IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SEVENTH APPELLATE DISTRICT
DIVISION ONE

KENNETH K., CAROL O., JAMES K., BEVERLY B., by and through her guardian ad litem, CAROL O., Plaintiffs-Appellants, v. CITY of CACTUS, MARY ROSE D., JOE D., ROCKY M., H. MOTORS, DOES 1-50, Defendants-Respondents,	Case No. _____

APPELLANTS' OPENING BRIEF

From the Judgment of the Superior Court
Of the State of California in and for
The County Sagebrush
Case No. _____

Honorable _____, Judge Presiding

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I. INTRODUCTION

Plaintiffs Kenneth K., Carol O., James K. and Beverly B. (by and through her guardian ad litem, Carol O.) appeal the order of the Superior Court granting summary judgment to Defendant City of Cactus (hereinafter referred to as "City"). The Superior Court based its decision to dismiss the claims against City on the finding that two statutory immunities apply: (1) the immunity provided by California Government Code sections 830.4 and 830.8 (shielding a public entity from liability merely because of a failure to provide regulatory traffic control signs – the so-called "sign immunity"); and (2) the immunity provided by Government Code section 830.6[1] (preventing public-entity liability for injuries caused by the design or plan of a public improvement – known as "design immunity").

The Superior Court erred in deciding, as a matter of law, that these immunities apply and that Plaintiffs' claims against City are therefore precluded. As detailed below, Plaintiffs presented adequate evidence to create a triable issue of fact on both immunities. As such, the applicability of the immunities at issue should have been submitted to the trier of fact rather than decided by the court as a matter of law.

II. STATEMENT OF THE CASE

Plaintiffs filed a Complaint for Damages on July 18, 1997, seeking damages from the death of their mother, Maxine K. (Clerk's Transcript on Appeal, 001-011.[2]) Maxine K. died from injuries suffered in an accident that occurred as she was crossing Sixth Street in the City of Cactus. Maxine K. was in the cross walk and was hit when a truck crossing Sixth Street on J Street collided with a car traveling westbound on Sixth Street, knocking the car into Maxine K. The complaint named as defendants Mary Rose D. and Rocky M. (the drivers of the two vehicles involved in the accident), Joe D. (the registered owner of the car driven by Mary Rose D.), H. Company, dba H. Motors (Rocky M.'s employer), and the City of Cactus.[3] City was included in the lawsuit under the theory that the intersection at Sixth and J streets constitutes a dangerous condition for which City should be held liable, and

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[1] All references herein to section numbers shall be to sections of the California Government Code, unless otherwise noted.

[2] References hereinafter to "CT" shall refer to the indicated page number of the Clerk's Transcript on Appeal, filed with the Court on February 9, 1999.

[3] Plaintiffs were required to file a claim with City, pursuant to the Government Tort Claims Act. The claim was timely filed and rejected by City, and the lawsuit was filed within six months of that rejection. (CT 003-4.)

that City was negligent in the design and maintenance of the intersection. (CT 004.)

Plaintiffs reached a settlement with defendants Mary Rose D., Rocky M. and H. Motors. These defendants moved for good faith settlement on May 22, 1998, and the Superior Court approved the settlement on June 18, 1998. (CT 235-43.) Plaintiffs subsequently filed a request for dismissal as to Mary Rose D., Joe D., Rocky M. and H. Motors. (CT 242, 245.)

On July 6, 1998, City, the only remaining defendant, filed its motion for summary judgment on all claims, on the grounds that City has immunity under section 830.6 and sections 830.4 and 830.8. (CT 424-30.) On July 22, 1998, Plaintiffs filed an opposition to City's motion, as well as objections to the evidence provided by City in support of its motion. (CT 445, 464-5.) City filed its reply on August 7, 1998. (CT 553-60.)

The Superior Court heard oral argument on the summary judgment motion on August 12, 1998, and issued an order granting City's motion on September 10, 1998. (CT 572-8.) Judgment in favor of City was entered on October 9, 1998. (CT 595-6.) Plaintiff filed a notice of appeal on October 22, 1998. (CT 597.)

III. Statement Of Facts

The Intersection

Sixth Street is a two-lane, one-way street, heading west through downtown Cactus. (CT 265.) It has been designated as a "through street" by the Cactus City Council. (CT 255, 261.) The primary feature of such a street is that it has fewer stop lights and stop signs than other streets in the vicinity. (*Ibid.*) Traffic on Sixth Street is controlled only by traffic signals at E, H and I Streets, all of which are west of (past) the J Street intersection. (*Ibid.*) Parking is allowed on both the north and south sides of Sixth Street, except for on a 20-foot section on each side of the street east of J Street, which is marked with red curb. (CT 265.) J Street is a two way street heading north and south that bisects Sixth Street. Traffic on J Street where it crosses Sixth Street is controlled by a stop sign on each side of the intersection. (CT 265.)

The Accident

On January 27, 1997, decedent Maxine K. was walking northbound on the west side of J Street in Cactus. (CT 434, 460.) She began

crossing Sixth Street from the south at about the same time a car driven by Rocky M. approached the J Street intersection on Sixth. (CT 435.) Rocky M. was driving at about 33 miles per hour (the speed limit is 25) in the left (southernmost) lane. (CT 472.) Instead of stopping when he saw Maxine K. enter the cross walk, Rocky M. braked slightly and began changing lanes, in an effort to give more room to the pedestrian to the south. (CT 381.) At about the same time, Mary Rose D. was at the stop sign on the north side of J Street in a small pickup and was attempting to cross Sixth Street in order to continue southbound on J Street. (CT 384.) She did not see Rocky M. approach from her left (from the east) and proceeded into the intersection, where she struck the right rear panel of Rocky M.'s car. (CT 385-6.)

The impact from Mary Rose D.'s truck spun Rocky M.'s car in a clock-wise direction and shoved it southward and into the crosswalk, striking Maxine K. (CT 469-70.)

Mary Rose D. testified that she did not see Rocky M. approach because her view was blocked by cars parked on Sixth Street. (CT 492.)

Street Design

The Cactus City Counsel designated Sixth Street as a "through street" in 1963, and specified that traffic on Sixth Street would only be stopped at certain intersections. (CT 261.) Shortly before 1987, several accidents were reported for the intersection of Sixth and J Streets. (CT 265.) After receiving inquiries from these concerned citizens (CT 533), the City Engineer directed staff to conduct a traffic investigation to determine whether a stop sign or stop signal should be installed at the intersection. (CT 534.)

The traffic sign and signal studies were conducted by a traffic technician employed by City, Daniel M. (CT 255.) It has not been established, other than by his own assertion, that Daniel M., who is not a certified engineer, had been granted the authority to personally approve or disapprove the placement of a stop sign or signal at an intersection. Further, the record is devoid of evidence establishing that the studies prepared by Daniel M. were approved by another official or body that had been granted such discretionary authority.

Plaintiffs presented the declaration of a registered civil engineer. This expert witness concluded that the warrant studies in 1987, while not technically justifying the placement of stop signs and signals, did produce specific results that should have alerted City to the need to mitigate problems at the intersection. (CT 480-1.)

