ACCEL

Authority for California Cities Excess Liability
c/o Alliant Insurance Services, Inc.
Corporation Insurance License No. 0C36861
560 Mission Street, 6th Floor, San Francisco, CA 94105

AGENDA

LEGEND: A - Action may be taken
I - Information
1 - Included
2 - Handout
3 - Separate
4 - Verbal

JPA: **ACCEL CLAIMS COMMITTEE MEETING**

DATE/TIME: Tuesday, May 30, 2023 at 10:00 AM

LOCATION: Teleconference
Link: https://alliantinsurance.zoom.us/j/95835729863?pwd=bUNGY3IvdW9laTJLL0JvVmFPWHF5dz09
Meeting ID: 958 3572 9863
Passcode: 155744
Dial: (669) 900-6833

In accordance with the requirements of the Brown Act, notice of this meeting must be posted in publicly accessible places, 72 hours in advance of the meeting, at the office of ACCEL's Secretary.

Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact Alliant Insurance Services at (415) 403-1400, 24 hours in advance of the meeting. Access to some buildings may require routine provision of identification to building security. However, ACCEL does not require any member of the public to register his or her name, or to provide other information, as a condition to attendance at any public meeting and will not inquire of building security concerning information so provided. See Government Code section 54953.3.

MEMBER LOCATIONS VIA TELE - CONFERENCE

- **City of Anaheim**, 201 South Anaheim Blvd., Suite 503, Anaheim, CA 92805
- **City of Bakersfield**, 1600 Truxtun Ave., 4th Floor, Bakersfield, CA 93301
- **City of Burbank**, 275 E. Olive Ave., Burbank, CA 91510
- **City of Santa Cruz**, 1200 Pacific Ave., Suite 290, Santa Cruz, CA 95060
- **City of Santa Monica**, 1685 Main Street, Room 131, Santa Monica, CA 90401

PAGE

A. CALL TO ORDER

B. CONSENT CALENDAR (A)

3-5 *1* **1.** Approval of Minutes for the February 6, 2023 Claims Committee Meeting
The Committee will review these minutes and will take action to approve or give direction.

C. REPORTS

1. CLAIMS COMMITTEE'S REPORT

3 a) **CLOSED SESSION – Pursuant to Gov't Code 54956.95** (A)
Members will review the following Closed Session items and may take action or give direction.
- i. Coverage Litigation Related to Valenzuela v. Anaheim Claim
- ii. Committee Review – ACCEL Open Loss Run
- iii. Estrella v. Modesto Reservation of Rights Letter
- iv. George Hills Estimated Loss Payments

RECONVENE - DISPOSITION OF CLOSED SESSION ITEMS

6-7 *1 & 2* b) Proposed Services for Legal Counsel (A)
The Committee will review the responses received to date regarding additional legal counsel services. Action may be taken or direction given.

8 *1* c) ACCEL's Claims Auditor (A)
The Committee will discuss the ACCEL Claims Auditor agreement and services. Action may be taken or direction given.

9-20 *1* d) Litigation Update (I)
George Hills will provide the Committee a litigation update.

D. PUBLIC COMMENTS (I)
4 *The public is invited at this point to address the Committee on issues of interest to them.*

ADJOURNMENT

Item No. B.1
Claims Committee
May 30, 2023

MINUTES OF THE ACCEL CLAIMS COMMITTEE MEETING

Thursday, March 16, 2023 at 10:00 AM

LOCATION: TELECONFERENCE

Link: https://alliantinsurance.zoom.us/j/97666347267?pwd=NGlpWUdtT3BMZ1pTNGFQVmVseTNuQT09
Meeting ID: 976 6634 7267
Passcode: 197763
Dial: (669) 900-6833

DRAFT

MEMBERS PRESENT:
Tracey Matthews, City of Anaheim
Jena Covey, City of Bakersfield *(left at 11:20 AM)*
Ross Brandon, City of Santa Cruz
Oles Gordeev, City of Santa Monica

MEMBERS ABSENT:
Betsy McClinton, City of Burbank

GUESTS AND CONSULTANTS:
Ben Oram, George Hills Company
David Tratuz, George Hills Company
Rich Santana, George Hills Company
Conor Boughey, Alliant Insurance Services
Lorissa Huey, Alliant Insurance Services

A. CALL TO ORDER

Tracey Matthews called the meeting to order at 10:01 AM.

B. CONSENT CALENDAR

B1. Approval of Minutes for the February 6, 2023 Claims Committee Meeting

A motion was made to approve the consent calendar.

