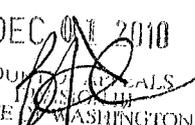




No. 295109

FILED
DEC 01 2010
COURT OF APPEALS
STATE OF WASHINGTON
By: 

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 MOTION
FOR DISCRETIONARY REVIEW

MATTHEW T. RIES
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APPENDIX A-1 to A-117

A. IDENTITY OF PETITIONER

FOURTH MEMORIAL CHURCH, d/b/a RIVERVIEW BIBLE CAMP (hereinafter “Riverview Bible Camp”), by and through its attorney Matthew T. Ries of Stamper Rubens, respectfully requests this Court to accept the review of the decision designated in Part B of this motion.

B. DECISION

The Riverview Bible Camp hereby requests discretionary review of Judge Linda G. Tompkins’ October 22, 2010 Order Granting Plaintiff’s Motion for Partial Summary Judgment Striking the Defendants Riverview Bible Camp’s Affirmative Defense of Immunity Pursuant to the Recreational Use Immunity Act under RCW 4.24.200-210; and Judge Linda G. Tompkins’ October 22, 2010 Order Denying Defendant’s Motion for Summary Judgment Dismissing Plaintiff’s lawsuit pursuant to the Recreational Use Immunity Act under RCW 4.24.200-210. (Appendix at pp. A-110 to A-117).

C. ISSUES PRESENTED FOR REVIEW

1. Whether the Superior Court’s decision granting Plaintiff’s Motion for Partial Summary Judgment, and the Court’s simultaneous decision to deny Defendant’s Cross Motion for Partial Summary Judgment concerning the application of RCW 4.24.200-210 was an obvious error which would render further proceedings useless?

2. Whether the Superior Court's decision granting Plaintiff's Motion for Partial Summary Judgment, and the Court's simultaneous decision to deny Defendant's Cross Motion for Partial Summary Judgment concerning the application of RCW 4.24.200-210 was probable error which substantially altered the status quo or substantially limited the freedom of the Defendant to act?

D. STATEMENT OF THE CASE

1. Factual Background of the Case.

Riverview Bible Camp is a camp located outside of Cusick, Washington that is privately owned by Fourth Memorial Church, a non profit organization. (Appendix at pp. A- 65). Riverview Bible Camp remains financially viable through the payment of admission fees, third-party donations, and assistance from Fourth Memorial Church. (Appendix at pp. A-60). Groups are allowed to either rent the facility, or to be guests of Riverview Bible Camp. (Appendix at pp. A-60). Groups that are admitted as guests are offered free food and lodging, but are required to provide all staffing. (Appendix at pp. A-61).

Riverview Bible Camp decided to allow Beats & Rhythms to use their facility free of charge for one weekend during the summer of 2008. Beats & Rhythms is an organization that provides a camp for children with congenital heart defects. (Appendix at pp. A-62). Mr. Mason, the camp

director, explains that Riverview Bible Camp selected Beats & Rhythms to be a guest group to give back to their community and to help another nonprofit organization. (Appendix at pp. A-62). Beats & Rhythms used the facility as a guest group for free the weekend of June 27, 2008. (Appendix at pp. A-61). As such, they were responsible for providing counselors and chaperones. (Appendix at pp. A-68).

On Friday, June 27, 2008, Gavin Cregan drove to the Riverview Bible Camp late in the afternoon after work and checked in with the Beats & Rhythms personnel who organized the event. (Appendix at pp. A-86 to A-88). After getting a tour of the facility by the Beats & Rhythms' supervising counselor, Beth Dullanty, Mr. Cregan walked over to the outdoor slide where people were congregating. (Appendix at pp. A-88 to A-90). After watching people use the slide for about ten minutes, he decided to try it for himself. Cregan went down the slide two times in two different lanes without any problems. (Appendix at pp. A-90).

On the third time down the slide, Mr. Cregan was on a different lane than the previous times. He describes that on this third time down as he went over the first of two humps, his legs went straight, and he felt his legs lose contact with the slide. (Appendix at pp. A-78 to A-79). He does not know if his buttocks ever lost contact with the slide. (Appendix at pp. A-80). He explains that the burlap sack had bunched up back under his

left foot, but remained under his right foot. (Appendix at pp. A-80). As his left foot came back down, it made contact with the slide surface, and he sustained his injury to his ankle. (Appendix at pp. A-82).

