

Design Immunity Does Not Protect Against a Failure to Warn of a Dangerous Condition

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A public entity may be held liable for failure to warn of a dangerous condition of public property even if the dangerous condition is covered by design immunity.

Under Government Code section 830.6, a public entity is entitled to design immunity if it establishes there is a causal relationship between the design of public property and an accident, the design was approved by authorized personnel, and the reasonableness of the design is supported by substantial evidence. In *Tansavatdi v. City of Rancho Palos Verdes*, the California Supreme Court ruled that even if design immunity applies, the public entity can still be held liable for failing to warn of a “concealed trap.” In that case, a bicyclist was struck and killed by a truck while riding through an intersection without a bike lane. The city approved a street design where the bike lane was discontinued for a block to allow for street parking.

The Court concluded that while design immunity shields the city from a dangerous condition claim, it does not protect the city against the failure to warn of a concealed trap. Importantly, the Court clarified the standard for determining whether a public entity is liable for failing to warn of a dangerous condition. A plaintiff must establish (1) the public entity was aware of the dangerous condition, (2) the dangerous condition was not reasonably apparent to a person exercising due care, and (3) the absence of a warning was a substantial factor in bringing about the injury. The case was remanded to the trial court to apply this test.

If you have any questions, or would like more information about how this decision may affect your agency, please contact **Bob Cecon** or **Jacob Metz**.

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