

# Key to a fun and safe summer

By Drew Brien

Summer is almost here. The days are getting longer and our parks are filling with people gathering to enjoy the outdoors, various recreational activities, and perhaps the occasional sunset. Here in Washington we have access to a plethora of different parks from beaches and forests, to recreational fields and historical or cultural parks. One thing all entities who run and manage these parks have in common is Recreational Immunity. The Recreational Immunity Statute, [RCW 4.24.210](#), provides that landowners who allow members of the public to use their properties for the purposes of outdoor recreation, without charging a fee, shall not be liable for unintentional injuries to such users.

WCIA recently defended a lawsuit in which the plaintiff was visiting a local park with beach access. While at the park, she was walking on a promenade that ran parallel to the beach when she tripped over a broken portion of the promenade that had sunken below the surface.

In this particular case, WCIA moved for summary judgment on the basis that Recreational Immunity applied to this loss. The plaintiff argued that Recreational Immunity did not apply because the park rented out covered shelters and kayaks for a fee. (In order to defeat Recreational Immunity, you must show that the cause of the injury was due to a known artificial latent defect or that there was a fee to use the park.) In response, we argued that Washington Courts have been consistent in that landowners may still charge a fee for something other than the use of the land itself, and still enjoy Recreational Immunity (*Jones v United States*).

In the end, the Court agreed with WCIA's defense saying that offering kayak and shelter rentals was not considered a fee to use the park where the plaintiff was injured. It was additionally found that the condition of the promenade where the loss occurred was an 'open and obvious condition' which made it a patent condition and not latent. The Court entered an order dismissing the case with prejudice.

It's just about that time of year when we spend as much time outside as possible, so parks will be in high demand. For the safety of our citizens, regardless of any potential defenses, action should be taken to keep parks reasonably safe for ordinary use.

For further information on Recreational Immunity and parks maintenance, general guidelines can be found in Section 5, PAR.04, of the [WCIA Liability Resource Manual](#).