MOTION: Jena Covey **SECOND:** Ross Brandon **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Betsy McClinton	Ross Brandon	Oles Gordeev
Aye	X	X		X	X
Nay					
Abstain					

C. REPORTS

C1. CLAIMS COMMITTEE'S REPORT

C1a. Litigation Update

Ben Oram presented to the Committee the 2023 first quarter Ligation Update.

Committee Members discussed and asked questions as they arose.

C1b. ACCEL's Legal Counsel

Lorissa Huey reminded the Committee that at a prior Committee Meeting, the Committee agreed that by June 1, 2023, ACCEL should develop an action plan on additional coverage counsel options and other matters (e.g. reservation of rights letters, coverage opinions) as ACCEL's claims activity increases.

The Committee agreed that it wants the Board to first discuss whether it wants to issue a Request for Quote (RFQ) and if so, take action at the Board level.

A motion was made to recommend to the Board to start a RFQ process, and if the Board does want to authorize this path, direction was given to the Program Administrators to first have a conversation with Byrne Conley, ACCEL's current legal counsel about ACCEL's goals.

MOTION: Oles Gordeev **SECOND:** Jena Covey **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Betsy McClinton	Ross Brandon	Oles Gordeev
Aye	X	X		X	X
Nay					
Abstain					

DRAFT

C1c. CLOSED SESSION – Pursuant to Gov't Code 54956.95

A motion was made to enter into Closed Session at 10:50 AM.

MOTION: Jena Covey **SECOND:** Oles Gordeev **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Betsy McClinton	Ross Brandon	Oles Gordeev
Aye	X	X		X	X
Nay					
Abstain					

A motion was made to come out of Closed Session at 12:16 PM.

MOTION: Oles Gordeev **SECOND:** Ross Brandon **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Betsy McClinton	Ross Brandon	Oles Gordeev
Aye	X			X	X
Nay					
Abstain					

Lorissa Huey reported out of Closed Session that the Committee reviewed the open loss run and no final reportable action took place.

D. PUBLIC COMMENTS - No public comments were made.

ADJOURNMENT

Tracey Matthews adjourned the meeting at 12:20 PM.

DRAFT

ACCEL

Authority for California Cities Excess Liability
c/o Alliant Insurance Services, Inc.
Corporation Insurance License No. 0C36861
560 Mission Street, 6th Floor, San Francisco, CA 94105

Item No. C.1.b
Claims Committee
May 30, 2023

PROPOSED SERVICES FOR LEGAL COUNSEL

ISSUE: At the Spring 2023 Board Meeting, the Board gave authority to issue a Request for Quote (RFQ). The Program Administrators sent out a Solicitation for General and/or Coverage Counsel. The responses received so far are provided as a handout.

The action plan is as follows and is about a six-month process:

1. ACCEL discussion to establish goals & objectives *(March BOD Meeting)*. – **Complete**
2. Administrations obtain authority to issue RFQ for legal services. – **Complete**
3. Administrators issue RFQ with a two- or three-week deadline. – **Issued**
4. Claims Committee Review of Proposals ***(Today's Focus)***
5. Next Steps / Interviews will be scheduled as needed. **– Summer 2023**
6. Committee recommendation to the Board. – **October 2023 BOD Meeting**

RECOMMENDATION: The Claims Committee will review the proposals received and make take action or provide direction. The Claims Committee may want to consider recommending the Board form an Ad Hoc Committee to interview candidates.

Additional Consideration

In favor: The Board has discussed a desire to diversify legal counsel and a vote in favor would move those efforts forward. If the Board were to create an Ad Hoc Committee, members of the Claims Committee and Underwriting Committee may have interest in participating due to the two primary uses of ACCEL's legal counsel. Legal Counsel is currently under the Underwriting Committee's purview, but the solicitation being discussed is a Claims Committee related item in response to claims related work.

Against: Members may disagree with the recommendation and want to propose a different course of action. Members may want a specific Committee or the Board to review proposals.

FISCAL IMPACT: Cannot be determined at this time. The RFQ has asked the attorneys for their hourly rate. Currently, ACCEL pays $225/hr for attorney time and $102/hr for paralegals per the contract with Byrne Conley.

ACCEL
Authority for California Cities Excess Liability
c/o Alliant Insurance Services, Inc.
Corporation Insurance License No. 0C36861
560 Mission Street, 6th Floor, San Francisco, CA 94105

BACKGROUND:

Below is a list from soliciting feedback from other internal resources.

