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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

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No. 295109



COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON

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

Petitioner,

v.

GAVIN J. CREGAN, a married man,

Respondent.

PETITIONER'S SUPPLEMENT TO MOTION
FOR DISCRETIONARY REVIEW

MATTHEW T. RIES
WSBA #29407
STAMPER RUBENS, P.S.
720 West Boone, Suite 200
Spokane, WA 99201
(509) 326-4800
Attorneys for Petitioner

RECEIVED
SEP 20 2010
Stamper, Rubens, P.S.

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

GAVIN J. CREGAN, a married man,)
)
Plaintiff,)

NO. 10-2-00572-7

vs.)

PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
STRIKING AFFIRMATIVE
DEFENSE OF IMMUNITY

FOURTH MEMORIAL CHURCH, a non-profit)
Washington corporation, d/b/a RIVERVIEW)
BIBLE CAMP,)
)
Defendant,)

FOURTH MEMORIAL CHURCH, a non-profit)
Washington corporation, d/b/a RIVERVIEW)
BIBLE CAMP,)
)
Third Party Plaintiff,)

vs.)

BEATS & RHYTHMS, a Washington)
corporation,)
)
Third-Party Defendant.)

COMES NOW the above-captioned Plaintiff, and hereby moves the court to enter an order striking Defendant Fourth Memorial Church's 5th affirmative defense, which alleges recreational use

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PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT STRIKING AFFIRMATIVE DEFENSE
OF IMMUNITY - PAGE 1

RICHTER-WIMBERLEY, P.S.
ATTORNEYS AT LAW
U.S. BANK BUILDING
422 W. RIVERSIDE, SUITE 1300
SPOKANE, WASHINGTON 99201-0305
(509) 455-4201
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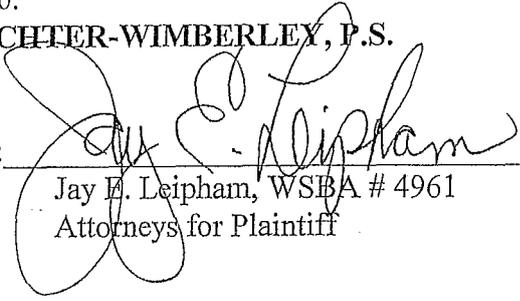
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1 immunity under RCW 4.24.200 and RCW 4.24.210. The ground for this motion is that there is no
2 dispute as to any fact material to the applicability of RCW 4.24.200 and RCW 4.24.210 to this
3 action, the statutes do not apply to the facts of this cause as a matter of law, and Plaintiff is entitled
4 to partial summary judgment striking defendant's 5th affirmative defense as a matter of law. This
5 motion is based upon the deposition testimony of the Defendant's Camp Director, Tim Mason, the
6 declaration testimony of the Plaintiff, Defendant's Answer to Plaintiff's Complaint herein,
7 Defendant's answers to Plaintiff's interrogatories and the files and records herein.
8
9

10 A proposed order granting relief requested is attached to this motion.

11 DATED this 20th day of September, 2010.

12 RICHTER-WIMBERLEY, P.S.

13 By: 
14 _____

15 Jay E. Leipham, WSBA # 4961
16 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

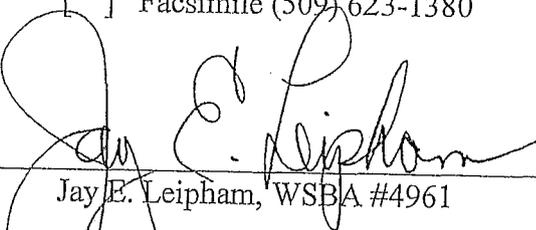
I hereby certify that on the 20th day of September, 2010, I caused to be delivered the foregoing Plaintiff's Motion for Partial Summary Judgment Striking Affirmative Defense of Immunity to the following counsel of record in the manner indicated:

Matthew T. Ries
Stamper Rubens, P.S.
720 W. Boone, Suite 200
Spokane, WA 99201

[] U.S. Mail
[] Certified Mail
[x] Hand Delivered
[] Facsimile (509) 326-4891

John P. Bowman
Keefe, Bowman & Bruya, P.S.
601 W. Main, Suite 1102
Spokane, WA 99201

[] U.S. Mail
[] Certified Mail
[x] Hand Delivered
[] Facsimile (509) 623-1380



Jay E. Leipham, WSBA #4961

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APR 14 2010

APR 14 2010
RICHTER-WIMBERLEY, P.S.

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

GAVIN J. CREGAN, a married man,)

Plaintiff,)

vs.)

No. 10-2-00572-7

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

Defendant.)

ANSWER TO COMPLAINT AND
AFFIRMATIVE DEFENSES AND THIRD
PARTY COMPLAINT

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

Third Party Plaintiff,)

vs.)

BEATS & RHYTHMS, a Washington)
corporation,)

Third Party Defendant.)

I. PARTIES, JURISDICTION AND VENUE

1.1 Defendant Fourth Memorial Church admits that it has at all times pertinent hereto been a non-profit corporation which does business in part under the name of Riverview Bible Camp (hereinafter referred to cumulatively as "Defendant Riverview"). Defendant Riverview admits the remaining allegations set forth in paragraph 1.1 of Plaintiff's Complaint.

1.2 Defendant Riverview is without sufficient information to either admit or deny the allegations set forth in paragraph 1.2 of Plaintiff's Complaint and therefore denies the same.

STAMPER RUBENS PS
ATTORNEYS AT LAW

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II. THE RELATIONSHIP BETWEEN THE PARTIES

2.1 Defendant Riverview admits it owns and occupies property and facilities in Stevens County, Washington, adjoining the Pend Oreille River, in the Selkirk Mountains, which it operates as a retreat and camp for groups. Defendant Riverview denies the remaining allegations set forth in paragraph 2.1 of the Plaintiff's Complaint.

2.2 Defendant Riverview admits that it entered into a rental agreement with Beats & Rhythms, a non-profit group which provides support and services to children suffering from congenital heart defects, including patients from Sacred Heart Children's Hospital. Defendant Riverview admits that the agreement provided for the occupancy of the camp facilities for 75 or more attendees for the weekend of June 27, 2008, planning a weekend of activities for the children served by the group. Defendant Riverview denies the remaining allegations set forth in paragraph 2.2 of Plaintiff's Complaint.

2.3 Defendant Riverview is without sufficient information to either admit or deny the allegations set forth in paragraph 2.3 of Plaintiff's Complaint and therefore denies the same.

III. THE GIANT SLIDE

3.1 Defendant Riverview admits that that there is a fiberglass slide, that Defendant Riverview allowed camp attendees and supervisors to use. Defendant Riverview admits that the slide was originally used in Spokane's Expo 74, and that Defendant Riverview subsequently acquired the slide and moved it to the camp, where it was reassembled and placed into operation. Defendant Riverview admits that the slide has been operated by Defendant Riverview for a number of years, and that it is commonly referred to as The Giant Slide. Defendant Riverview denies the remaining allegations set forth in paragraph 3.1 of the Plaintiff's Complaint.

3.2 Defendant Riverview admits that The Giant Slide is designed for users to seat themselves on a burlap sack at the top and slide down the length of the apparatus in separate lanes. Defendant Riverview is without sufficient information to either admit or deny the remaining allegations set forth in paragraph 3.2 of Plaintiff's Complaint and therefore denies the same.

3.3 Defendant Riverview admits that portion of the slide was in need of repairs. Defendant Riverview denies the remaining allegations set forth in paragraph 3.3 of Plaintiff's Complaint.

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CAUSE OF ACTION
(BREACH OF CONTRACT/INDEMNIFICATION)

3.1 For purposes of this cause of action, Riverview incorporates by reference all allegations contained in paragraphs 1.1 through 2.10 above.

3.3 To the extent that Riverview is found liable to Gavin Cregan for the injuries sustained on Riverview's premises, Beats & Rhythms has the obligation to indemnify and hold harmless Riverview for those damages pursuant to the Indemnity Agreement signed by Beats & Rhythms.

