MUNICIPAL TORT AND CIVIL RIGHTS LITIGATION UPDATE

GMSR
APPELLATE LAWYERS
GREINES, MARTIN, STEIN & RICHLAND LLP

Tim Coates
tcoates@gmsr.com
310.859.7811
May 14, 2021 | LEAGUE OF CALIFORNIA CITIES CONFERENCE

1

Civil Rights
Law Enforcement Liability

2

Torres v. Madrid, __U.S.__, 2021 WL 1132514 (2021)

3

Torres v. Madrid – Facts

- Officers trying to execute an arrest warrant for another person, approach plaintiff in her parked car.
- Plaintiff begins to drive away; claiming to fear for their safety, officers shoot at the car, injuring plaintiff, who drives off.
- Plaintiff sues for excessive force.
- Tenth Circuit dismisses suit: No seizure occurred for purposes of Fourth Amendment claim.

4

Torres v. Madrid Supreme Court Decision

- Reversed.
- Application of physical force to the body of a person with intent to restrain is a seizure, even if the person does not submit and is not subdued.
- Each application of force constitutes a seizure.
- No such thing as a continuing seizure.

5

Torres v. Madrid – Impact

- Decision raises questions about future claims concerning almost any type of coercive action by police officers, such as use of tear gas or pepper spray, or even physical contact simply designed to move a suspect from one place to another.
- Raises issues about what constitutes a discrete application of force.
- If officers wrestle with a suspect over the course of several minutes, is each physical contact during that struggle a separate application of force subject to evaluation for reasonableness on a minute by minute, or even moment by moment basis?

6

Taylor v. Riojas, __U.S__, 141 S.Ct. 52 (2020)

7

Taylor v. Riojas – Facts

- Prison inmate placed in cell without proper toilet facilities for several days, resulting in cell "teeming in human waste."
- Sues prison officials for Eighth Amendment violation.
- Fifth Circuit dismisses action based on qualified immunity.
- Plaintiff could not point to any clearly established law involving similar facts.

8

Taylor v. Riojas Supreme Court Decision

- Reversed.
- No qualified immunity.
- Constitutional violation so obvious that reasonable official would have fair warning of potential liability, even in absence of case directly on point.

9

Taylor v. Riojas – Impact

- Significant case.
- Rare Supreme Court reversal of grant of qualified immunity over the past 20 years.
- Only case other than *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) in which Court has applied the fairly lax "fair warning" standard to reject qualified immunity.
- May represent response to growing dissatisfaction with the "clearly established law" prong of qualified immunity.
- *Taylor* will likely be cited with great frequency by plaintiffs in opposing defense arguments on qualified immunity.

10

O'Doan v. Sanford, 991 F.3d 1027 (9th Cir. 2021)

11

O' Doan v. Sanford – Facts

- Plaintiff's girlfriend calls 911: Plaintiff having epileptic seizure, acting violently and fled the residence naked.
- Paramedics find couple grappling in the street and call police.
- Plaintiff runs towards officers in a fighting pose, but then flees.
- Officer applies "reverse reap throw," tripping plaintiff, grabbing his arm and slowly pushing him to the ground.
- Plaintiff returns to normal in hospital and arrested for resisting arrest, but charges dropped.
- Plaintiff sues for excessive force and wrongful arrest, and due process claim premised on alleged omission of critical information in the arrest report, i.e., that he suffered from epilepsy.
- District court grants summary judgment to defendants.

12

O' Doan v. Sanford – Ninth Circuit

- Affirms.
- Claims barred by qualified immunity.
- No clearly established law would have suggested that the minimal use of force, i.e. ,the "reverse reap throw," or subsequent struggle on the ground, were improper.
- No case would have suggested that arresting plaintiff under the circumstances would violate the Fourth Amendment.
- No case law would have put the officers on notice that omission of plaintiff's condition from the arrest report would violate any clearly established right.

13

O' Doan v. Sanford – Impact

- Very helpful decision.
- Strongly reaffirms stringent application of the clearly established law standard for qualified immunity.
- Especially helpful in cases concerning moderate use of force against individuals suffering from some sort of mental impairment.