- Greg Rolen
  Haight Brown & Bonesteel, LLP
  Three Embarcadero Center, Suite 200
  San Francisco, CA 94111
- Debra Sturmer
  Lerch Sturmer LLP
  One Samsome St, Suite 2060
  San Francisco, CA 94104
- Blane Smith
  Law Office of Blane A. Smith
  455 University Ave, Suite 270
  Sacramento, CA 95825
- Doug Alliston
  Alliston Law Office
  2795 E. Bidwell #100-140
  Folsom, CA 95630
- Robert A. Cutbirth
  SBEMP Attorneys
  1800 E. Tahquitz Canyon Way
  Palm Springs, CA 92262
- Richard Frischer
  Lamb & Frischer Law Firm, LLP
  500 Lighthouse Ave, Suite A
  Monterey, CA 93940
- Scott Vida
  Pollak Vida & Barer
  11500 West Olympic Blvd., Suite 400
  Los Angeles, CA 90064
- Andy Downs
  Bullivant Houser
  101 Montgomery Street, Suite 2600
  San Francisco, CA 94104-4146
- Steve Brower
  Brower Law
  26062 Red Corral Rd
  Laguna Hills, California 92653

Prior to 2015, David Garthe in Oakland was ACCEL's Coverage Counsel and has retired. As such, ACCEL has given direction to the Program Administrators to approach potential new Coverage Counsel.

In 2015, The Administrators approached several potential Coverage Counsels for ACCEL. Byrne Conley shown interest in the position. Byrne works with several other Municipal Insurance Pools in the State and is known to the Administrators to be a competent Coverage Counsel.

Back then, ACCEL did not 'officially' have General Counsel either. We were able to combine these roles and Byrne Conley has been ACCEL's General Counsel and Coverage Counsel since 2015.

Byrne has a deep understanding of JPAs and provides fair and member-oriented coverage stances which is a benefit to ACCEL. As ACCEL's claims activity increases, there is a need for more coverage counsel work. At a prior Claims Committee Meeting, the Committee agreed that by June 1st, ACCEL should develop an action plan on additional coverage counsel options and other matters (e.g. reservation of rights letters, coverage opinions).

HANDOUT: Responses as of 5/23/2023.

ACCEL
Authority for California Cities Excess Liability
c/o Alliant Insurance Services, Inc.
Corporation Insurance License No. 0C36861
560 Mission Street, 6th Floor, San Francisco, CA 94105

Item No. C.1.c
Claims Committee
May 30, 2023

ACCEL'S CLAIMS AUDITOR

ISSUE: Rob Powers at R.E. Powers & Company has been ACCEL's auditor since 2018. Rob stepped into this role, by taking over from Praxis Claims Consulting that same year. We are in the last year of the current contract term.

At the January 2023 Board Meeting, the Board authorized the option to extend for one year in Rob's contract and will expire at the January 2024 Board Meeting after Rob presents the 2023 audit. The Board requested to agendize this item for the upcoming June 2023 Board Meeting. The purpose of today's discussion is to discuss the current Claims Auditor's agreement and services.

RECOMMENDATION: It is recommended that the Committee provide a recommendation to the Board to negotiate a new contract, issue a request for proposal (RFP) or take other related action.

Additional Consideration

In favor: The proposed action would request the incumbent auditor to propose a new contract. Rob has worked with ACCEL since 2018 and during the last Service Providers Surveys, the Board provided positive feedback.

Against: ACCEL would engage in an RFP process to obtain services from either the incumbent auditor, or a new auditor. The last RFP process yielded few qualified candidates. ACCEL's position may be that there is no desire to change the incumbent Claims Auditor.

FISCAL IMPACT: The current contract fees are as follow:

Annual Fee
2021 - $57,958
2022 - $57,958
2023 - $57,958

BACKGROUND: At the August 29, 2018 Special Board Meeting, the Board authorized a contract with Rob Powers for a three-year duration. In January 2021, the Board authorized a new contract with Rob for another two years with a one-year option to extend. Tim Farley, Farley Consulting Services was the prior Claims Auditor.

ATTACHMENT: None

ACCEL

Authority for California Cities Excess Liability
c/o Alliant Insurance Services, Inc.
Corporation Insurance License No. 0C36861
560 Mission Street, 6th Floor, San Francisco, CA 94105

Item No. C.1.d
Claims Committee
May 30, 2023

LITIGATION UPDATE

ISSUE: At today's meeting, Ben Oram, ACCEL Litigation Manager will provide another update because the Committee requested these to be provided quarterly.