3.4 To the extent that Riverview is found liable to Gavin Cregan for the injuries sustained on Riverview's premises, Beats & Rhythms has the obligation to indemnify and hold harmless Riverview for the attorneys fees and costs incurred in defending Gavin Cregan's claims pursuant to the Indemnity Agreement signed by Beats & Rhythms.

3.5 Riverview is entitled to recover from Beats & Rhythms all damages and costs incurred by Riverview to the extent they arise out or are connected with Beats & Rhythms' negligent acts or omissions that occurred on the Riverview's premises.

PRAYER FOR RELIEF

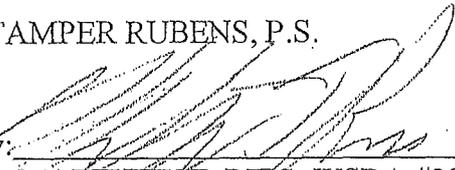
WHEREFORE, Riverview prays this Court for the following relief:

1. That Plaintiff be awarded nothing from Riverview, and that Plaintiff's lawsuit be dismissed with prejudice;
2. That Riverview be awarded its attorney fees and costs from the Plaintiff incurred in defending this matter as provided by law, including but not limited to, RCW 4.84 *et seq.*;
3. To the extent that Riverview is found liable to Gavin Cregan for the injuries sustained on Riverview's premises, that Riverview be awarded from Beats & Rhythms those damages, along Riverview's attorneys' fees and costs incurred in defending this matter as provided by law, including but not limited to, RCW 4.84.330.
4. For such other and further relief as the court deems just and equitable.

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DATED this 14 day of April 2010.

STAMPER RUBENS, P.S.

By: 
MATTHEW T. RIES, WSBA #29407
Attorney for Defendant, Fourth
Memorial Church, d/b/a Riverview Bible
Camp

STAMPER RUBENS PS
ATTORNEYS AT LAW

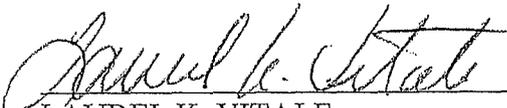
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CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of April 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jay Leipham
Richter-Wimberley, PS
422 W. Riverside Ave., Ste. 1300
Spokane, WA 99201

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy (Facsimile)


LAUREL K. VITALE

H:\Brotherhood Mutual\Fourth Memorial Church\Pleadings\Answer&AffirmDefenses&ThirdPtyCompl.doc

STAMPER RUBENS PS
ATTORNEYS AT LAW

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SEP 20 2010
Stamper, Rubens, P.S.

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

GAVIN J. CREGAN, a married man,
Plaintiff,

NO. 10-2-00572-7

vs.

FOURTH MEMORIAL CHURCH, a non-profit
Washington corporation, d/b/a RIVERVIEW
BIBLE CAMP,
Defendant.

DECLARATION OF JAY E.
LEIPHAM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
STRIKING AFFIRMATIVE
DEFENSE OF IMMUNITY

FOURTH MEMORIAL CHURCH, a non-profit
Washington corporation, d/b/a RIVERVIEW
BIBLE CAMP,
Third Party Plaintiff,

vs.

BEATS & RHYTHMS, a Washington
corporation,
Third Party Defendant.

JAY E. LEIPHAM, hereby declares, upon penalty of perjury, as follows:

I am attorney of record for the plaintiff herein. I make this declaration based on my personal knowledge. I took the deposition of Tim Mason in this cause, and ordered and received

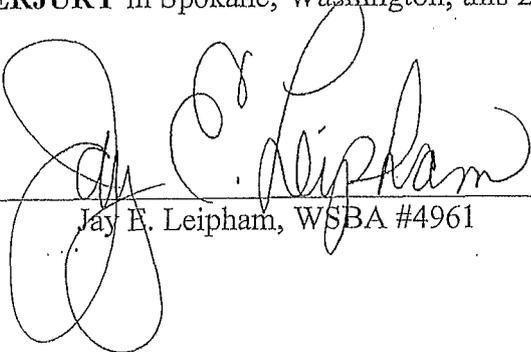
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1 the transcript thereof from the court reporter in both digital (electronic; e-transcript in .ptx
2 format) and paper form.
3

4 Exhibit 1 hereto, entitled "Deposition of Tim Mason" is a compilation of true and
5 accurate excerpts taken digitally from the e-transcript of the deposition of the Camp Director of
6 Riverview Bible Camp, Tim F. Mason, taken June 28, 2010 before court reporter David Storey,
7 of Storey & Miller, Court Reporters, including a copy of the court reporter's certification of that
8 transcript and selected exhibits. Each of the numbers centered in the text refer to the page of the
9 transcript from which the testimony was excerpted, and the numbers along the side indicate the
10 line number of the testimony in the transcript.
11

12 Exhibit 2 hereto is a true and accurate copy of Defendant Fourth Memorial Church's
13 answer to Plaintiff's Interrogatories 13 and 19, of Plaintiff's First Interrogatories and Requests
14 for Production of Documents Directed to Defendant, including the verification thereof.
15

16 **SIGNED UNDER PENALTY OF PERJURY** in Spokane, Washington, this 20th day of
17 September, 2010.

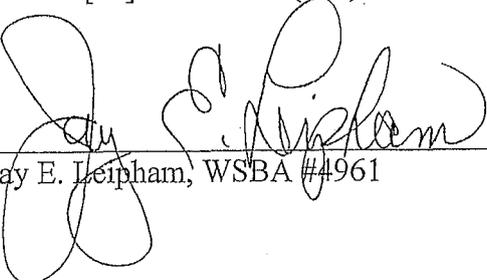
18 
19 Jay E. Leipham, WSBA #4961
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September, 2010, I caused to be delivered the foregoing Declaration of Jay E. Leipham in Support of Plaintiff's Motion for Partial Summary Judgment Striking Affirmative Defense of Immunity to the following counsel of record in the manner indicated:

Matthew T. Ries [] U.S. Mail
Stamper Rubens, P.S. [] Certified Mail
720 W. Boone, Suite 200 [x] Hand Delivered
Spokane, WA 99201 [] Facsimile (509) 326-4891

John P. Bowman [] U.S. Mail
Keefe, Bowman & Bruya, P.S. [] Certified Mail
601 W. Main, Suite 1102 [x] Hand Delivered
Spokane, WA 99201 [] Facsimile (509) 623-1380



Jay E. Leipham, WSBA #4961

DEPOSITION OF TIM MASON

5

11 Q. And how long have you been a camp director?

12 A. Eight and one-half years.

13 Q. And is that all at Riverview Bible Camp?

14 A. Yes.

9

22 Q. On each of those occasions that you used the camp, prior

23 to becoming its director, were fees charged for use of the

24 camp?

25 A. Yes.

10

1 Q. And were those on a per-head basis?

2 A. Yes.

3 Q. So there was a charge for each camper's use?

4 A. Every individual person, yup, yes.

5 Q. So that would be every camper and every counselor?

6 A. Yes.

7 Q. You said this went back to 1995, did I get that right?

8 A. Yes.

13

3 Q. How do individuals come to be admitted to the facility?

4 MR. RIES: I guess I'll object to the form.

5 Go ahead.

6 A. We do not take individuals. We take groups. And they
7 would contact me or I would seek them out to see if they'd
8 be interested in renting or being our guest.

9 Q. (BY MR. LEIPHAM) Are there any limitations,
10 restrictions on the groups or the kinds of groups that can
11 rent the facility or be guests of the facility?

12 A. Not in writing but, yes.

13 Q. Okay. What are those restrictions?

14 A. Their beliefs.

15 Q. And in what respect are there restrictions about use
16 based on beliefs?

17 A. Well, we will rent to either, and have guests that are
18 either Christian or secular, either a nonbelieving group or
19 a Christian group, a group that doesn't have any religious
20 affiliation or a Christian organization.

21 Q. Okay. For secular groups, do they need to be charitable
22 in nature, or do you have any limitations there?

23 A. No.

24 Q. Now, you used the phrase rent or be guests of, what's
25 the difference?

14

1 MR. RIES: Object to form.

2 Go ahead.

3 A. Occasionally we'll have groups there that we want to

4 give them a free stay, a type of refreshment. They may not
5 be able to afford the camp, and we will be able to let them
6 stay without charge.