At about the same time as the warrant studies, the Parking Place Commission also reviewed the sight line issue on Sixth Street. (CT 257.) Modifications were made to restrict vehicle parking on the south side of Sixth Street, but no modifications were made on the north side of Sixth Street. (*Ibid.*) Again, there is no evidence in the record indicating that the Parking Place Commission had authority to determine or approve the parking design on Sixth Street, or when and how it actually did so. (CT 513.) Further, there is no evidence in the record indicating that the Commission, assuming it had discretionary authority to approve such a design, considered the design of parking along the north side of Sixth Street at all. Vehicles parked on the north side of Sixth Street blocked the view of the driver crossing J Street in the case at bar. (CT 493, 595.)

The original signal and sign warrant studies were conducted in 1987. Since that time, significant development has occurred in the vicinity of the intersection. Specifically, a jail complex was constructed in 1993. As a result, J Street was closed between Fourth and Fifth Streets (to the north of the subject intersection). (CT 481.) Although traffic studies were completed at that time, the Environmental Impact Report (hereinafter "EIR") prepared for the development recommended no changes in the Sixth and J Street intersection. (*Ibid.*) However, a reassessment of parking on Sixth Street was recommended, but was apparently not completed. (CT 353.)

The development envisioned by the EIR did not come to fruition. Originally, a jail and civic center combination was planned. However, only the jail was constructed. (CT 507.)

Problems With The Intersection

Plaintiffs' expert, Edward R., indicated that a sight line problem is well established at the intersection of Sixth and J streets. (CT 479.) This problem is created by parking on the north and south sides of Sixth Street. (*Ibid.*) As a result of the sight distance problem, vehicles traveling north and south on J Street crossing Sixth have difficulty seeing approaching vehicles traveling westbound on Sixth Street. (*Ibid.*) Similarly, the vehicles traveling on Sixth have difficulty seeing vehicles at the J Street stop signs. (*Ibid.*) Both drivers testified that they did not see each other before the collision. (CT 380, 492.)

Sixth Street proceeds in a slight uphill fashion to the west. Plaintiffs' expert, Edward R., indicated that he believed the uphill gradient, as well as the placement of signal lights a short block from the J Street intersection, cause drivers to speed on Sixth Street, both to

compensate for the uphill direction of the street as well as to time the lights ahead. (CT 479.) This opinion is substantiated by the fact that City speed survey studies show that most vehicles travel in excess of the posted 25 mile-per-hour speed limit. (*Ibid.*) In addition to this tendency to speed, the configuration of Sixth Street also encourages drivers to look past the J Street intersection, further exacerbating the sight line problem. (*Ibid.*)

The sight line problem was recognized by City officials, including the City Manager and the Director of Public Works. (CT 520.) Further, the history of "correctable" accidents over the one-year period preceding the accident also substantiates the existence of the problem. (CT 480.) Correctable accidents are those that would have been prevented with traffic control devices at the intersection. In the 12 month period before the accident, there were four correctable accidents. The subject accident occurred just days after the 12 month period expired. Thus, there were essentially five correctable accidents in a one year period. (CT 480.) There were substantially more non-reported accidents in that same period. (*Ibid.*)

IV. Judgment Appealed From and Issues On Appeal

Plaintiffs appeal the order granting City's motion for summary judgment dated September 10, 1998. (CT 572-8.) The Judgment in favor of City entered pursuant to that order on October 9, 1998 (CT 595-6.), if allowed to stand, would finally dispose of all the issues between the parties, and appeal to this Court is therefore appropriate pursuant to Code of Civil Procedure section 904.1.

The issues on appeal are:

1) Whether the Superior Court erred in finding that as a matter of law, City is immune under section 830.6 (design immunity); and

2) Whether the Superior Court erred in finding as a matter of law that City is immune under sections 830.4 and 830.8 (traffic sign immunity).

V. Standard Of Review

A. Review Of Summary Judgment Order In General

A trial court properly grants summary judgment when the moving papers show there is no triable issue as to any material fact, and the moving party is entitled to judgment as a matter of law. (*Alvarez v. State of California* (1999) 79 Cal. App.4th 720, 727 [95 Cal.Rptr.2d

719]; Code Civ. Proc. § 437c, subd. (c).) A defendant moving for summary judgment meets its burden of proof by showing there is a complete defense to the action. (*Ibid.*, Code Civ. Proc. § 473c, subd. (o)(2).) Once the defendant does so, the burden shifts to the plaintiff to show the existence of a triable issue of fact with respect to that defense. (*Ibid.*) The papers are to be construed strictly against the moving party and liberally in favor of the opposing party; any doubts regarding the propriety of summary judgment are to be resolved in favor of the opposing party. (*Kulesa v. Castleberry* (1996) 47 Cal.App.4th 103, 112 [54 Cal.Rptr.2d 669].)

An appellate court reviews a trial court's decision on summary judgment *de novo*. (*Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 385 [62 Cal.Rptr.2d 803].) That is, the appellate court independently applies the same three-step analysis required of the trial court:

> We identify issues framed by the pleadings; determine whether the moving party's showing established facts that negate the opponent's claim and justify a judgment in the moving party's favor; and if it does, we finally determine whether the opposition demonstrates the existence of a triable, material factual issue.

Tsemetzin v. Coast Federal Savings & Loan Assn. (1997) 57 Cal.App.4th 1334, 1342 [67 Cal. Rptr.2d 726].

Thus, because City moved for summary judgment in this case, City has the burden, both at trial and on appeal, to establish facts that negate Plaintiffs' claims and establish a defense to the action. If it does so, it is Plaintiffs' burden to show that these facts are in genuine dispute. Further, this Court should construe Plaintiffs' moving papers liberally and City's moving papers strictly, and should resolve any doubt regarding the propriety of summary judgment in favor of Plaintiffs.

B. Review Of Finding Of Immunity Under Section 830.6

The immunity provided by section 830.6 (design immunity) is an affirmative defense. (*Flournoy v. State of California* (1969) 275 Cal.App.2d 806 [80 Cal.Rptr. 485].) When raised on motion for summary judgment or nonsuit, the first two elements, whether the injury was caused by the design and whether the design was approved by a legislative body or an officer exercising delegated discretion, may only be resolved as issues of law if the facts are undisputed. (*Id.*) The third element, whether the reasonableness of the design is supported by substantial evidence, requires only evidence of solid value which reasona-

bly inspires confidence. (*Hefner v. County of Sacramento* (1988) 197 Cal.App.3d 1007, 1014 [243 Cal.Rptr. 291].)

In *Grenier v. City of Irwindale* (1997) 57 Cal.App.4th 931 [67 Cal.Rptr.2d 454], the court concluded that the substantial evidence test should not apply to the first two elements, despite some authority that has suggested that substantial evidence is also sufficient for these two elements. (See, e.g., *Higgins v. State of California* (1997) 54 Cal.App.4th 177, 186 [62 Cal.Rptr.2d 459].)

> Yet the language of the statute 'suggests that the substantial evidence test may apply only to the reasonableness element, and that a jury must decide the remaining elements of design immunity on the basis of the preponderance of the evidence.'

(Grenier v. City of Irwindale, supra, 57 Cal.App.4th at p. 940, fn 5, citing Fisher, *Design Immunity for Public Entities* (1991) 28 San Diego L.Rev. 241-3.)