RECOMMENDATION: This is an information item, no action is necessary.

FISCAL IMPACT: No financial impact is expected.

BACKGROUND: The Program Administrators discussed services with ACCEL's Claims Chair, Tracey Matthews. As a result of that discussion, ACCEL requested that George Hills provide a quarterly or semiannual litigation update.

ACCEL has not previously received litigation updates as part of our litigation management services, but has received updates at strategic planning meetings.

The Litigation Update documents are posted on the ACCEL Website in the Members' Only section.

ATTACHMENT: Litigation Update from George Hills.

CONSPIRACY THEORIES

Spencer v. City of Palos Verdes Estates (Second D.C.A. case no. B309255)	**2/27/23**
[conspiracy to permit illegal activity; SLAPP motion; surf turf war]	
Issue:	*Whether the City conspired with the Bay Boys to essentially privatize Lunada Bay, depriving nonlocals of access.*
Ruling:	The Second Appellate District reversed the trial court's ruling granting the City of Palos Verdes Estates' judgment on the pleadings. **The court held that Plaintiffs have sufficiently alleged an actionable conspiracy in which the City has participated by its acts and omissions in connection with the activities conducted by the Lunada Boys.**
Facts:	The Lunada Bay Boys (Bay Boys) are a group of young and middle-aged men local to the City of Palos Verdes (the "City"), who consider themselves to be the self-appointed guardians of Lunada Bay. One of their tenets is to keep outsiders away from the surf location. They accomplish this through threats and violence. Plaintiffs are (1) two non-locals who encountered harassment by the Bay Boys when they tried to surf Lunada Bay and (2) a non-profit dedicated to preserving coastal access. They brought suit against the Bay Boys, some of its individual members, and the City itself for conspiracy to deny access under the California Coastal Act. Plaintiffs alleged that the City authorized the construction of a masonry and wood structure that the Lunada Boys used as a hand-out and also alleged that the City was aware if it's illegal harassment of non-local but did nothing to prevent the conduct. Plaintiffs argued that the City tacitly approved the conduct. The trial court granted the City judgment on the pleadings. The Appellate court held that Plaintiffs sufficiently alleged an unpermitted "development" in the Bay Boys' denial of access to the beach. Further, the court explained that parties can, in fact, be liable for Coastal Act violations under the doctrine of conspiracy. Conspiracy liability is not limited to tort; defendants may be liable if they agree to engage in conduct that violates a duty imposed by statute. The court wrote, at this point, Plaintiffs sufficiently alleged an actionable conspiracy in which the City has participated.

SEXUAL ABUSE AND MOLESTATION

Doe v. Marysville Joint Unified School Dist. (Third D.C.A. case no. C095253)	**3/2/23**
[sexual abuse; claims filing/timeliness; Civ. Code § 340.1]	
Issue:	*Whether the trial court erred because their prior claims were not "litigated to finality" within the meaning of § 340.1 and may be therefore revived, and whether dismissing plaintiffs'*

	claims violates equal protection.
Ruling:	**Sexual abuse claims that were previously dismissed in 2002 for failure to file a tort claim were subject to *res judicata* and A.B. 218 did not operate to revive the claims or alter the prior adjudication.**
Facts:	In 2002, plaintiffs M.D. Doe, A.J. Doe, and S. Doe sued defendant Marysville Joint Unified School District and at least one District employee, alleging their school counselor sexually abused them. The trial court entered judgment in favor of the District after finding that plaintiffs failed to timely file a government claim before filing their complaint. The Court of Appeal affirmed the judgment on appeal, and the California Supreme Court denied review. In 2019, the California Legislature passed Assembly Bill No. 218 (2019-2020 Reg. Sess.), which amended Code of Civil Procedure section 340.1 to extend the statute of limitations for victims bringing childhood claims of sexual assault. Thereafter, plaintiffs filed this action against the District and certain individuals predicated on the same set of facts as their 2002 suit. The trial court sustained the District's demurrer without leave to amend as to plaintiffs, finding that the prior dismissal was *res judicata*, and that allowing section 340.1 to reopen a final judgment would run afoul of constitutional separation of powers principles. Plaintiffs appealed, arguing the trial court erred because their prior claims were not "litigated to finality" within the meaning of section 340.1 and could therefore be revived, and because dismissing plaintiffs' claims violated equal protection.