7 Q. (BY MR. LEIPHAM) How is it determined what groups
8 you'll offer a free stay?

9 A. I do that as the director.

10 Q. So it's just your discretion?

11 A. Yes.

12 Q. Are there any written policies at all of the church that
13 address what groups can use the facilities and under what
14 circumstances financially?

15 A. No.

16 Q. Do you offer free stays to groups that include both food
17 and lodging?

18 A. Yes.

19 Q. All right. Once a group is admitted to the facility,
20 are there any restrictions on what portions of the facility
21 they have access to or can use?

22 A. Sometimes.

23 Q. And what are those occasional restrictions?

24 A. Sometimes they are -- their insurance will tell them you
25 cannot access a certain portion of the camp. Sometimes they

1 won't rent or have available to them all of the campus.

7 Q. And when it's a group that you have not granted a "Free
8 stay" how is the fee charged or calculated?

9 A. Per person.

10 Q. And per night?

11 A. Per night.

20

9 Q. I take it that with Beats & Rhythms you used the camp's
10 standard rental agreement, and just inserted zero instead
11 of, of what ordinarily would be a fee or a charge, is that
12 correct?

13 A. Yes.

21

3 Q. Has Beats & Rhythms returned to Riverview Bible Camp
4 since 2008?

5 A. Yes.

6 Q. Which years?

7 A. 2009.

8 Q. And are they coming back this year?

9 A. No.

10 Q. And were they granted a fee waiver in 2009?

11 A. Yes.

12 Q. Do you know why they are not coming back this year?

13 A. I told them because of this they could not.

14 Q. Because of this lawsuit?

15 A. Yes.

27

3 Q. What's your understanding of the relationship between
4 Riverview Bible Camp and Fourth Memorial Church?

5 A. Fourth Memorial Church owns Riverview Bible Camp.

6 Q. Are you an employee of Fourth Memorial --

7 A. Yes.

8 Q. -- Church? Whom do you answer to?

9 A. The board of elders.

31

18 Q. And is the per-person charge intended to cover all of
19 the costs of running the camp?

20 A. Yes.

21 Q. Is it also intended to provide any level of profit or
22 safety margin above the anticipated costs of running the
23 camp?

24 MR. RIES: Object to the form.

25 Q. (BY MR. LEIPHAM) If you know.

32

1 A. It is not to make a profit, but it is to anticipate
2 further facility needs and staffing needs to better serve
3 your guests.

4 Q. I take it one of the basic purposes is to avoid losing
5 money on the camp if possible?

6 A. Correct.

35

2 Q. (BY MR. LEIPHAM) Okay. And of the groups that attend
3 Riverview in a calendar year, what percentage are given free
4 access, like Beats & Rhythms was --

5 MR. RIES: Object to foundation.

6 Q. (BY MR. LEIPHAM) -- in 2008.

7 A. I wouldn't know how to calculate it in my head right
8 now. As far as I know, in 2008 Beats & Rhythms was the only
9 free group, free of charge.

10 Q. How is the, the charge determined for a guest group, if
11 it is not going to be free, how do you determine how much to
12 charge?

13 A. Off the survey that's taken every three years, I believe
14 it is taken every three years, and then based on the numbers
15 of the previous year and anticipated needs for the following
16 year.

17 Q. I take it the charge is an amount that's estimated with
18 the purpose of giving the camp an adequate income stream
19 without losing money and without necessarily making very
20 much money?

21 A. Correct.

22 Q. In years where there have been shortfalls, that is,
23 where the income level did not match the expenses for that
24 year, where has the shortfall been obtained?

25 MR. RIES: Object to the form, foundation.

36

1 Go ahead.

2 A. I've experienced that one year, and Fourth Memorial

3 provided the necessary funds to get us through.

4 Q. (BY MR. LEIPHAM) Which year was that?

5 A. 2009.

6 Q. Just so it is clear, then, in 2008 the costs, the total

7 cost to put on the camp that year was more than covered by

8 the charges paid by the group, the groups that use the camp,

9 is that right?

10 A. And donations.

38

25 Q. -- is that fair enough? Is that slide available for use

39

1 by anyone who hasn't registered as a group with the camp?

2 A. I believe our staff uses it, will go down it, yes.

3 Q. Anybody other than, is it available for the use of

4 anyone other than your staff and presumably members of the

5 Fourth Memorial Church, and members of groups that have

6 executed group rental agreements?

7 A. They are not -- if we know of it, no, they are not

8 allowed to be on it if they haven't filled out the

9 paperwork.

10 Q. And the paperwork refers to the --

11 A. The contract and release forms.

12 Q. Those are the documents that are part of Exhibit No. 1?

13 A. Correct.

14 Q. Just to be clear about it, if someone who wasn't, who
15 hadn't signed -- wasn't part of a group who had signed one
16 of the rental agreements, somebody just driving along the
17 highway there, if they stopped, they couldn't go in and use
18 that slide with your permission?

19 A. We keep it locked.

41

13 Q. Okay. I think we already covered that reservations are
14 required for all users, is that right?

15 A. Yes.

16 Q. You don't allow walk-ins --

17 A. No.

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4 Q. (BY MR. LEIPHAM) Let's go back on the record.

5 Just to make sure I've covered it, what are the sources
6 of the financial support for the camp, for Riverview Bible
7 Camp?

8 A. Rental income and donations.

9 Q. And the rental income, it would be the money that's paid
10 by groups renting under the guest group rental agreement

11 forms, is that right?

12 A. That and our program camps.

94

9 Q. And is it your understanding that this[Beats & Rhythms] was the only

10 group that year that summer, if you will, that was allowed

11 to use the facility at no charge?

12 A. That is my, that's how I remember it, yes.

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APR 16 2010

RICHTER-WIMBERLEY, P.S.

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

GAVIN CREGAN, a married man)

Plaintiff,)

vs.)

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

Defendant.)

NO. 10-2-00572-7

PLAINTIFF'S FIRST
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS DIRECTED
TO DEFENDANT

WITH ANSWERS THERETO

TO: Defendant, FOURTH MEMORIAL CHURCH, d/b/a RIVERVIEW BIBLE CAMP., and its attorney:

A. GENERAL DEFINITIONS AND PROCEDURES

You are served with the original of Plaintiff's First Interrogatories and Requests for Production of Documents Directed to Defendant pursuant to CR 26, 33 and 34. Please type your answers in the space provided or on a separate page or pages as needed. In the event you choose to place your response on a separate page, you must clearly denote the number of the question to which the response relates, including any subpart thereof, if applicable. Return the verified original of the completed interrogatories to Attorney Jay B. Leiphart of Richter-Wimberley, P.S., U.S. Bank

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PLAINTIFF'S FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT: PAGE 1
WITH ANSWERS THERETO

RICHTER-WIMBERLEY, P.S.
ATTORNEYS AT LAW
U.S. BANK BUILDING
422 W. RIVERSIDE, SUITE 1300
SPOKANE, WASHINGTON 99201-0305
(509) 455-4201
FAX (509) 455-4217

ORIGINAL

EXHIBIT 2 - PAGE 1

INTERROGATORY NO. 12: Regarding expert witnesses, please provide the following information:

- a. Identify each person whom you expect to call as an expert witness.
- b. State the subject matter on which the expert will testify.
- c. State the substance of the facts upon which the expert will testify.
- d. State the opinions to which the expert will testify.
- e. Summarize the grounds for each opinion the expert will give.
- f. Identify each expert whom you have consulted, but will not call as a witness, including name, current address, telephone number, and employer.

ANSWER:

Defendant will supplement this Interrogatory according to the Court's Case Scheduling Order.

REQUEST FOR PRODUCTION NO. 6: Attach to your answers hereto a true and accurate copy of each report regarding this matter prepared by each expert identified in your answer to the immediately preceding interrogatory.

RESPONSE:

Defendant will supplement this Interrogatory according to the Court's Case Scheduling Order.

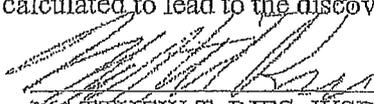
INTERROGATORY NO. 13: With regard to the slide upon which Gavin Cregan was injured, state the following:

- a. The date and manner of your original acquisition of the slide.
- b. The names and addresses of its manufacturer and designer.
- c. The name and address of the entity from which you acquired it.
- d. The date the slide was first placed into service at Riverview Bible Camp.

