Avoiding the Pitfalls of Immunity Under Government Code Section 830.4

By Adam Shea and Nicholas W. Yoka

Government Code section 830.4 provides immunity for public entities when it is alleged that a dangerous condition existed merely because of the failure to provide a traffic sign. In dangerous condition cases, we are increasingly seeing public entities relying primarily on section 830.4 for immunity from liability. In the past six months alone, we have opposed three separate motions for summary judgment where the central premise for immunity was this very Government Code section.

On February 3, 2020, Jane Doe had just gotten home from work and decided to go for a run around her neighborhood. About halfway through her run, Jane was in a marked crosswalk when she was struck by a motor vehicle. Jane suffered catastrophic injuries, including a severe traumatic brain injury and fractures throughout her entire body.

After the incident, it came to light that a prior fatal incident had occurred at that same intersection and a city commissioner even stated at a public hearing "that there should be some proposed improvements" at the intersection.

When this case came to us, Jane was on her Fourth Amended Complaint. The prior firm handling the case had unsuccessfully opposed three demurrers where one of the main issues was whether the city was immune from liability under Government Code section 830.4. It was no surprise to us that we would soon face a motion for summary judgment that could risk putting a complete end to Jane's case.

A. Government Code Section 830.4

Government Code section 830.4 states, "[a] condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code." Vehicle Code section 21460 is a statute that addresses situations where it is not permitted for drivers to cross double parallel yellow lines, double parallel sold white lines, and double parallel lines, where one of the lines is broken.

This statutory immunity under section 830.4 only applies to public entities and does not extend to any private entities. (*Lichtman v. Siemens Industry Inc.* (2017) 16 Cal.App.5th 914, 930.)

B. Merely, Only, Solely

The crux of section 830.4 lies in the word "merely" which indicates that the California State Legislature intended to preclude dangerous condition claims when the *only* basis for the claim was the need for a traffic control signal. "Cases interpreting this section have held that it provides a shield against liability only in those situations where the alleged dangerous condition exists *solely* as a result of the public entity's failure to provide a regulatory traffic device or street marking." (*Washington v. City & County of San Francisco* (1990) 219 Cal.App.3d 1531, 1534.) "If a traffic intersection is dangerous for reasons other than the failure to provide regulatory signals or street markings, the statute provides no immunity." (*Id.* at pp. 1534-35) Similarly, CACI 1120 states "[y]ou may not find that the defendant's property was in a dangerous condition just because it did not provide [*insert device or marking*]. However, you may consider the lack of a [*insert device or marking*], along with other circumstances shown by the evidence, in determining whether the defendant's property was dangerous."

In *Hilts v. County of Soland* (1968) 265 Cal.App.2d 161, defendant county argued that it was immune under section 830.4. The court disagreed, holding that the evidence indicated that the "intersection was

Adam Shea is a partner at Panish Shea Ravipudi LLP, where he handles injury and death cases. Adam has exclusively represented plaintiffs in personal injury and wrongful death cases for the past 33 years. He is on the Board of CAALA and is a member of ABOTA. www.panish.law

Nicholas W. Yoka is an attorney with Panish Shea Ravipudi LLP and focuses his practice on civil rights, products liability, and catastrophic personal injury cases. He received his J.D. from the Univ. of Calif., College of the Law, San Francisco (formerly UC Hastings). www.panish.law

dangerous *not only* because of the failure to provide warning or regulatory signs or signals *but also* because of the conjunction of other factors such as the presence of trees, the differences in elevation between the roadway grades and adjoining fields, and the method of striping the intersection." (*Id*. at p. 174, emphasis added.) Similarly, in *Washington v. City & County of San Francisco*, *supra*, 219 Cal.App.3d at p. 1535, the court held that "the intersection was dangerous *not only* because of the absence of traffic devices; *but also* because of" certain visual obstructions.

Recall that in Jane's case, our client was struck by a motor vehicle in a marked crosswalk. In that matter, the court issued a tentative ruling to grant defendant's motion for summary judgment based on immunity under section 830.4. At the hearing, we made the following oral argument to the court:

> That word "merely" is very important in the statute. The legislature clearly put that word "merely" to identify that it cannot be solely because of the failure to put a regulatory or traffic device signal ….
>
> As this court has pointed out just now in its [tentative] holding regarding the dangerous condition and causation, there are a number of factors here outside of the mere failure to provide enhanced street lights and visibility markings, such as the fact that counsel just admitted there was a speed radar sign that was even past the intersection where it couldn't even be seen at this dangerous intersection. There was a vertical curvature and visual obstructions. And that's very important because in cases granting summary judgment on the basis of 830.4, there is no visual obstruction such as a vertical curvature at play ….
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> There is also the fact that the City here knew of the many issues, specifically outside of the failure to provide that regulatory device. And, therefore, 830.4 is in no way applicable to this case.

Five weeks later, the court reversed its tentative ruling. The court mirrored our argument at the hearing holding that section "830.4, is not at issue here, because plaintiff does not allege that the dangerous condition exists merely because of the failure to provide signals, signs and warnings. I emphasize the word 'merely' because, based upon the pleadings, plaintiff lays out many reasons she thinks the location is dangerous, not just signage and warning issues." (Emphasis in original.)