SUBSTANTIAL COMPLIANCE WITH GOVERNMENT CLAIMS ACT

Malear v. State of California (First D.C.A. case no. A163146)		**3/13/23**
[compliance w/ Gov. Claims Act; rejection]		
Issue:	*Whether plaintiff substantially complied with the statutory requirements of the Gov. Claims Act.*	
Ruling:	The court of appeal reversed, reinstating the claim for failure to take reasonable action to summon medical care for prisoners in immediate need, based on the transfer of high-risk inmates during the COVID-19 pandemic. Although Malear filed suit before the denial of his government claim, he filed an amended complaint just after the denial and before the defendants were served with the original	

	complaint or appeared in the action. The amended complaint alleged denial of his claim. Malear has established substantial compliance with the statutory requirement. Assuming the truth of the material allegations in the amended complaint, Malear has stated facts sufficient to constitute a cause of action; the complaint does not disclose the existence of a statutory immunity defense as a matter of law.
Facts:	In May 2020, CDCR transferred 194 inmates from California Institution for Men (Chino) to San Quentin. The inmates were at risk of developing serious symptoms of COVID-19 (persons over the age of 65 and/or with underlying medical conditions). Although they had tested negative two weeks prior, several had COVID-19 at the time of the transfer. Some exhibited symptoms before exiting the transfer bus. San Quentin then had no COVID-19 cases among its prisoner population. A month later, at least 1,400 inmates, including Malear, were diagnosed with COVID-19. Several inmates dies from COVID at San Quentin. Malear filed a putative class action, alleging failure to take reasonable action to summon medical care for prisoners who were in immediate need. The trial court dismissed, holding that Malear had not complied with the Government Claims Act, having filed suit before the rejection of his government claim.

Carrillo v. County of Santa Clara (Second D.C.A. case no. B322810)		**3/13/23**
[MICRA; alleged medical care while in custody led to amputation; discovery]		
Issue:	*Whether the applicable statute of limitations was MICRA's "outside date" of three years" and that, in any case, his claim was timely because "he was not reasonably informed about the manifestation of the injury and its negligent cause until in or around April 2018 after he visited the Mexican Consulate.*	
Ruling:	The Second Appellate District affirmed. Plaintiff contended the trial court erred in sustaining the demurrer because the applicable statute of limitations is three years when both MICRA and section 945.6 apply, not one year. Except in circumstances inapplicable here, "any suit brought against a public entity on a cause of action for which a claim is required to be presented" must be brought within six months after the County's rejection of the claim. The court held that, here, where both section 945.6 and MICRA apply, Plaintiff was obligated to meet the deadlines set forth in both statutes. Further, the court held the allegations of the FAC do not support a delayed discovery exception to the one-year statute of limitations. Plaintiff failed in the FAC to plead specific facts to show he could not have earlier made this discovery, even with reasonable diligence. Accordingly, because Plaintiff filed his suit more than a year after his amputation, the trial	

	court did not err in sustaining the County's demurrer on statute of limitations grounds
Facts:	Plaintiff appealed from a judgment of dismissal of his medical negligence claim against Defendant County of Santa Clara, after the trial court sustained the County's demurrer without leave to amend on statute of limitations grounds. [Section 340.5 – MICRA – provides that plaintiff must file suit "within three years after the date of injury or one year after plaintiff discovers, or through the use of reasonable diligence should have discovered the injury, whichever comes first." Plaintiff developed a foot blister while incarcerated that later became infected and resulted in amputation. It wasn't until a subsequent conversation between plaintiff and another party that plaintiff realized that the nurse's treatment may have been a contributing factor. So the question at issue relates to *when* plaintiff should have made the discover for statute of limitations / filing purposes.)

INVERSE CONDEMNATION

Shenson v. County of Contra Costa (First D.C.A. case no. A164045)		**3/30/23**
[inverse condemnation in subsidence; entity must own or control]		
Issue:	*Whether the County had assumed ownership of the drainage improvements constructed 40 years prior, and was therefore liable for the subsequent erosion and damage to plaintiffs' properties.*	
Ruling:	Court of appeal affirmed the trial court's grant of summary judgment. **A public entity must either own or exercise actual control over a waterway or drainage improvements to render them public works for which the public entity is responsible.**	
Facts:	In the 1970s-1980s, the County approved maps for two subdivisions bordered by a tributary of "Murderer's Creek." The creek is a natural watercourse that is the main receptacle for storm runoff emanating from the watershed above the properties and is the only reasonable means of collecting and conveying that runoff. Pursuant to the Subdivision Map Act, the County required the developers to make drainage improvements to collect and convey water from the subdivisions to the creek. Contributing to runoff were two private roads serving as ingress and egress to the subdivisions and one county-owned road. adjacent to one subdivision. As provided by the Map Act, the County required the developers to dedicate drainage easements to the County. When it approved the	

	subdivision maps, however, the County did not accept the offers of dedication. The drainage improvements remained in the ownership of the developers and later the homeowners. The owners bought lots in those subdivisions in 2010 and 2016. They sued the County and a flood control district for inverse condemnation and tort claims after drainage improvements constructed more than 40 years earlier failed and serious erosion and subsidence damaged their properties. The superior court rejected the suit on summary judgment.
Notes:	

