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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 295109

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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III

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FOURTH MEMORIAL CHURCH, a non-profit Washington  
Corporation, d/b/a RIVERVIEW BIBLE CAMP,

Appellant

v.

GAVIN J. CREGAN, a married person,

Respondent

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PETITIONER'S REPLY BRIEF

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## I. INTRODUCTION

It is undisputed that (1) the Recreational Use Act applies to use of a slide; (2) that the Camp was open to members of the public at the time Plaintiff's injury occurred; and (3) that no fee was charged for the use of the Riverview Bible Camp. These undisputed facts clearly warrant immunity under the Recreational Use Act.

To overcome the application of these facts to the statute, Respondent argues that once a fee is ever charged by a property owner, that forever precludes the application of the Recreational Use Act. In other words, the Respondent argues that property use never changes. To reach this conclusion, the Respondent asks this Court to add language to the statute, to ignore precedent that analyzes how the property is being used at the time of the injury, and to apply inapplicable case law. The Court should reject Respondent's attempt to add requirements that are not supported by the language of the statute, nor case precedent interpreting the statute.

## II. ARGUMENT

### A. Application of the Undisputed Facts to the Plain Wording Of The Recreational Uses Act Indicate it is Applicable to this Case.

When the Court applies the undisputed facts to the plain wording

of the statute, the Recreational Use Act is clearly applicable to this case.

The statute provides in relevant part:

Except as otherwise provided in subsection (3) or (4) of this section, **any public or private landowners . . . , who allow members of the public to use them for the purposes of outdoor recreation, . . . without charging a fee of any kind therefor**, shall not be liable for unintentional injuries to such users.

RCW 4.24.210(1) (emphasis added).

First, the Respondent is a member of the public. Second, Riverview Bible Camp allowed the Respondent to use the slide in question for purposes of outdoor recreation. Third, neither Mr. Cregan, nor Beats & Rhythms were charged a fee of any kind for the use of the property. Applying these facts to the plain wording of the statute, Riverview Bible Camp is not liable for the unintentional injury the Respondent sustained when using the slide.

The Respondent argues that the Recreational Use Act should be narrowly construed. However, when reviewing statutory language, the interpreting party cannot add words or clauses to the language of the statute. State v. Freeman, 124 Wn. App. 413, 101 P.3d 878 (Div. 1, 2004). As will be discussed, each of the Respondent's arguments impermissibly invite the Court to add language and conditions to the statute.

**B. The Respondent Erroneously Argues that the Recreational Use Act is Unavailable to Property Owners if Any Fee is Charged at Any Time in the Past to Any Member of the Public.**

For the first time on appeal, the Respondent argues that the wording of RCW 4.24.210(1) means that if any member of the public is charged a fee at any time in the past that a property owner is forever precluded from obtaining the protection afforded under the Recreational Use Act. To support this argument, the Respondent selectively cites to phrases of the statute, while ignoring other portions that directly contradict such an interpretation. The Respondent further ignores Washington precedent that has consistently held that property use changes, and thus the Court reviews how the property is being used at the time of the injury.

**1. The Statutory Language Does Not Support the Respondent's Strained Interpretation.**

The Respondent argues in its brief that “Before immunity is granted, free access must be provided to ‘members’ of the public, not just to any member and *not just to the individual bringing the claim* which gives rise to the assertion of the defense.” (Resp. Brief. Pg. 9) (emphasis added). The Respondent goes on to argue that if any ‘members of the public’ are charged a fee to use the property at any time in the past, than the property owner is forever precluded from obtaining the statutory immunity. (Resp. Brief. Pg. 9). Under this strained argument, if a

different member of the public was previously charged a fee at some time in the past (ie. ten years ago), the property owner would be forever precluded from obtaining the protection of the Recreational Use Act to a member of the public who was injured using the property for free for recreational purposes. The Court should reject this argument because it clearly leads to absurd results that were never intended by the legislature. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (statutes should be construed to give effect to their manifest purposes and to avoid absurd results).

