

CLIENT NEWS BRIEF

California Supreme Court Holds Firefighting Immunity Under California's Government Claims Act Is A Waivable Affirmative Defense

In *Quigley v. Garden Valley Fire Protection District*, the California Supreme Court rejected the midtrial dismissal of a lawsuit involving a firefighter who suffered severe and permanent injuries after she was run over by a water truck while sleeping at a base camp. The court held that a firefighting immunity under Government Code section 850.4, part of California's Government Claims Act (GCA) (Gov. Code, § 810 et seq.) is an affirmative defense which must be raised before trial and may be waived absent timely assertion.

Background

Plaintiff Rebecca Quigley was a U.S. Forest Service firefighter and part of a team assigned to assist with a large fire which broke out in the Plumas National Forest in September 2009. While Quigley was fighting the fire, she had to sleep at a base camp with other firefighters. One night, while Quigley was sleeping in a field in her sleeping bag, an employee of an independent contractor who was servicing a nearby shower unit drove his truck onto the field where Quigley was sleeping, severely injuring her. Quigley sued Garden Valley Fire Protection District, Chester Fire Protection District, and their employees for damages based upon claims of negligence, failure to warn, and dangerous condition of public property.

During the trial, defense counsel filed a motion for nonsuit arguing, for the first time, that the defendants were entitled to immunity under Government Code section 850.4, which grants public agencies and public employees immunity against claims for injuries caused by fighting fires. The trial court granted the motion, rejecting Quigley's argument that the defendants waived the immunity defense when they failed to invoke immunity in their answer to her complaint. The trial court specifically ruled that Government Code section 850.4 immunity—one of several governmental immunities provided for under the Government Claims Act—is jurisdictional and therefore could be raised by a defendant at any time, including during trial. On appeal, the Court of Appeal affirmed the nonsuit in favor of the defendants and found that the defendants were immune from liability based upon a broad interpretation of section 850.4, and that such immunity is jurisdictional and thus can be raised at any time.

The Court's Opinion

On review, the California Supreme Court considered whether the subject governmental immunity provision, section 850.4, constituted an affirmative defense, which a defendant must timely raise, or whether such immunity was absolute so that it served as a limitation on the fundamental jurisdiction of the courts. Affirmative defenses are considered waived if not timely asserted. In reaching its conclusion, the state high court affirmed that section 850.4 in fact confers an absolute immunity from liability. However, the court distinguished absolute immunity from a question of fundamental jurisdiction, and found the section 850.4 *also* operates as an affirmative defense. In other words, even as an absolute immunity, section 850.4 is only effective as a shield from liability if a defendant invokes the immunity before trial as an affirmative defense.

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The court found that there existed a factual dispute as to whether the defendants timely invoked firefighting immunity when they raised an affirmative defense in their answer which broadly cited all the applicable immunity provisions “from Sections 810 to 996.6, inclusive” of the Government Claims Act. The court remanded the case back to the appellate court for further adjudication on this issue.

Takeaways

Quigley is significant in that it clarifies that defendants must timely invoke the absolute firefighting immunity provided for by Government Code section 850.4 in order to reap the benefits of the affirmative defense. Critically, it is likely that the court’s analysis in this respect will apply to the timely assertion of the other governmental immunity defenses provided for under the Government Claims Act.

If you have any questions about the *Quigley* case or about government claims in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our podcast, follow us on [Facebook](#), [Twitter](#), and [LinkedIn](#) or download our [mobile app](#).

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