

Governmental Immunity Act of Utah Updates

Cases of Note:

Kerr v. Salt Lake City, 2013 UT 75, --- P.3d ---- (2013). Pedestrian brought suit against the City for injuries sustained after tripping and falling on a sidewalk displacement. On summary judgment, the City argued that it qualified for discretionary function immunity. Trial court denied summary judgment. Decision affirmed on appeal.

But see, Clemente v. Salt Lake City, Case No. 120907299 (J. Kelly), March 5, 2014. Plaintiff alleged that she tripped and fell on displaced concrete, fracturing her left pinky finger and resulting in more than \$350,000 in damages. Case dismissed with prejudice because the Plaintiff failed to put forth any facts showing the City had actual or constructive notice of the displaced sidewalk. The court also held that the City is immune from suit: "The City's alleged actions or inactions in this matter involved a discretionary function and the City followed its required policies and practices, as set forth in the City's briefing and at oral argument."

Francis v. Utah Div. of Wildlife Resources, 2013 UT 65, 321 P.3d 1089 (2013). Camper was killed by a bear while camping with his family in American Fork Canyon. On remand, the state argued that the natural condition exception to the Immunity Act precluded liability. The Utah Supreme Court held that the bear was not a "natural condition" on publicly owned or controlled land within meaning of the Governmental Immunity Act of Utah.

Jenkins v. Jordan Valley Water Conservancy Dist., 2013 UT 59, 321 P.3d 1049 (2013), *vacating* 2012 UT App 204, 283 P.3d 1009 (2012). The Utah Supreme Court's decision is not as interesting as the Court of Appeals decision, which was vacated "so the decision will not 'be left standing to affect subsequent proceedings.'" 2013 UT 59, ¶ 22. However, the COA's analysis of "governmental function" for purposes of governmental immunity is worth discussion.

Legislative changes (effective May 13, 2014):

HB 293S01 Governmental Immunity Waiver Amendments (McKell)

<http://le.utah.gov/~2014/bills/static/HB0293.html>

This Bill provides that Governmental Immunity is not waived for injuries related to the activity of wildlife that arises during the use of a public or private road. Amends Utah Code § 63G-7-301.

SB 267S01 Governmental Immunity Act Amendments (Weiler)

<http://le.utah.gov/~2014/bills/static/SB0267.html>

Provides that if a claimant files a Notice of Claim timely, but with the wrong jurisdiction, the Claimant has an additional 30 day extension of time to discover that mistake and file that claim with the correct governmental entity. Amends Utah Code § 63G-7-401.

SB 250 Public Duty Doctrine Amendments (Bramble)

<http://le.utah.gov/~2014/bills/static/SB0250.html>

Provides that a general duty that a governmental entity owes to the public does not create a specific duty to an individual member of the public unless there is a special relationship between the governmental entity and the individual member of the public. Amends Utah Code § 63G-7-202.

Related legislative changes (but not to the GIAU itself):

HB 20S02 Emergency Vehicle Operator Duty of Care Revisions (Dee)

<http://le.utah.gov/~2014/bills/static/HB0020.html>

Provides that an operator of an emergency vehicle owes no duty of care to a person who is a suspect in the commission of a crime, if that individual is fleeing from law enforcement, and that no duty of care is owed to a passenger in such a vehicle unless the passenger is being held involuntarily. Amends Utah Code § 41-6a-212.

SB 56S01 Risk Management Amendments (Bramble)

<http://le.utah.gov/~2014/bills/static/SB0056.html>

Provides that the use of school property for civic center purposes is considered a permit for Governmental Immunity purposes. This Bill should make it easier to use school district property for various public purposes. Amends Utah Code § 53A-3-413.

Margaret D. Plane
Salt Lake City Attorney's Office
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