First, the statute focuses on the individual that is using the property and who is injured. The statute provides in relevant part:

Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners . . . who allow members of the public to use them for the purposes of outdoor recreation, . . . without charging a fee of any kind therefor, **shall not be liable for unintentional injuries to such users.**

RCW 4.24.210(1) (emphasis added). The bolded portion of the statute was conveniently ignored by the Respondent. The statute clearly focuses on the users of the property who are injured. That is to say, at the time of the injury, was the landowner charging the users a fee of any kind for the use of the property for the purposes outdoor recreation?

This focus on the individual users of the property is also emphasized in the statutory language of RCW 4.24.200, which provides:

The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes **by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.**

(Emphasis added). The grant of immunity is targeted to the individual persons entering on to the property that are injured. It is illogical and unsupported by the statutory language for the Respondent to argue that the statute means that if any member of the public was charged a fee some time in the past (such as ten years previously), that the landowner is forever precluded from obtaining protection under the Recreational Use Act. The plain wording of the statute focuses on the users, or individual persons, who are using the property at the time of the injury.

**2. Riverview Bible Camp is Not Required to Leave Its Camp Open to the Entire *General Public* for Free Use at All Times for the Recreational Use Act to Apply.**

The Respondent continues to argue on appeal, albeit in a slightly different manner, that the Recreational Use Act cannot apply to protect Riverview Bible Camp because the camp did not allow *all members* of the *general public* use the facilities at *all times*. This argument continues to

fail because Washington's Recreational Use Act lacks language requiring a landowner to open their land to every member of the general public at all times for the Act to apply. The Respondent does not attempt to distinguish the statutes and cases from the other jurisdictions that Riverview Bible Camp cited in its Appellate Brief that rejected the same argument. The Respondent further does not address Washington's legislative history of the statute which further supports the interpretation that select members of the public can be allowed to use the property for specified periods of time. Nor does the Respondent address Washington precedent that has clearly held that property use changes, and thus the Court must focus on how it is being used at the time of the injury.

**a. The Respondent makes no attempt to distinguish the statutes in other jurisdictions that have rejected his argument.**

The Respondent makes a conclusory argument that the statutes in Missouri, Nebraska and Hawaii are worded to allow landowner's immunity who allow access to individual members, but not "free access to the rest of the public." (Resp. Brief. p. 10). Without any argument or specific citation by the Respondent, Riverview Bible Camp is uncertain as to what portion of the statutes, if any, the Respondent may be referencing. As such the Court should simply disregard the Respondent's nonspecific,

conclusory reference in his brief. State v. Johnston, 100 Wn. App. 126, 134, 996 P.2d 629 (2000) (issue is waived when party fails to provide legal support).

However, even if the Court does consider the Respondent's generic argument, the reality is that the statutes in each of the jurisdictions are similarly structured. For instance, Missouri's statute provides in relevant part:

Except as provided in sections 537.345 to 537.348, an owner of land owes no duty of care to **any person who enters on the land** without charge to keep his land safe for recreational use or to give any general or specific warning with respect to any natural or artificial condition, structure, or personal property thereon.

V.A.M.S. 537.346. The statute similarly focuses on the person who enters upon the land and uses the property similar to RCW 4.24.200 and RCW 4.24.210(1).

Nebraska's Recreational Use Act is worded very similar to Washington's statute.

The purpose of sections 37-729 to 37-736 is to encourage owners of land to make **available to the public** land and water areas for recreational purposes by **limiting their liability toward persons entering thereon** and **toward persons who may be injured** or otherwise damaged by the acts or omissions of persons entering thereon.

Neb.Rev.St. § 37-730 (emphasis added).<sup>1</sup> Again, Nebraska’s statutory language is very similar to RCW 4.24.200. See also Neb.Rev.St. § 37-731; Neb.Rev.St. § 37-732 (which discusses allowing persons to come on to the property without charge).