2. Procedural History of the Case.

Plaintiff filed his complaint on February 9, 2010 in Spokane County Washington Superior Court. (Appendix at pp. A-1 to A-12). Riverview Bible Camp filed an answer to the Complaint in this action and asserted an affirmative defense of immunity under Washington's Recreational Use Immunity Statute, RCW 4.24.200-210. (Appendix at pp. A-13 to A-20). On September 20, 2010, Mr. Cregan filed a Motion for Partial Summary Judgment to Strike Riverview Bible Camp's Affirmative Defense of Immunity under Washington's Recreational Use Immunity Statute. (Appendix at pp. A-21 to A-29). Mr. Cregan alleged that RCW 4.24.200-210 did not apply because (1) Riverview Bible Camp was not open to the general public all the time; (2) Riverview Bible Camp typically charged a fee for the use of the facility; and (3) Mr. Cregan believed that he was in fact charged a non-monetary fee by being required to provide services as a nurse to participate in the retreat at Riverview Bible Camp. (Appendix at pp. A-21 to A-29).

On October 11, 2010, Riverview Bible Camp filed a response to Plaintiff's Motion for Summary Judgment and also filed a Cross Motion

for Summary Judgment, to establish as a matter of law that the Recreational Use Act under RCW 4.24.200-210 applied and protected Riverview Bible Camp from liability. (Appendix at pp. A-30 to A-52). Riverview Bible Camp argued that (1) Beats and Rhythms and Mr. Cregan were “members of the public” as contemplated by RCW 4.24.210; (2) Mr. Cregan was never directed by Riverview Bible Camp to provide services; (3) restricting the protections of the recreational use statute to landowners who never charged a fee, or ever planned on charging a fee for the use of his land would contravene the intent of RCW 4.24.200-210; and (4) the intent of the Recreational Use statute is to analyze the landowners’ use of the land at the time the injury occurred. (Appendix at pp. A-30 to A-54).

On October 22, 2010, Judge Linda G. Tompkins heard oral argument from attorneys in this case, and issued an Order Granting Plaintiff’s Motion for Partial Summary Judgment and Striking the Defendants Riverview Bible Camp’s affirmative defense of immunity under the recreational use act. (Appendix at pp. A-110 to A-117). Judge Tompkins in the same order denied Riverview Bible Camp’s Cross-Motion for Summary Judgment to dismiss the lawsuit based upon the Recreational Use Act. (Appendix at pp. A-110 to A-117).

Judge Tompkins explained in her oral opinion that she did not believe the Recreational Use Act applied to Riverview Bible Camp

because (1) Riverview Bible Camp had charged fees for the precise same use that Beats & Rhythms were afforded to different groups at different times; (2) the cases of Plano and Nelson were “more closely in line” with this case because “plaintiffs on those days were not charged fees either, but defense was not able to avail themselves of the immunity argument”; (3) the “Giant Slide” was possibly an activity that could “be provided in an enclosed facility in the middle of a city”; and (4) raised concerns about whether “if a member of the public had driven in would they have been permitted access to the slide free of charge?” (Appendix at pp. A-110 to A-117).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

The Rule of Appellate Procedure, RAP 2.3 provides in pertinent part:

(b)...discretionary review may be accepted only in the following circumstances:

- (1) The superior court has committed an obvious error which would render further proceedings useless;
- (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act; ...or,
- (4) The superior court has certified, or all the parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may

materially advance the ultimate termination of the litigation.

RAP 2.3.

Petitioner initially believed that because this issue was so close for the Superior Court Judge, and because it would be a dispositive issue that would render the remaining proceedings useless, that Gavin Cregan would stipulate to having the matter reviewed by the Court of Appeals on discretionary review in lieu of having a full trial, and then having the Court of Appeals consider this fundamental legal issue on appeal. Unfortunately, there was a misunderstanding and miscommunication between the parties, and Petitioner learned that Mr. Cregan would not stipulate to review under RAP 2.3(b)(4). Accordingly, the Petitioner is filing a motion with the Superior Court Judge Tompkins to certify that the order involves a controlling question of law that warrants the immediate review of the order to the Court of Appeals. That hearing is set for December 17, 2010.

While the motion to certify is pending, the Court of Appeals should further accept discretionary review because the Superior Court committed a probable error that alters, or limits the Petitioner's position in this case based upon the legal precedent addressed below.

