

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: DANGEROUS CONDITION – ROAD CONDITIONS

Why is the entity allegedly at fault when two private vehicles run into each other on a flat, straight road on a sunny day? The allegation will be that a dangerous condition of public property contributed to, or caused the accident, but the real answer is probably because the entity has the deepest pocket. In a typical case, one or both drivers are responsible for the accident, but the insurance coverage might not be adequate to cover the injuries and damage so some other source of compensation must be found.

In order to bring the entity in, the claimant will have to prove that a dangerous condition of public property caused, or contributed to the accident. To prove this they have to satisfy the elements in the Government Code:

- Did the entity own or control the property? Not a big issue on a claim of a dangerous road.
- Was the property in a dangerous condition at the time of the accident? Common sense often gives way to experts on this issue, but a common sense approach has value.
- Did the dangerous condition create a reasonably foreseeable risk of the kind of accident that occurred? Here we argue the lack of due care by the drivers.
- Did the entity have notice of the dangerous condition long enough to have protected against it? This element distinguishes between an accident caused by poor maintenance or design, and at the other extreme some recent debris on the road or stolen road signs.
- Was the dangerous condition a substantial factor (proximate cause) in causing the injury? You can have a “bad” road, but it has to contribute to, or be the cause of the accident.

After looking at the elements you look at the possible defenses. Comparative negligence is always an issue; one or both drivers are usually the primary cause of the accident. Immunities also have to be explored, especially the design immunity.

The investigation of a dangerous condition claim is pretty straight forward:

- Inspect the scene as soon after the accident as possible while physical evidence is still present.
 - Concentrate on road signs, maintenance, changed conditions, and obvious defects.
- Get the police report – but recognize that they are not always accurate.
- Inspect the vehicles – make sure the physical evidence supports the allegations.
- Get the accident history for the involved road – this goes to the notice issue.
- Get the maintenance and inspection records for the road.
- Get driver statements, and determine if they were impaired.
- Determine what insurance is available to the parties – do they really need us in this suit?

In the majority of YCPARMIA road claims the investigation supports that there was not a dangerous condition that caused or contributed to the accident.

Next topic: Comparative Negligence