The Nebraska Supreme Court interpreted these statutes and concluded that “a landowner need allow only some members of the public, on a casual basis, to enter and use his land for recreational purposes to enjoy the protection” of recreational use immunity. Holden ex rel. Holden v. Schwer, 242 Neb. 389, 495 N.W.2d 269, 274 (1993).

Hawaii’s Recreational Use Act is likewise similar to Washington’s. Its purpose is similarly explained in the statute:

The purpose of this chapter is to encourage owners of land to make land and water areas **available to the public** for recreational purposes by **limiting their liability toward persons entering thereon** for such purposes.

HRS § 520-1; see also HRS § 520-4. The Ninth Circuit Court of Appeals rejected the argument that the land must be open to the entire general public for the landowner to be afforded immunity under the recreational

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<sup>1</sup> Riverview Bible Camp cited Holden ex rel. Holden v. Schwer, 242 Neb. 389, 495 N.W.2d 269, 274 (1993) in its Appellate Brief. The Supreme Court of Nebraska interpreted the Nebraska Recreational Use Act which was codified at the time as Neb.Rev.St. §§ 37-1001 through 37-1005. The Nebraska Recreational Use Act was subsequently recodified at Neb.Rev.St. §§ 37-729 through 37-736.

use act. Howard v. U.S., 181 F.3d 1064, 1071 (9<sup>th</sup> Cir. 1999) (emphasis added).

Contrary to the Respondent's mischaracterization, the statutes in Nebraska, Missouri, and Hawaii have not worded their statutes significantly different than the way Washington has worded its Recreational Use Act. These statutes do not specifically state that a landowner can "den[y] free access to rest of the public" to still obtain immunity under the statute. The courts interpreting the statute simply looked at the plain wording of the statutes. The plain language of RCW 4.24.200 and RCW 4.24.210 similarly provide that a landowner is immunized from liability for unintentional injuries to persons who enter onto the land and use the land for recreational purposes. There is no language in RCW 4.24.210 that requires the property to be opened up to the entire *general* public in order for a property owner to be afforded the protection under the Recreational Use Act.

**b. Washington's Legislative History further clarifies that the Recreational Use Act is applicable to individual members of the public for limited periods of time.**

Washington's legislative history supports the interpretation that property owners can give permission for specified persons to come on the property for specific time periods and still be afforded protection under the

Recreational Use Act.

The Respondent argues that this Court should not consider the legislative history because the statute is not ambiguous. Riverview Bible Camp agrees that the plain meaning of the statute does not require a landowner to open up its land for free to the *entire general* public. However, it is the Respondent who is attempting to create the ambiguity by arguing that the term “members of the public” and “*persons entering thereon*” somehow means member of the *entire general* public, who must have access to the property *all of the time*. Due to the fact that the Respondent is attempting to add language and ambiguity in the statute, it is appropriate for the Court to consider the legislative history which clearly demonstrates that the drafters never intended what the Respondent is attempting to argue.

The Respondent further argues that the Court should not consider the legislative history because the legislators were not discussing the payment of a fee for the use of the property, and therefore the entire discussion is irrelevant. The Respondent simply misses the point. The discussion is directly applicable to the question of whether the property has to be maintained open to the entire general public all of the time in order for the Recreational Use Act to apply. As can be seen by the

discussion between the legislators, that is not the intent of the statute. As seen by the example of the hunter asking permission of the landowner to come upon the property to hunt, private property could be allowed to be used as recreational use for specified persons, and for a specified time period. If a person enters the property without first seeking permission, then they would be considered trespassers. H.R. 258, Wash.S.Jour. 42<sup>nd</sup> Legis. 875-77 (1967) (CP 93-94).

