



AGENDA

LEGEND: A - Action may be taken
I - Information
1 - Included
2 - Handout
3 - Separate
4 - Verbal

JPA: ACCEL CLAIMS COMMITTEE MEETING

DATE/TIME: Tuesday, December 12, 2023 at 9:30 AM

LOCATION: Teleconference

Link: <https://alliantinsurance.zoom.us/j/91524356182?pwd=R0NOc1J4a2k3cjRZVXpxUUQ0MjR3dz09>

Meeting ID: 915 2435 6182

Passcode: 187712

Dial: (669) 900-6833

In accordance with the requirements of the Brown Act, notice of this meeting must be posted in publicly accessible places, 72 hours in advance of the meeting, at the office of ACCEL's Secretary.

Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact Alliant Insurance Services at (415) 403-1400, 24 hours in advance of the meeting. Access to some buildings may require routine provision of identification to building security. However, ACCEL does not require any member of the public to register his or her name, or to provide other information, as a condition to attendance at any public meeting and will not inquire of building security concerning information so provided. See Government Code section 54953.3.

- MEMBER** • City of Anaheim, 201 South Anaheim Blvd., Suite 503, Anaheim, CA 92805
LOCATIONS • City of Bakersfield, 1600 Truxtun Ave., 4th Floor, Bakersfield, CA 93301
VIA TELE - • City of Ontario, 200 North Cherry Ave., Ontario, CA 91764
CONFERENCE • City of Santa Cruz, 1200 Pacific Ave., Suite 290, Santa Cruz, CA 95060
• City of Santa Monica, 1685 Main Street, Room 131, Santa Monica, CA 90401

PAGE

A. CALL TO ORDER

B. CONSENT CALENDAR (A)

- 3-4 1 1. Approval of Minutes for the October 5, 2023 Claims Committee Meeting
The Committee will review these minutes and will take action to approve or give direction.

C. REPORTS

1. CLAIMS COMMITTEE'S REPORT

- 5 1 & 3 a) 2023 ACCEL Claims Audit Draft (A)
Members will be given a draft of the Claims Audit report that will be presented to the Board. Action may be taken to provide a recommendation to the Board or direction given.
- 6-8 1 b) Closed Session Confidentiality Policy and Procedure Review (A)
The Committee will conduct a biennial review of the Policy and Procedure. If the Committee proposes any changes, action will be taken to provide a recommend to the Board to adopt or direction given.
- 9-18 1 c) Litigation Update (I)
George Hills will provide the Committee a litigation update.



3 d) **CLOSED SESSION – Pursuant to Gov’t Code 54956.95** (A)

Members will review the following Closed Session items and may take action or give direction.

- i. Committee Review – ACCEL Open Loss Run
- ii. George Hills Estimated Loss Payments
- iii. Supplemental Claims Audit Report

RECONVENE - DISPOSITION OF CLOSED SESSION ITEMS

D. PUBLIC COMMENTS (I)

4 *The public is invited at this point to address the Committee on issues of interest to them.*

ADJOURNMENT



MINUTES OF THE ACCEL CLAIMS COMMITTEE MEETING

Item No. B.1
Claims Committee
December 12, 2023

Thursday, October 5, 2023 at 10:30 AM

LOCATION:
TELECONFERENCE

Link: <https://alliantinsurance.zoom.us/j/93076713399?pwd=QXc1UEIyYjhoYUR4bDZaclRMZTlsZz09>

Meeting ID: 930 7671 3399

Passcode: 957107

Dial: (669) 900-6833

MEMBERS PRESENT:

Tracey Matthews, City of Anaheim
Jena Covey, City of Bakersfield (*left at 11:38 AM*)
Numeya Williams, City of Ontario Alternate
Ross Brandon, City of Santa Cruz
Oles Gordeev, City of Santa Monica

MEMBERS ABSENT: None

GUESTS AND CONSULTANTS:

Ben Oram, George Hills Company
Conor Boughey, Alliant Insurance Services
Lorissa Huey, Alliant Insurance Services

A. CALL TO ORDER

Tracey Matthews called the meeting to order at 10:35 AM.

B. CONSENT CALENDAR

B1. Approval of Minutes for the September 27, 2023 Claims Committee Meeting

A motion was made to approve the consent calendar.

