

## Manager/Supervisor Risk Management

#58– 5/29/12

A twice weekly e-mail training for YCPARMIA members

### TOPIC: DANGEROUS CONDITION – DEFENSES AND IMMUNITIES

This topic deals with more technical aspects of handling dangerous conditions claims made against public entities. It is not really necessary for the supervisor or manager to know this material. It is included merely to show that even when there is a dangerous condition, the public entity has opportunities to limit its exposure by asserting defenses and/or immunities.

After the claimant proves all of the elements that a dangerous condition of public property caused their injury, the public entity can assert defenses to defeat the claim. The Government Code (GC) allows the entity to assert any defense that would be available to a private party. The most common would be comparative negligence where the claimant is responsible for their own failure to exercise reasonable care for their own safety. Conversely, the public entity can establish a defense by showing that it acted reasonably under the circumstances.

In addition to defenses there are statutory immunities found in the GC. Some of the immunities that apply to dangerous conditions include:

- Approved plan or design immunity (reasonable plans approved by the governing body);
- Regulatory traffic control signs immunity (limited to very specific instances);
- Effect of weather conditions on streets and highways (but does not extend to damaged or deteriorated property);
- Natural conditions of unimproved public property (you don't have to make natural conditions safe);
- Unpaved access roads and recreational trails (as distinguished from roads and highways);
- Unimproved and unoccupied state lands (similar to the natural condition immunity);
- Hazardous recreational activities (those that have a substantial risk that the claimant assumes); and
- Reservoirs, canals, drains, and water conduits (these are manmade rather than natural conditions).

Each of these immunities has elements that must be proven to assert the immunity. They all appear to recognize that the public has an interest in using public land that should be encouraged, and that the public entities do not have the resources to make all land reasonably safe.

On a related issue, there is a general rule that actions taken by the entity after an accident to repair or change the condition of the property is not evidence that the public property was in a dangerous condition at the time of the injury. The rule is there to avoid discouraging an entity from taking subsequent protective actions when it learns of a potentially dangerous condition. As a practical matter, however, common sense suggests that a jury would find an inference that something was wrong, so the decision to work on the alleged dangerous condition should be carefully considered. Conversely, recognize that once an injury has occurred, it can be used to prove that the entity had notice of the dangerous condition on subsequent injuries, and failure to take protective actions could be deemed unreasonable.

Next topic: Dangerous Condition – Sidewalk Claims