Plaintiffs submit that the weight of authority, as well as the plain language of the statute itself, militate for a finding that summary judgment on the design immunity defense is only appropriate where the first two elements are proved by undisputed evidence. Thus, upon a showing of genuine dispute of material fact, those issues must be submitted to the jury.

C. Review Of Finding Of Immunity Under Sections 830.4 And 830.8

As discussed below, whether the immunities provided in sections 830.4 and 830.8 apply in a particular case requires a determination as to the cause of the injury. If the *sole* cause of injury is the failure of City to install regulatory traffic devices at the intersection (830.4), then the immunity applies, unless the intersection also constitutes a trap that City should have corrected or warned against (830.8). Because these are factual determinations, summary judgment is appropriate only if no triable issue of material fact exists. (*Hilts v. County of Solano* (1968) 265 Cal.App.2d 161, 174 [71 Cal.Rptr. 275].) Thus, the general summary judgment standard of review discussed in section A above is applicable.

VI. Trial Court Erred In Deciding City Met Burden Of Showing Applicability Of Desing Immunity

A public entity may be liable for negligently creating an injury-producing dangerous condition on its property or for failing to remedy a dangerous condition despite having had notice and sufficient time to protect against it. (See generally sections 830 and 835; *Grenier v. City*

of Irwindale, supra, 57 Cal.App.4th at p. 939.) However, if the public entity successfully pleads and proves all the requisite elements of section 830.6, the so-called "design immunity" may apply and protect the public entity from liability. Section 830.6 provides in pertinent part:

> Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity, or some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design . . . or (b) a reasonable legislative body or other body or employee could have approved the plan or design . . . .

A municipal defendant has the burden of establishing as a matter of law all the elements of the defense. (*Cameron v. State of California* (1972) 7 Cal.3d 318, 324 [102 Cal.Rptr. 305].) The affirmative defense of design immunity is generally broken into three elemental categories:

> (1) a causal relationship between the plan and the accident; (2) discretionary approval of the plan prior to construction; [and] (3) substantial evidence supporting the reasonableness of the design.

(Higgins v. State of California, supra, 54 Cal.App.4th at 186.) Of course, as a threshold matter, it must be shown that the improvement was constructed according to a plan or design. Design immunity does not immunize decisions which were not made. (*Cameron v. State of California, supra*, 7 Cal.3d at p. 326.)

In the case at bar, City moved for summary judgment on the theory that the injuries suffered by Plaintiffs and their decedent, Maxine K., were caused by the design of the intersection, and as such, City is immune under section 830.6. City has offered as evidence of the design the following four items: (1) the City Council Resolution dated April 23, 1963, establishing Sixth Street as a through street, (one without a stop sign at its intersection with J); (2) the September 1987 traffic warrant study indicating no need for a stop sign on Sixth Street; (3) the December 1987 traffic warrant study indicating no need for a traffic control signal; and (4) the EIR conducted in connection with future construction of a City Justice Facilities and Civic Center Project, which reviewed the impact of the project on the intersection of Sixth and J streets. (CT 254-257.)

As discussed below, the Superior Court erred in granting summary judgment by finding that the undisputed facts establish the applicabil-

ity of the design immunity to this case. First, the threshold element was not met because none of the evidence listed above can be characterized as a "plan or design" for purposes of the design immunity statute. Second, even if construed as a plan or design, Plaintiffs have adequately shown that the accident was caused by something other than the features of the intersection that were the subject of the plan or design offered by City. Third, City has not offered adequate proof of the discretionary authority to approve the designs at issue. Fourth, City did not provide substantial evidence of the reasonableness of the design. Finally, even if all of these elements were met, Plaintiffs have raised a triable issue as to whether changed circumstances caused the design immunity to be lost.

A. City Has Not Established That Intersection Was Constructed Pursuant To "Plan or Design"

In order for the design immunity to apply, the public improvement must have been constructed according to a plan or design. The public agency has the burden of proving both the existence of the plan as well as the elements of the plan. Generally, this requires evidence of the original plan of the improvement.

The evidence found to be sufficient by the *Alvarez* court included a copy of the "As Built Plans" for the subject project, which contained their date of approval ("Approved April 8, 1968") and the signatures of at least four engineers (including "District Engineer R.E. Deffebach"). (*Alvarez v. State of California, supra,* 79 Cal.App.4th at p. 728.)

In *Callahan v. City and County of San Francisco* (1971) 15 Cal.App.3d 374 [93 Cal.Rptr. 122], the asserted dangerous condition was a T-type intersection which had been in existence for years. The evidence found sufficient by the reviewing court included evidence that plans for modifications of the intersection were approved by the Assistant City Engineer in 1957 and 1960, evidence that the intersection was not known to be unsafe at the time of the 1957 modification, and evidence of the on-going safety of the intersection (no similar accident had been known to occur at the intersection). (*Id.* at pp. 377-378.)

Here, unlike the state in *Alvarez*, City failed to submit details of the original design of the Sixth and J streets intersection. Instead, City merely offered proof that the City Council approved conversion of the street to a through street, that two studies were conducted to determine whether stop signs or signals should be added to Sixth Street at the in-

tersection, and an EIR that assessed the impact to the intersection of a nearby construction project, but which called for no changes to the intersection. Further, unlike the city in *Callahan,* City here failed to submit any plans for modifications to the intersection. For example, there would have been various plans affecting the area in and around the intersection during the construction of the new jail facilities. A warrant study to decide whether a traffic control device is needed at an intersection is only one component of the "plan or design" of an intersection. The complete original design would conceivably include lighting, power (including the power pole on the northeast corner), curbs, gutters and driveways, parking, and the elevation and configuration of the intersection as a whole.

The EIR cannot be characterized as a "plan or design" because it was a preliminary step in developing the actual plans for the jail facility and civic center. In fact, the EIR mentions the need to address the parking problem, but does not actually specify any changes to the parking at the intersection, or indicate when, if ever, these changes would be made.

No plan or design was submitted for parking and vision obstruction conditions at the intersection. At most, Daniel M. offered testimony that the Parking Place Commission reviewed the parking and made changes, but City offered no evidence of this review, or its approval.

Because City has offered no evidence of a plan or design, pursuant to which the intersection was constructed, City failed to meet the threshold issue in determining whether the design immunity applies.

B. Vision Obstruction At Intersection Was A Cause Of The Accident And Was Not The Feature Of A Plan Or Design

Even if the evidence offered by City can be construed as elements of a plan or design, City failed to meet the remaining elements of the defense. First, the proponent of the design immunity is required prove that the alleged design caused the accident, as opposed to some other cause. (*Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 570 [136 Cal.Rptr. 751].) The injury-producing feature must have been a part of the plan approved by the governmental entity. (*Higgins v. State of California, supra,* 54 Cal.App.4th at p. 185.) The immunity only applies to "a design-caused" accident. (*Flournoy v. State of California, supra,* 275 Cal.App.2d at p. 812.)

