

WASHINGTON CASE UPDATE

Cyclist Can't Get Over Recreational Immunity Speed Bump

From the Desk of Kyle Riley: Is the owner of land provided for public recreational use immune from liability when a cyclist falls and is injured after riding over a raised portion of a pathway that he thought was flat? Read on to see how the Washington Supreme Court examined the case.

Claims Pointer: In Washington, landowners who open their land to the public are immune from liability relating to the recreational use of the land unless a particular exception applies. One exception to immunity is when the injuries are caused by a "known dangerous artificial latent condition for which no warning signs were posted." In this case, the Washington Supreme Court ruled that a landowner does not need actual knowledge for a condition to be "dangerous," and that a condition is "latent" (hidden or not obvious) if the "ordinary recreational user" standing near the condition could not observe it.

case in point...

Jewels v. City of Bellingham, No. 90313-1, 2015 WL 3643478, June 11, 2015, Supreme Court of Washington.

Steven Jewels was riding his bicycle on a pathway in Cornwall Park, which is maintained by the City of Bellingham ("the City"). As he was riding, Jewels rode over a speed bump that caused a jolt to his bike. As he approached the next bump, he decided to go around it on what he thought was "bare, flat pavement." Both asphalt speed bumps were painted with bright yellow paint, were approximately three inches high, and spanned the entire width of the road. At either end of each speed bump there was a slightly less raised portion of the path about two inches high that diverted water off of the pathway. These "water diverters" were not painted. When Jewels rode over the water diverter, the unexpected shock threw him from the bike, causing him injury. A day after Jewels' injury, the City issued a work order to paint the water diverters like the speed bumps.

When Jewels filed a negligence suit against the City, the City filed a motion for summary judgment arguing that it had immunity under Washington's recreational land use statute. In response, Jewels argued that the water diverter was a "known dangerous artificial latent condition." RCW 4.24.210(4)(a). The trial court granted summary judgment to the City, stating that the water diverter was "clearly obvious and clearly visible...[s]o it is not a latent condition." The trial court also ruled that the City did not know the water diverter was dangerous, and therefore, was immune from

suit. The Court of Appeals affirmed.

The Washington Supreme Court upheld the summary judgment ruling, but only on the basis that the condition, the water diverter, was not latent. The Court concluded that the trial court and Court of Appeals were mistaken that RCW 4.24.210(4)(a) requires the plaintiff to prove that the party claiming recreational use immunity (in this case, the City) had actual knowledge that a condition was dangerous. The Court clarified that the words "known," "dangerous," "artificial," and "latent" only modify "condition," not each other. Therefore, a condition need only be dangerous to meet that part of the exception.

As to whether the water diverter was latent, the Court held that a condition is not latent as a matter of law "if an ordinary recreational user standing near the injury-causing condition could see it by observation, without the need to uncover or manipulate the surrounding area." The Court explained that the latency of a condition is based on the average recreational user, not the personal experience of the user or the viewpoint of a particular activity. The Court affirmed the trial court's grant of summary judgment to the City.



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