14

Rice v. Morehouse, 989 F.3d 1112 (9th Cir. 2021)

15

Rice v. Morehouse – Facts

- Plaintiff stopped by officer for failing to signal for a full five seconds before changing lanes.
- Plaintiff refuses to produce driver's license and car registration and repeatedly asks to speak to the officer's supervisor.
- Officer calls for back up and over a dozen officers respond.
- Several officers pull plaintiff from car, trip him, pin him down, and handcuff him.
- Plaintiff sues for excessive force.
- District court grants summary judgment to defendants based on qualified immunity.

16

Rice v. Morehouse –Ninth Circuit

- Reverses.
- Material issues of fact whether plaintiff was actively resisting arrest, or only passively resisting arrest, i.e., simply failing to obey officer commands as opposed to physically resisting.
- Use of non-trivial force –holding plaintiff's arms behind his back and pushing him face-down on the pavement– could be deemed excessive as applied to a suspect who offered only passive resistance.
- Officers did not explore other options to compel compliance.
- Plaintiff had committed only a trivial infraction.

17

Rice v. Morehouse – Impact

- Very problematic decision.
- Continues Ninth Circuit practice of categorizing levels of resistance, against which the reasonableness of the officer's conduct is measured, even though the lines between various categories may not be easily discerned in the field.
- Unduly emphasizes alternative tactics as a measure of reasonableness, even though case law makes it clear that officers need not use the least intrusive means to compel compliance.

18

Ventura v. Rutledge, 978 F.3d 1088 (9th Cir. 2020)

19

Ventura v. Rutledge – Facts

- 911 call from a woman, Andrade, reporting that the father of her children, Omar, had hit her, as well as her mother, and smashed a car window.
- Officer responds, finds that Omar is not there.
- Omar returns, walks towards officer while holding a knife; ignores command to stop and drop it and warning that he will be shot.
- When Omar is 10-15 feet away and still approaching, officer fires twice, fatally wounding Omar.
- Omar's family sues for excessive force.
- District court grants summary judgment on qualified immunity.

20

Ventura v. Rutledge – Ninth Circuit

- Ninth Circuit affirms.
- No clearly established law would have suggested that the use of force was unlawful under the circumstances.
- In *Kisela v. Hughes*, 138 S.Ct. 1148 (2018) Supreme Court found officers entitled to qualified immunity for shooting a knife-wielding suspect that arguably presented a lesser threat than Omar did here.

21

Ventura v. Rutledge – Impact

- Extremely helpful decision for excessive force cases.
- Strongly reaffirms and stringently applies the clearly established law test for qualified immunity.

22

Hernandez v. Town of Gilbert, 989 F.3d 739 (9th Cir. 2021)

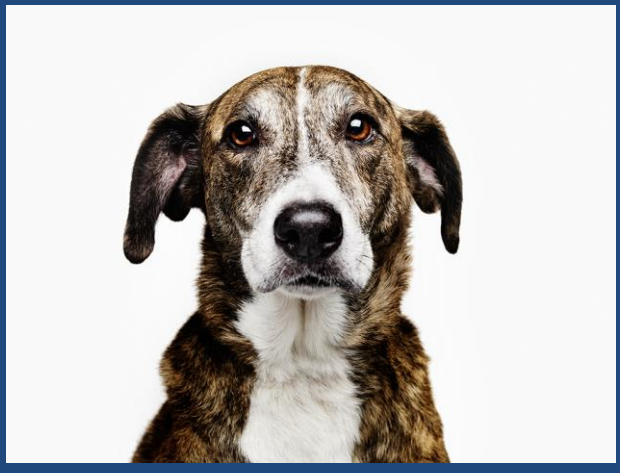
23

Hernandez v. Town of Gilbert – Facts

- Officer Robertson activates lights and siren to effect a traffic stop when he saw plaintiff's car swerving.
- Plaintiff sees lights, but continues driving several minutes to his home and pulls into garage.
- Plaintiff shuts off his car and tries to close the garage door remotely, but Officer Robinson stops the door and waits for back-up officers.
- Canine Officer Gilbert accompanied by his partner, police dog Murphy, respond.

