CALIFORNIA TORTS CLAIMS ACT & IMMUNITIES

I.

INTRODUCTION

. As a result, since 1963, all government tort liability in California has been based on statute. The legislation and amendments are codified in Government Code §§810-996.6. The Act applies to all public entities and their employees. Thus, an action can be brought on a tort claim against a public entity, provided that there is compliance with the Tort Claims Act.

II.

PROCEDURAL REQUIREMENTS AND STATUTE OF LIMITATIONS

Generally, a suit for money or damages cannot be brought against a government entity (or against a government employee acting in the scope of employment) unless and until a timely claim has been presented pursuant to the California Tort Claims Act and either acted upon or deemed rejected by the passage of time. 'Tort Claims Act' is something of a misnomer. The Act applies to all claims for money or damages against government entities, including claims arising out of contract. Hart v. Alameda County, (1999) 76 Cal.App.4th 774. Compliance with the claim filing requirement is an *essential* element of a damages cause of action against a government entity. Consequently, plaintiff must allege facts demonstrating or excusing claim-filing compliance; otherwise, the complaint is subject to general demurrer for failure to state a cause of action. State of Calif. v. Super.Ct. (Bodde), (2004) 32 Cal.4th 1234, 1239.

Claims for injury to person, property, or crops must be presented within six months of the accrual of the cause of action. Claims for all other injuries must be presented within one year of the accrual of the cause of action. With regard to subrogation actions, the time period for filing

the claim begins to accrue as of the date of loss, not the date the insurer provides payment on behalf of its insured. Commercial Union Assurance Co. v. City of San Jose, (1992) 127 Cal.App.3d 730, 735. Where a claim involves both damage to personal and real property, the claim should be filed within six months from the date of the loss to ensure that all potential damages may be recovered.

Generally, the public entity has forty-five days to act upon the claim, by rejecting or accepting it, once the claim has been presented. If the public entity fails to take any action on the claim within the forty-five day period, the claim is deemed rejected. If the claim is rejected by the public entity, and notice is provided to the claimant that the public agency has rejected the claim, then the complaint for damages must be filed with the court no later than six months after the date of rejection. If the public entity rejects the claim but does not provide the claimant with written notification of rejection, the claimant has two years from the accrual of the cause of action to file a complaint. Govt. C §945.6

III.

IMMUNITIES

There are numerous illusory and potentially meritorious defenses to government tort claims. Some of these immunities are contained in the California Tort Claims Act; the remainder are strewn through the California Codes. There is no tort liability for California governmental entities in the absence of an express statute or constitutional provision creating or accepting liability.

A. Discretionary Acts and Omissions

Except as provided otherwise by statute, "a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Govt. C §820.2. Since the public employee is immune, the public entity employing the employee is also immune. Govt. C §815.2(b). The determination whether an act is discretionary must be made on a case by case basis in light of the policy considerations relevant to the purposes of granting immunity. The primary criterion is whether the area involved is one of quasi-legislative policy making that is inappropriate for judicial review or, in other words, whether the case will turn on the quality of basic policy decisions committed to coordinate branches of government. Johnson v. State, (1968) 69 Cal.2d 782, 789-90.

California precedents provide some guidance as to the meaning of the term "discretionary" by recognizing immunity in some circumstances but not others. It can accurately be said that, generally, immunity exists if the injury results from the public employee's discretion to undertake an activity, liability if it results from his negligence in performing it after he has made the discretionary decision to do so. Roseville Community Hospital v. State, (1977) 74 Cal.App.3d 583, 589. Thus, the decision to investigate is often characterized discretionary, while the act of investigating is not. The "essential" requirement of Government Code §820.2 is "a causal connection between the exercise of discretion and the injury." McCorkle v. City of Los Angeles, (1969) 70 Cal.2d 252, 262.

The California cases reveal myriad acts held to be discretionary based on the specific facts presented.

(1) determination whether to renew a school superintendent's contract;

(2) school board members' decision to reject sign featuring Ten Commandments submitted for posting at baseball field;

(3) determination of the “lowest responsible bidder” on a public works contract;

(4) expression of good faith medical opinion as to diagnosis of mental illness;

(5) decision to adopt county flood plan and decision to breach levee in particular manner;

(6) the decision to institute condemnation proceedings;

(7) the determination of the length of time a public entity may take to decide a matter submitted to it for decision;

The variety of examples of discretionary acts is matched only by the examples of nondiscretionary acts for which no immunity under Government Code §820.2 is available.

(1) breach of a mandatory law enforcement duty;

(2) negligence in performance of a task even though the decision to perform that task is discretionary.

(3) the decision whether to permit a psychiatric outpatient to administer her own medication;

(4) use of unreasonable force amounting to assault and battery in arrest;

(5) negligent selection of an independent contractor for construction work.

The immunity for discretionary decisions provides no comfort if the public defendant did not, in fact, exercise discretion. The mere fact that a particular determination could be one requiring an exercise of discretion is no basis for immunity. The public entity must demonstrate that its employee in fact consciously exercised discretion in connection with the negligent acts and omissions alleged in the complaint. Johnson v. State, (1968) 69 Cal.2d 782, 794 n.8. If the employee in question believed there was no choice and the determination was required to be exercised in a particular way, the discretionary function immunity is inapplicable. Moreover, if the decision is made by one person and implemented by another, the second person cannot rely on the discretionary function immunity.

2. Other General Immunities

(a) Public Officers' Immunity for Subordinates' Acts and Omissions

The Tort Claims Act precludes application of common law rules of vicarious liability to public officers based on their subordinates' torts. The immunity, however, is inapplicable if the supervising employee participated in the tort. See Dailey v. Los Angeles Unified Sch. Dist., (1970) 2 Cal.3d 741.

(b) Malicious Prosecution

Public employees acting within the scope of employment are personally immune from liability for the prosecution of judicial or administrative proceedings even if they act maliciously and without probable cause. Govt. C. §821.6.

(c) Health and Safety Inspections of Property

Public entities are not liable for failure to inspect, or for inadequate or negligent supervision of property (other than their own property as defined in Govt. C §830(c)) in ascertaining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety. Govt. C §818.6. Public employees have a comparable personal immunity. Govt. C §821.4.

VI.

CONCLUSION

The California Torts Claim Act is a complex mechanism, and not all of its parts yield to the same analysis. Some provisions may be construed broadly and others narrowly, depending on their intent and the specific facts of a case. Analysis of a provision of the Act should focus on the actual words of the statute, giving them a plain and common sense meaning. Then, if necessary, the courts will look at antecedents in pre-Act case law.