C. Invited Reliance Theory

Section 830.4 also does not prevent liability where a public entity exercises discretion to install traffic signs or regulatory signals, and thereby invites public reliance on them. (*Teall v. City of Cudahy* (1963) 60 Cal.2d 431, 434; *Mathews v. State ex rel Dep't of Transp.* (1978) 82 Cal.App.3d 116; *De La Rosa v. City of San Bernardino* (1971) 16 Cal.App.3d 739, 746.)

Government Code section 830.8 adds to the statutory scheme, providing that:

> Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which 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.

This qualification is sometimes referred to as the "invited reliance" theory. "Although sections 830.4 and 830.8 of the Government Code ... provide that a public entity may not be held liable for failure to install traffic signs or signals, when it does so in such a manner as to constitute a trap, liability may be imposed for the maintenance of a dangerous condition." (*Bakity v. County of Riverside* (1970) 12 Cal.App.3d 24, 31.) In other words, when a public entity undertakes to provide traffic signals, it invites reliance on those signals. It can, therefore, be held liable for creating a dangerous condition in installing the signals. Once the signals are installed, the public entity must act reasonably in operating and maintaining them. (*De La Rosa v. City of San Bernardino, supra,* 16 Cal. App.3d at p. 746.)

In *Bakity v. County of Riverside*, *supra*, 12 Cal.App.3d at p. 28, a collision occurred at an intersection when one vehicle failed to follow the stop sign. The stop sign was located 36 feet east of the line of the cross street and near a eucalyptus tree. (*Ibid*.) There, the court held that sections 830.4 and 830.8 did not provide immunity because the stop sign was placed "in an unanticipated position" which "could constitute a trap for an unwary motorist." (*Id*. at p. 31.)

Similarly, in *Briggs v. State of California* (1971) 14 Cal.App.3d 489, 497, the court determined that liability against the public entity could "be predicated on the inadequate warning sign placed" in the roadway because the evidence showed that the signage was not very visible to passing motorists, did not meet the specifications called for in the state manual, and was placed too close to the hazard. Specifically, the court held that "the state having undertaken to sign the area was obligated to sign it properly and should have to answer for any inadequate or deceptive warning proximately contributing to the accident." (*Id*. at p. 497.)

Public entities will sometimes re-write section 830.4 to apply to any situation involving a traffic signal whatsoever. This is not what the Legislature intended. By its plain language, section 830.4 does not necessarily confer immunity for a dangerous design of a signal that had already been supplied. Providing signals can also sometimes invalidate the immunity.

D. Third Party or Contributory Negligence

In almost every case involving section 830.4, the defense will argue that they have no liability because another party is negligent. It is well established, however, that proximate causation is almost always a question of fact. (*Hurley v. County of Sonoma* (1984) 158 Cal.App.3d 281.) "It is established that although a third person may have been concurrently negligent with a public entity, *the latter is not necessarily relieved from liability*." (*Id*. at p. 287, emphasis added.) "Foreseeability is the primary element" here and "[t]he question of proximate cause essentially is one of fact." (*Id*. at p. 288, citations omitted.) "[I]t is settled that what is required to be foreseeable is the general character of the event or harm — e.g. [a car straying off the highway and striking the abutment] — not its precise nature or manner of occurrence." (*Ibid*., quoting *Bigbee v. Pacific Tel. & Tel. Co.* (1983) 34 Cal.3d 49, 57-58.) A plaintiff need not prove that the defendant's negligence was the sole cause of the harm, only that it was a substantial factor in causing harm. (*Mayes v. Bryan* (2006) 139 Cal.App.4th 1075, 1092-93.) According to the "substantial factor" test, a defendant's negligent conduct may combine with another factor to cause harm. (*Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187.) Importantly, a defendant cannot avoid responsibility just because some other person, condition, or event was also a substantial factor is causing the plaintiff's harm.

E. *Mixon*, *Mittenhuber*, and *Paz*

Public entities commonly rely on a few specific cases to make the argument that Government Code section 830.4 precludes the plaintiff from recovering on a dangerous condition claim. For instance, in *Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, the plaintiff alleged multiple other factors of the roadway that contributed to causing a dangerous condition. The court held, however, that the plaintiff made no attempt to specifically allege how or in what manner he was inadequately warned of a dangerous condition and that the plaintiff failed to allege that "the defendant was negligent in maintaining the sign." (*Id*. at pp. 7 and 10.) The court further held that although the plaintiff argued that visibility issues existed, the complaint failed to allege any "specific facts which would support the conclusion that motorists could not see each other until after they were committed to the intersection." (*Id*. at p. 12.)

Additionally, it is worth stressing that the *Mittenhuber* opinion did not reject many of the factors used by the plaintiffs to avoid section 830.4 immunity. Rather, the court stressed the plaintiff's failure to sufficiently *allege* many of the issues.

