

WA Recreational Immunity Statute and Leased Land

By Jason Barney

Claimant “Truman Burbank” was injured when he tripped and fell over a curb stop placed along a walking path leading to the seating area of a baseball stadium, and brought suit against the City of Seahaven. The curb stop was arguably out of place and a trip hazard. The suit was successfully defended based on recreational use immunity - though a few extra steps of analysis were required because the City of Seahaven leased instead of owned the property on which Burbank was injured.

Washington’s recreational immunity statute ([RCW 4.24.210](#)) provides landowners or others in lawful possession of lands immunity for unintentional injuries to users when those lands are opened to the public without charge for recreational purposes. Exceptions apply for injuries caused by known, dangerous, artificial, latent conditions unless a warning sign is conspicuously posted. So, a landowner may be immune from a claim for a trip-and-fall caused by a protruding tree root on a hiking trail, since that condition is natural, not artificial, and is not latent. But, a landowner would not be immune for injuries caused by a hidden, dangerous artificial condition known to the landowner.

The immunity analysis often focuses on the exceptions (known, dangerous, artificial latent) and not necessarily on the status as a landowner, or more particularly, “others in lawful possession of lands.” Here, the City of Seahaven leased lands from the school district which were developed into recreational facilities with volunteer assistance from the local parks foundation. The City of Seahaven was not the owner but was in lawful possession of the land and it was open for recreational purposes.

Check the lease agreement for the rights and responsibilities of the lessor and lessee. The statute has been interpreted to exclude immunity unless the possessor of the land also has the authority to close the land and exclude recreational activities. If the lease is not clear on this issue, immunity may be barred - even if the property was open for recreational purposes at the time of the accident.

The City was able to prevail on a summary judgment motion for the injury claim arising from this leased, recreational property. If you have non-owned property available for recreational purposes, you may want to review your lease agreements for language specifying that the land is open for recreational purposes and that the City/lessee also has the authority to close the land or otherwise put it to non-recreational use. This will strengthen the City's immunity defenses for injury claims arising out of the uses of recreational property.