In this case, Riverview Bible Camp is acting in just the same manner as the farmer who allows a hunter to come on his property. Riverview Bible Camp is a non-profit organization that operates a camp. It manages to usually make a slim profit with the help of donations and the fees charged to groups and campers for the use of the facility. Although in 2009, it actually lost money. (CP 114-115). Like the farmer, Riverview Bible Camp wanted to give back to society and allow an organization such as Beats & Rhythms to use the facility for a weekend free of charge. Given the language of the statute, and the legislative history, it is apparent that Riverview Bible Camp's charitable act was exactly what the Legislature intended, and the conduct they hoped would occur with the enactment of the statute.

c. **Courts analyze how the property is being used at the time of the injury.**

Property classification and use does not remain static. Washington Courts have recognized that property can be used for different purposes at different times. Courts must focus on the landowner's use of the land at *the particular time of the injury* being litigated. Home v. North Kitsap School District, 92. Wn. App 709, 715, 965 P.2d 1112, 1116 (1998).

According to Division One, the proper approach when applying this statute is to analyze the purpose for which the landowner was using the land, as opposed to the purpose for which the Respondent was using the land.<sup>FN6</sup>  
**We agree, although we observe that a landowner may use the land for different purposes at different times. Here, then, it is necessary to focus on the nature of the landowner's use at the time of the accident being litigated.**<sup>FN7</sup>

Home v. North Kitsap School District, 92 Wn. App. at 714 (citing footnote 7 Widman v. Johnson, 81 Wn. App. 110, 114, 912 P.2d 1095, review denied, 130 Wn.2d 1018, 928 P.2d 414 (1996)) (emphasis added).

The Respondent does not dispute that the holding is applicable or that it is erroneous. Instead the Respondent attempts to distinguish and distract the Court from the case by directing the Court's attention to the discussion about whether a school football field is open to members of the

public.<sup>2</sup> Riverview Bible Camp is citing Home v. North Kitsap School District for the proposition that property use and classification does not remain static. The Court does not look at how it is used historically. Rather, the analysis is on how the property is being used at the time of the accident.

The Washington Supreme Court further rejected the argument that the courts should look at the predominant use when deciding whether the Recreational Use Act applied. In the case of McCarver v. Manson Park & Recreational District, 92 Wn.2d 370, 377, 597 P.2d 1362 (1979), the plaintiffs attempted to assert the similar argument being made by the Respondent:

Finally, appellants assert that the statute was not intended to apply to land or water areas available exclusively for recreational purposes. They argue that in light of the statutory purpose, the scope of the act should be limited to land *primarily used* for other purposes, but with *incidental* recreational uses. Thus, they reason when Manson Park affirmatively invites the public to use the park exclusively

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<sup>2</sup> The Home v. North Kitsap School District case dealt with the issue of the classification of a school athletic field when it is used for school events. When it is being used for school sponsored events, such as a football game, the court followed the rationale of the Idaho Supreme Court in a similar type of case that concluded that a school district owed a duty to protect the students and participants in the school event. The court did not have to decide the issue of what constitutes "members of the public," in the statute because the court simply relied upon the deposition testimony of the school administrator who testified that the field is not open to the public when it is being used for a scheduled sport, such as a junior high football game. 92 Wn. App. at 717.

for recreational purposes, it falls outside the scope of the liability limiting statute.

McCarver, 92 Wn.2d at 377 (emphasis added). The Court rejected the argument that looked at a property's primary use as there is no language in the statute that has such a limitation.

We decline to impose a limiting construction upon the statute differentiating land classifications based upon *primary* and *secondary uses* where the legislature did not. Arguments to achieve such a result should appropriately be addressed to the legislature.

McCarver, 92 Wn.2d at 377 (emphasis added).

The Respondent argues that the holding of McCarver is wholly different than his argument, and limited to its specific facts. The argument made by the plaintiff in McCarver is the same type of argument made by the Respondent in this case. As explained above, applying the undisputed facts of this case to the statute, Riverview Bible Camp is entitled to immunity under the Recreational Use Act. The Respondent wants to overcome the plain language of the statute by grafting on language to the statute that a landowner cannot obtain immunity where the landowner primarily uses the property as a fee charging camp, and only secondarily allows it to be used free of charge for groups such as Beats & Rhythms. (See e.g. Resp. Brief. Pg. 9). The Supreme Court rejected this type limitation based upon primary and secondary uses. The Court instead

looks at the language of the statute, and applied the facts of the case to the statute.