In *Cameron*, the California Supreme Court held that the design immunity did not apply to the facts of the case. (*Cameron v. State of California, supra*, 7 Cal.3d at p. 326.) The dangerous condition as-

serted to exist involved the superelevation ("banking") of an "S" curve in the highway where the accident occurred. A civil engineer testified that the elevation across the road changed abruptly, tending to make a car roll. The state argued design immunity applied because the uneven superelevation was part of a duly approved design or plan of the highway. The engineer also stated that the design was in accordance with mid-1920 standards and was reasonable. (*Ibid.*)

Despite this evidence, the court held that the evidence failed to establish that the superelevation of the curve as actually constructed was the result of or conformed to a design approved by the public entity. (*Cameron v. State of California, supra*, 7 Cal.3d at p. 326.) Instead, the state had merely shown that the Board of Supervisors had approved a design showing the course of the right of way and the elevation above sea level of the white center stripe of the road. Therefore, there was no basis for concluding that any liability for injuries caused by the uneven superelevation was immunized by section 830.6. (*Ibid.*)

Here, Plaintiffs submitted expert testimony concluding that the accident at issue was caused in part by a vision obstruction at the intersection, created primarily by cars parked on both the north and south sides of Sixth Street (east of its intersection with J Street). (CT 479.) In addition, Plaintiffs experts concluded that the upward slope of the street in general, when combined with the placement of lights further west on J Street, had the effect of causing drivers to look past the J Street intersection and to speed on that stretch of road, further exacerbating the sight line problem. (CT 472.) In fact, Rocky M. acknowledged that he was speeding, and that he was not able to see the car that hit him or the pedestrian in the intersection partly because of the sight-line problem. (CT 500.)

Like the deficient design plan in *Cameron* which made no mention of the superelevation that was the actual cause of the accident, none of the "plans" offered by City addressed specific parking arrangements. Further, none of these plans addressed the upward slope of the street, the placement or timing of traffic lights further west on Sixth Street, or the establishment of the speed limit on Sixth Street.

City may assert that the sight distance problem was a factor considered in the investigation and warrant study conducted for the stop sign in October 1987. The introductory portion of the stop sign study notes that, "Sight distance is partially obstructed when vans and large trucks park on Sixth Street near the intersection." (CT 265.) The EIR also acknowledges the potential problem (CT 343) and recommends that the parking supply for the project should meet the parking ordinance requirements of the City. (CT 343) However, no evidence was submit-

ted by City establishing that these recommendations were acted upon before January 27, 1997, the date Maxine K. was killed.

Finally, reference is made in the deposition of Daniel M. as well as Daniel M.'s declaration, that the Parking Place Commission reviewed the parking on Sixth Street and made changes. However, the record is devoid of any declaration on the part of the Parking Place Commission itself describing this review, or the plan that resulted from this review, if any.

Under the principles of *Cameron* and *Alvarez*, City has failed to meet its burden of producing facts establishing the injury was caused by a feature of the intersection that was the subject of a plan or design. Thus, regardless of whether the Court applies the general summary judgment standard of review (absence of disputed material fact) or the substantial evidence standard, City clearly failed to meet either standard on this element. Because City must meet all elements to gain the benefit of the immunity, the trial court erred in granting summary judgment on this issue.

C. Approval Element Was Not Met Because City Presented Insufficient Evidence Of Discretionary Authority To Approve Plan Or Design Or Conformity With Established Standards

To satisfy the second element of the defense, the defendant must show that the plan or design that caused the injury was approved by the public entity's legislative body or officer exercising discretionary authority. (*Ramirez v. City of Redondo Beach* (1987) 192 Cal.App.3d 515, 526 [237 Cal.Rptr. 505].)

In the case at bar, City relies on four possible plans or designs which were approved in various manners. While the City Counsel, as City's legislative body, provided adequate approval for the designation of Sixth Street as a through street and for the acceptance of the EIR, City has failed to show adequate approval of the stop sign and traffic light warrant studies or the review and approval of the parking arrangements.[4]

1. Evidence of Daniel M.'s Authority Is Insufficient

City attempts to show that Daniel M., a senior traffic technician, had been delegated discretionary authority to conduct and approve

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[4] As discussed above, Plaintiffs contend that even if approval was deemed adequate, none of the features of the intersection approved through these plans actually caused the accident.

traffic warrant studies by the City Engineer's office. (CT 255.) However, City makes no offer of proof other than Daniel M.'s own statement that the City Engineer's office had been granted the authority by the legislative body to make such decisions. City also failed to establish that the City Engineer had lawfully delegated this authority to a technician.

In *Thompson v. City of Glendale* (1976) 61 Cal.App.3d 378, 384 [132 Cal.Rptr. 52], the reviewing court held that the director of public works had properly delegated to the superintendent of maintenance the authority to approve the design of a handrail because a local municipal code section expressly allowed the delegation of a power or duty. In *Alvarez*, the appellate court concluded that the element was satisfied because the state produced, among other things, declarations of present and former employees of Caltrans explaining the discretionary approval process for roadway design in general and for the specific project at issue. (*Alvarez v. State of California*, *supra,* 79 Cal.App.4th at p. 728.)

In contrast to *Thompson* and *Alvarez*, City has failed to submit any evidence to establish the nature and scope of the authority of the City Engineer within City's government structure. City has also failed to offer any independent evidence to support Daniel M.'s bald conclusion that in his post as senior traffic technician, he is delegated discretionary authority to supervise the general design, construction and placement of traffic regulatory devices. (CT 255.) Unlike *Alvarez,* where the state submitted general and specific evidence of the pertinent discretionary approval process, City in the case at bar has failed to produce any evidence of how the general approval process is effectuated between Daniel M. and the City Engineer and how it was accomplished for this intersection.

2. City Failed To Establish Daniel M.'s Authority To Make Parking Decisions, And Provided No Evidence Of Parking Place Commission's Authority

Even if City can establish that Daniel M. possessed the authority to make discretionary decisions about whether a traffic control device was warranted at the intersection, Daniel M. himself testified that the Parking Place Commission was the legislative body which would make decisions about putting colored curbs on a street. (CT 512.) Given this, there is little or no value to the conclusory statement Daniel M. makes in his declaration in support of the motion for summary judgment that, "[i]n 1987, the City also reviewed sight distance

at the intersection of Sixth and J Streets, and the Parking Place Commission approved and inspected parking on Sixth Street." (CT 257.)

No documentary evidence was submitted by City whatsoever concerning any discretionary design decisions made by the Parking Place Commission. Nor was any evidence submitted establishing the authority of the Commission. Based on the current record, it is impossible to know whether the Commission has any legislative duties or discretionary decision-making powers whatsoever, or whether it is merely an advisory board. Again, a resolution by the City Counsel or a provision in the City Charter would be necessary to establish these facts. Defendant presents neither.

3. City Has Offered No Competent Evidence Regarding The Intersection's Compliance With Established Standards

In addition to showing that the design was specifically approved by an employee exercising discretionary authority, City may also meet the approval element by showing the design conformed to previously approved standards.

In *Hefner v. County of Sacramento, supra,* 197 Cal.App.3d 1007, the plaintiff asserted that the placement of a "limit line" caused a driver's visibility at an intersection to be obscured. The plan for the intersection did not designate placement of the limit line. Rather, a senior traffic supervisor made the decision about where the line should be placed according to county standards that had been promulgated by a civil and traffic engineer. Copies of the county's standards were incorporated by reference into the declaration of the promulgating engineer. The initial construction design was approved by an engineer, and limit line's conformance with standards was later verified by the declaration of an independent civil engineer.