NOTICE OF CONSENT DECREES

Santa Clara Valley Water Dist. v. Century Indemnity Co. (Sxith D.C.A. case no. H047394)	**3/30/23**
[excess insurance; reservation of rights; consent decrees; No Voluntary Payment provisions]	
Issue:	*Whether the trial court properly found that the NVP provisions in the two excess policies barred the District from seeking indemnification for the expenses it incurred as a result of entering into the Consent Decree.*
Ruling:	By entering into a consent decree without notifying its insurer, Santa Clara Valley Water District violated a "no voluntary payment" provision in its insurance policies.
Facts:	Santa Clara Valley Water District was insured by Century. In 2000, the District notified Century that it had been advised by the federal government of potential claims for natural resource damages resulting from mercury contamination in the Guadalupe River Watershed (NRD Claim). Century requested additional information, including the status of negotiations. Century made several similar requests to the District between 2000-2002. In 2001, Century indicated that it had no duties under the primary policies because there was no lawsuit pending, had no duty to indemnify the District under the excess policies until the underlying limits of the policies had been exhausted, and was reserving its rights under the policies. The District subsequently signed a tolling agreement, was sued in federal court, and entered a Consent Decree without notifying Century. In 2008, the District notified Century of the existence of the lawsuit and the Consent Decree and stated that it had incurred $4 million in costs to comply with the Consent Decree. Century cited a No Voluntary Payment (NVP) provision. The District did not contact Century

	until 2014, when it completed its required Consent Decree work. In 2015, the District sued Century. The court of appeal affirmed summary judgment for Century. The NVP provisions barred the District from seeking indemnification for the expenses it incurred under the Consent Decree, without notifying Century or obtaining its consent. Those provisions apply to the settlement even though it was achieved through a consent decree rather than a traditional settlement agreement. Because the NRD Claim was disposed of by that settlement, there was no "adjudication" that gave rise to an "ultimate net loss" that gave the District the right to pay and seek indemnification.
Notes:	

SCOOTER PERMITING

Sara Hacala et al. v. Bird Rides, et al.	**4/10/23**
[Bird scooters in LA; Gov. Claims Act § 810 et seq.; discretionary authority]	
Issue:	*Whether the City of L.A. is vicariously liable under the Gov. Claims Act for its employees' alleged negligent failure to monitor Bird's compliance with the Permit and to use the City's powers to impose fees on Bird.*
Ruling:	The Second Appellate District reversed the trial court's judgment and held that the trial court erred when it dismissed Plaintiffs' negligence claims against Bird Rides, Inc. (Bird). **The court held that Bird may be held liable for breaching its general duty under § 1714 to use "ordinary care or skill in the management of [its] property."** **Because Plaintiffs' claims against the City are premised on the public entity's discretionary authority to enforce the permit, the City is immune from liability under the Government Claims Act**. In contrast, regardless of the permit's terms, Bird may be held liable for breaching its general duty under **section 1714** to use "ordinary care or skill in the management of [its] property." The court explained that having deployed its dockless scooters onto public streets, Bird's general duty encompasses an obligation, among other things, to use ordinary care to locate and move a Bird scooter when the scooter poses an unreasonable risk of danger to others. The court concluded that Plaintiff is authorized to assert a private action for public nuisance against the company
Facts:	Bird Rides, Inc. (Bird) launched its electric motorized scooter rental business in the City of Los Angeles (the City) by deploying hundreds of Bird scooters onto the City's streets and

	sidewalks. Plaintiff and her daughter were on a City sidewalk just after twilight. The sidewalk was crowded with holiday shoppers, and Plaintiff did not see the back wheel of a Bird scooter sticking out from behind a trash can. She tripped on the scooter, fell, and sustained serious physical injuries. Plaintiffs sued Bird and the City for negligence and other related claims. The trial court sustained Defendants' demurrer without leave to amend, concluding neither Bird nor the City owed Plaintiffs a duty of care.
Notes:	

