THE NATURAL CONDITION IMMUNITY

As we approach the spring season, warmer temperatures are bound to entice outdoor enthusiasts to venture out to the wide open spaces to camp, hike and backpack. As we all know, there is no shortage of visually stunning and otherwise inviting wilderness areas throughout the state of California to visit – from Big Sur, to Death Valley, to the Trinity Alps Wilderness.

Before you get excited about those hot dogs and s'mores, you should be aware of Government Code § 831.2, commonly referred to as the "natural condition immunity," which could render public entities immune against claims of premises liability and dangerous condition liability. Government Code § 831.2 provides that "neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach."

§831.2.
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The purpose of the natural condition immunity is to encourage public use of unimproved government property by relieving government agencies from being "'put to the expense of making the property safe, responding to tort actions, and paying damages.'" Sounds like a good idea, right? Keep reading to learn how you can be denied damages by a public entity if you camp in an area that is classified as "unimproved."

The natural condition immunity was discussed in the recently published case of County of San Mateo v. Superior Court of San Mateo County (2017) 13 Cal.App.5th 724. As shown by County of San Mateo, the issue is not straightforward and there are many factors to be considered such that summary judgment is generally not appropriate. Indeed, the lead drafter of the Government Claims Act, Professor Van Alstyne, contemplated that "the distinction between the 'developed' land and the 'undeveloped' sectors of a park might well be difficult to identify in terms of boundary lines on a map, and might have to be treated as a question fact…"

In County of San Mateo, plaintiff child brought a lawsuit against the County of San Mateo alleging premises liability and dangerous condition of public property after he suffered injuries as a result of a 72-foot tall diseased tree falling on his tent while camping within a County-owned wilderness area. The County moved for summary judgment on the grounds that it was immune from liability under the natural condition immunity.

The trial court denied the County's motion, concluding that there were triable issues of fact as to whether the subject property was "unimproved" within the meaning of the statute. First, the trial court pointed out that the campsite where plaintiff's injuries occurred had been "improved" by a clearing, picnic tables, a fire pit, a barbecue pit, and bumper logs and that in the tree's immediate vicinity, there were two other developed campsites and a paved roadway.

Next, the trial court distinguished the matter from an earlier similar case, Alana M. v. State of California (2016) 245 Cal. App.4th 1482. In Alana M., a public entity was found to be immune from liability in a suit brought against it by plaintiff who had similarly been injured by a falling tree. The Court there explained that the public entity was immune since the tree (and not the plaintiff) was located on unimproved property.

The Alana M. Court determined that in interpreting Government Code § 831.2, the relevant inquiry should be the character of the property where the natural condition

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Clearly, there are many nuances to the natural condition immunity. So before you load up your packs and begin your ascent up a mountaintop this spring season, consider the character of your campsite and whether the land could be described as "improved."

(in Alana M., the tree) is located, and not the location of where the injury occurred. In County of San Mateo however, plaintiff presented expert opinion that the tree at issue had roots which grew underneath the campsite where plaintiff suffered his injuries. As such, the trail court determined that there were triable issues of fact and therefore, summary judgment would not be appropriate.

Last, the trial court considered expert opinion presented by plaintiff that man-made physical alterations contributed to the diseased condition of the tree which ultimately caused it to break and fall onto plaintiff, causing him injuries. The trial court determined that this evidence presented by plaintiff also created a triable issue of fact of whether such man-made contributions caused the subject property to be considered "improved" such that the County would not be entitled to summary judgment.

Clearly, there are many nuances to the natural condition immunity. So before you load up your packs and begin your ascent up a mountaintop this spring season, consider the character of your campsite and whether the land could be described as "improved." Otherwise, you may be out of luck if you try to seek monetary compensation for injuries you suffer while you are on your trip in the great outdoors.

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RECREATIONAL TRAIL IMMUNITY

831.4.
A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:
(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.
(b) Any trail used for the above purposes.
(c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

Of the many immunities available under the California Government Code, "trail immunity" under section 831.4 has long shielded public entities from liability when injuries are suffered by those using public property for recreational purposes. Immunity under this section even extends to private property owners who grant public easements to public entities for those purposes. The immunity was enacted to encourage public entities and private easement grantors to allow the use of public property for recreation without the burden and expense of litigation stemming from alleged injuries on the trails leading to recreational activities.

However, an appellate court recently rejected this defense in a case involving the City of Pasadena. In Jacobo Garcia v. American Golf Corporation, the City was sued after a young child was struck in the head by a stray golf ball, which caused a brain injury. At the time of his injury, the child was in a stroller on a walkway that was part of the City of Pasadena's Rose Bowl Loop, located next to a golf course. The child's mother sued the City, which owns the golf course, along with the private entity that managed and operated the golf course.

The City asserted trail immunity to defend against the lawsuit. The plaintiffs countered that the dangerous condition was not the location of the walkway — insofar as its proximity to the golf course — but rather the inadequacy of the seven-foot high fences around the golf course, and other measures taken to guard against injuries that could be caused by stray golf balls. The trial court sided with the City, and the plaintiffs appealed. The issue on appeal was whether the injury was caused by a dangerous condition of the walkway for purposes of trail immunity.

Rejecting the City's assertion and trial court's application of trail immunity, the appellate court found that, while the City could be protected from injuries caused by the walkway itself, the immunity did not extend to dangerous conditions caused by the golf course – an adjacent public property.

In reaching its conclusion, the appellate court had to distinguish the case from a number of contradictory cases, including Leyva v. Crocket & Co., Inc., a case decided in January of this year. The Leyva court evaluated strikingly similar facts: a pedestrian traveling along a public path adjacent to a golf club suffered an injury caused by a stray golf ball. However, in Leyva, the appellate court applied trail immunity and extended the cloak of immunity to a private golf club owner who had granted adjacent easements to a county for public unpaved recreational hiking trails.

The difference between the Leyva opinion and the Garcia opinion is a matter of policy. The appellate court honed in on fairness and disincentives for immunizing the City. In particular, the court deemed it fair to deny the City immunity for a dangerous condition

on the golf course that increases the risk of harm by third party conduct and opined that cloaking the City with immunity would disincentive it from correcting the dangerous condition.

The appellate court has thus limited a public agency's trail immunity under certain circumstances. With Garcia in mind, public entities and private owners/operators alike should ensure that sufficient preventative measures are considered and taken when evaluating recreational properties adjacent to public trails.

For additional information please contact SDRMA's Chief Risk Officer Dennis Timoney, ARM at 916-231-4141 or email Dennis at dtimoney@sdrma.org.