In *Uyeno v. State of California* (1991) 234 Cal.App.3d 1371 [286 Cal.Rptr. 328], the plaintiffs asserted the timing of a traffic signal was not approved in advance of its implementation, in that the timing was not contained in the original design. The state had proffered evidence of how traffic signal systems generally were approved and additional evidence of how the subject signal system received its approval. Significantly, the system had received approvals by the deputy director for Caltrans in San Francisco, an electrical design engineer, and the local deputy director of public works. The appellate court deemed this evidence to be sufficient. (*Id.* at p. 1379.)

Here, City has merely offered the opinion of a traffic technician that the intersection complies with unspecified standards. Unlike in *Hefner*,

City submitted no proof concerning the actual construction of the intersection, much less that the design had been approved by a civil engineer. Further unlike *Hefner*, City failed to articulate the specific standards used for the intersection layout or how the standards were promulgated, and therefore failed to establish a foundation for Daniel M's opinion.[5] "[T]he mere fact that an expert witness testifies that in his opinion, a design is reasonable, does not make it so." (*Levin v. State of California* (1983) 146 Cal.App.3d 410, 418 [194 Cal.Rptr. 223].)

Further, unlike in *Uyeno* where the state submitted both general and specific evidence concerning the approval process for a traffic signal system, City did not explain the general approval process, nor did City articulate the specific approvals received for any integral part, or the whole, of the intersection.

In short, City has failed to provide any competent evidence proving that the intersection conforms with appropriate standards. It has also failed to specify the standards to which the intersection is purported to conform. Thus, City cannot satisfy the approval prong of the design immunity defense by showing conformity with previously approved standards.

D. City Failed To Provide Substantial Evidence Of Reasonableness Of Intersection's Design

Assuming City has adequately satisfied the previous elements of the design immunity, it must also show the substantial reasonableness of the design. This element is met if any reasonable government official could have approved the challenged design. (*Higgins v. State of California, supra,* 54 Cal.App.4th at pp. 183-184.) In determining whether the evidence is substantial, courts assess whether the evidence "reasonably inspires confidence" and is of "solid value." (*Davis v. Cordova Recreation & Park Dist.* (1972) 24 Cal.App.3d 789, 798 [101 Cal.Rptr. 358].)

1. City Offers No Competent Expert Evidence Of Reasonableness Of Design

Generally, a civil engineer's opinion regarding reasonableness of a design constitutes substantial evidence sufficient to satisfy this element. (*Hefner v. County of Sacramento, supra,* 197 Cal.App.3d at p.

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[5] Plaintiffs also assert that Daniel M. was not qualified to offer this opinion. See below.

1015.) In *Hefner,* even though the employee exercising the discretionary authority was not a licensed engineer, the county proffered the declarations of two engineers who verified that the placement of the limit line satisfied all established design criteria and safe engineering practices, which the court concluded constituted substantial evidence. (*Id.* at p. 1017.)

In *Higgins v. State of California, supra,* 54 Cal.App.4th at p.187, the state's evidence held to be substantial included the declaration of a civil engineer who attested that the plans were approved by at least four highway engineers on the way up through the chain of command. In addition, the engineer stated that the actual project conformed with the approved plan. "He thus laid a foundation for his opinion the design could reasonably have been approved." (*Ibid.*)

As explained by the *Alvarez* court, the design and construction of highways, including the discretionary approval of project plans, is beyond the common experience of the trier of fact. (*Alvarez v. State of California, supra,* 79 Cal.App.4th at p. 732.) It is thus the proper subject of expert testimony. (Evid. Code, § 801, subd. (a).) A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." (Evid. Code, § 720, subd. (a).)

Here, City relies primarily on the declaration of Daniel M. and the warrant studies he conducted in his capacity as senior traffic technician "under the direction of the City Engineer's Office." Daniel M.'s declaration also purports to give his opinion as to the intersection's compliance with various laws, as well as attesting to the adequacy, safety, and reasonableness of the sightlines for vehicular and pedestrian traffic. However, it is undisputed that Daniel M. does not have an engineering degree and that the extent of his formal education is an AA degree in general education. (CT 504.) Unlike the public entities in *Hefner, Higgins,* and *Alvarez,* City has thus failed to submit a declaration by any engineer attesting that the intersection design conformed to either an approved plan, established standards, or safe engineering practices.

Daniel M's testimony may not accurately be characterized as that of an "expert." In addition to his lack of formal training as an engineer, his own work on this particular case indicates a lack of personal knowledge of, or expertise on, the subject of the proper completion of warrant studies, let alone conformance of the intersection to engineering standards.

For example, the two warrant studies conducted in 1987 do not appear to have been properly completed, or were only properly completed after consultation with Daniel M.'s superiors. (CT 287-90.) Page one of the signal study contains a note, which appears to be Daniel M.'s handwriting, and says, "check with Bert 1) on volumes for a one way street 2 lanes? 2) warrant 10 vehicle hours? - how to calculate." (CT 287.) This indicates that Daniel M. merely filled out the form, and had to consult with others to determine how to calculate the formula.

Because of these failings, and Daniel M's lack of specialized training or formal education, Plaintiffs dispute that he qualifies as an expert in the field of intersection design. Daniel M.'s opinions, therefore, may not even be admissible, let alone constitute substantial evidence of the reasonableness of the intersection's design. City has offered no other evidence, and therefore has failed to meet this element of the defense.

2. The Number of Accidents at the Intersection Renders Any Design Decision Unreasonable

The lack of accidents at an intersection may be accepted by a Court as evidence that an improvement is not dangerous. (*Callahan v. City & County of San Francisco*, *supra*, 15 Cal.App.3d 374 (no accident like the one in question had ever occurred and only one accident per 685,000 cars had occurred in four and one-half years); see also *McKray v. State of California* (1977) 74 Cal.App.3d 59 [141 Cal.Rptr. 280] (court found that a lack of evidence of accidents at the site demonstrated that the improvement was not dangerous as a matter of law and thus there was no need to even consider design immunity).)

In the case at bar, the undisputed facts show the opposite to be true. While Daniel M. only documented a handful of accidents, he acknowledged that he never used near-misses in his analysis of whether a signal or stop sign should be recommended, in spite of the fact that there was a memo from the city manager, sent to the then head of engineering, which explained that the city manager personally had "watched hundreds of near-misses" at the intersection. (CT 511.) At the very least, this evidence raises a triable issue of fact regarding the safety history of the intersection.

Thus, the reasonableness of the intersection's design cannot be said to be supported by undisputed evidence of a low occurrence of accidents. Rather the high occurrence of near misses, together with the actual accident history, including the accident at issue, further calls into

question the reliability of what little evidence City has provided in attempting to establish the reasonableness of the design.

Taken as whole, City's evidence of reasonableness is clearly not of solid value and therefore fails the substantial evidence test. A reasonable government official could not have approved an intersection with such a high number of accidents and near-misses caused by the sight obstruction and other problems existing at the intersection. Thus, summary judgment in favor of Defendant should not have been granted. (*Higgins v. State of California, supra*, 54 Cal.App.4th 177.)

E. Even If Design Immunity Initially Applied, City Lost Immunity When Jail Project Resulted In Changed Circumstances At Intersection

Assuming *arguendo* that City is able to establish the applicability of the design immunity for its design of the intersection, that immunity does not continue into perpetuity. Rather, it may be lost under certain circumstances. (*Grenier v. City of Irwindale, supra,* 57 Cal.App.4th at p. 942.)