Defendants will also commonly cite to *Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124. There, a motorist struck a pedestrian in a marked crosswalk with no traffic signal. The plaintiffs alleged that the defendant was negligent for the lack of traffic signal and warning signs at the intersection. (*Id*. at p. 135.) In addition to arguing lack of traffic signals, the plaintiffs argued that the intersection had three further defects that contributed to causing the collision. (*Id*. at p. 132.) *First*, the plaintiffs argued that the roadway had dim lighting because there was no overhead streetlight, however, the court found that the absence of street lighting is itself not a dangerous condition. (*Id*. at p. 132-133.) *Second*, the plaintiffs argued that the crosswalk had parallel lines instead of zebra stripes, but the court held that the fact that a crosswalk was painted with parallel lines rather than zebra style, was too trivial to create a substantial risk of injury. (*Id*. at p. 136.) *Lastly*, the plaintiffs argued that a dip in the grade of the intersection impaired the visibility of the crosswalk. The court held that this argument was not supported by the evidence because the grade change is slight, photographs show that the crosswalk markings are visible, and there was no dispute that the intersection was visible to a driver for 520 feet, which exceeded the state standards. (*Id*. at p. 137.)

Although the *Mixon* plaintiffs, unlike those in *Mittenhuber*, alleged that there were issues with the roadway aside from simply the signage, the court shut down these arguments as either trivial or not supported by the evidence. It is important to hire a qualified expert traffic engineer and/or accident reconstructionist to inspect the scene and provide exact measurements to prove visibility or sight line issues. It is also important to examine the design documents to make sure the entity constructed the roadway as intended. This will not only be helpful in defeating design immunity, but it will assist in overcoming section 830.4 immunity.

Defendants will also often point to *Paz v. State of California* (2000) 22 Cal.4th 550, as support for immunity under section 830.4. The only substantive analysis of section 830.4 in *Paz*, however, is by Chief Justice George writing in dissent. There, the dissent states that a "city's liability under section 835 may not be posited *solely* upon the city's failure to provide a traffic control signal." (*Id*. at p. 564, emphasis added.) Chief Justice George goes on to state "a trier of fact reasonably could find that the intersection ... constituted a dangerous condition not merely because of the absence of a traffic signal but because of the configuration and restricted sight lines of the intersecting streets, the permissible speed limit [], and the increase in traffic follow [] over time, and because the city was aware of a number of serious accidents and near-misses that had occurred at the intersection in the years preceding the accident here in question." (*Ibid*.)

As pointed out by Chief Justice George, it may be helpful — in addition to other factors — to try to establish a known pattern of similar types of incidents to show that "the city was aware of a number of serious accidents and near-misses that had occurred at the intersection in the years preceding the accident here in question." (*Paz. State of California*, *supra*, 22 Cal.4th at p. 564.)

F. Government Claim and Complaint

Although this article does not aim to address all the components of filing a lawsuit against a public entity, there are several rules involving submitting a government claim and filing a complaint for damages

against a government entity that are worth stressing in the context of discussing section 830.4.

According to Government Code section 945.4, no action may be commenced unless a claim which satisfies section 910 has been submitted and denied. The claim relating to a cause of action for death or injury to a person must be presented no later than six months after the incident occurred. (Gov. Code § 911.2.) If the public entity takes no action within 45 days of presentation of the claim, the claim is deemed denied and the plaintiff can file a lawsuit within two years from the date of injury. On the other hand, if the public entity denies the claim, a plaintiff must sue within six months from the day of the postmark or personal delivery of the right to sue letter. (Gov. Code § 945.6.)

Section 910, subsections (c) and (d) of the Government Code, require that plaintiffs submitting claims need to provide the "date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted" and "[a] general description of the ... injury, damage, or loss incurred so far as it may be known at the time of the claim." The purpose of these statutes is "to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation." (*Stockett v. Association of Cal. Water Agencies Joint Powers Insurance Authority* (2004) 34 Cal.4th 441, 446, citation omitted.) Although a claim does not need to "contain the detail and specificity required of a pleading," it is nevertheless important to properly state your claim to avoid issues with a motion to strike or even a motion for summary judgment. (*Id*. at 446, quoting *Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407, 1426.)

When making a claim based on a dangerous condition of public property, you should try to identify all the ways the condition was dangerous. There may be multiple defects in the condition of a roadway, such as the design characteristics, physical characteristics, configuration, speed limit that was set and allowed, the interrelationship of the property's structural or natural features, or the presence of other latent hazards. Regardless of which particular defects are at issue, it is important to identify all of them individually. As the court held in our recent case with Jane, "based upon the pleadings, plaintiff lays out many reasons she thinks the location is dangerous, not just signage and warning issues." You should make every effort to lay out the different reasons the roadway is dangerous, independent of the regulatory signs and warnings.

G. Conclusion

Dangerous condition cases are not easy and often involve many hurdles to prove liability. Yet, we owe a duty to our clients to fully investigate what caused the incident and how it should have been prevented. At the outset of the case, it is important to know the law and avoid easily avoidable pitfalls from submitting the government claim, to filing the complaint, conducting discovery, and opposing motions that attempt to summarily adjudicate your client's claims and render them with zero recovery. ■