- e. Identify the person within your organization who knows the most about the history, maintenance and repairs of the slide during your ownership of it.
- f. Identify the custodian of all records relating to maintenance and repairs performed upon any portion of the slide from January 1, 2005 to the present.
- g. Identify all records relating to maintenance and repairs performed upon any portion of the slide from January 1, 2005 to the present.
- h. Identify all persons who have inspected the slide for any safety purposes from January 1, 2005, and all inspection reports generated from each such inspection.
- i. Identify the persons primarily responsible for decisions regarding maintenance and repair of the slide from January 1, 2005 to the present.
- j. Identify the custodian of all records relating to any injuries suffered by any user of the slide.
- k. Identify all records relating to any injuries suffered by any user of the slide.

ANSWER:

Objection. This interrogatory is overly broad and unduly burdensome as it seeks historical information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

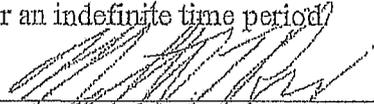

 MATTHEW T. RIES, WSBA No. 29407

Without waiving the foregoing objection, the slide is believed to have been originally used in the Expo '74 World's Fair. It was subsequently acquired and located at the Shadle Park Center in Spokane. The slide was subsequently donated to the Riverview Bible Camp prior to 1995.

- e. Tim Mason is the director of the camp and is knowledgeable about the slide.
- f. Tim Mason.
- g. See documents produced concerning maintenance set forth in response to Request for Production No. 7. There is also routine maintenance of the slide, but the records would be limited to invoices and receipts for the materials used for the maintenance of the slide over the years.
- h. The slide is inspected by camp personnel including Devin Lorraine, Rory Sinclair, and Blake McAnerin. See also the report made by Christy A. Reilly, Adjuster identified in previous interrogatories.

i. Tim Mason is the director of the camp. Devin Lorraine, Rory Sinclair, and Blake McAnetin have worked at the camp during that time period (2005- present), and have performed maintenance on the slide.

Objection. Defendants further object to this interrogatory to the extent it asks for a description of all injuries no matter how minor, and for an indefinite time period?


MATTHEW T. RIESS, WSBA No. 29407

j. - k. Notwithstanding the foregoing objection, there have been minor matters where campers have skinned knees, etc. over the years. This is documented in log kept in the nurse's cabin. The only injury that has occurred at the camp that was serious enough to require hospitalization, besides Gavin Cregan's injury, of which Defendant is aware in the last ten years, was a female camper who was injured at the base of the slide during the summer of 2009. The camper's father decided to have her pose for a picture at the base of the slide instead of exiting the base area per the instructions. Another camper came down the slide and struck her while she was standing at the base of the slide and she broke her collar bone. Defendant is not aware of any documents concerning the incident.

REQUEST FOR PRODUCTION NO. 7: Attach to your answers hereto a true and accurate copy of each record and each report identified in your answers to the immediately preceding interrogatory.

RESPONSE:

See objections raised in the answer to the previous interrogatory. See attached documents.

INTERROGATORY NO. 14: If you assert that any other person or "entity," as defined in RCW 4.22.070 is at fault and in any way caused any of the plaintiff's injuries or damages, for each such person or "entity" please provide the following information:

- a. Identify each such person or entity;
- b. Narratively describe the facts that support the asserted "fault" of each such person or entity;
- c. Set forth your assertion as to the injury or damage caused by each such person or entity.

ANSWER:

The budget does not have a line item for maintenance and repair for the slide. Maintenance and repair of the slide is included in the budget line item "Repair/Maintenance/ Replace" for equipment and other items at the camp.

2005 Budget for "R/M/R" = \$40,000.
2006 Budget for "R/M/R" = \$41,500.
2007 Budget for "R/M/R" = \$39,000.

2008 Budget for "R/M/R" = \$49,000.
2009 Budget for "R/M/R" = \$34,000.
2010 Budget for "R/M/R" = \$17,000.

INTERROGATORY NO. 18: Identify each budget or reserve plan document containing data relating to planned expenditures for maintenance and repair of the subject slide for each fiscal year after the year ending in 2004.

ANSWER:

Pursuant to CR 33(c), Defendant elects to produce the documents that provide the information requested in Interrogatory No. 18. See documents produced in response to Request for Production No. 8.

REQUEST FOR PRODUCTION NO. 8: Regarding each budget and each reserve plan identified in your answers to the immediately preceding interrogatory, attach to your answers hereto a true and accurate copy of those portions containing data relating to planned expenditures for maintenance and repair of the subject slide.

RESPONSE:

See attached documents.

INTERROGATORY NO. 19: Please describe the standard fees charged by Riverview Bible Camp for group registrations in June, 2008.

ANSWER:

Lodging - \$20 per person per night.
Meals - \$5 per person per meal.
The lodging and meals were donated to Beats & Rhythms for their camp.

INTERROGATORY NO. 20: Please identify the custodian of Riverview Bible Camp's income statement for its 2008 fiscal year, or whatever other financial statement or document sets forth the income received from fees charged to users of the camp during that year, and identify each such financial statement, report or document.

STATE OF WASHINGTON)

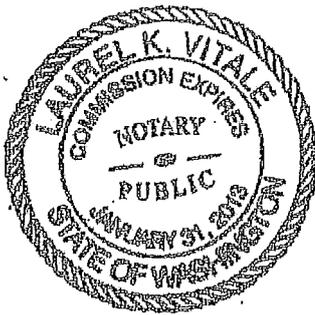
County of Spokane) :SS

DWIGHT ADEN, JR., being first duly sworn on oath, deposes and says:

That I am the BUSINESS MANAGER for the Defendant in the above-entitled matter; that I am authorized to verify the foregoing answers and responses; that I have read the foregoing Interrogatories and Requests for Production, and the answers and responses thereto, know the contents thereof, and believe the same to be true.

Dwight Aden Jr.
DWIGHT ADEN, JR.
(Name)

SUBSCRIBED AND SWORN to before me this 16 day of April, 2010.



Laurel K. Vitale
Notary Public in and for the State
of Washington, residing at Spokane
My Appointment Expires: 11-31-10

CERTIFICATION

The undersigned attorney for Defendant Fourth Memorial Church, d/b/a Riverview Bible Camp, has read the foregoing answers and responses to Plaintiff's First Interrogatories and Requests for Production of Documents, and they are in compliance with CR 26(g).

4-16-10
Date

[Signature]
MATTHEW T. RIES, WSBA #29407
Attorney for Defendant

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PLAINTIFF'S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT: PAGE 15 WITH ANSWERS THERETO

RICHTER-WIMBERLEY, P.S.
ATTORNEYS AT LAW
U.S. BANK BUILDING
422 W. RIVERSIDE, SUITE 1300
SPOKANE, WASHINGTON 99201-0305
(509) 455-4201
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EXHIBIT 2 - PAGE 6

RECEIVED
SEP 20 2010
Stamper, Rubens, P.S.

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

GAVIN J. CREGAN, a married man,
Plaintiff,

NO. 10-2-00572-7

vs.

FOURTH MEMORIAL CHURCH, a non-profit
Washington corporation, d/b/a RIVERVIEW
BIBLE CAMP,
Defendant.

DECLARATION OF GAVIN
CREGAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
STRIKING AFFIRMATIVE
DEFENSE OF IMMUNITY

FOURTH MEMORIAL CHURCH, a non-profit
Washington corporation, d/b/a RIVERVIEW
BIBLE CAMP,
Third Party Plaintiff,

vs.

BEATS & RHYTHMS, a Washington
corporation,
Third Party Defendant.

