CLIENT NEWS BRIEF

Appellate Courts Reject Recreational Trail Immunity for Adjacent Hazards

August 2017
Number 47

Two decisions in the last three months have increased the potential for a public entity to be held liable for an injury suffered on one of its recreational trails. Appellate courts deciding *Garcia v. American Golf Corporation* (May 3, 2017, No. B267613) ___ Cal.App.5th ___ and *Toeppe v. City of San Diego* (July 27, 2017, No. D069662) ___ Cal.App.5th ___ held that a public entity cannot assert recreational trail immunity when an adjacent hazardous condition of the public entity's property is unrelated to, or independent of, the trail. Previous decisions had broadly applied statutory recreational trail immunity to hazards on property adjacent to public trails.

The California Supreme Court denied review of the *Garcia* decision on August 9. As of this writing, no request for Supreme Court review has been filed in *Toeppe*.

Prior Law

Public entities generally are immune from liability for injuries caused by their recreational trails, pursuant to Government Code section 831.4. The statute specifically provides that a public agency is not liable for an injury caused by a "condition of" an "unpaved road" or "trail" used for general recreational purposes.

In the past, this immunity has been consistently interpreted to broadly protect public agencies from liability due to injuries from both design elements and locations of trails. In *Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074, the plaintiff was bumped off a path and started to slip down a hill. The court held that recreational trail immunity extended to both the design of a trail (the lack of handrails) and the location (the placement next to a steep slope). One year later, in *Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332, the appellate court held that the "condition of" a bikeway included the design of a bicycle gate into which plaintiff had crashed, and that even though the injury occurred just off the bikeway itself, that the gateway to the bike path was "an integral part of the bike path."

Earlier this year, in *Leyva v. Crocket & Company, Inc.* (2017) 7 Cal.App.5th 1105, an appellate court considered a case where the plaintiff was struck by a golf ball while on a publicly owned trail. The plaintiff argued that the lack of safety barriers on the adjacent golf course caused the injury, and that this condition was not a faulty design or condition of the trail. The appellate court disagreed and concluded that the immunity applied since the trail's location next to the golf course was an "integral feature" of the trail, and the erection of a safety barrier would be equivalent to the installation of a handrail in *Amberger*.

The *Garcia* Decision

Factually similar to *Leyva*, the plaintiff in *Garcia* was a child in a stroller who was hit in the head by a golf ball while on a pedestrian walkway between a roadway and a golf course, which were all owned by a city. However, in *Garcia* the court


William P. Curley III
Partner and Co-Chair
Local Government Practice Group
Los Angeles Office
wcurley@lozanosmith.com


Arne B. Sandberg
Senior Counsel
Walnut Creek Office
asandberg@lozanosmith.com

Lozano Smith
ATTORNEYS AT LAW

concluded that *Amberger* "did not hold that there must be immunity for every injury occurring on a trail when an adjacent public property was a contributing factor. … It identified the issue as whether the trail and an adjacent public property meet a relatedness test." The court found that the trail and golf course did not pass this relatedness test, and it distinguished *Leyva* despite its strong factual similarities.

Consequently, the court issued a narrow holding: A public golf course cannot assert a recreational trail immunity defense when the trail abuts a public street; the course is a commercially-operated, revenue-generating enterprise; the course has a dangerous condition; and the dangerous condition caused harm to a user of the trail.

The *Toeppe* Decision

Issued by the same appellate district that issued *Leyva*, the *Toeppe* decision used an approach similar to *Garcia* but stated a broader holding. The plaintiff was walking on a trail in a public park when a eucalyptus branch fell and injured her. The court distinguished *Amberger* by saying that the tree was "independent of the trail" and that the dangerous conditions in the two cases were fundamentally different. The court also distinguished *Leyva* despite the fact that the hazardous condition in *Leyva* was off the trail and independent of it. The court concluded that the recreational trail immunity did not apply, holding that "this is not a case about trails. It is about trees."

Impact on Public Agencies

Leyva still has some precedential value, but by tacitly disapproving that case, the *Garcia* and *Toeppe* cases seem to establish a new paradigm that limits public agency immunity for hazardous conditions adjacent to recreational trails. Accordingly, public agencies may need to reassess the design, insurance, maintenance and use of their trails to minimize the risk of liability.

If you have any questions about these decisions or trail immunity 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 visit our website, follow us on Facebook or Twitter or download our Client News Brief App.