MOTION: Jena Covey **SECOND:** Ross Brandon **MOTION CARRIED**

| | Tracey Matthews | Jena Covey | Numeya Williams | Ross Brandon | Oles Gordeev |
|---------|-----------------|------------|-----------------|--------------|--------------|
| Aye | X | X | X | X | X |
| Nay | | | | | |
| Abstain | | | | | |



C. REPORTS

C1. CLAIMS COMMITTEE'S REPORT

C1a. CLOSED SESSION – Pursuant to Gov't Code 54956.95

A motion was made to enter into Closed Session at 10:38 AM.

MOTION: Oles Gordeev **SECOND:** Jena Covey **MOTION CARRIED**

| | Tracey Matthews | Jena Covey | Numeya Williams | Ross Brandon | Oles Gordeev |
|---------|-----------------|------------|-----------------|--------------|--------------|
| Aye | X | X | X | X | X |
| Nay | | | | | |
| Abstain | | | | | |

A motion was made to come out of Closed Session at 11:50 AM.

MOTION: Oles Gordeev **SECOND:** Ross Brandon **MOTION CARRIED**

| | Tracey Matthews | Jena Covey | Numeya Williams | Ross Brandon | Oles Gordeev |
|---------|-----------------|------------|-----------------|--------------|--------------|
| Aye | X | | X | X | X |
| Nay | | | | | |
| Abstain | | | | | |

Conor Boughey reported out of closed session the Committee reviewed the open loss run and no reportable action took place.

D. PUBLIC COMMENTS – There were no public comments.

ADJOURNMENT

Tracey Matthews adjourned the meeting at 11:53 AM.



Item No. C.1.a
Claims Committee
December 12, 2023

2023 ACCEL CLAIMS AUDIT DRAFT

ISSUE: Rob Powers, ACCEL’s Claim Auditor will walk through a draft of the 2023 Claims Audit. This audit will be reviewed by the Claims Committee (CC) at today’s meeting and then presented to the Board at the January 18, 2024 Board Meeting. Rob will be at the January Board Meeting.

The City of Anaheim audit is scheduled for Dec 8, 2023, and isn’t available for the CC agenda mailing date distribution. Rob will provide a verbal update to the CC at today’s meeting.

RECOMMENDATION: Staff recommends the Committee review the draft Claims Audit and take action to make a recommendation to the Board at the January 18, 2024 Board Meeting to “Receive and File” the report, or provide direction as appropriate.

Additional Consideration:

In favor: The Committee may vote to form a recommendation to the Board to “Receive and File” the attached “Draft” to complete this year’s audit cycle and allow the production of the “Final” Claims Audit. Once approved by the Board, the audit will be finalized and posted on the ACCEL Website.

Against: Upon Committee review, if any further questions, edits or comments may change the results of findings of the report, the Committee may vote to instruct the Auditor or Administrators to take further action prior to presenting it to the Board for acceptance.

FISCAL IMPACT: No financial impact is expected from the recommended action. The fee for FY 23/24 is \$57,958.

BACKGROUND: This is the sixth year that Rob Powers at R.E. Powers & Company, LLC will perform the Claims Audits. Rob’s contract was renewed in January 2021 for a two-year period with a one-year additional option. The one-year additional option was extended for the 2023 claims audit year. The 2017 and prior Claim Audits were conducted by Tim Farley from Farley Consulting Services.

SEPARATE: 2023 ACCEL Claims Audit Draft



Item No. C.1.b
Claims Committee
December 12, 2023

CLOSED SESSION CONFIDENTIALITY POLICY AND PROCEDURE REVIEW

ISSUE: In 2018, the Claims Committee agreed that the Closed Session Confidentiality Policy and Procedure (P&P) should be reviewed every even numbered year by the January Board Meeting. It is now time to review.

The last time the P&P was reviewed was at the January 11, 2022 Committee Meeting and there were no changes.

The purpose of today's review is to be sure all Committee members are aware of this policy, provide feedback and apply this policy to the following agenda items.

RECOMMENDATION: It is recommended that the Committee review and propose changes, if any, and take action to make a recommend to the Board or provide direction.

Additional Consideration

In favor: If the Committee is recommending proposed changes, the Program Administrators will provide a redlined version of the P&P for the Board's consideration at the upcoming Board Meeting.

Against: If the Committee is not recommending any proposed changes, the reviewed date will be marked as today's meeting date. The biennial review will be complete.

FISCAL IMPACT: No financial impact is expected from the recommended action.