GAVIN J. CREGAN, hereby declares, upon penalty of perjury, as follows:

I am the above-captioned plaintiff. I make this declaration based on my own personal knowledge. I am thirty-five years old, and am a registered nurse. I am currently employed as a

COPY

1 pediatric surgical recovery room nurse by Sacred Heart Medical Center. In June, 2008, I was a
2 new employee there, just hired as my wife was leaving military service and we were about to
3 move to Spokane. Before I started work, I was approached to become a volunteer camp
4 counselor by hospital staff members who were active in a pediatric cardiac patient support group
5 called Beats & Rhythms. The children of the group are medically vulnerable cardiac patients of
6 the hospital and affiliated physicians. I expected to be caring for some of them in my role as
7 recovery room nurse. I wanted to support my new community. I was happy to agree to
8 volunteer my time and efforts for a weekend camp experience to be held at Riverview Bible
9 Camp ("the Camp" hereafter) near the end of June, 2008.
10
11

12 The Camp was a facility adjacent to the Pend Oreille River, approximately 60 miles north
13 of Spokane. I drove myself to the Camp late in the afternoon of June 27, 2008, and reported to
14 Beats & Rhythms' coordinator, Beth Dullanty. I was given a quick tour of the camp layout, and
15 then went to the Giant Slide, where the group's children and other counselors were sliding down
16 the three-story fiberglass slide while everyone waited for the rest of the group to arrive. I wanted
17 to get to know the kids I would be working with during the camp experience, and chatted with
18 the kids who were there and the other adults present. I watched the children and the adults use
19 the slide, and eventually joined in.
20

21 With the encouragement of the campers and other volunteers, I went down the slide with
22 them two or three times. I did exactly what everyone else was doing, and complied with the
23 posted rules. I took a burlap bag ("gunny sack") from the pile at the bottom of the slide, walked
24 up the stairs, sat down on the sack on one of the lanes that was not marked "do not use" and slid
25 down on the sack, feet first. I sat down flat on the burlap with my legs straight out in front of
26 me. As I went over the 2nd downslope, I felt myself get "launched" into the air. When I came
27

28 i:\jel-plf\cregan\pleadings\sjdeclarationcregan.pld.doc

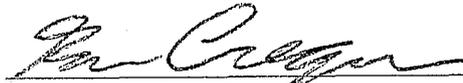
**DECLARATION OF GAVIN CREGAN IN SUPPORT
OF PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT STRIKING AFFIRMATIVE
DEFENSE OF IMMUNITY - PAGE 2**

RICHTER-WIMBERLEY, P.S.
ATTORNEYS AT LAW
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422 W. RIVERSIDE, SUITE 1300
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1 down, the burlap bag had shifted under me and my body was crooked. It felt like my foot caught
2 on the surface of the slide or the side of the lane, with a very loud and sickening popping noise
3 that I can still clearly hear in my head, and my foot rolled under my leg, causing tri-malleolar
4 fractures of my lower left leg and ankle. I now have permanent restriction of the motion of that
5 ankle.
6

7 I was not asked to pay any fee to be a volunteer counselor at the Camp, but I would not
8 have been at the Camp or on the Giant Slide except for being a volunteer counselor. I was acting
9 in that capacity when I was injured. I did not go to Riverview Bible Camp to be a camper or for
10 personal recreation. I was there to be a counselor and supervisor of the children who constituted
11 the group. It was my understanding that I could not use the slide or attend the Camp with Beats
12 & Rhythms unless I was acting as an adult counselor.
13

14 SIGNED UNDER PENALTY OF PERJURY in Spokane, Washington this 16th day of
15 September, 2010.
16

17 

18 Gavin J. Cregan
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CERTIFICATE OF SERVICE

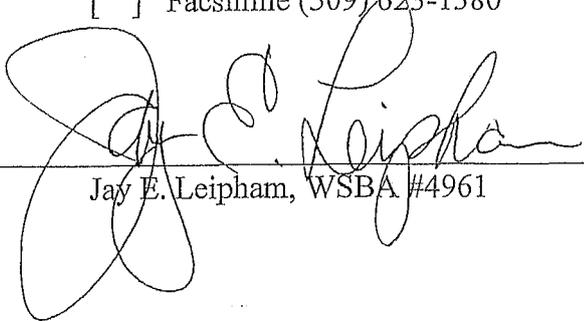
I hereby certify that on the 20th day of September, 2010, I caused to be delivered the foregoing Declaration of Gavin J. Cregan in Support of Plaintiff's Motion for Partial Summary Judgment Striking Affirmative Defense of Immunity to the following counsel of record in the manner indicated:

Matthew T. Ries
Stamper Rubens, P.S.
720 W. Boone, Suite 200
Spokane, WA 99201

[] U.S. Mail
[] Certified Mail
[x] Hand Delivered
[] Facsimile (509) 326-4891

John P. Bowman
Keefe, Bowman & Bruya, P.S.
601 W. Main, Suite 1102
Spokane, WA 99201

[] U.S. Mail
[] Certified Mail
[x] Hand Delivered
[] Facsimile (509) 623-1380



Jay E. Leipham, WSBA #4961

RECEIVED
SEP 20 2010
Stamper, Rubens, P.S.

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

GAVIN J. CREGAN, a married man,
Plaintiff,

NO. 10-2-00572-7

vs.

MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT STRIKING
AFFIRMATIVE DEFENSE OF
IMMUNITY

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

Defendant,

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

Third Party Plaintiff,

vs.

BEATS & RHYTHMS, a Washington
corporation,

Third-Party Defendant.

I:\EL-PLF\Cregan\Pleadings\SJMemo.pld.wpd
MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT STRIKING
AFFIRMATIVE DEFENSE OF IMMUNITY - PAGE 1

RICHTER-WIMBERLEY, P.S.
ATTORNEYS AT LAW
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422 W. RIVERSIDE, SUITE 1300
SPOKANE, WASHINGTON 99201-0305
(509) 455-4201
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I. SUMMARY

Plaintiff was injured at Defendant's summer camp. Defendant rents its camp to groups for a fee. Plaintiff, a registered nurse employed by Sacred Heart Children's Hospital, agreed to be a volunteer counselor for a group of children sponsored by a local pediatric cardiac patient support group, Beats and Rhythms, for whom Defendant waived the normal fee.

While acting in that capacity on June 27, 2008, Plaintiff suffered a trimalleolar fracture of his left foot and ankle as he used a fiberglass amusement park Giant Slide owned and operated by Defendant on its camp property. His injury was proximately caused by the long-standing defective condition of the slide.

Suit was commenced in February, 2010. Defendant has alleged an affirmative defense that it is immune from civil liability under the recreational immunity statute, RCW 4.24.200-210. Plaintiff contends the immunity statute does not apply in this case as a matter of law, and has filed this summary judgment motion to strike Defendant's alleged affirmative defense of statutory immunity.

II. FACTS

Riverview Bible Camp ("the Camp," hereafter) is owned and operated by defendant Fourth Memorial Church ("Fourth Memorial" hereafter). (Fourth Memorial Answer to Complaint, Paragraph 2.1) Plaintiff Cregan is a registered nurse, and in the spring of 2008 was newly hired as a pediatric recovery room nurse at Sacred Heart Hospital. (Cregan Declaration, p. 1) Plaintiff Cregan agreed to volunteer as an adult counselor for a summer camp program of Beats & Rhythms, a non-profit support group for children with cardiac conditions. (Cregan Declaration, p. 1) The

1 program was to be conducted at the Camp, a facility on the Pend Oreille River, approximately 60
2 miles north of Spokane. (Cregan Declaration, p. 2)

3
4 On June 27, 2008, Gavin Cregan reported to the Camp for the first day of the Beats &
5 Rhythms program. (Cregan Declaration, p. 2) After an introductory tour of the Camp layout, he was
6 directed to the Giant Slide, where children and adults were sliding down the three-story fiberglass
7 slide (Cregan Declaration, p. 2), an amusement park thrill-ride left-over from Expo '74, acquired
8 by Fourth Memorial and installed at the Camp some time before 1995. (Fourth Memorial Answer
9 to Complaint, Paragraph 3.1; Defendant's answer to Plaintiff's Interrogatory 13) On his second or
10 third trip down the slide, Mr. Cregan was launched into the air and landed on his left foot/ankle,
11 resulting in tri-malleolar fractures which have left him with permanent restrictions of motion in his
12 ankle. (Cregan Declaration, p. 3) The evidence at trial will indicate that his injury was caused by
13 the poor condition and maintenance of the slide, a disputed fact not material to the pending motion.
14
15