24

Not Police Dog Murphy



25

Hernandez v. Town of Gilbert – Facts

- Robinson commands plaintiff 13 times to get out of the vehicle.
- Robinson tries control holds and pepper spray.
- Warns plaintiff at least five times that the police dog would bite him if he doesn't comply.
- Gilbert orders Murphy to bite plaintiff. Thirty-six seconds into the bite, Officer Gilbert commands Murphy to release, and fourteen seconds later, Murphy obeys.
- Plaintiff still clings to the headrest. Robinson asks, "should we let the dog go again?" Officers pull plaintiff from the car.
- Plaintiff sues for excessive force. District court grants summary judgment based on qualified immunity.

26

Hernandez v. Town of Gilbert – Ninth Circuit

- Affirms.
- Use of force reasonable as a matter of law, and in any event, Officer Gilbert would be entitled to qualified immunity because no clearly established law would have indicated his conduct was improper.
- Multiple applications of lesser levels of force had been unsuccessful.
- Plaintiff warned multiple times that the canine would bite him if he continued to physically resist.
- The bite was relatively short in duration.

27

Hernandez v. Town of Gilbert – Impact

- Very helpful case.
- Provides a road map for analyzing canine force claims for purposes of a qualified immunity.

28

Villanueva v. State of California, 986 F.3d 1158 (9th Cir. 2021)

29

Villanueva v. State of California – Facts

- Officers attempt traffic stop on truck while in plain clothes and driving an unmarked unit.
- Driver Villanueva, purportedly did not know they were police officers and speeds away with his passenger, Orozco.
- After a short high speed pursuit, Villanueva is blocked on a side street, and very slowly attempts a three point turn.
- Officers exit vehicle and move towards the truck, guns drawn. Perceiving Villanueva was going to hit them, they fire at the vehicle, killing Villanueva and wounding Orozco.
- Orozco and Villanueva's family file excessive force suit.
- The district court denies summary judgment based on qualified immunity.

30

Villanueva v. State of California – Ninth Circuit

- Affirms: Factual issue whether Villanueva was driving towards the officers at the time the shots were fired.
- Truck was moving very slowly -- jury could find it did not present a threat justifying deadly force.
- Clearly established that officers could not shoot at a vehicle that posed no threat to themselves or others.
- Rejects officers' argument that Orozco was not "seized" for purposes of the Fourth Amendment because the officers had not intended to shoot him.
- It was enough that the officers intended to shoot at the vehicle.

31

Villanueva v. State of California – Impact

- Another Ninth Circuit decision denying qualified immunity where officers fire at a slowly moving vehicle.
- Key factors: Did speed of the vehicle itself pose a threat, and where were officers in relationship to the vehicle?
- Circuit split on whether a passenger struck by fire directed at the driver of a vehicle is "seized" under the Fourth Amendment.
- Several circuits apply the tougher Fourteenth Amendment "unrelated to any legitimate law enforcement purpose" standard.
- Inconsistent with *Torres v. Madrid*, __U.S.__, 2021 WL 1132514 (2021): Officer's specific intention to apply force to a particular target touchstone for a "seizure" under the Fourth Amendment.

32

Estate of Anderson v. Marsh, 985 F.3d 726 (9th Cir. 2021)

33

Estate of Anderson v. Marsh – Facts

- CHP Officer attempts traffic stop.
- After high speed pursuit, suspect's vehicle crashes into fence.
- Officer approaches, gun drawn, as suspect revs engine.
- Officer orders suspect to stop and show his hands. Suspect suddenly reaches down towards the floorboard, and officers fires twice, believing he was reaching for a weapon. No weapon found.
- Suspect subsequently died of unrelated causes, and family files suit for excessive force.
- District court denies summary judgment based on qualified immunity.

34

Estate of Anderson v. Marsh Ninth Circuit

- Appeal dismissed for lack of jurisdiction.
- *Mitchell v. Forsy*th, 472 U.S. 511 (1985): Denial of qualified immunity based solely on an issue of law is immediately appealable.
- *Johnson v. Jones*, 515 U.S. 304 (1995): Denial of summary judgment on qualified immunity based on a disputed issue of fact is not immediately appealable.
- Officer's appeal based on the contention that it was undisputed that the driver had made a sudden movement, but the district court concluded there was factual dispute.
- Under *Johnson*, the order denying summary judgment was not immediately appealable.