BACKGROUND: In 2015, the Claims Committee make a recommendation to the Board to amend the Closed Session Confidentiality P&P. The recommendation was to add Step 2; that required the Claims Committee Chair to consult with the Program Administrators and Board President prior to engaging an attorney for coverage analysis services. The rest of the changes represent simple edits to make the document easier to read. The Board approved the changes at the April 2015 Board Meeting.

In 2022, the Executive Committee requested the Program Administrators to check all of ACCEL's P&Ps and other documents if it states "himself/herself" and "he/she" and to make an administrate changes for diversity inclusion. The Closed Session Confidentiality P&P was updated.

ATTACHMENT: Closed Session Confidentiality Policy and Procedure.

ADMINISTRATIVE POLICY AND PROCEDURE

SUBJECT: CLOSED SESSION CONFIDENTIALITY

DATE: June 23, 1994

AMENDED DATE: April 17, 2015

REVIEWED DATE: ~~January 11, 2022~~ December 12, 2023

POLICY:

The Authority for California Cities Excess Liability (hereinafter referred to as “Authority”) must have the ability to excuse any Member Agencies from confidential discussions when a conflict of interest exists. Therefore, whenever the Authority is called upon to consider protected confidential information in connection with a Member Agency’s claim in which the interests of the Member Agency and Authority are potentially in conflict, the Authority shall preserve its right to confidentiality by excluding the Member Agency from all closed session discussions of the matter.

PROCEDURES:

1. Upon receipt of a claim wherein the Authority’s Claims Administrator determines a possible conflict of interest exists between any Member Agencies and the Authority, the Claims Administrator shall notify the Chair of the Claims Committee and the Board President about the potential conflict. If the conflict involves either the Claims Committee Chair or the Board President, the Program Administrator shall be notified. The report from the Claims Administrator shall summarize the investigation findings, and request the claim be referred to outside Legal Counsel for a coverage opinion, pending the approval of two notified parties. If one of the notified Parties has a conflict, they are not able to give approval.
2. The Claims Committee Chair, or the Board President, who receives the report about the potential conflict shall consult with the highest ranking Board Officer and Program Administrators about the request to determine if the facts support the need to forward the claim to the Authority’s Legal Counsel. Additionally, the Claims Committee Chair or the Board President shall schedule a Claims Committee meeting to discuss the matter.
3. The Claims Committee Chair or the Board President shall subsequently review the claim with Legal Counsel and assist them with preparing a report and recommendation for consideration by the Claims Committee. The report will outline the legal basis for asserting a conflict of interest exists, how the conflict could compromise the Authority’s legal position, and recommend a course of action to minimize the exposure to the Authority.
4. The Claims Committee shall review the information presented by the Claims Administrator and the Authority’s Legal Counsel to determine if a conflict does or does not exist. The Claims Committee shall report to the affected Member Agency and the Board of Directors its decision about the existence of a conflict. If the Claims Committee concludes that a conflict

of interest does exist, then the affected Member Agency shall be excluded from all closed session discussions (i.e., all Committee meetings and Board of Director meetings) of the matter until it is resolved.

5. The Chair of the Claims Committee will report to the Board of Directors the outcome of the Claims Committee's action on the matter as soon as possible.
6. The Member Agency affected by the action of the Claims Committee may appeal the findings of the Claims Committee to the Board of Directors. The determination of the Board of Directors shall be final.



Item No. C.1.c
Claims Committee
December 12, 2023

LITIGATION UPDATE

ISSUE: At today's meeting, Ben Oram, ACCEL Litigation Manager will provide another update because the Committee requested these to be provided quarterly.

RECOMMENDATION: This is an information item, no action is necessary.

FISCAL IMPACT: No financial impact is expected.

BACKGROUND: The Program Administrators discussed services with ACCEL's Claims Chair, Tracey Matthews. As a result of that discussion, ACCEL requested that George Hills provide a quarterly or semiannual litigation update.

ACCEL has not previously received litigation updates as part of our litigation management services, but has received updates at strategic planning meetings.

The Litigation Update documents are posted on the ACCEL Website in the Members' Only section.

ATTACHMENT: Litigation Update from George Hills.

DANGEROUS CONDITION OF PUBLIC PROPERTY

Stufkosky v. Department of Transportation

Docket: B317192 (Second Appellate District; Sixth Div.)

Opinion Date: 10/30/23

Judge: Beebe

Facts: The appellants in the case alleged that the California Department of Transportation (Caltrans) was liable for an accident on State Route 154 (SR-154). They claimed the highway had a dangerous design and lacked adequate warnings for drivers about deer crossings, which contributed to the accident.