In this case, there is nothing in the statute that limits application of the Recreational Use Act to property where it is primarily used for recreational purposes and where fees are not charged. The Court should follow the analysis of McCarver, and reject Respondent's attempt to add restrictive language to the statute. Such limitations should be left to the legislature.

**C. Respondent's Reliance on *Plano* and *Nielsen* are Misplaced.**

Respondent spends the bulk of its legal argument discussing the boat dock cases of Plano v. City of Renton, 103 Wn. App. 910, 14 P.3d 871 (2000) and Nielsen v. Port of Bellingham, 107 Wn. App. 662, 27 P.3d 1242 (2001). Both cases are dealing with different and factually specific scenarios that are not applicable to the issues involved in this case.

**1. *Plano* addresses the issue of *mixed* use of property, and not of *changing* use of the property.**

Respondent primarily relies upon Plano to support his argument that if a property owner ever charged a fee for the use of the property, that the property owner can never obtain immunity under the Recreational Use Act. To support this argument, the Respondent cites several quotes out of

context, including the following:

But Washington's statute does not say that a landowner can have immunity so long as the lands or water areas are available free of charge some of the time. The statute simply states that there is no immunity if the owner charges a "fee of any kind".

Plano, 103 Wn. App. at 914 (cited in Resp. Brief p. 13). The Court must consider the context in which this statement was made in that case. The court in Plano was addressing a specific situation where the landowner is simultaneously charging some persons for the use of the dock, while allowing other members of the public to use the dock for free. The case did not deal with a situation where the property was allowed to be used entirely free for a charitable group and for recreational purposes. The court did not make a broad sweeping ruling that property use and classification remains static, or that the property use on one day necessarily controls how the property will be classified on a different day.

In Plano, the court started with the question of whether the City of Renton charged a "fee of any kind" for using the moorage. 103 Wn. App. at 913. The court analyzed whether the City was charging a fee for the use of the moorage to other persons when the injury occurred, rather than simply focusing on the person that was injured. Id. at 913 (citing Gaeta v. Seattle City Light, 54 Wn. App. 603, 608-09, 774 P.2d 1255 (1989)(the

court looked at the intended use of the property from the perspective of the landowner)). Ms. Plano sustained her injury when she picked up her boat moored to the dock after 6:00 pm. Id. at 913. Although Ms. Plano had paid for the moorage of her boat the previous evening, she had not yet paid during the time she sustained her injury. The court concluded that when looking at the situation from the perspective of the property owner, the City of Renton was charging members of the public to moor their boats at the time of the accident, and thus the Recreational Use Act was inapplicable.

In the above quote cited by Respondent, the court was only addressing the specific argument made by the City of Renton that because some members of the public could have walked on the dock for free, that the dock should therefore be classified as recreational use. The City of Renton did not charge the public to moor their boat to the dock between 8:00 am and 6:00 pm for up to four (4) hours, nor did it charge people who walk on the dock or the gangway without mooring a boat. Plano, 103 Wn. App. at 912. The City of Renton asked the Court to follow the case of Flohr v. Pennsylvania Power & Light Co., 821 F. Supp. 301, 305 (E.D. Pa. 1993) (where the plaintiffs had paid a camping fee, but the court concluded that the landowner was immune because the plaintiffs could have used the area where the accident occurred without charge if they had

come only for the day).

When the court made its statement in the opinion quoted above, the court recognized that the City of Renton was charging fees to the persons to use the dock and gangway throughout the day. When analyzing it from the perspective of the City of Renton, it was not important for the court to try to determine whether some members of the public were charged a fee, and some were simultaneously using the dock for free. The court did not want to, or need to, determine whether some persons paid and some did not where the owner of the land was clearly charging fees at the time of the accident. The proper analysis is the intent of the property owner. When looking at the situation from the perspective of the landowner, so long as the landowner was charging persons to use the property at the time of the accident, the court does not sort out who actually paid to determine if the Recreational Use Act applies.