35

Estate of Anderson v. Marsh – Impact

- Highlights confusion about appealability of order denying summary judgment based on qualified immunity.
- Fletcher dissent: *Johnson* standard difficult to apply, and the Circuits have requested guidance from the Supreme Court.
- Officer was raising an issue of law –whether the district court was *required* to accept his version of the facts, because driver had died.
- By characterizing the denial as based on an issue of fact, majority sidestepped the legal issue.
- Likely to be ongoing litigation of appealability until the Supreme Court clarifies the *Johnson* standard.

36

Tabares v. City of Huntington Beach, 988 F.3d 1119 (9th Cir. 2021)

37

Tabares v. City of Huntington Beach— Facts

- Officer observes Tabares twitching, muttering and apparently on drugs in a mini mart parking lot.
- Officer approaches, Tabares moves away, but then approaches the officer with fists raised.
- Officer commands him to stop, tasers Tabares several times.
- They grapple, fall to the ground, officer feels Tabares trying to grab his gun and pulling something from his belt.
- Tabares works free, confronts the officer with something in his hand.
- Officer shoots Tabares six times in rapid succession, orders him to stop, and then immediately fires a seventh round, killing Tabares. Tabares had the officer's flashlight.

38

Tabares v. City of Huntington Beach— Facts

- The Tabares family files suit in federal court asserting a claim for excessive force under the Fourth Amendment and a negligence claim under California law.
- The district court grants summary judgment, finding the force reasonable under the Fourth Amendment, and dismisses the state law claim on the same grounds.
- Plaintiff only appeals the grant of summary judgment on the state claims.

39

Tabares v. City of Huntington Beach Ninth Circuit

- Reverses. State law claim can proceed.
- California law broader than federal law in evaluating use of force.
- In California, an officer's tactical decisions prior to use of force could be considered in assessing reasonableness of force.
- Plaintiff's expert opined that officer should have realized that Tabares was mentally ill and de-escalated, instead of confronting Tabares.
- Jury could find six shots in rapid succession unreasonable, because officer did not assess the effect of each shot before firing again.
- Seventh shot fired without giving Tabares a chance to comply with the final command to stop and get down on the ground.

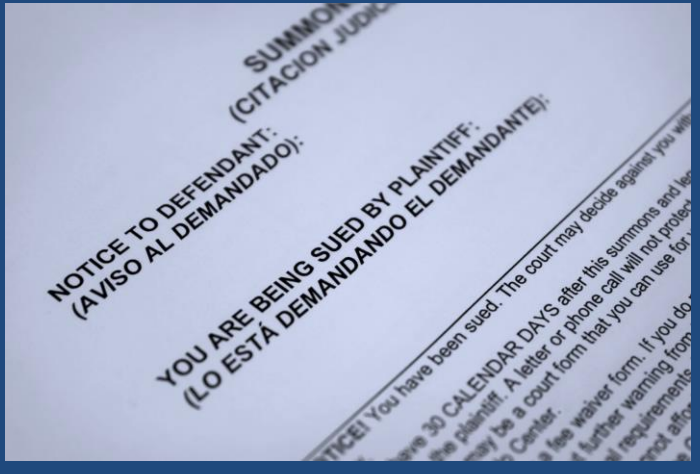
40

Tabares v. City of Huntington Beach – Impact

- Extremely troubling decision.
- Reminder of how much greater the scope of liability is on a California negligence claim than a typical Fourth Amendment claim, as well as the ease with which a hired expert can get a case past summary judgment simply by second guessing split-second tactical decisions made in the field.
- Very loose language concerning the number of shots fired, and the need to assess each shot, is problematic.
- Plaintiffs will cite *Tabares* in cases involving multiple shots.

41

Shuler v. City of Los Angeles, __Cal. App.5th __, 2021 WL 1247964 (2021)



42

Shuler v. City of Los Angeles – Facts

- Plaintiff files federal civil rights action asserting that police officers unreasonably detained her and subjected her to a strip search.
- Plaintiff includes state claims in the federal action, but only the federal claims go to trial.
- Jury finds for defendants, and the district court dismisses the state claims without prejudice.
- Plaintiff refiles state claims in state court.
- Defendants move for judgment on the pleadings: Federal Judgment bars the state claims under collateral estoppel.
- Trial court grants motion and dismisses the case.