Analysis & Holding:

Design Immunity Defense (Gov. Code §830.6)

Caltrans claimed design immunity under §830.6, which requires evidence of a causal relationship between the plan and the accident, discretionary approval of the plan prior to construction, and substantial evidence supporting the design's reasonableness. The court found that the appellants' own allegations established the required causal connection between the highway's design and the accident. Caltrans provided detailed plans and a traffic engineer's declaration, affirming the highway met safety standards and the reasonableness of its design.

Failure to Warn

The appellants also argued that Caltrans created a dangerous condition by failing to adequately warn drivers of deer crossings. The court addressed this claim, differentiating it from the Supreme Court's decision in *Tansavatdi v. City of Rancho Palos Verdes*. In this case, Caltrans had considered warning measures for deer crossings, and the dispute was only about their adequacy.

Conclusion

The appellate court affirmed the judgment in favor of Caltrans. The court's decision emphasized that Caltrans' design decisions, including considerations of safety features and warnings, were sufficient to establish design immunity under §830.6.

Summerfield v. City of Inglewood

Docket: B324117 (Second Appellate District; Eighth Div.)

Opinion Date: 10/25/23

Judge: Stratton

Facts: Appellants filed a wrongful death action against the City of Inglewood for the death of their son. Appellants alleged the City was negligent and created a "dangerous condition" in a public park by failing to install security cameras in an area with ongoing criminal activity, which caused an unknown third party to fatally shoot their son. The trial court sustained the City's demurrer to the complaint with leave to

amend. Appellants filed a first amended complaint, which the trial court sustained, this time without leave to amend. The trial court then entered a judgment of dismissal.

Analysis & Holding: Affirmed. The court concluded that Appellants’ dangerous condition and negligence claims failed, and the trial court did not err in declining to grant leave to amend. The court explained that here Appellants’ proposed allegations about “additional problematic criminal activity in Darby Park” and “crime in the areas of Inglewood immediately surrounding Darby Park” were vague and not specific. Appellants in no way explained how the proposed amendments would change the legal effect of the allegations in their FAC and merely stated in a conclusory fashion that they “could have created a dangerous condition and a duty to warn.” Furthermore, the court wrote that Appellants failed to propose any new facts addressing the main issue of the FAC.

‘PREMISES LINE’ RULE / EXCEPTION

Jones v. Regents of the University of California

Docket: G061787 (Fourth Appellate District; Third Div.)

Opinion Date: 11/28/23

Judge: O’Leary

Facts: Plaintiff Jones, an employee of the University of California (UC), experienced a bike accident on UC grounds while heading home from work, after which she filed suit against the UC. In response, the UC contended that Plaintiff’s injuries fell under the workers’ compensation “exclusivity” rule. It argued that the “premises line” rule extended the scope of employment until Plaintiff left UC’s premises, making her eligible for workers’ compensation. The trial court agree with UC and granted summary judgment in its favor.

Analysis & Holding: Plaintiff argued there was a triable issue on whether the premises rule applied to her accident, citing factors like her leaving work, use of public areas, and her choice of commuting method. The appeals court affirmed the trial court’s judgment, stating that the factors cited by appellants did not raise any question about the applicability of the premises line rule. Under this rule, an employee’s injuries are considered within the scope of employment if they occur on the employer’s premises. The rule is designed to provide a clear demarcation point for when employment begins and ends. The court noted that the circumstances of Plaintiff’s accident (occurring just after leaving her workstation on UC grounds) brought her injuries within the workers’ compensation scheme as per the premises line rule. The factors cited by appellants (leaving work, public area usage, commuting method) did not alter the rule’s applicability.

The court also concluded that Plaintiff’s injuries occurred in the scope and course of her employment as a matter of law, thus the workers’ compensation exclusivity rule barred her tort claim. Appellants further argued for a “dual capacity” exception to the exclusivity rule, suggesting that at the time of the injury, Plaintiff was a pedestrian or bike path user. However, the court noted that Labor Code §3602 (a) contradicts this contention, as it states that occupying a dual capacity at the time of injury does not allow for an action at law for damages against the employer. The judgment was affirmed, upholding the trial court’s decision that workers’ compensation was the exclusive remedy for Plaintiff’s injuries.

