# CARL WARREN eUpdate

## RECREATIONAL IMMUNITY

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***Trail immunity inapplicable where plaintiff does not dispute the condition of a trail. Toeppe v. City of San Diego. (No. D069662, Super. Ct. No 37 - 2014-00004836-CU-PO-CTL, California Court of Appeals, Fourth Appellate District, Division One, July 27, 2017)***

A tree branch fell on the plaintiff while she and her boyfriend were walking through a city park. She filed a lawsuit against the city alleging the existence of a dangerous condition on public property, namely a negligently maintained eucalyptus tree. The City prevailed on summary judgment, arguing that the plaintiff was struck by the tree branch while standing on a trail; thus, the City could not be liable under Government Code section 831.4 (trail immunity).

Plaintiff appealed the ensuing final judgment following the City's successful motion for summary judgment. Plaintiff's challenge was two-fold. First, she asserted the trail immunity did not apply to the facts of this case. To this end, plaintiff emphasized that her claim of a dangerous condition was based on a negligently maintained eucalyptus tree, not the condition of the trail passing through the park. Second, she contended even if trail immunity did apply, a disputed issue of material fact existed as to where she was located when the branch struck her. The appeals court agreed with the plaintiff on both grounds. Plaintiff's claim in this case did not give rise to trail immunity. In addition, there was a disputed issue of material fact as to where she was when the branch struck her. Therefore, the appeals court reversed the trial court's ruling.