43

Shuler v. City of Los Angeles – Court of Appeal

- Affirms.
- Jury in the federal action specifically found that the officers' actions were reasonable.
- Since "unreasonable conduct" is the entire basis of a negligence claim, the jury's finding in the federal action necessarily barred the subsequent state suit based on the same conduct.

44

Shuler v. City of Los Angeles – Impact

- Very helpful case.
- Reaffirms that collateral estoppel applies when defendants prevail in a federal civil rights action.
- Key in such cases: Are the federal and state claims virtually identical?

45

Wright v. Beck, 981 F.3d 719 (9th Cir. 2020)

46

Wright v. Beck – Facts

- LAPD seizes plaintiff's 400 + firearm collection pursuant to warrant.
- LAPD returns eighty firearms, but keeps the rest because plaintiff had not submitted sufficient proof that he owned them.
- While parties negotiate, LAPD officer successfully applies for court order to destroy the firearms. No notice given to plaintiff.
- Plaintiff sues various parties, asserting a violation of his Fourteenth Amendment right to due process.
- District court grants summary judgment to all defendants based on qualified immunity and the absence of any constitutional violation.

47

Wright v. Beck – Ninth Circuit

- Reverses in part and affirms in part.
- Clear due process right to notice before firearms were destroyed.
- No evidence that two of the defendants had anything to do with procuring the court order to destroy the firearms.
- Court reverses summary judgment as to the officer who had procured the court order.
- Acknowledges no case law addressing this specific factual scenario, but no qualified immunity because the need for notice under basic principles of due process was obvious.

48

Wright v. Beck – Impact

- Continues troubling trend where Ninth Circuit rejects qualified immunity based on the "obvious" nature of the constitutional violation, without pointing to existing case law addressing similar facts.
- Possibly supported by the Supreme Court's decision in *Taylor v. Ri*ojas, __U.S__, 141 S.Ct. 52 (2020) applying the *Hope v. Pelzer* ,536 U.S. 730 (2002) "fair warning" standard in evaluating qualified immunity claims.

49

Civil Rights
First Amendment

50

SCOTUS COVID CASES

51

Trio Of SCOTUS COVID-19 Cases

- *Roman Catholic Diocese v. Cuomo*, 592 U.S __, 141 S.Ct. 630 (2020); *South Bay United Pentecostal Church v. Newsom*, __U.S.__, 141 S.Ct. 716 (2021);*Tandon v. Newsom*, __U.S.__, 2021 WL 1328507 (2021) (per curiam).
- Suits challenge state-wide COVID-19 orders limiting indoor gatherings, including religious services.
- *Roman Catholic Diocese:* New York regulations allowing secular businesses to operate at a higher capacity than religious facilities.
- *South Bay:* California ban on indoor, in person services.
- *Tandon:* California's restrictions on in-home religious gatherings.
- District courts and Circuit courts denied injunctions.

52

Supreme Court's Decisions

- 5-4 Court grants injunction in each case.
- Court's orders in are summary in nature, and no single dispositive opinion issued.
- Majority of the Court found that the regulations had to be reviewed under strict scrutiny, with each state required to provide a compelling justification as to why religious facilities were subject to greater restrictions than secular activities.

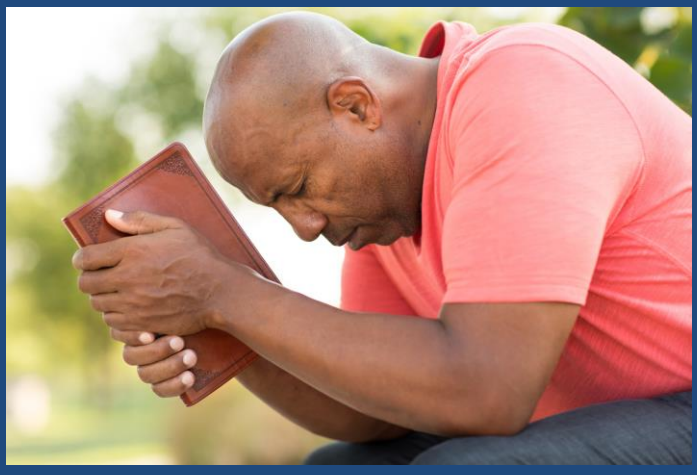
53

Covid-19 Decisions – Impact

- Not a full precedential decision by the full court, but per curiam decision in *Tandon* signals clear majority for changing the manner in which courts should evaluate statutes of neutral application that may have an impact on religious practice.
- A statute's specific reference to religious activity is sufficient to trigger strict scrutiny, even if the statute also applies to similarly situated secular activities.
- Decisions underscore the need to be extremely careful in drafting any ordinance or regulation that specifically refers to religious activity.