VOLUNTEER vs. EMPLOYEE – STATUS AND REMEDIES

Perez v. Galt Joint Union Elementary School District

Docket: C092691 (Third Appellate District)

Opinion Date: 9/25/23

Judge: Hull

Facts: Plaintiff was seriously injured while volunteering at a spelling bee organized at a school in the Galt Joint Union Elementary School District. In her subsequent lawsuit against the school district, the critical issue was whether the district’s governing board had passed a specific resolution, Resolution No. 37 in 1968 under Labor Code §3364.5, and whether this resolution still applied. Under the Act, plaintiff’s status was converted from volunteer to employee, rendering workers’ compensation the sole remedy to compensate Plaintiff for her injuries.

Analysis & Holding: On appeal, Plaintiff argued that because: (1) there was no evidence the district board members were aware of their duties under Labor Code §3364.5 at the time she was injured, (2) none of the members were present at the event at which she was injured, and (3) there was no evidence they knew about the bee, she was therefore neither “authorized by the governing board” to act as a volunteer nor performing services under their “direction and control” at the time of injury. Thus, plaintiff reasoned, the trial court should have rejected the defendant’s affirmative defense that she was covered by the Act and, therefore, that workers’ compensation provided her exclusive remedy. Finding no reversible error in finding plaintiff’s exclusive remedy was under the Act, the Court of Appeal affirmed the trial court.

In conclusion, the appellate court reversed the trial court’s judgment, holding that the district could potentially be liable for injuries that occur while students are waiting for transportation that the district had undertaken to provide.

ATTORNEY FEES

Doe v. Atkinson

Docket: A166145 (First Appellate District; First Div.)

Opinion Date: 10/19/23

Judge: Hume

Facts: John Doe, a junior at UC Davis, was suspended for a year for violating the university’s Sexual Violence and Sexual Harassment Policy. This action followed an incident where Doe made a brief video-recording during a consensual sexual encounter with Jane Roe. After investigation, UC Davis found that Doe had violated their policies. Despite an internal appeal, UC Davis upheld the one-year suspension, resulting in Doe’s delayed graduation. Doe filed a petition for writ of administrative mandate. The trial court overturned the suspension, finding it “objectively excessive and punitive,” but upheld UC Davis’s Title IX procedures. UC Davis adjusted the suspension period and later issued Doe’s degree retroactively. Doe then sought attorney fees under Civil Procedure Code § 1021.5 and Government Code §800.

Analysis & Holding:

Denial of Attorney Fees Under §1021.5: The trial court denied Doe's request for attorney fees, ruling the lawsuit did not confer a significant benefit on the public or a large class of persons. The court's ruling helped ensure that UC schools would impose reasonable sanctions in future Title IX cases, but this benefit was deemed insufficient to meet the statutory requirement.

Remand for Reconsideration Under §800: The trial court also denied fees under §800, which applies to arbitrary or capricious actions by public entities. The appellate court concluded that the trial court applied an incorrect legal standard in this assessment and remanded the case for reconsideration under the proper standard. The appellate court noted that while the trial court's ruling suggested that the one-year

suspension resulted from an arbitrary or capricious action, a factual determination and evaluation of Doe's attorneys' billing records were necessary for awarding fees under §800.

Disposition: The order denying attorney fees was affirmed in part and vacated in part, with instructions for the trial court to reconsider Doe's entitlement to fees under Government Code §800.

PUBLIC RECORDS ACT

City of Gilroy v. Sup. Court of Santa Clara County

Docket: H049552 (Sixth Appellate District; X Div.)

Opinion Date: 10/23/23

Judge: Greenwood

Facts: The Gilroy Police Department (GPD) receives complaints about homeless encampments, including on the property of the Santa Clara Valley Water District. GPD assists with the cleanup of homeless encampments ("sweeps") on Water District property, after which the Water District is responsible for collecting any belongings left at the site. GPD collects and stores some items, such as ID cards. GPD officers assisting with sweeps have body-worn cameras, which they activate during "criminal investigation or enforcement" actions. This footage is retained for one year, then automatically deleted by a computer system unless flagged for preservation.

After receiving complaints from homeless persons that their personal property was being destroyed during sweeps, the Law Foundation made numerous public record requests and sought declaratory relief under the California Public Records Act (CPRA; Gov. Code, 7920.000).

Analysis & Holding: The court of appeal held that the trial court erred in granting declaratory relief on the basis that GPD's past conduct in responding to the Law Foundation's public records requests violated the CPRA. The trial court did not err by denying the Law Foundation's request for a declaration that Gilroy violated the CPRA by failing to preserve responsive records it claimed were exempt while the records requests were pending. CPRA is not a records retention statute.