DANGEROUS CONDITION OF PUBLIC PROPERTY

Greenwood v. City of L.A. *(Los Angeles County Super. Ct. No. 19STCV39849)*		**3/27/23**
[dangerous condition; disease arising out of accumulation of garbage]		
Issue:	*Whether the City knowingly failed to remedy a dangerous condition of public property adjacent to plaintiff's place of work, as a result of which plaintiff contracted typhus.*	
Ruling:	**The Second Appellate District affirmed the trial court's ruling in favor of the City finding that the City's demurrer did not abuse its discretion in denying leave to amend**. The court explained that Plaintiff has not proffered any facts she could allege, based on which her complaint would no longer describe injury "resulting from the decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community" that was "the result of the exercise of discretion vested in the public entity or the public employee." Rather, her arguments that no exercise of discretion occurred are grounded in a definition of "exercise of discretion," which the court concluded is inapplicable here. Further, the court reasoned that because it concluded that the SAC sufficiently alleges immunity under § 855.4, subdivision (a), additional allegations Plaintiff represents she could add establishing that the City acted without due care as required by § 855.4, subdivision (b) would not defeat such immunity.	
Facts:	Plaintiff worked as a deputy city attorney starting in 1996. In 2018, the County of Los Angeles designated an area adjacent to plaintiffs work location as a "typhus zone" due to the accumulation of garbage and trash which plaintiff had to pass by as she commuted to work. The City was aware of the designation and the problem but did nothing about it. Plaintiff contracted typhus. The trial court entered this judgment in favor of the City after sustaining a demurrer on the basis that, under Government Code § 855.4, the City was	

	immune from liability.

Downey v. City of Riverside (Fourth D.C.A. case no. D080377)		**4/26/23**
[dangerous condition from adjacent vegetation; bystander liability based on a phone call]		
Issue:	*Whether the trial court erred in dismissing a claim because plaintiff "witnessed" the event by and through a phone call at the time of injury, and therefore adequately alleged a claim for NEID as a bystander.*	
Ruling:	**The Court of Appeal determined plaintiff should have been given an opportunity to allege facts establishing she, through a phone call, had the requisite " 'contemporaneous sensory awareness of the causal connection between the negligent conduct and the resulting injury.' "**	
Facts:	Plaintiff-appellant Jayde Downey appealed the dismissal of her case after a trial court sustained without leave to amend the demurrers of defendants-respondents Ara and Vahram Sevacherian and the City of Riverside to Downey's operative complaint. Downey alleged causes of action for dangerous condition of property and negligence arising out of an automobile collision involving Downey's daughter, Vance. In that pleading, Downey alleged the collision occurred "because [City] created or permitted to exist, a dangerous condition of public property" and because Sevacherian maintained vegetation and trees on their property so as to cause an unsafe obstruction to the view of vehicular traffic. **She alleged that because she was on the phone with Vance and heard the sounds of the crash and its aftermath, she was "present, or virtually present" at the scene when the collision happened, thereby causing Downey "serious emotional injuries and damages."** The trial court ruled Downey's allegations were "insufficient to show that Downey had a contemporaneous awareness of the injury-producing event—not just the harm Vance suffered, but also the causal connection between defendants' tortious conduct and the injuries Vance suffered." Downey contended the court erred; that because she contemporaneously perceived the event causing injury to Vance, she adequately alleged a claim for negligent infliction of emotional distress as a bystander. The Court of Appeal reversed the trial court, finding that under the circumstances, Downey should be given an opportunity to allege facts establishing she had the requisite "'contemporaneous sensory awareness of the causal connection between the negligent conduct and the resulting injury.'"	

Tansavatdi v. City of Rancho Palos Verdes [Cal. Supreme Court, case no. S267453]		**4/27/23**
[design immunity; bicycle v. auto; failure to warn survives immunity]		
Issue:	*Whether the design immunity bars all forms of claims that seek to impose liability for*	