Analyzing the quotation in the context, Plano's holding does not conflict with the clear holding of Home v. North Kitsap School District, 92. Wn. App at 715, that property use changes, and that the use of the property must be considered at the time of the accident. Plano was not addressing a situation where the property was being used exclusively for recreational purposes at the time of the accident. Plano was addressing the question of *mixed use* of property, rather than the *change of use* of the

property. Thus the Court should disregard the holding and comments in the Plano case. The Court should instead follow the clear rule set forth in Home v. North Kitsap School District, and analyze how the property is being used at the time of the accident.

In this case, the Beats & Rhythms group was the only group that was using the camp facilities at the time of the accident. Riverview Bible Camp did not charge Beats & Rhythms a fee of any kind for the use of the facility. (CP 106-107). As a guest group, Beats & Rhythms was responsible for obtaining chaperones and counselors to oversee the use of Riverview Bible Camp. (CP 113-114). Riverview Bible Camp was not staffing the Beats & Rhythms camp with its own counselors to oversee the use of the camp facilities. From Riverview Bible Camp's perspective, the use of the camp facilities and slide by Beats & Rhythms and the Respondent was for recreational use. This is not the same situation as in Plano where some people are being assessed a fee and at the same time some are using the facility for free. In this case, the Beats & Rhythms was given exclusive use of the camp facilities. As such, the Recreational Use Act is clearly applicable.

**2. Respondent makes inconsistent arguments as to whether a property owner can ever charge a fee for the use of the property.**

The Respondent makes inconsistent arguments in his Brief

regarding the charging of a fee, and the application of the Recreational Use Act. As discussed above, on page 9 of the Respondent's Brief, he first attempts to argue that if a property owner charges a fee at any time for the use of the property, the Recreational Use Act is forever inapplicable. The Respondent apparently recognizes that this extreme position is tenuous, and later in his brief backs away from that position. Respondent concedes that the Court in Plano did not mean that the Recreational Use Act is forever inapplicable if a fee is charged "at any time in the past." (Resp. Brief p. 15). If it is not at any time in the past, then the question becomes what period of time must elapse between the charging of a fee, and when the landowner becomes eligible for the protection of the Recreational Use Act? Is it a day? Is it a week? Is it a month? Is it a year? Is it ten years? There is nothing in the statute that provides for any such time parameters or requirements. There is further nothing in Plano that provides any such parameters.

Recognizing that there is no statutory language or precedent that supports his argument, the Respondent asks this Court to simply gloss over and not address the difficult questions and implications of the Respondent's argument.

It is not necessary to argue that *Plano* precludes immunity for fee charged "at any time in the past," where the subject landowner only occasionally and incidentally allows free

access and instead systematically denies access to all others who have not paid the rent. The *Plano* court did not need to extend its ruling in such a manner, nor does this court.

(Resp. Brief 15-16). Where there is no statutory language providing any time period, then the Court is only left with one of two choices. The first is to accept the extreme interpretation that if any fee is ever charged in the past to any member of the public, than the Recreational Use Act is forever unavailable to a landowner. The second option is to follow the holding of Home v. North Kitsap School District, and analyze how the property is being used at the time of the injury. Anything in between these two positions would require the Court to impermissibly rewrite and add language to the statute. Clearly, the more reasonable interpretation is to follow the Home precedent.

The Respondent also wants this Court to once again ignore the holding of McCarver, 92 Wn.2d at 377, and apply the Recreational Use Act based upon the primary use of the property. As the Washington Supreme Court recognized in McCarver, there is nothing in the statute that provides that type of limitation. Any such limitation should be left to the legislature, and not the Court.