County of San Benito v. Superior Court of San Benito County

Docket: H050285 (Second Appellate District; X Div.)

Opinion Date: 10/10/23

Judge: Lie

Facts: Western Resources Legal Center (Western) requested records "about or related to" the Strada Verde Project, including: (1) "all Public Records Act requests sent by anyone concerning" the Project; (2) "all writings received by the County concerning the Project"; (3) "all writings sent by the County to anyone" concerning the Project; (4) "all writings concerning" two individuals; (5) "all text messages sent or received by" two individuals relating to the Project; (6) "all writings" concerning procedures relating to the consideration of general plan amendments; and (7) "all writings concerning potential offsite consequences." Western later requested documents "concerning or discussing" a presentation titled "San Benito Public Records Reveal Deception and Misconduct" and investigations into said deception and misconduct.

Western sued to compel the County to produce the documents for both requests and sought a declaration that the County's policies and procedures were unlawful. In the litigation, Western's requests for production of documents included a request for "all documents responsive to the public records request."

Analysis & Holding: The court of appeal modified the discovery order, citing the California Public Records Act (Gov. Code 7921.000), which states that the "court must determine whether the discovery sought is necessary to resolve whether the agency has a duty to disclose, and ... consider whether the request is justified given the need for an expeditious resolution." Although most of Western's discovery requests were proper, the request to produce the same documents ultimately at issue in the proceeding and the interrogatories seeking a new narrative justification for the County's past decisions were improper.

Bondgraham v. Superior Court of Alameda County

Docket: A1675187 (First Appellate District; Second Div.)

Opinion Date: 9/25/23

Judge: Roesch

Facts: In 2019, two Oakland journalists filed request under the California Public Records Act (CPRA) for information from the Oakland Police Department, specifically regarding the "Celeste Guap" scandal involving police officers and an underage individual. The trial court order the OPD to produce documents related to this case, but with certain redactions.

Analysis & Holding:

The appellate court reviewed three primary arguments made by the petitioners challenging the redactions:

1. Redactions Under Section 837.2, Subdivisions (b)(4) and (b)(5): The court found that the trial court erred in permitting certain redactions under these subdivisions. It highlighted that subdivisions (b)(4) and (b)(5) had specific limitations on what could be redacted, and the redacted information in question, including general policy recommendations and screenshots of Guap's Facebook profile, did not meet these criteria.
2. Redaction of Officer Names Under Section 832.7, Subdivision (b)(6)(B): The court disagreed with the trial court's decision to redact the names of officers who were witnesses under this section. The appellate court argued that preserving the anonymity of witnesses does not apply equally to officers and civilians, especially considering the significant public interest in the conduct of peace officers.
3. Redaction Under Former Government Code Section 6254, Subdivision (f): The appellate court found that the trial court incorrectly permitted redactions based on this former government code section. Section 832.7, subdivision (b)(1) explicitly states that certain police officer records shall not be confidential and should be available for public inspection, overriding the exemptions in former Government Code section 6254, subdivision (f).

The appellate court's decision emphasizes the importance of transparency and public access to police records, especially in cases of police misconduct. The court's directive for the trial court to reconsider the redactions under the proper interpretation of section 832.7 aligns with the CPRA's intent to broadly provide public access to information, balancing this with individual privacy rights. This decision is a significant assertion of the public's right to access records concerning police misconduct, reflecting the evolving legal landscape in this area.

FEHA

Martin v. Board of Trustees of the Cal. State University

Docket: B303509 (Second Appellate District; Eighth Div.)

Opinion Date: 11/14/23

Judge: Bachner

Facts: California State University (CSU) hired Plaintiff as the director of university communications of CSU Northridge's Marketing and Communications Department (the Department). The VP testified that after speaking with employees while investigating complaints against Plaintiff, he determined that Plaintiff could not be an effective department leader because he disregarded CSU's direction regarding professionalism. Staff could not work with him, and subordinates were intimidated and threatened by him. Plaintiff filed a complaint against CSU alleging gender, race, color, and sexual orientation discrimination under the Fair Employment and Housing Act (FEHA); race, gender, and sexual orientation harassment; and failure to prevent harassment and discrimination. CSU filed a motion for summary judgment or adjudication. The trial court entered the order granting summary judgment to Defendants and Plaintiff appealed.

