Ventura County issued COVID-19 pandemic public health orders that mandated a 48-day closure of gun shops, ammunition shops, and firing ranges, while allowing other businesses like bike shops to remain open. The Orders also prohibited everyone from leaving their homes other than for preapproved reasons, which did not include traveling to gun or ammunition shops or firing ranges outside Ventura County. Plaintiffs, individuals, and 2nd Amendment rights groups, filed suit alleging violation of their 2nd Amendment Rights by prohibiting access to acquiring firearms and ammunition and also by barring use of firearms and ammunition they already owned as facilities operated by businesses.

Analysis and Holding:
The District Court concluded that the plaintiffs failed to state a claim and dismissed the case. The Ninth Circuit reversed the dismissal. The Court reasoned that the Orders "burdened conduct protected by the Second Amendment, based on a historical understanding of the scope of the Second Amendment right" and failed to satisfy any level of heightened scrutiny. They were not the least restrictive means to further the governmental interest, especially when compared to businesses that had no bearing on fundamental rights, yet were allowed to remain open. The County failed to provide any explanation suggesting that gun shops, ammunition shops, and firing ranges posed a greater risk of spreading COVID-19 than other businesses and activities nor any evidence that it considered less restrictive alternatives. The Orders imposed a far greater burden than California's 10-day waiting period.