Recreational immunity: not always a slam-dunk defense

by Debbi Sellers

In 1967, legislation was enacted to provide immunity to landowners who open their land to the public, free of charge, for recreational use. The landowner must have lawful possession and control of the land and have authority to close the land to the recreating public.

What does it mean to have immunity? Recreational immunity is provided for under RCW 4.24.210 and is available to any public or private landowner or others in lawful possession and control of land. In order for recreational immunity to apply, all of the following conditions must be met: (1) the landowner must allow members of the public to use the land for the purpose of outdoor recreation; (2) there must be no fee of any kind charged for the use of the land; and (3) the landowner must place warning signs for any known dangerous artificial latent conditions. When all of these conditions have been met, the landowner shall not be liable for unintentional injuries, thus having immunity.

It is well-settled that the immunity statute is applicable to municipal parks and play areas. *See Curran v. City of Marysville, 53 Wn. App. 358, 766 P.2d 1141 (1989) and Van Dinter v. City of Kennewick, 121 Wn.2d 38, 846 P.2d 522 (1993).* Courts have also found that a landowner can charge a fee for one portion of his recreational land, without losing immunity for the remainder. This was true in *Jones v. United States et al., 693 F.2d 1299 (9th Cir. 1982)* where the plaintiff, Ida Jones, injured herself in the Hurricane Ridge area of Olympic National Park while she was snow sledding on an inner tube she had rented for a fee from the park. The rental fee for the inner tube was not a fee charged for the entrance upon or the use of the land on which the injury occurred and recreational immunity was granted.

A landowner does not need to devote an entire contiguous parcel of land to public use without charge in order to have immunity. A landowner must only show that it charges no fee for using the land or water area where the injury occurred. In recent years however, courts have developed the “necessary and integral test” which is applied to land that is partially fee-generating and partially free. If an accident happens on land

that is open for general recreational use, but the location is a necessary part of the fee-generating portion, immunity will not apply. For example, in *Nielsen v. Port of Bellingham*, *107 Wn.App. 662, 27 P.3d 1242 (2001)*, Joyce Nielsen was visiting a friend who was renting space at a commercial marina. While walking along the dock toward his residence, she tripped and was injured. The Port reasoned that the area where the plaintiff tripped was open for recreational use by anyone, so immunity should apply. The court disagreed, stating that it was a "necessary and integral" part of the fee-generating rental area. The court came to a similar decision in *Plano v. City of Renton, 103 Wn.App. 910, 14 P.3d 871 (2000)*.

While WCIA has had success denying liability for injuries and obtaining dismissals of lawsuits by arguing the applicability of the Recreational Immunity Statute, it is not a given. If you have questions regarding recreational immunity, please contact your assigned WCIA Risk Management Representative.

WCIA Risk Management Representatives are available to answer questions and inspect playgrounds, ball fields, swimming pools, and parks for members! For assistance please contact your assigned Risk Management Representative.