16 The Camp facilities are not open to the public. Since at least 1995, Fourth Memorial has
17 charged fees for entry and for use of Camp facilities and services, calculated and quoted per head
18 and per day, depending upon which parts of the camp will be used. (Leipham Declaration, Ex. 1,
19 hereafter referred to as "Mason Dep.", pp. 9-10; 15 [all page references are to the original transcript]
20 and Ex. 2, Defendant's answer to Plaintiff's Interrogatory 19.)
21

22 Groups are allowed entry to the Camp based in part upon their beliefs. (Mason Dep., p. 13)
23 The slide can be used only by members of admitted groups (and, of course, the Camp and Church
24 staff). (Mason Dep., p. 39) Individuals are not allowed entry to the Camp except as part of a group.
25 (Mason Dep., p. 13) Walk-ins are not allowed. (Mason Dep., p. 41)
26

1 As a matter of the director's discretion, the fees were waived for Beats & Rhythms, the group
2 for which plaintiff volunteered to be a counselor, and the Camp was rented to Beats & Rhythms
3 under the Camp's standard form rental contract, for a zero fee. (Mason Dep., p. 14; 20) Beats &
4 Rhythms was the only group admitted without payment of fees in 2008. (Mason Dep., p. 35; 94)
5 But when the group applied in 2010, the director denied them entry, because of the commencement
6 of this lawsuit. (Mason Dep., p. 21)
7

8 The Camp's financial support is dependent upon rental income, and donations. (Mason Dep.,
9 p. 47) The annual Camp budget includes an operating profit, and the group user fees are set at a
10 level intended to cover the operating costs of the facility. (Mason Dep., p. 31-32) 2009 was the first
11 year the Camp lost money on an operations basis in the 8 1/2 years the current Director has been
12 involved. (Mason Dep., p. 35-36; 5)
13

14 Gavin Cregan did not go to the Camp to use the slide or for recreation or to be a camper, but
15 to be a volunteer counselor for Beats & Rhythms. (Cregan Declaration, p. 3) His ability to use the
16 slide was predicated on his provision of counselor services to Beats & Rhythms, defendant's tenant.
17 (Cregan Declaration, p. 3)
18

19 III. LEGAL ANALYSIS

20 Defendant Fourth Memorial Church, d/b/a Riverview Bible Camp, has pleaded the following
21 affirmative defense:
22

23 5. Defendant Riverview is immune from liability for any of the plaintiff's injuries
24 sustained on Riverview's property under the recreational use statute, RCW 4.24.200
25 and RCW 4.24.210.
26

1 The statutory intent is simple and clear. It provides immunity for landowners only where the
2 property is made available to the "public" for outdoor recreation "without charging a fee of any
3 kind." RCW 4.24.200 provides, in pertinent part:
4

5 The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in
6 lawful possession and control of land and water areas or channels to make them
7 available to the public for recreational purposes by limiting their liability toward
8 persons entering thereon. . .(emphasis supplied)

8 RCW 4.24.210 provides immunity solely to property owners/occupiers:

9 who allow members of the public to use them for the purposes of outdoor
10 recreation. . .without charging a fee of any kind therefor. . .(emphasis supplied)
11 RCW 4.24.210(1)

12 Defendant admits that it charges most users a fee to use its facilities, but contends that its
13 waiver of the fee for the group for which Plaintiff volunteered to serve entitles it to immunity for
14 Plaintiff's injury. The case law is as clear as the statute itself that charging other users a fee
15 precludes Defendant from the protection afforded by the statute, without regard to whether plaintiff
16 or the group which sponsored his participation paid or was expected to pay the fee.
17

18 In *Plano v. City of Renton*, 103 Wn. App. 910, 14 P.3d 871 (2000), the court held that the
19 City's standard moorage charge precluded immunity under the statute for an injury caused by the
20 condition of the metal ramp leading to the boat slips, despite the plaintiff not having paid the charge.
21 Plaintiff fell on the City's ramp and suffered a compound leg fracture. She had purchased an annual
22 boat launch permit which gave her one free night of moorage. She paid \$10 for the second night of
23 moorage. She did not pay the fee for the third night of moorage, and was injured the following
24 morning. The City denied liability, claiming the protection of RCW 4.24.210.
25
26

1 Both parties filed cross-motions for summary judgment on the issue. The trial court granted
2 the City's motion under the statute and entered an order of dismissal. Plaintiff appealed. Division
3 One reversed and remanded for entry of partial summary judgment on Plaintiff's motion to strike
4 the City's statutory affirmative defense, and for trial on her injury claim.
5

6 In the course of its opinion, the Court noted that the statute, as an immunity statute and in
7 derogation of common law, must be strictly construed:
8

9 The statutory grant of immunity is to be strictly construed. *Matthews v. Elk*
10 *Pioneer Days*, 64 Wn. App. 433, 437-38, [*912] 824 P.2d 541, *review denied*,
11 119 Wn.2d 1011, 833 P.2d 386 (1992).

12 The Court noted that the defendant City did not charge a fee to enter the park where its dock
13 was located, nor any fee to use most of the park's facilities, but that it did charge for overnight
14 moorage and that the allegedly defective ramp which allegedly injured Plaintiff was the connection
15 between the floating boat moorage and the City's fixed pier. The Court also noted that non-moorage
16 users could enter the area and walk among the moored boats without ever paying a fee.
17

18 The determinative factor was that some users were charged a fee for use of the facility where
19 the injury occurred.
20

21 Observing that the stated purpose of the statute is to encourage property owners to make their
22 land available for free recreation by the general public (*See* RCW 4.24.200, above), the Court
23 distinguished cases from numerous other states, where the statutory immunity language was
24 different, and held that the City's fee for moorage users precluded application of the immunity
25
26

1 statute for an injury in that area of the park, without regard to whether the injured user paid or was
2 expected to pay the fee:
3

4 The question under Washington's statute, however, is not whether [plaintiff]
5 actually paid a fee for using the moorage, or whether [defendant] actually charged
6 a fee to the person injured. The question is whether [defendant] charges a "fee of
7 any kind" for using the moorage. This statutory language needs no interpretation
8 as it is unambiguous. *See Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804
9 P.2d 24 (1991).

10
11 Washington's statute does not say that a landowner can have immunity so long as
12 the lands or water areas are available free of charge some of the time. The statute
13 simply states that there is no immunity if the owner charges a "fee of any kind."

14 Similarly, in *Nielsen v. Port of Bellingham*, 107 Wn. App. 662, 27 P.3d 1242 (2001), rev.
15 denied, 145 Wn.2d 1027, 42 P.3d 974 (2002), the court held that the injury claim of a user of a dock
16 for which the defendant Port charged fees to moor commercial fishing boats and a "live-aboard"
17 yacht was not within the coverage of the recreational use immunity statute, despite the Port making
18 the dock available to the general public without charge for sightseeing and walking upon, relying in
19 part upon the *Plano* case. As noted, the Port's petition for review was denied by the Supreme Court.

20 The *Neilson* court cited and relied upon the *Plano* decision, emphasizing that "the purpose
21 of [the defendant Port's] marina at Squalicum Harbor is commercial--the mooring of fishing boats
22 and pleasure craft for a fee." Thus, that the area was also used by sightseers, and had been used by
23 the plaintiff (who was an invitee of a moorage tenant), without paying a fee did not give rise to
24 immunity under the statute. The trial court's ruling, and the jury's verdict, were affirmed.

25 It should also be noted that although Plaintiff was not charged a financial fee, he was required
26 to agree to provide services as a predicate to his entry to the camp and his use of the slide. He was
27 not admitted to the camp to be a camper or for his own use of any of the facilities, but to act as a

1 counselor to the children of Beats & Rhythms. His agreement to provide counseling services was
2 a *quid pro quo* for his admittance to the Camp and to use of its facilities, including the Giant Slide.
3 As such, his use of the slide was predicated upon “a fee of any kind,” and the statute does not
4 immunize the Defendant from liability for his injury.
5

6 The standard for granting a motion for partial summary judgment is set forth in CR 56:

7 The judgment sought shall be rendered forthwith if the pleadings, depositions,
8 answers to interrogatories, and admissions on file, together with the affidavits, if any,
9 show that there is no genuine issue as to any material fact and that the moving party
10 is entitled to a judgment as a matter of law.