54

Kennedy v. Bremerton School Dist., 991 F.3d 1004 (9th Cir. 2021)



55

Kennedy v. Bremerton School Dist. – Facts

- Plaintiff high school football coach disciplined after kneeling to pray in the center of the football field immediately after games, often joined by players and members of the public.
- Plaintiff previously warned not to engage in the conduct because School District believed that public prayer at an official school function would violate the Establishment Clause.
- Plaintiff sues: The discipline and limitation on his religious activities violates the First Amendment.
- District court dismisses the action.

56

Kennedy v. Bremerton School Dist. Ninth Circuit

- Affirms.
- Public employees are not foreclosed from engaging in all religious practices while on duty, e.g., a silent prayer or carrying a religious medal, but Establishment Clause prohibits overt displays of religious practice while engaged in official work.
- Reasonable observer would perceive that the plaintiff's highly public display of religious belief at a school sponsored function signaled the school's support for the activity, which would run afoul of the Establishment Clause.

57

Kennedy v. Bremerton School Dist.– Impact

- Very helpful decision.
- Provides guidelines for accommodating or limiting the religious activities of public employees while on duty.
- Reaffirms application of the "reasonable observer" test in evaluating potential Establishment Clause violations.

58

Uzuegbunam v. Preczewski, __U.S.__, 141 S.Ct. 792 (2021)

59

Uzuegbunam v. Preczewski – Facts

- Plaintiff handing out religious literature on a college campus is told he could only distribute literature in designated areas.
- Plaintiff reserves an area, but is told his speech was disturbing other people and violates college's ban on "disorderly conduct."
- Plaintiff sues: College's policies violate the First Amendment.
- College changes policies, plaintiff graduates, and the trial court dismisses the case: Case moot and request for nominal damages not enough to allow the case to continue.
- 11th Circuit affirms.

60

Uzuegbunam v. Preczewski Supreme Court

- Reverses.
- So long as there was a completed constitutional violation and hence an injury, the availability of an award of nominal damages meant the case remained a live controversy, even if there was no likelihood the conduct would occur again.

61

Uzuegbunam v. Preczewski – Impact

- Arguably expands availability of nominal damages as a means to maintain a lawsuit where it is difficult to quantify any constitutional injury, and the alleged unconstitutional conduct has ceased.
- Especially significant in free speech cases where damages are difficult to quantify.
- Will impact a broad range of cases challenging regulations that are quickly rescinded in the face of potential liability.

62

ADA Liability

63

C.L. v. Del Amo Hospital, __F.3d__, 2021 WL 1183017 (9th Cir. 2021)

64

C.L. v. Del Amo Hospital – Facts

- Hospital bars plaintiff from entering the facility with her service dog, contending that the dog was not a qualified service animal as it lacked formal certification.
- Plaintiff sues for violation of the ADA.
- Following bench trial, district court finds for defendant: Without formal certification the dog did not qualify as a service animal under the ADA.

65

C.L. v. Del Amo Hospital – Ninth Circuit

- Reverses.
- ADA does not specify any certification procedure for an animal to qualify as a service animal.
- Under ADA it is sufficient that an animal is trained, whether by the owner or someone else, to perform specific tasks to help a disabled owner.
- Remanded for retrial so district court can determine whether the animal had sufficient training to meet the ADA standard.

