

A swing, and a miss!

by Reed Hardesty

One of the few immunities granted in our state is RCW 4.24.210, commonly referred to as the Recreational Immunity Statute. A landowner that opens their land for recreational use, without charging a fee, is not liable unless a condition is known, artificial, dangerous and latent. If a landowner provides a warning to users of known conditions, the immunity statute still applies. Many WCIA members operate parks that are open to the public.



We frequently get claims and lawsuits from people injured in those parks. The member's knowledge, regular maintenance, and inspection practices can be important elements in successfully defending claims and lawsuits.

A fourteen-year-old girl broke her arm on a city swing. The city swing set was circled by a raised concrete curb-style border that separated and contained the surface material within the swing set area from the grassy field section of the park. She had been swinging when the swing seat split and she fell off the swing and stumbled and contacted the curb. This park was the crown jewel of this city's park system and was well maintained. Employees did weekly inspections using a checklist and diligently noted the conditions inspected and noted corrective action taken when required. The inspections were done every Friday—they never missed a week. Occasionally the employee noted vandalism in the park. A few months before the accident in question, the employee noted some seat swings had been vandalized with cuts, the employee replaced those seats. In the inspection after the injury, the employee also noted more vandalism to the swings and replaced more seats.

When the attorney presented the claim for \$60,000, we countered with the excellent maintenance of the city and the recreational immunity statute. The attorney poooh-pooohed the applicability of the statute and began to describe the placement of the curb near the swings as the latent condition that was an exception. He argued park construction standards required curbing to be further from the swing area. Thankfully, arguing relational latency, like a very visible curb, has been well tested and resisted by case law. Courts have said it is not the perspective of the user that determines whether a condition is latent or not. The pertinent case law involved an off road motorcycle rider going over large hills. From his perspective, the motorcyclist could not see that the hill he was going over led to a straight drop off. The judge and the Court of Appeals affirmed for the purposes of the rec immunity statute, the perspective of the injured person is immaterial. The side of a gravel hill is obvious and patent; it cannot become

latent. Same with a curb around a swing, or moss on steps to a restroom at a little used park restroom in a remote state park.

The plaintiff's attorney was not swayed by this winsome argument from the WCIA adjuster, and he filed a lawsuit. After very little discovery, the defense attorney was able to get the entire case dismissed in large part due to the weekly checklists that clearly showed the city was a dutiful park owner. The city was entitled to recreational immunity under RCW 4.24.210 since they did not charge the user a fee of any kind to use the park and the condition that injured the user (the vandalized swing seat) was not known to city employees.