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Dangerous Condition of S \$2,000,000
Public Property

For the plaintiff:
Steven R. Cavalli
Jayme L. Walker
For the defendant:
Wendy M. Garbers

Alameda Superior
Mediator Ellen S. James,
ret., JAMS

RESULT DATE: Jan. 26, 2015

Nancy Lee, Monica Lee, Samantha Lee v. City of Oakland (RG12641451) 16-JV_95

FURTHER DESCRIPTION: Wrongful Death

SETTLEMENT: \$2,000,000

ATTORNEY Plaintiff - Steven R. Cavalli, Jayme L. Walker (Gwilliam, Ivary, Chiosso, Cavalli & Brewer APC, Oakland).
Defendant - Wendy M. Garbers (Office of the City Attorney, Oakland).

FACTS: On Sept. 24, 2011, Allen Lee, 52, was riding his bicycle with his cycling club when his front tire became caught in a large rut in the roadway while he was descending Grizzly Peak Blvd. in the City of Oakland. As Lee struggled to free his bicycle from the confines of the 6-8 foot long large rut, the bicycles momentum caused Allen to be thrown over the handlebars, across the centerline and into the path of an oncoming vehicle. He died almost instantly from massive head trauma.

Decedent's wife and two daughters, ages 16 and 20, brought this action against defendant.

CONTENTIONS: PLAINTIFF'S CONTENTIONS: Plaintiffs claimed the City of Oakland was liable for allowing a dangerous condition to exist on public property despite actual notice of the dangerous condition in plenty of time to correct it before decedent's death. In March 2005, the City of Oakland responded to a cyclist's complaint acknowledging that they were unable to fix the potholes on one of the sections of Grizzly Peak and acknowledging the road's condition was a danger to cyclists.

In December 2005, Oakland City Councilwoman Jane Brunner forwarded a complaint from a civil engineer regarding the danger to hundreds of bicyclists on Grizzly Peak Blvd. because of cracks in the roadway. There are several emails back and forth between public works about advising as to the plan of action, but no plan of action to correct the dangerous condition.

Another complaint on March 20, 2007, indicated that two bicyclists had ended up in the ER because of the potholes on Grizzly Peak. The city replied that it was repairing streets but was limited by funding. The response acknowledged that the city was familiar with the condition of the road and even admitted that there likely were many bicycle collisions caused by the condition of the road that were unreported. On May 24, 2010, a cyclist called to complain about cracks on Grizzly Peak that the caller claimed was wide enough to fit a bicycle tire.

Six months prior to decedent's death, there was a complaint about potholes on Grizzly Peak between Lomas Cantadas and Claremont Ave. Nothing was done to resolve the complaint until Jan. 1, 2012, after decedent's death.

DEFENDANT'S CONTENTIONS: Defendant contended that decedent assumed the risk of riding his bicycle on Grizzly Peak because he was engaged in a sport with inherent risks. Defendant contended that because decedent was riding with an organized cycling club and preparing for a cycling competition that hitting potholes in the road was a risk inherent in that activity. Defendant claimed the city was unable to fix the roadway because it lacked the funds.

DAMAGES: Plaintiffs claimed approximately \$500,000 in loss of household services.

RESULT: The case settled for \$2 million.

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