66

C.L. v. Del Amo Hospital – Impact

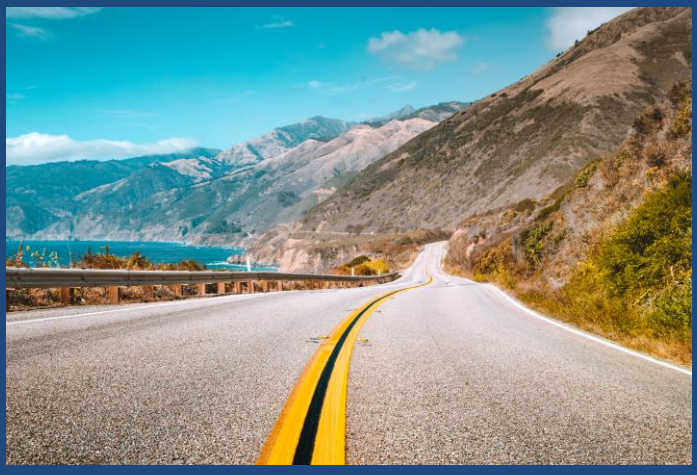
- Sets a broad standard for qualifying as a service animal under the ADA.
- Suggests caution in being overly restrictive in barring animals from public property that owners have specified as service animals.

67

Municipal Tort Liability

68

Menges v. Department of Transportation, 59 Cal.App.5th 13 (2020)



69

Menges v. Dept. of Transportation – Facts

- Plaintiff seriously injured when her vehicle was struck by a truck exiting the freeway.
- Sues the State: Accident caused by the dangerous condition of the freeway and off ramp.
- State successfully moves for summary judgment based on design immunity under Government Code section 830.6.

70

Menges v. Dept. of Transportation Court of Appeal

- Affirms.
- State established plan was reasonable by submitting expert testimony to that effect.
- Contrary expert opinion does not create a triable issue of fact: There need only be substantial evidence that the plan was reasonable.
- Rejects argument that the roadway was not constructed in substantial conformance with the plans, and hence no immunity.
- Testimony of plaintiff's expert on the issue lacked foundation.
- Expert merely identified minor deviations between the plan and the roadway as built.
- Statute only requires that the improvement be constructed in "substantial compliance" with design, not identical in every single aspect.

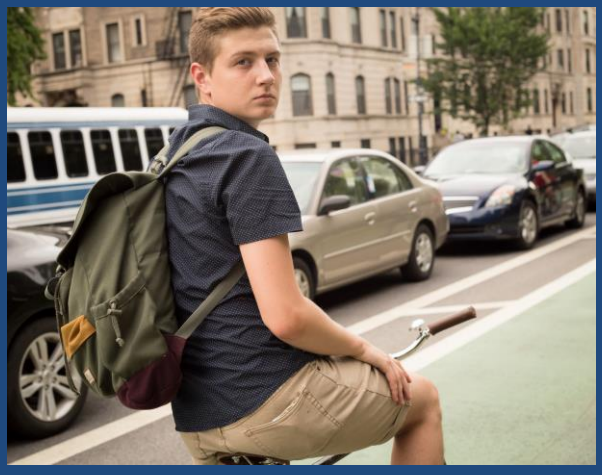
71

Menges v. Dept. of Transportation – Impact

- Very strong support for design immunity.
- Reaffirms that the reasonableness of a design can be established as a matter of law by submission of substantial evidence that the design comported with professional standards -- a mere conflict in the evidence on that point cannot overcome the immunity.
- Good language on rejecting conclusory expert testimony to defeat summary judgment in dangerous condition cases.
- Strong emphasis that an improvement need not be built in perfect accordance with a plan in order for the immunity to apply.

72

Tansavatdi v. City of Rancho Palos Verdes, 60 Cal.App.5th 423 (2021)



73

Tansavatdi v. City of Rancho Palos Verdes Facts

- Plaintiff 's son was killed after being struck by a vehicle while riding his bike on a city street.
- Plaintiff sues, asserting that the street lacked a bicycle lane and was in a dangerous condition, and that the City should have provided a warning of the condition.
- City successfully moves for summary judgment based on design immunity under Government Code section 830.6. Trial court does not separately address plaintiff's failure to warn claim.

74

Tansavatdi v. City of Rancho Palos Verdes Court of Appeal

- Affirms in part and reverses in part.
- City properly established all the elements of design immunity.
- However, under *Cameron v. State of California*, 7 Cal.3d 318 (1972), even if City was entitled to design immunity, plaintiff could still assert a separate dangerous condition claim based on failure to warn.
- Court emphasizes that claim could not be based on the failure to warn of an alleged dangerous condition that was included as part of the plan, such as the absence of a bike lane.
- Remands to the trial court to address the failure to warn claim.