In *Baldwin v. State of California* (1972) 6 Cal.3d 424 [99 Cal.Rptr. 145], the California Supreme Court reversed its own precedent and held, "[o]nce the entity has notice that the plan or design, under changed physical conditions, has produced a dangerous condition of public property, it must act reasonably to correct or alleviate the hazard." (*Id.* at p. 434.) Thus, even where a plan or design is shown to have been reasonably approved, or was prepared in conformity with standards previously approved, the public entity does not retain the statutory immunity from liability conferred on it by section 830.6 if changed physical conditions produce a dangerous condition of public property and cause injury. (*Id.* at p. 438.)

In response to *Baldwin*, the legislature amended section 830.6 in 1979 and provided that even after notice that a property is no longer in conformity with the approved design, the immunity continues for a reasonable period of time sufficient to permit the public entity to obtain funds for and carry out the remedial work necessary. (Stats. 1979, ch. 481, § 1, p. 1638.)

Appellate courts reviewing the question of loss of design immunity have agreed that *Baldwin* and the amendment to section 830.6, read together, mean that the design immunity may be lost by evidence that the design under changed circumstances has produced a dangerous condition. (*Alvarez v. State of California, supra*, 79 Cal.App.4th at p. 737.) The design immunity is not lost simply because the design is operating under changed physical conditions. There must be evidence

that the design, under changed conditions, has produced a dangerous condition of which the public entity is aware. (*Baldwin v. State of California, supra*, 6 Cal. 3d at p. 434, 438; *Dole Citrus v. State of California* (1997) 60 Cal.App.4th 486, 494 [70 Cal.Rptr.2d 348].)

An improvement may constitute a dangerous condition if increased traffic at the site, coupled with an aberrant accident history, indicates its dangerousness. (See *Baldwin v. State of California, supra*, 6 Cal.3d at pp. 428-429.)

Here, City had notice that there were numerous accidents and near-misses at the intersection. Further, Plaintiffs provided clear evidence of changed circumstances. Specifically, after the warrant studies were prepared by Daniel M. in 1987, the construction of a jail facility nearby resulted in various changed conditions in and around the intersection. Although apparently submitted by City as evidence of a plan or design, the EIR conducted for the project actually details how the intersection could foreseeably change. The EIR stated both on-street and off-street parking were already near levels which could not accommodate a significant amount of additional parking generated by the build-out. (CT 343.) On-street parking was projected to be lost due to the closure of J Street between Fourth and Fifth Streets. (CT 351, 507-8.) Daniel M. verified in his deposition that the build-out of the jail resulted in the loss of 70 on-street parking spaces, 50 of which were supposedly replaced by an off-street dirt parking lot (the area where the court was projected to be built). (CT 508.) Daniel M. also stated that no subsequent parking survey was conducted to determine the impact of the jail project, and that there had been no increase in public parking to compensate for the loss of the on-street parking when J Street closed. (CT 508.) Taken in its totality, this is clear evidence of changed circumstances since the last warrant studies were conducted in 1987.

Despite these changed conditions, City conducted no new plan of any kind (parking, stop sign, or signal) for the intersection. Meanwhile, City was on notice of the large number of accidents and near-misses at the intersection, and had been for several years. City also was aware that a sight distance problem caused by the parking configuration, as well as the tendency of drivers to speed through the intersection, caused accidents and near misses at the intersection.

This evidence establishes, at minimum, a triable issue of fact as to whether changed conditions caused the design immunity to be lost. Thus, for this additional reason, summary judgment was improperly granted in favor of City on the design immunity affirmative defense.

VII. TRIAL COURT ERRED IN FINDING NO ISSUE OF FACT REGARDING APPLICABILITY OF SECTION 830.4 AND 830.8

A. Section 830.4 Immunity Does Not Apply Because Dangerous Condition At Sixth And J Streets Does Not Exist Solely *Because Of Failure To Install A Regulatory Device Or Street Marking*

The trial court held that City was immune from liability under section 830.4. This was error because section 830.4 only applies if the alleged dangerous condition consists solely of a failure to install regulatory traffic signs, signals or markings. In the case at bar, the dangerous condition at the intersection was created by, among other factors, (1) City's failure to limit parking on the north and south side of Sixth Street causing a sight line problem for vehicles and pedestrians on both Sixth and J Streets; (2) City's failure to prevent the speeding problem on Sixth Street; (3) City's failure to regrade the road that contributed to the speeding problem on Sixth Street; and (4) City's failure to warn pedestrians, or those crossing Sixth on J, or those traveling down Sixth Street of the sight line problems and advising a slower speed.

California Government Code Section 830.4 provides:

> A condition is not a dangerous condition . . . *merely* because of the failure to provide regulatory traffic control signals, stop signs, yield right of way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code. (Emphasis added.)

The regulatory signals, signs, and markings referred to in section 830.4 include, regulatory traffic control signals, pedestrian traffic control signals, stop signs, yield-right-of-way signs, speed restriction signs, and distinctive double line roadway markings. (*Washington v. City and County of San Francisco* (1990) 219 Cal.App.3d 1531, 1535, n. 2 [269 Cal.Rptr. 58].) If the traffic intersection is dangerous for reasons other than the failure to provide regulatory signals or street markings, the statute does not provide immunity. (*Id.* at pp. 1534-5.)

> A dangerous condition proven to exist for reasons other than or in addition to the mere failure to provide controls or markings described in section 830.4 and constitute a proximate cause of the injury without regard to whether it constitutes a trap to one using due care because of the failure to post signs different from those in 830.4 warning of that dangerous condition.

(*Washington v. City and County of San Francisco, supra,* 219 Cal.App.3d at p. 1537.)

Here, City's liability under section 830.4 does not depend upon a finding by this court that the condition at this intersection constitutes a trap because liability under this section may be imposed where as here, the condition exists for reasons other than City's failure to install a regulatory device listed in section 830.4. Even if a stop sign or regulatory signal is one of the remedies which may have corrected the dangerous condition at this intersection, that is not the *sole* remedy that plaintiff relies on to correct the dangerous condition that exists at Sixth and J Streets.

There are several other preventive measures that City could have taken to correct the dangerous condition including placing warning dots on Sixth Street preceding J Street to alert individuals to slow down, restricting speed limit on Sixth Street, posting a warning sign on J Street to warn both pedestrians and vehicles about the low visibility problem due to the grading of the street, limiting sight line parking along the north and south side of Sixth Street, relocating the utility pole which was a contributing factor to the visibility problem (although this alone would not have corrected the problem) and/or regrading Sixth Street so that there is not a tendency for vehicles to increase their speed as the road rises toward the intersection. (CT 391-2, 394-9, 472-3, 478-81.)

Here, as in *Washington*, the dangerous condition of the intersection was a proximate cause of the accident, and it is alleged to be dangerous for reasons other than or in addition to City's mere failure to provide traffic controls or markings defined under section 830.4, the immunity simply does not apply.