Analysis & Holding: Affirmed. The court found that the trial court correctly granted summary judgment on Plaintiff's discrimination claims, explaining that CSU established a legitimate reason for the termination. Moreover, the court held that Plaintiff failed to submit evidence that creates a dispute of material fact as to pretext. Similarly, the court explained that Plaintiff has not established a dispute of fact regarding whether CSU's internal investigation was pretextual. The court wrote that Plaintiff failed to produce substantial evidence of any bias in the E&D investigation, and his statistical evidence is not probative of discriminatory motive. Further, Plaintiff's evidence of CSU's commitment to diversity did not create a triable issue of discriminatory motive.

CLAIMS FILING REQUIREMENTS

Stronghold Engineering, Inc. v. City of Monterey

Docket: H050157 (Sixth Appellate District)

Opinion Date: 11/3/23

Judge: Grover

Applicable Law:

- *Gov. Code § 905 – requirement that “all claims for money or damages against local public entities” be presented to the responsible public entity before a lawsuit is filed.*
- *Gov. Code § 945.4 – “No suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented...until a written claim therefore has been presented to the public entity.”*

Facts: Stronghold Engineering, Inc. (Stronghold) entered into a contract to renovate the Monterey Conference Center. The contract required Stronghold to give written notice before seeking additional compensation. Changes required approval via written change orders. A dispute resolution procedure was specified for claims under \$375,000. The parties signed a change order in early 2016, and disagreements later arose over the interpretation of waiver language concerning project delays. Without first presenting a claim to the City, Plaintiff filed suit seeking declaratory relief regarding the interpretation of the contract, asserting the Act was inapplicable. Stronghold then presented three claims to the City from 2017-2019 based on its refusal to approve change orders necessitated by purportedly excusable delays. A fourth amended complaint was filed alleging breach of contract.

The trial court granted the City summary judgment, reasoning that the declaratory relief cause of action in the initial complaint was, in essence, a claim for money or damages, and that all claims in the operative complaint “lacked merit” because Plaintiff failed to timely present a claim before filing suit.

Analysis & Holding: The appellate court found that Stronghold's initial action seeking purely declaratory relief did *not* constitute a claim for money or damages, thus *not* triggering the claims presentation

requirement under Gov. Code §954.4. The trial court was incorrect in sustaining the demurrer and later granting summary judgment based on Stronghold's failure to present a claim before filing the initial complaint.

The initial complaint sought interpretation of the contract and change order, not a specific money judgment. Any subsequent claim for damages based on that interpretation would require a presented claim, but the initial declaratory relief did not. The presented claims before amending the complaint to add breach of contract actions were appropriate. However, these were separate from the initial declaratory relief action. The court determined that Stronghold's first claim exceeded \$375,000, thus not triggering the contract's mandatory pretrial dispute resolution procedure. The issue of attorney fees awarded to the city was not part of the appeal but was addressed in a separate matter. The judgment was reversed, and the matter remanded for further proceedings on all causes of action in the operative fourth amended complaint. Stronghold was awarded its appellate costs.

BROWN ACT

Mary's Kitchen v. City of Orange (anti-SLAPP motion / Brown Act)

Docket: G061693 (Fourth Appellate District; Third Div.)

Opinion Date: 10/25/23

Judge: Gastelum

Facts: Defendant City of Orange appealed an order denying an anti-SLAPP motion. The underlying lawsuit alleged a violation of the Brown Act. Plaintiff Mary's Kitchen provided homeless services in the City of Orange. Prior to the filing the lawsuit, the city manager terminated Plaintiff's license, citing safety concerns. Subsequently, the city council held a closed session to discuss potential unspecified litigation. Afterward, the city attorney exited the meeting and declared that the council had "unanimously confirmed" the termination of Mary's Kitchen's license.

The Brown Act required that any contemplated action or topic of discussion be posted in an agenda at least 72 hours prior to the meeting; the meeting agenda pertinent here did not mention anything about Mary's Kitchen's license. Plaintiffs Mary's Kitchen and Gloria Suess (CEO and president of Mary's Kitchen) filed a verified complaint/petition for writ of mandate against the City. The City then filed an anti-SLAPP motion, arguing that because the agenda described the meeting as discussing legal matters, the complaint/petition arose out of protected activity. The City took the position that no action was taken at the meeting, and that the unanimous approval described in the minutes simply reflected inaction—i.e., that the city council chose to do nothing to override the city manager's decision to terminate the license. The court denied the motion, concluding the complaint targeted the City's failure to provide adequate notice of the confirmation of the license termination rather than anything that was said at the meeting.

