

OREGON CASE UPDATE

Is a City Employee Immune from Liability under Oregon's Public Use of Land's Act?

From the desk of Joshua P. Hayward: Are government employees or government agents that are responsible for the repair or maintenance of city-owned recreational land immune from liability for their negligence? Read on to see how the Oregon Supreme Court recently answered this question.

Claims Pointer: The Oregon Supreme Court held that individual employees or agents responsible for repairing, maintaining, and operating improvements on City-owned recreational land available to the public for recreational purposes are not "owners" of the land and, therefore, are not entitled to immunity from their negligence. This case is important in distinguishing immunities that are personal to a defined individual or entity and those that may extend to agents of that individual or entity.

case in point...

Johnson v. Gibson, 358 Or 624 (March 3, 2016).

Emily Johnson ("plaintiff") filed a lawsuit after stepping into a hole while jogging in a public park and injuring herself. In her complaint, plaintiff named the City of Portland, Scott Gibson and Robert Stillson ("defendants"). Gibson, a park technician responsible for park maintenance, created the hole to fix a malfunctioning sprinkler head. Stillson was the maintenance supervisor for all west side parks in the City.

Plaintiff filed her complaint in federal district court, alleging that the defendants were liable for negligently causing her injuries. The district court granted summary judgment in favor of the three defendants, holding that the defendants were immune from liability under Oregon's Public Use of Lands Act ("the Act"). Plaintiff appealed to the Ninth Circuit Court of Appeals, which certified two questions to the Oregon Supreme Court. The first and primary question was whether individual employees responsible for the repair, maintenance and operating improvements on City-owned recreational land available to the public for recreational use are "owners" of the land and therefore immune from liability for their negligence. The Oregon Supreme Court answered that the individual employees are not "owners" of the land and therefore are not

immune from liability.

The court reviewed the Act, which provides an owner of land immunity from liability for any injury or property damage that arises out of the use of the land for recreational purposes. The limitation on liability applies where the principle purpose for the land's use is recreation. An "owner" is defined as the possessor of any interest in any land and includes a tenant, lessee, occupant or other person in possession of the land.

The court disagreed with the defendants' argument that the definition of "owner" was ambiguous and could include owners' employees and agents. According to the court, an owner must have some level of control over the use of land. Absent an ability to control the land's use, the individual does not have the decision-making authority contemplated by the statute to either make the land available to the public or charge for permission to use the land.

The court also rejected defendants' argument that the law recognizes employees and agents as having the same privileges and immunities as their principals. According to the court, immunities provided to a principal may, but do not always, extend to the principal's agent. Furthermore, whether immunity extends to an agent is a matter of

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legislative choice and the legislature must determine how broadly immunity extends. In this case, the court was unwilling to assume that the legislature intended to extend immunity to an owner's employees and agents. Neither the text of the Act nor its context or history showed a legislative intent to extend the immunity of owners to their employees and non-employee agents. According to the court, the legislature knows how to extend immunity to governmental employees and agents and chose not to do so in the Act.

Therefore, the Public Use of Lands Act does not extend immunity to individual employees or agents as they are not considered owners of the land.

Because the court determined that immunity did not extend to employees and agents, it did not address the second question certified to the court.

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