B. City Is Not Immune Under Section 830.8 Because Intersection Constitutes Dangerous Condition Resulting In Trap To Person Exercising Reasonable Care And Diligence

The trial court also found that City was immune under section 830.8. (CT 572-3.) While section 830.4, discussed above, provides broad immunity for failure to install *regulatory* traffic signs and other devices, 830.8 provides a more limited immunity from liability for failure to provide other types of signs, most commonly warning signs. (See *Black v. County of Los Angeles* (1976) 55 Cal.App.3d 920, 932-3 [127 Cal.Rptr. 916], regarding the distinction between the types of signs addressed by sections 830.4 and 830.8.)

A public entity may lose the limited protection of 830.8, and thereby be held liable for injury, when it fails to provide traffic regulatory or warning signals (other than those described in section 830.4)

that are "necessary to warn of a dangerous condition . . . which would not be reasonably apparent to, and would not have been anticipated by a person exercising due care." (Section 830.8.)

The Law Revision Commission, in its comments on section 830.8, noted that while section 830.4 prevents the imposition of liability based on the failure to provide traffic regulatory or warning signals or devices of a type not listed in section 830.4, liability may exist for failure to provide such a signal or device where the condition constitutes a "trap" to a person using the street or highway with due care. (Cal. Law Revision Com., 32 West's Ann. Gov. Code (2001 ed.) § 830.8; *Dahlquist v. State of California* (1966) 243 Cal.App.2d 208, 213 [52 Cal.Rptr. 324].)

However, the so-called trap exception does not come into play and is not applicable unless a dangerous condition under section 835 is first shown to exist. In the absence of a dangerous condition, a public entity is not liable for merely failing to provide warning signs or devices. (*Pfeiffer v. County of San Joaquin* (1967) 67 Cal.2d 177, 184 [60 Cal.Rptr. 493].)

It bears repeating that City has raised this issue on summary judgment. Thus, City bears the burden of showing that the facts establishing each element of the defense are undisputed. (*Hilts v. County of Solano, supra*, 265 Cal.App.2d at p. 174.) Plaintiffs must merely raise a triable issue as to facts that defeat the defense. In this case, Plaintiffs have adequately shown, for purposes of summary judgment, that a dangerous condition existed at the intersection of Sixth and J streets, and that this condition was not reasonably apparent to either pedestrians or motorists. As shown below, a triable issue exists as to whether the "trap" exception to section 830.8 immunity applies, and thus the trial court erred in granting City summary judgment based on a finding of immunity under that section.

1. Plaintiffs Have Presented Adequate Evidence Of Dangerous Condition To Satisfy Trap Exception's Threshold Element

As noted above, a threshold element in deciding whether the trap exception to section 830.8 applies is whether a dangerous condition exists. Liability for dangerous condition of public property is established under section 835, while section 830 defines the term "dangerous condition":

> [A] condition of property that creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury when such property or adjacent property is used with due care in manner which it is reasonably foreseeable that it will be used.

(See, also, *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 810 [205 Cal.Rptr. 842].)

The court should consider all the surrounding circumstances to determine if the risk is substantial as opposed to minor, trivial, or insignificant, thus creating a dangerous condition. (*Fielder v. City of Glendale* (1977) 71 Cal. App.3d 719, 734 [139 Cal.Rptr. 876].) Expert testimony regarding professional standards and the degree of risk created by the condition in question may be used as a basis for finding that it is dangerous. (*Cameron v. State of California, supra,* 7 Cal.3d at pp. 323-327; *Hilts v. County of Solano, supra*, 265 Cal.App.2d at p. 174.)

Several appellate courts have held that it was error for the trial court to find as a matter of law that a dangerous condition did not exist when the plaintiff produced evidence to raise a triable issue of fact as to the dangerousness of the roadway. For example, in *Hilts v. County of Solano, supra*, 265 Cal.App.2d at p. 174, the court found that the testimony of the traffic engineer indicated that an intersection was dangerous not only because of the failure to provide warning or regulatory signs or signals, but also because of the conjunction of other factors such as the presence of trees, the differences in elevation between the roadway grades and adjoining fields, and the method of striping the intersection. "Accordingly, we cannot say as a matter of law that the immunities of sections 830.4 and 830.8 governed this case." (*Ibid.*)

Further, in *Washington v. City and County of San Francisco, supra,* 219 Cal.App.3d at p. 1535, the court accepted the opinion of plaintiff's expert that the intersection was made dangerous by posts and shadows of overcrossings. "We cannot say these factors were so trivial, minor, or insignificant that as a matter of law the intersection here was not dangerous; The court did not err in submitting the issue to the jury." (*Id.* at 1540.)

In the present case, the dangerous condition resulting in a trap is created by the sight line problem due to vehicle parking along the north and south side of Sixth Street, and the speeding problem along Sixth Street. Further, the upgrade from the dip in the road contributes to the speeding problem along Sixth Street because vehicles tend to accelerate as they approach the intersection. Thus, due to the sight problem, a vehicle or pedestrian on J Street is unable to see a vehicle traveling on Sixth Street until they have already entered the intersection or crosswalk, which is too late to avoid an accident. Therefore, the restricted vision for vehicles traveling on both Sixth and J streets, coupled with the excessive speed of vehicles traveling along Sixth

Street, creates a trap for vehicles and pedestrians on Sixth and J Streets.

Plaintiff produced expert testimony by two independent experts who, based on their experience and expertise, both came to the conclusion that this intersection constituted a dangerous condition. George T.,[6] one of Plaintiffs' experts, after reviewing all the documentation specifically found this intersection to be a dangerous condition due to visibility problems because of parked vehicles, coupled with the speeding problem on Sixth Street:

> I conclude that the primary causes of the collision was the speed of the M. vehicle (~ 33 mph) which was greater than the posted speed limit of 25 mph and the vision obstructions to both drivers and the pedestrian, Ms. R. caused by vehicles parked along the north and south curbs of 6th Street just east of the intersection. It is my opinion that M's view of Ms R. was obstructed by a vehicle(s) parked on the south curb of 6th Street until Ms. R. came into view beyond the obstruction. Had the obstruction not been present Mr M. would have been able to see Ms. R. in time to stop before reaching the crosswalk. The same obstructions probably also led Ms. R. to, unknowingly, begin to walk into the crosswalk toward the path of the Lincoln. It is also my opinion that Ms. D's view of the M. vehicle was obstructed by a vehicle(s) parked on the north curb of 6th Street. This, I believe, caused her to proceed form the stop line toward the path of the M. vehicle. It is, furthermore, my opinion that Ms. D saw the M. vehicle after traveling part way into 6th Street and applied her brakes, but too late to avoid striking the M. vehicle in its right rear quarter panel.

(CT 472-3.)

Additionally, Edward R.,[7] Plaintiffs' other expert, also found that this intersection constituted a dangerous condition due to the restricted sight lines caused by parked vehicles. (CT 479.) Because of this visibility problem, vehicles traveling north and south on J Street crossing Sixth have difficulty seeing approaching vehicles westbound on Sixth Street. Vehicles traveling on Sixth Street also have difficulty seeing vehicles parked at the stop signs on J Street. Edward R. also found there was a slight upgrade on Sixth from K Street to J Street that

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[6] George T. has a Ph.D. in Metallurgical Engineering and has taken several courses dealing in the field of traffic accident reconstruction. He has been reconstructing accidents for over 20 years and has reconstructed over one hundred accidents. Additionally, he is qualified and has testified as an expert in both federal and state court proceedings. (CT 472).