**3. The *Nielsen* case is inapposite to this case.**

Respondent's citation to, and reliance upon Nielsen v. Port of Bellingham, 107 Wn. App. 662, 27 P.3d 1242 (2001) is similarly

misplaced. The Nielsen case is factually specific and distinguishable from this case in several respects. First and foremost, the case is distinguishable because the Port was charging a fee to Dr. Wilkins for the use of the ramp and boat dock. The court explained that, “Nielsen was not a recreational user within the meaning of the recreational use statute at the time of her injury; she was an invitee of Dr. Wilkins, a paying moorage customer.” Nielsen, 107 Wn. App. at 666. Unlike that case, neither Respondent nor Beats & Rhythms were charged or paid a fee for the use of the facility. They were recreational users of the camp and slide.

Second, the boat ramp and dock was not being used at the time of the accident for recreational purposes, but rather for business purposes. Analyzing the use of the property from the perspective of the landowner, the court concluded that at the time of the accident that the Port used the marina as a fee generating purpose, rather than for recreational purposes. “[T]he reason the float at Gate One exists is to provide moorage for commercial fishing boats and one ‘live aboard’-the Port’s paying customers.” Id. at 668. “Here, from any reasonably objective measure of the Port’s ‘standpoint’, the purpose of its marina at Squaticum Harbor is commercial-the mooring of fishing boats and pleasure craft for a fee.” Id. at 668.

In this case, the slide was clearly being used for outdoor recreation

when the accident occurred. The slide by its very nature is a recreational activity. Again, neither Respondent nor Beats & Rhythms were charged or paid a fee for the use of the facility. The Recreational Use Act should therefore apply.

**D. The Court Should Reject the Respondent's Policy Arguments regarding the Recreational Use Act.**

The Respondent makes several policy arguments that Riverview Bible Camp should not be afforded immunity under the Recreational Use Act. First, the slide has been used at the camp for over fifteen (15) years. (CP 101-102). Riverview Bible Camp has never had a similar type of injury from a person using the slide. The only accident that resulted in any serious injury occurred when a girl was struck by another slider while she stood posing for a photograph by her father at the end of the slide. That is wholly unrelated to the situation in this case. (CP 143-44).

Second, the Recreational Use Act provides reasonable limitations on its grant of immunity. For example, RCW 4.24.210(4) does not provide immunity to a landowner where a person is injured by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. The Respondent has not argued, and there are no facts which would support an argument, that the slide was somehow a known dangerous artificial latent condition. The immunity

granted has reasonable limitations.

Third, the Respondent argues that regardless of the statute, Riverview Bible Camp should not be granted immunity simply because a fee was not charged for the use of the facility. Riverview Bible Camp did not just provide the use of the facility and slide for free. Since Beats & Rhythms was a guest group, Riverview Bible Camp did not have its camp counselors present to monitor the use of the outdoor activities, such as the use of the slide. Instead, it turned that responsibility over to Beats & Rhythms and its counselors and chaperones. (CP 113-114). The Recreational Use Act was enacted to encourage the opening of private land to use for recreational purposes. Davis v. State, 144 Wn.2d 612, 616, 30 P.3d 460, 462 (2001). Riverview Bible Camp acted just as the statute contemplated, and thus should be afforded the protection under the Recreational Use Act.

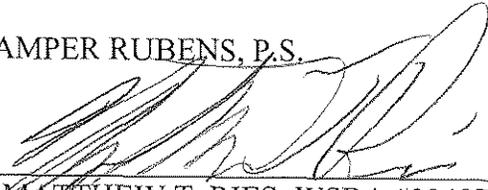
#### IV. CONCLUSION

For the foregoing reasons, Riverview Bible Camp respectfully requests that the Court reverse the Superior Court's Motion for Summary Judgment Order entered on October 22, 2010, and dismiss Mr. Cregan's Complaint against Riverview Bible Camp because it is immune from liability pursuant to the Recreational Use Act.

RESPECTFULLY SUBMITTED this 15 day of August 2011

STAMPER RUBENS, P.S.

By:



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d/b/a Riverview Bible Camp

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15 day of August 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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Richter-Wimberley, PS  
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- Hand Delivered
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LAUREL K. VITALE