11 IV. CONCLUSION

12 There is no dispute about the facts pertinent to this motion. Fourth Memorial charges
13 virtually all users monetary fees for the use of its Camp facilities, including access to the Giant Slide
14 which injured plaintiff. The Camp is not open to the public. Access is dependent upon membership
15 in a group, and upon that group’s beliefs or purposes. The group for whom Gavin Cregan
16 volunteered was not required to pay a monetary fee in 2008, but Gavin Cregan’s admittance was
17 predicated upon his provision of counsellor services to that group, Defendant’s tenant.
18

19 The issue is purely legal: under these circumstances, is Fourth Memorial immune from
20 liability for plaintiff’s injuries under the terms of RCW 4.24.200–210? The plain language of the
21 statute, and the clear decisions of the appellate courts, require a negative answer. The statute does
22 not extend immunity to a landowner which does not make its property available to the public without
23 charging a fee of any kind. Fourth Memorial’s affirmative defense of under RCW 4.24.200–210
24 should be stricken, as a matter of law.
25
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KEEFE BOWMAN BRUYA

OCT 15 2010

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BY _____ TIME _____

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OCT 15 2010

STAMPER, RUBENS,

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

GAVIN J. CREGAN, a married man,

Plaintiff,

NO. 10-2-00572-7

vs.

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

Defendant,

PLAINTIFF'S REPLY
MEMORANDUM OPPOSING
DEFENDANT'S MOTION FOR
DISMISSAL

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

Third Party Plaintiff,

vs.

BEATS & RHYTHMS, a Washington
corporation,

Third-Party Defendant.

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I. BACKGROUND

Plaintiff moved to strike Defendant's affirmative defense under the recreational immunity statute, RCW 4.24.210. Defendant has filed a counter-motion for dismissal of Plaintiff's Complaint. The key facts are undisputed. Defendant operates the summer camp where Plaintiff served as a volunteer counselor and charges admission to enter the camp. Plaintiff was serving as part of the only group for which the Camp waived the fee in 2008. Relying on clear Washington appellate decisions, Plaintiff argues that the Camp's charging a fee makes RCW 4.24.210 inapplicable. Relying on Missouri law and comments in the legislative history of the Washington statute, Defendant argues the contrary.

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III. LEGAL ANALYSIS

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The central and controlling fact in this case is that Riverview Bible Camp charges a fee for entry to its camp and use of the camp facilities, including the Giant Slide upon which Plaintiff was injured, virtually all of the time and to virtually all of those who use the camp. As originally noted, the camp budget includes a margin for profit (Mason Dep., p. 31-32) and since the current director has been involved the only year the camp lost money was 2009. (Mason Dep., p. 35-36; 5) Beats and Rhythms is the only group for whom the fee was waived in 2008, the season Plaintiff was injured. (Mason Dep., p. 35; 94)

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Whether "members of the public" means the same thing as "the general public" is a meaningless side issue. The Defendant cites Missouri law, but ignores the vast differences between the Missouri statute and Washington's statute. The Missouri statute focuses on the specific entry onto land giving rise to the claim:

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

RSMo 2000, 537.346

5 As noted in the case relied upon by Defendant, but not quoted, under the Missouri law:

6 To invoke the RUA, the general requirements are "(1) an owner of the land; (2) entry
7 upon the land; (3) entry upon the land without charge; and (4) entry for recreational
8 use." *Lonergan v. May*, 53 S.W.3d 122, 128 (Mo. App. 2001). If these requirements
9 are met, then the owner "owes no duty to the entrants to keep the land safe or to give
10 any general or specific warnings with respect to any natural or artificial condition,
11 structure, or personal property on the land, unless one of the exceptions contained in
12 section 537.348 apply." *Id.*

State ex rel Young v. Wood, 254 S.W.3d 871, 873 (2008)

13 Under the Washington statute, the focus is upon the availability of the property to members
14 of the public, without charging a fee of any kind, providing immunity solely to property
15 owners/occupiers:

16 who allow *members of the public* to use them for the purposes of outdoor recreation,
17 . . . *without charging a fee of any kind* therefor. . . (emphasis supplied)

RCW 4.24.210(1)

18 Thus, the Missouri authorities argued by Defendant are simply irrelevant to the discussion
19 in this case. Likewise, Defendant's lengthy argument based on legislative history is irrelevant.
20 Without a showing of ambiguity, a court will derive a statute's meaning from its language alone.
21 *Geschwind v. Flanagan*, 121 Wn.2d 833, 840, 854 P.2d 1061 (1993) In judicial interpretation of
22 statutes, the first rule is that the court should assume that the legislature means exactly what it says.
23 Plain words do not require construction. *Sidis v. Brodie/Dohrmann*, 117 Wn.2d 325, 329, 815 P.2d
24 781 (1991)

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26
27 **PLAINTIFF'S REPLY MEMORANDUM OPPOSING**
28 **DEFENDANT'S MOTION FOR DISMISSAL – PAGE 3**

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Defendant begins the legislative history argument by conceding that the statute is unambiguous and impliedly conceding that legislative history may be used only when the statutory language is ambiguous. It then invites the court to consider comments it likes in the legislative record, anyway. Those comments are not helpful to Defendant's case in any event, as each of them is focused on an issue other than whether the property owner generally charges a fee for access to the property. In the hunting example relied upon by Defendant, the issue is the knowledge requirement ("known dangerous") for liability for a latent artificial condition of the property, not whether the property was a fee-hunting operation. Similarly, Senator Canfield's example is focused on the liability for failure to warn and the trespasser status of the person injured, not on the effect of charging most users a fee. Both examples assumed a pattern of no fee being charged, in order to get to the issue being discussed.

Defendant argues that *Home v. North Kitsap School District*, 92 Wn.App. 709, 965 P.2d 1112 (1998) supports its position. However, the dispositive issue for that court was that the activity involved (a school football game) was not a "public" recreational use. The focus was on the nature of the activity being pursued, not on the free availability of the property, which was conceded by all parties. To the extent that Defendant wishes to make the issue in this case the meaning of "members of the public," the case is contrary to Defendant's position. It was undisputed that the football game was open to the public to attend, without any fee. The injured person, however, was a coach for the "away" team, and the game being played was a school-sanctioned match. Citing cases which distinguished "student" and "school" activities from "public" activities, the court described its ruling:

1 . . . it is undisputed that North Kitsap was not holding the football field open for use
2 by members of the public when Home was injured, and North Kitsap is not immune
3 by virtue of RCW 4.24.210.

4 *Home*, at 717.

5 Similarly, Defendant also relies on *Gaeta v. Seattle City Light*, 54 Wn. App. 603, 774 P.2d
6 1255 (1989), again ignoring that the issue in that case was whether the landowner's purpose
7 constituted recreational use, not whether a fee was charged anyone. Defendant confuses
8 "commercial use" with the fee issue, and while they may be related, the two are different concepts.
9 The primary case relied upon by Plaintiff, *Plano v. City of Renton*, 103 Wn. App. 910, 14 P.3d 871
10 (2000), specifically considered *Gaeta*:

11 Our analysis on this point is consistent with *Gaeta v. Seattle City Light*, 54 Wn. App.
12 603, 774 P.2d 1255, *review denied*, 113 Wn.2d 1020, 781 P.2d 1322 (1989). In
13 *Gaeta*, the plaintiff attempted to avoid the statutory immunity by showing that his
14 purpose in coming on the land was commercial, not recreational. The court held that
15 the application of the statutory immunity depends on the perspective of the
16 landowner as to the use of the land, not on the purpose of the user. *Gaeta*, 54 Wn.
17 App. at 608-09. From Renton's perspective, the moorage is available for members of
18 the public to use for purposes of outdoor recreation. Under the statute, immunity is
19 available only if Renton does not charge a fee of any kind for such use.