[7] Edward R. is a registered professional licensed civil engineer. He has a Bachelor of Science degree in civil engineering and has more than 30 years experience in civil engineering and traffic engineering issues related to streets. (CT 478, 482-9.)

caused drivers to speed toward J Street. (CT 479-80.)[8] Thus, as in *Cameron* and *Hilts,* expert testimony offered by Plaintiffs significantly substantiates the dangerous condition at this intersection.

The dangerous condition that exists at this intersection is substantiated by City records. Several different City documents recognize that there was a sight distance problem at this intersection. (CT 265, 520, 534.) City has acknowledged that there is a speeding problem on Sixth Street, which Plaintiffs submit contributes to the dangerous condition. (CT 266, 512, 520, 534.) The City traffic engineering documents show that there have been numerous accidents at this intersection, several of which were correctable right angle accidents. (CT 517-8.) There were also several near misses at this intersection. Several non-injury accidents also occurred at this intersection which are not reported. (CT 519.) Also, the warrant study associated with the Environmental Impact Report prepared for the jail project acknowledges that the level of service fell below an acceptable level for vehicles stopped on J Street turning northbound on Sixth Street, yet City failed to take corrective action. (CT 308, 327.)

In *City of South Lake Tahoe v. Superior Court* (1998) 62 Cal.App.4th 971, 979 [73 Cal.Rptr.2d 146], the court found after viewing the photographs of the intersection there was nothing preventing a motorist's view of the approaching intersection and no reasonable person could find it constituted a dangerous condition. However, here, unlike in *City of South Lake Tahoe,* the photographs taken by police officers at the scene clearly depict the visibility problem caused by vehicles parked along the north and south curbs of Sixth Street. A reasonable person after viewing those photographs cannot say that this intersection, as a matter of law, does not possibly constitute a dangerous condition. (CT 535.)

Thus, viewing all the surrounding circumstances and factors at this intersection, as this Court must, it is at least a triable issue of fact whether the intersection constitutes a dangerous condition. Plaintiffs

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[8] City argues that the expert opinions are not based on reliable facts and lack legal foundation. (CT 562.) Because both experts lay out the foundation of the factual basis upon which they relied, City's claim should be rejected. Further, City's reliance of *Hefner* is misplaced. Because Plaintiffs in this case do not claim that the placement of the stop sign or limit line created the dangerous condition, *Hefner* is distinguishable.

have clearly met their burden in establishing the first element of the trap exception to the section 830.8 immunity.

2. The Condition of the Intersection Constitutes A Trap Because The Sight Line and Speeding Problems Are Not Readily Apparent To Either Crossing Pedestrians Or Motorists.

The dangerous condition of the intersection constitutes a trap for vehicles and pedestrians stopped on J Street attempting to cross Sixth Street. The trap exception applies when it is alleged that the entity failed to post adequate signs warning of a dangerous condition, and the dangerous condition is not reasonably apparent. (*Hefner v. County of Sacramento, supra,* 197 Cal.App.3d at p. 1018; See, also, *Flournoy v. State of California, supra,* 275 Cal.App.2d 806 (failure to warn of icy bridge).)

In *Cameron v. State of California, supra,* 7 Cal.3d at pp. 328-9, the court found that a driver would find it too late to react and remedy the dangerous situation. However, had warning signs been in place, this danger would be eliminated. Thus, the condition amounted to a trap. (*Ibid.*)

In *Feingold v. County of Los Angeles* (1967) 254 Cal.App.2d 622 [62 Cal.Rptr. 395], there was evidence that a vehicle entering the intersection from the north could not see a vehicle entering from the east until either or both drivers were committed to the intersection because of the promontory of the land on the adjacent property. (*Id.* at pp. 625-626.) Thus, the court found these circumstances were a dangerous condition resulting in a "trap" to a driver using due care. (*Ibid.*)

Here, as in *Feingold,* the intersection amounts to a trap because drivers and pedestrians on Sixth and J Streets are unable to see one another until they have entered the intersection and are then committed to the intersection. Because of the sight line visibility problem, vehicles stopped on J Street at the stop signs and pedestrians attempting to cross Sixth Street must pull out past the parked vehicles to see if there are any oncoming vehicles. If there are oncoming vehicles, however, there is no time to react, because vehicles on Sixth Street drive at an excessive speed. Further, as in *Cameron,* vehicles and pedestrians on J Street find that it is too late to react when they are finally able to see oncoming traffic. But had warning signs been placed on Sixth Street, drivers and pedestrians would have at least been alerted to the problem and could have conformed their conduct accordingly. As noted above, the speeding is caused in part by the uphill slope of the street and the placement of lights further west on Sixth in a manner that encourages

speeding in order to time the lights. Without the warning signs, a reasonable pedestrian or driver stopped on J Street would not know of the speeding and grading problem, and therefore would not know that the reaction time is less than could be expected.

The existence of the trap is confirmed by the details of the accident at issue. Mary Rose D. testified she did not see Rocky M.'s vehicle until she pulled out to see if she could safely cross. She first saw Rocky M.'s vehicle immediately before hitting it, causing his vehicle to spin and strike Maxine K. Moreover, there is evidence that the Maxine K. did not see Rocky M.'s vehicle because if she had she logically would not have attempted to cross the street. (CT 469, 472).

The trap situation is confirmed not only by plaintiff's independent expert testimony (see excerpts above) but also by an independent witness, Mr. Cooper who stated in his declaration:

> . . . when you come down J Street that stop sign, you cannot see oncoming traffic heading west on Sixth Street, especially in the southern lane, until you stick your front of your car out to the point that you can see around a car and by that time, it's too late. (CT 527.)

Had there been a proper warning device, such as a sign warning drivers on Sixth Street of the visibility problem, or warning dots on Sixth Street that would alert drivers to slow down or watch for crossing traffic this accident could have been avoided. Further, just as in *Washington*, the dangerous condition herein was a proximate cause of the accident. Thus, just as in *Hilts*, City's failure to place some type of warning device on Sixth Street constituted passive negligence, an independent separate concurring cause giving rise to liability under section 830.8.

The potential risk of injury posed by this dangerous condition is great. The dangerous condition at this intersection creates a high risk that vehicles will collide causing severe physical injury and even death, as in this case. This cannot logically be classified as a minor or trivial defect. Here, just as in *Washington*, the combination of the visibility, speeding, and grading problem were factors that cannot reasonably be classified as minor, trivial, or insignificant in light of the tragic consequences.

Plaintiffs have provided sufficient evidence of the existence of a trap to raise a triable issue that prevents summary judgment on this issue. Thus, the trial court erred by finding as a matter of law that City could not be liable under 830.8.

VIII. CONCLUSION

For the reasons stated above, the Superior Court erred in determining as a matter of law that the section 830.6 immunity as well as the section 830.4 and 830.8 immunities apply to the facts of this case. Because Plaintiffs have raised triable issues of fact, the order granting summary judgment should be reversed.

Dated: March 1, 2001

Respectfully submitted,
LAW OFFICE OF GEOFFREY S.

By: _____
Attorney for Appellants
KENNETH K., CAROL O., JAMES K., BEVERLY B., by and through her guardian ad litem, CAROL O.