

CLICK HERE TO RETURN TO WEBSITE

[APPELLATE DECISION]

Hernandez v. Department of Transportation

***536 7 Cal.Rptr.3d 536**

2003 Daily Journal D.A.R. 13,627

**Kathleen HERNANDEZ et al, Plaintiffs and
Appellants,**

v.

**DEPARTMENT OF TRANSPORTATION,
Defendant and Respondent.**

No. B157527

Dec. 15, 2003.

Background: Persons injured in automobile accident and family of deceased person brought actions against Caltrans....Superior Court granted summary judgment for Caltrans. Plaintiffs appealed

...Hernandez's expert, former Caltrans Traffic Engineer Robert Douglas, opined that "Caltrans initially installed embankment guardrail at the 600-foot top-of-offramp location under Section 8-604.2 of its applicable 1966 Traffic Manual because of perceived high 'run-off-the-road probability.' However, such high 'run-off-the-road probability' was even higher at the location of Plaintiff's accident." Accordingly, **according to Douglas** "Caltrans' own applicable embankment guardrail guidelines specifically called for guardrail to be installed at the subject offramp accident location because the slope and embankment heights there fell well above the 'Guardrail Need Determination' curve [in the guidelines], and since there was a perceived high run-off-the-road probability at the top 600 feet of the offramp (where other embankment guardrail was installed), the probability was even substantially higher at the Plaintiff's offramp accident location. Caltrans' failure to have installed guardrail on the portion of the offramp embankment where Plaintiffs' accident in this case occurred, in my opinion, was in violation of Caltrans own 1966 Traffic Manual's embankment guardrail guidelines, specifically Section 8-604.2."...

DISPOSITION

The judgement is reversed. The matter is remanded to the trial court for further proceedings not inconsistent with this opinion. Hernandez is to recover her costs on appeal.

[APPELLATE DECISION]

FILED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

NOV 23 2005

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
ERIKA D. DUNN DEPUTY

Young Seok Kim and Tai Lee,

Plaintiff,

Case No.

v.

Order

Eckhart Seed Company, et. al.,

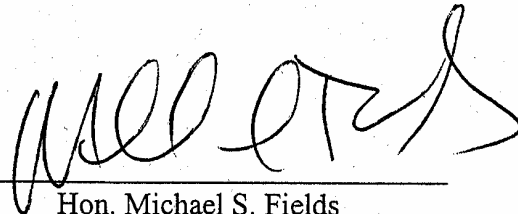
Defendants.

The summary judgment motion of Defendant California Department of Transportation ("State") came on regularly for hearing on Nov. 4, 2005. After oral argument, the matter was submitted. Now, at a later time, the court denies the motion for the reasons stated below.

There is at least a triable issue regarding whether the State has established the second element of design immunity as to design approval. Plaintiff's expert, Robert Douglas, a Traffic and Roadway Design/Construction Engineer who had worked at Caltrans, asserts that the lack of a completion date and signature by a Resident Engineer on the "As Built" plans the State produced are significant. Without them, there is no guarantee that the intersection in question was in fact constructed pursuant to the plans offered. The State did not address this point in its reply or oral argument.

Dated:

11/28/05



Hon. Michael S. Fields
Judge of the Superior Court