20 The same is true in the case at bar. Assuming *arguendo* that the landowner's use is
21 recreational, immunity is nevertheless available to Defendant only if it "does not charge a fee of any
22 kind for such use." It is even more clear in the case at bar than in *Plano* that the landowner charges
23 a fee for the use of its camp. Defendant mis-reads *Plano* and misconstrues the *Plano* court's intent
24 when it characterizes the issue as being whether the defendant intended to charge the plaintiff a fee.
25 The *Plano* court made clear that such was not the issue, but that the issue was whether any public
26 access depended upon payment of a fee:

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28 **PLAINTIFF'S REPLY MEMORANDUM OPPOSING
DEFENDANT'S MOTION FOR DISMISSAL - PAGE 5**

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1 The question under Washington's statute, however, is not whether Plano actually paid
2 a fee for using the moorage, or whether Renton actually charged a fee to the person
3 injured. The question is whether Renton charges a "fee of any kind" for using the
4 moorage.

5 *Plano*, at 913

6 This understanding of *Plano* is echoed in *Nielsen v. Port of Bellingham*, 107 Wn. App. 662,
7 27 P.3d 1242 (2001), rev. denied, 145 Wn.2d 1027, 42 P.3d 974 (2002), relied upon by Plaintiff and
8 which relied upon *Plano*. As previously noted, *Nielsen* refused immunity to the Port for injury to
9 the social invitee of a moorage fee payer. There was no indication that the Port had any intention
10 to charge that plaintiff a fee. The crucial fact was that it charged a fee for moorage, which negated
11 immunity.

12 Defendant engages in a tortuous attempt to distinguish between "spatial" analyses and
13 "temporal" analysis, arguing that it may claim immunity from the effects of its negligence if it makes
14 its property available free of charge some of the time, on those rare occasions it waives its usual fees,
15 arguing that the *Plano* and *Nielsen* cases use only a "spatial" analysis. The plain language of the
16 *Plano* court shows the contrary:

17 *Washington's statute does not say that a landowner can have immunity so long as the*
18 *lands or water areas are available free of charge some of the time. The statute*
19 *simply states that there is no immunity if the owner charges a "fee of any kind."*
20 *Plano*, at 914.

21 Defendant's reliance on *McCarver v. Manson Park and Rec. Dist.*, 92 Wn.2d 370, 597 P.2d
22 1362 (1979) seems misplaced. There, the Plaintiff attempted to argue that the act applied only to
23 property which had a primary use other than recreation, harkening back to the earliest version of the
24 statute, which applied to agricultural and forest land made available to the public. No such issue is
25 involved in this case.
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28 **PLAINTIFF'S REPLY MEMORANDUM OPPOSING
DEFENDANT'S MOTION FOR DISMISSAL – PAGE 6**

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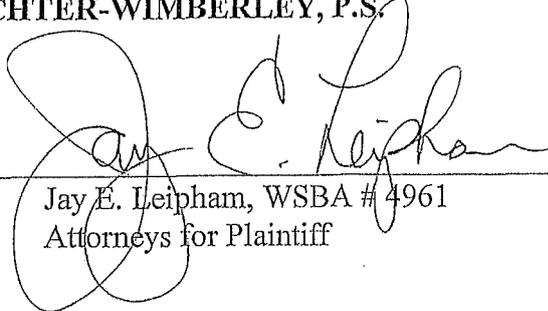
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Given the Defendant's virtually total reliance on user fees to operate this camp, an additional basis for denying immunity would be that the Defendant's use of the property is not a recreational use within the meaning of the act, similar to the conclusion reached by the *Nielsen* court. That court characterized the Port's use in that case as "commercial," but a less profit-oriented characterization in the case at bar would be "fee generating." Defendant claims that such a result in this case would "chill" charitable provision of its property, but that conclusion is illogical. Its failure to achieve immunity arises not from the singular waiver of its fees on behalf of Beats and Rhythms, but upon its unrelenting levying of fees on all other users. If immunity from civil liability for its negligence is its goal (which its director disavows), it should find another way to fund the camp rather than by charging fees. To come within the act, it needs to conform to its requirements, and refrain from charging "a fee of any kind."

15 III. CONCLUSION

16 An operation that is virtually totally dependent upon charging user fees for access to its
17 property is not entitled to immunity from civil liability for its negligence under RCW 4.24.210,
18 particularly as such a statute is required to be strictly construed. Defendant's affirmative defense
19 raising that statutory bar should be dismissed.

20 **RESPECTFULLY SUBMITTED** this 15th day of ^{October}~~September~~, 2010.

21
22 **RICHTER-WIMBERLEY, P.S.**

23
24 By: 

25 Jay E. Leipham, WSBA # 4961
26 Attorneys for Plaintiff

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28 **PLAINTIFF'S REPLY MEMORANDUM OPPOSING
DEFENDANT'S MOTION FOR DISMISSAL - PAGE 7**

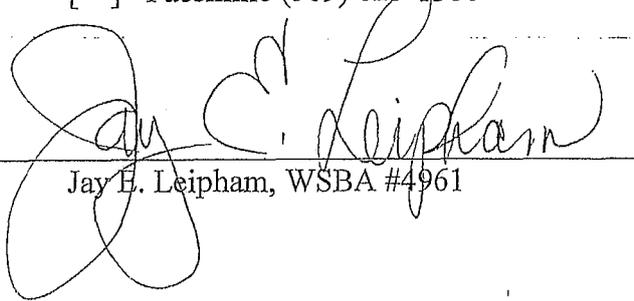
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6 **CERTIFICATE OF SERVICE**

7 I hereby certify that on the 15th day of ~~September~~ ^{October}, 2010, I caused to be delivered the
8 foregoing PLAINTIFF'S REPLY MEMORANDUM OPPOSING DEFENDANT'S MOTION FOR
DISMISSAL to the following counsel of record in the manner indicated:

9 Matthew T. Ries [] U.S. Mail
10 Stamper Rubens, P.S. [] Certified Mail
11 720 W. Boone, Suite 200 [x] Hand Delivered
Spokane, WA 99201 [] Facsimile (509) 326-4891

12 John P. Bowman [] U.S. Mail
13 Keefe, Bowman & Bruya, P.S. [] Certified Mail
14 601 W. Main, Suite 1102 [x] Hand Delivered
Spokane, WA 99201 [] Facsimile (509) 623-1380

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17 Jay E. Leipham, WSBA #4961
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OCT 11 2010

RICHTER-WIMBERLEY, P.S.

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

GAVIN J. CREGAN, a married man,)

Plaintiff,)

vs.)

No. 10-2-00572-7

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

DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

Defendant.)

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

Third Party Plaintiff,)

vs.)

BEATS & RHYTHMS, a Washington)
corporation,)

Third Party Defendant.)

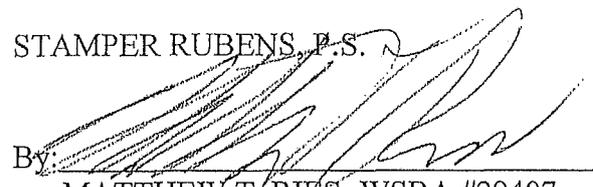
Defendant, Fourth Memorial Church, d/b/a Riverview Bible Camp by and through its attorney, Matthew T. Ries of the law firm of Stamper, Rubens, P.S., hereby moves for partial summary judgment to have the Court enter an order ruling as a matter of law that RCW 4.24.200 - 210 are applicable to this case.

STAMPER RUBENS PS
ATTORNEYS AT LAW

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DATED this 11 day of October 2010.

STAMPER RUBENS, P.S.

By: 

MATTHEW T. RIES, WSBA #29407
Attorney for Defendant, Fourth
Memorial Church, d/b/a Riverview Bible
Camp

STAMPER RUBENS PS
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

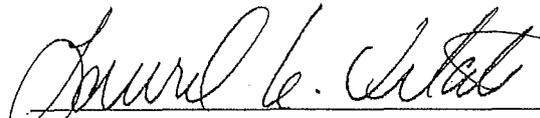
I hereby certify that on the 11 day of October 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jay Leipham
Richter-Wimberley, PS
422 W. Riverside Ave., Ste. 1300
Spokane, WA 99201

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy (Facsimile)

John P. Bowman
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601 W. Main, Ste. 1102
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- U.S. Mail, Postage Prepaid
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LAUREL K. VITALE

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STAMPER RUBENS PS
ATTORNEYS AT LAW