	*injuries resulting from a dangerous feature of a roadway. More specifically, whether design immunity is limited to claims alleging that a public entity **created** a dangerous roadway condition through a defective design, or whether the statutory immunity also extends to claims alleging that a public entity **failed to warn** of a design element that resulted in a dangerous roadway condition.*
Ruling:	**The Supreme Court held that design immunity does not categorically preclude failure to warn claims that involve a discretionarily approved element of a roadway and declined to overrule its prior precedent.**
Facts:	Plaintiff is the mother of a bicyclist who ran into a semi-truck turning right into a neighborhood from the number 2 lane and was turning across a dedicated right turn lane. The bicyclist was riding down a steep decline in a bike lane and when the bicycle lane ended, the cyclist moved into the dedicated right turn lane but did not anticipate that the truck was turn from the center of the road onto the intersecting street. Relying on its holding in *Cameron v. State of California*, 7.Cal.3d 318 (1972), the Supreme Court held that design immunity does not categorically preclude failure to warn claims that involve a discretionarily-approved element of a roadway and declined to overrule its prior precedent. At issue was whether design immunity is limited to claims alleging that a public entity created a dangerous roadway condition through a defective design or whether the statutory defense of design immunity also extends to claims alleging that a public entity failed to warn of a design element that resulted in a dangerous roadway condition. **The Supreme Court held (1) the effect of Cameron is that, while Cal. Gov. Code 830.6 shields public entities from liability for injuries stemming from the design of a roadway's physical features, they nonetheless have a duty to warn of known dangers the roadway presents to the public**; and (2) this Court declines the invitation of City of Rancho Palo Verdes to overrule Cameron.
Notes:	

Manuel Sanchez Hernandez v. City of Stockton **[3rd D.C.A.]**		**4/28/23**
[dangerous condition (sidewalk); plaintiff failed to identify the condition sufficiently]		
Issue:	*Whether a civil action is barred where the complaint premises liability on a factual basis entirely different from that stated in plaintiff's government claim.*	
Ruling:	Affirmed. The court held that the trial court properly found a lawsuit against a public entity	

	was barred where plaintiff asserted an entirely different theory of liability in his lawsuit than he had previously asserted in his government claim.
Facts:	Plaintiff allegedly tripped and fell while walking on a sidewalk in Stockton. He filed a government claim with the city, alleging he sustained severe injuries due to a "dangerous condition" on the city-owned "sidewalk surface." He identified that condition as an "uplifted sidewalk." Upon receiving Hernandez' claim, the city sent a liability claims investigator to inspect the sidewalk at the location identified by plaintiff. When the investigator was unable to find any defect in the sidewalk at or near the location, and plaintiff failed to comply with a request for more information, the city rejected his claim. Plaintiff filed suit, once again alleging injury due to an unspecified "dangerous condition" of the city sidewalk. During his subsequent deposition, however, Hernandez disclosed that he did not trip and fall because of an "uplifted sidewalk," as alleged in his government claim. Rather, he explained, he fell after he "tripped in a hole," specifically an empty tree well. The city moved for summary judgment, asserting that such relief was warranted because Hernandez was "suing on a factual basis never reflected in his government claim," which is "disallowed" under the Gov. Claims Act. The trial court granted the city's motion, finding that Hernandez was barred because the factual basis for recovery asserted in this action is not "fairly reflected" in his government claim.
Notes:	Plaintiff's counsel was Raymond Ghermezian who frequently sues public entities all over the stated and is typically this careless in many of his cases.

Stack v. City of Lemoore (Fifth D.C.A. case no. F082994)		**5/3/23**
[dangerous condition (sidewalk); City may be on notice but pedestrian still not on notice]		
Issue:	*Whether the offending portion of the sidewalk was not a "dangerous condition" under the Gov. Claims Act (or condition so trivial, minor, or insignificant that it could be considered not dangerous as a matter of law).*	
Ruling:	Jury verdict affirmed. The court decided that, despite some factors suggesting otherwise, the dangerousness of the sidewalk couldn't be ruled out as a matter of law. **Although the condition was visible on approach on an inferably clear, dry day and had not harmed others or plaintiff in his 300+ prior jogs at the same location, reasonable minds could still differ as to its dangerousness based on the evidence of the first defect's relatively large height and rough edge, the presence of back-to-back defects, and the partial obstruction of the pine needles and debris**. As such, the determination of the condition's	

	dangerousness was properly left to the jury, whose verdict the court did not overturn.
Facts:	Plaintiff regularly jogged on the sidewalk in question. On the day of the incident, the sidewalk was visible on approach, and it was seemingly clear and dry. Plaintiff had jogged many times before without harm. However, on this occasion, the sidewalk had a defect of a relatively large height and rough edge, and there was the presence of back-to-back defects spaced only a couple meters apart but both caused by tree roots. Additionally, the visibility of these defects was partially obstructed by pine needles and debris. Plaintiff brought the case against the City for maintaining the sidewalk, arguing dangerous condition.