

# DANGEROUS CONDITION OF PUBLIC PROPERTY UPDATE ON RECENT CASE LAW JUNE 15, 2023

PRESENTED BY: **MICHAEL R. NEBENZAHL AND CHARLES ABBOTT**

**burke**

BURKE, WILLIAMS & SORENSEN, LLP

# INTRODUCTIONS



**Michael R. Nebenzahl**  
Los Angeles Partner



**Charles Abbott**  
Los Angeles Partner

- 65 years of experience
- 50+ Trial Verdicts
- Primary Practice:  
Public Entity Defense
- Numerous MSJ's  
granted for cities  
throughout southern  
California

# DANGEROUS CONDITION OF PUBLIC PROPERTY

## DISCUSSION TOPICS

- Dangerous Condition: Gov't Code §§ 830(a) and 835
- Notice: Gov't Code § 835(b)
- Immunities: Gov't Code §§ 830.6 and 830.8
  
- Claims Related Issues and Documentation
- Tips for MSJs or Witness Preparation

# STACK V. CITY OF LEMOORE (2023)

91 CAL.APP.5TH 102, 308 CAL.RPTR.3D 45 (5TH APP. DIST.)

---

- Experienced jogger trips over a 1  $\frac{3}{4}$  inch offset that he regularly jogs over. Offset adjacent to a second offset.
- Upholding trial verdict, case rejects application of *Huckey v. Temecula* (4th App. Dist.).
- Now, any offset greater than one inch unlikely to be trivial

# STACK V. CITY OF LEMOORE (2023)

91 CAL.APP.5TH 102, 308 CAL.RPTR.3D 45 (5TH APP. DIST.)

---

- Holistic/multi-factor test is not much different than *Fielder*, *Stathoulis*, and *Huckey*.
- Plaintiff's familiarity with the site is not a factor for DCPP. Although distraction may be a factor.
- Expert opinion cannot support DCPP as this is a factual question and an expert opinion cannot support the ultimate legal conclusion.

# NUNEZ V. CITY OF REDONDO BEACH (2022)

81 CAL.APP.5TH 749, 297 CAL.RPTR.3D 461 (2ND APP. DIST.)

---

- Sidewalk policy does not establish legal standard for a dangerous condition.
- Endorses Hickey standard focusing court on totality of circumstances.
- A “City does not have a duty to protect pedestrians from every sidewalk defect...only those that create a substantial risk of injury....”

# HERNANDEZ V. CITY OF STOCKTON (2023)

90 CAL.APP.5TH 1222, 307 CAL.RPTR.3D 813 (3RD APP. DIST.)

---

- Claim and Complaint both allege an uneven sidewalk.
- At deposition, Plaintiff explains he fell into an empty tree well.
- Appellate court upheld MSJ because his testimony does not “fairly reflect” the Claim.

# MARTINEZ V. CITY OF BEVERLY HILLS (2021)

71 CAL.APP.5TH 508, 286 CAL.RPTR.3D 462

---

- Constructive notice differs whether offset is in a sidewalk or alley or street.
- May indicate Court's willingness to evaluate substantial risk of injury based on location of offset.



# TANSAVATDI V. CITY OF RANCHO PV (2023)

14 CAL.5TH 639, 527 P.3D 873, 307 CAL.RPTR.3D 346

---

- Complaint alleged (1) intersection constituted a DCPP and (2) City had not adequately warned of the DCPP not apparent to motorists.
- Appellate court agreed City established design immunity. So, City was not liable for creating a DCPP, but design immunity does not apply to claim of failure to warn about the DCPP.

# TANSAVATDI V. CITY OF RANCHO PV (2023)

14 CAL.5TH 639, 527 P.3D 873, 307 CAL.RPTR.3D 346

---

- To prevail on a failure to warn claim:
  - Must show public entity had notice that its design resulted in a DCPP.
  - Must show that the accident-causing condition was a concealed trap.
  - Absence of a warning was an independent, separate, concurring cause of the accident.

# TANSAVATDI V. CITY OF RANCHO PV (2023)

14 CAL.5TH 639, 527 P.3D 873, 307 CAL.RPTR.3D 346

---

- Public entity has a continuing duty to review plan in light of its actual operation.
- Design immunity recognizes that the design may be the best engineers can do under the circumstances but still leave foreseeable dangers that can and should be addressed through appropriate warnings.

# CITY OF CHICO V. SUPER. CT. (2021)

68 CAL.APP.5TH 352, 283 CAL.RPTR.3D 432

---

- Immunity for injuries caused by natural condition of unimproved property (Gov't Code § 831.2)
- Immunity applies even if City engages in periodic pruning and improved pathways throughout property.

# DANGEROUS CONDITION OF PUBLIC PROPERTY

## TAKEAWAYS

- Expect more cases about one-inch offsets
- Consider a Sidewalk Inspection and Repair policy
- *Tansavatdi* means more considerations at design and continuing duty to review. Also means more warning signs.



---

**THANK YOU!**