Analysis & Holding: The appellate court agreed with the lower court's assessment that the complaint targeted the City's failure to provide adequate notice of the confirmation of the license termination, not what was said during the meeting. The court further concluded that the City Council's "unanimous confirmation" was evidence of an action (i.e., ratification). This was relevant to the court's anti-SLAPP analysis, which centered on whether Plaintiff's complaint arose from an unprotected action or from protected speech. The court concluded that the action of ratifying the termination of the licensing agreement was not conduct in furtherance of free speech. Rather, the conduct was "ordinary business." As such, the court denied Plaintiff's anti-SLAPP motion, stating that the complaint did not arise from protected activity.

FIREFIGHTER'S RULE

Michael Rattary et al. v. Brian Favro

Docket: A164441 (First Appellate District; Fourth Div.)

Opinion Date: 11/29/23

Facts: Defendant crashed his car into a firetruck, after which Plaintiffs (two firefighters) began to provide aid. Plaintiffs' lawsuit alleges that Defendant was negligent in failing to comply with their directions, thereby causing them to be harmed by a subsequent vehicle collision.

Analysis & Holding: The Firefighter's Rule negates responsibility "by one whose negligence causes or contributes to the fire which in turn causes the death or injury of [the firefighter]," with exceptions. Under Civil Code 1714.9(a)(1), "any person is responsible, not only for the results of that person's willful acts causing injury" to a firefighter and "also for any injury occasioned to [the firefighter] by the want of ordinary care or skill in the management of the person's property or person," "where the conduct causing the injury occurs after the person knows or should have known of the presence of the firefighter."

The court instructed the jury on Assumption of Risk / Exception / Occupation. The Special Jury Verdict Form asked: Did Defendant increase the risks to [the firefighters] through conduct occurring after he knew or should have known of the presence of the firefighters? The presiding juror marked, "No." The court of appeal ordered a new trial.

Defendant's counsel committed misconduct by misrepresenting the applicable law to the jury, stating that Defendant could not be held liable unless he had increased the risk to the firefighters, "beyond the risk that's inherent to their job."

PUBLIC ENTITY IMMUNITIES

Renee Thomas v. The Regents of the University of California

Docket: A164550 (First Appellate District; Second Div.)

Opinion Date: 11/29/23

Judge: Markman

Applicable Law: Gov Code § 822.2 – "*A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption, or actual malice.*"

Facts: Plaintiff, a soccer player, sued the University of California, Berkeley (UCB) and others after being released from the women's soccer team. She claimed sexual harassment by the head coach, Neil McGuire, and negligent behavior by Jim Knowlton, UCB's athletic director. Plaintiff alleged McGuire's conduct created a hostile, fear-driven environment involving derogatory remarks and psychological torment. She also alleged that Knowlton and UCB ignored complaints about McGuire's behavior.

Analysis & Holding: The court concluded that Plaintiff sufficiently pleaded a cause of action for sexual harassment under Civil Code § 51.9 against McGuire and UCB. Her complaint described pervasive bullying and abuse, which could be construed as harassment based on gender. However, her allegations against Knowlton were not sufficient for liability under § 51.9. The court noted that while Plaintiff might face challenges proving her claims were enough to state a cause of action at the demurrer stage.

Corruption Exception Analysis: Plaintiff argued that McGuire's actions were motivated by corruption, which would negate the immunity provided under Gov. Code § 822.2. She linked this to the broader

“Varsity Blues” scandal. The court also examined whether Plaintiff’s allegations sufficiently demonstrated a corrupt motive directly connected to the harm she sustained. The court noted that to fall under the corruption exception in § 822.2, it must be shown that the fraud was motivated by corruption or actual malice. Plaintiff’s allegations implied McGuire’s involvement in the admissions scandal and that he misrepresented her continued participation on the team. However, the court found that Plaintiff did not adequately allege facts connecting McGuire’s recruitment actions to the scandal or establish how this would lead to her unjustified release from the team. In conclusion, the court held that Plaintiff failed to establish a connection between McGuire’s alleged corrupt motives and her harm. Therefore, the trial court did not err in sustaining McGuire’s demurrer based on this immunity under § 822.2. The court emphasized the need for concrete facts to support claims of corruption negating statutory immunity.