75

Tansavatdi v. City of Rancho Palos Verdes Impact

- Helpful because it has an extensive discussion of the elements of design immunity and provides clear guidance on how to establish the immunity.
- However, discussion of the failure to warn issue, and difficultly in parsing out just what sort of failure to warn claim is viable where the public entity has established design immunity, is extremely confusing.
- Open invitation for plaintiffs to assert muddled failure to warn claims in response to a design immunity defense.
- Note: *Cameron* itself is very confusing, and guidance from the Supreme Court as to its meaning would be helpful.

76

Williams v. County of Sonoma, 55 Cal.App.5th 125 (2020)

77

Williams v. County of Sonoma – Facts

- Plaintiff injured when she fell off her bike after striking a large pothole while practicing long-distance cycling for a race.
- Plaintiff sues the County: Extremely large pothole constitutes a dangerous condition of property.
- The trial court rejects County's argument that the doctrine of implied assumption of risk barred the action.
- Jury finds for plaintiff.

78

Williams v. County of Sonoma Court of Appeal

- Affirms.
- Assuming doctrine of implied assumption of risk applies to dangerous condition cases, doctrine inapplicable here.
- Exception to the doctrine when a property owner increases the inherent danger of an activity.
- County's failure to fix the pothole increased the inherent risks of engaging in long distance cycling in preparation for competition.

79

Williams v. County of Sonoma – Impact

- Very troubling decision.
- Broadens dangerous condition liability for public entities with respect to activities that are themselves risky.
- Inconsistent with decisions holding that the exception for increasing the inherent risks of an activity applies only to an entity that sponsors the activity.
- Note: Decision does not impact the immunity for hazardous recreational activities of Government Code section 831.7 which might foreclose liability in many similar instances.

80

Lowry v. Port San Luis Harbor District, 56 Cal.App.5th 211 (2020)

81

Lowry v. Port San Luis Harbor District – Facts

- Plaintiff employed by the defendant and was injured on one of defendant's vessels.
- Realizing time to file a claim under Government Code section 911.2 had expired, plaintiff, who had already filed suit, submits a late claim application, attaching a copy of the complaint.
- Defendant denies the late claim.
- Defendant demurrers to complaint: Action premature because it was filed before the late claim application was submitted.
- Trial court dismisses action.

82

Lowry v. Port San Luis Harbor District Court of Appeal

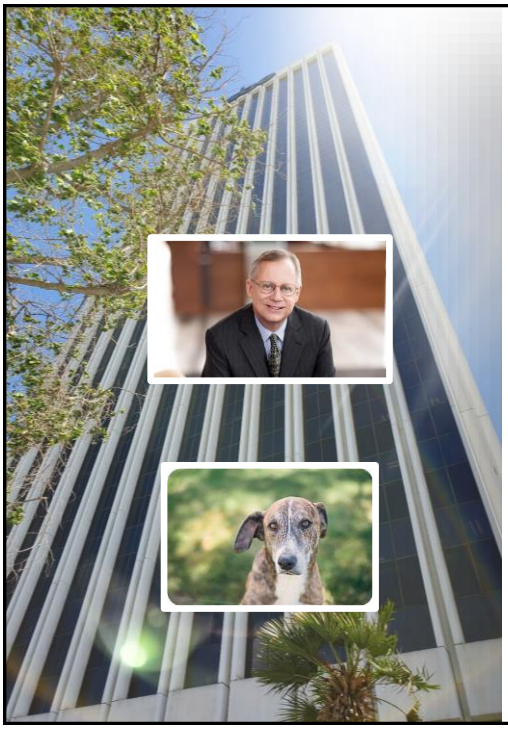
- Affirms.
- Compliance with the Claims Act is a prerequisite to filing suit.
- Improper to file a complaint unless and until a claim or late claim application has been denied.
- Complaint clearly filed before the late claim application was denied and was therefore premature.

83

Lowry v. Port San Luis Harbor District – Impact

- Helpful language concerning the need for strict compliance with the Claims Act, albeit in the context of a highly formalistic interpretation of the statute.

84



THANK YOU !

Tim Coates
Greines, Martin, Stein & Richland
tcoates@gmsr.com
310.859.7811

Monty
The Big Comfy Chair
feedmepetme@gmail.com
555.555.5555

85