- 1. The Court Committed Probable Error By Adding the Requirements to the Recreational Use Act that are Not**

Required.

Determining whether the Recreational Use Act applies comes down to determining three issues. First, does the recreational use act apply to playground equipment such as slides? Second, must Riverview Bible Camp's property be open to the entire general public all the time in order for the recreational use act to apply? Third, since Riverview Bible Camp typically charges a fee for the use of the facility, does this preclude the recreational use act from ever applying to Riverview Bible Camp even if Beats & Rhythms was not charged any fee for the use of the facility?

a. The Recreational Use Act applies to playground equipment.

Judge Tompkins queried in her oral opinion whether a slide represents the type of activity contemplated in the Recreational Use Act, considering it could take place in an enclosed facility in the middle of a city. This was an issue that was never argued by the parties in their summary judgment briefs because the issue has been well settled. Division III of the Court of Appeals recently concluded that that the Red Wagon slide in the middle of the City of Spokane is the type of outdoor recreation that is contemplated by the Recreational Use Act. Swinehart v. City of Spokane, 145 Wn. App. 836, 848, 187 P.3d 345, 351 (Div. 3, 2008). The use of the slide located at Riverview Bible Camp represents

outdoor recreational activity contemplated under RCW 4.24.200-210.

- b. Riverview Bible Camp is not required to leave its camp open to the entire general public for free at all times for the recreational use act to apply.**

Judge Tompkins raised the questions in her oral opinion if a member of the public would have driven to the camp, would he have been permitted access to the slide free of charge. (Appendix at pp. A-64 to A-68). The Court was apparently persuaded the argument raised by Mr. Cregan that the term “members of the public” in the statute means that the property must be open to all of the public, all of the time. To support this argument, Mr. Cregan cited to the case of Plano v. City of Renton, 103 Wn. App. 910, 14 P.3d 871 (2000). There exists no language in the statute that requires the land be open to the “general” public, nor is there such a discussion in Plano.

Courts in other jurisdictions have rejected similar arguments where parties have attempted to graft on language to similar recreational use statutes. In the case of State ex. rel. Young v. Wood, 254 S.W.3d 871, 873 (2008), two separate hunters were granted permission to enter on to the farm for the purpose of hunting wild turkeys. While they were hunting, one of the hunters ended up accidentally shooting the other hunter. Missouri’s recreational use statute is similar to Washington’s in its protections of private landowners. There the Court rejected the Plaintiff’s

argument that the farm property had to “open their property to the entire general public” to protect the landowner under the recreational use statute. State ex. rel. Young, 254 S.W.3d at 873 (emphasis added). The court found that no language existed in the statute requiring the general public.

The use of the term “public” merely reflects the fact that the statute is designed to encourage landowners with property suitable for certain recreational activities to allow members of the public to participate in those activities. Nowhere does the RUA require that land be opened to the entire general public, and this Court will not add language to a statute that is clear and unambiguous. *Lombardi*, 846 S.W.2d at 202 n. 9. This reading of Missouri's RUA mirrors that of the Eighth Circuit. *Wilson v. United States*, 989 F.2d 953, 957 (8th Cir.1993).

State ex rel. Young, 254 S.W.3d at 873 -874 (Mo.,2008).

Similarly, Wilson v. United States, 989 F.2d 953, 957 (8th Cir.1993), involved a Boy Scout group that was allowed on to a military base for an activity. Several boys were injured while playing with an aluminum irrigation pole that came into contact with an overhead power line. The argument was raised that inviting a specific group such as the Boy Scouts does not constitute the “members of the general public.” The Court rejected the argument because the plaintiff was attempting to rely upon a distinction not made within the language of the Missouri Recreational Land Use Statute. There was no such language requiring that it be made available and open to the “general public.” “The plain language of the statute indicates that a landowner owes no duty of care ‘to

any person who enters on the land without charge’ for recreational purposes.” Wilson, 989 F.2d at 957 (quoting Mo.Rev.Stat. §537.346) (emphasis in original).

Washington’s legislative history and the language of the statute support the interpretation of the statute that the property does not have to be left open to the entire general public all of the time for free. The statutes were first enacted in 1967. Laws of 1967, ch. 216. Although the statute has been amended over the years to broaden the activities, the relevant language pertaining to the term “members of the public” at issue in this case has not been changed or modified. This purpose of the statute is plainly stated in RCW 4.24.200:

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 legislative intent can be seen in the 1967 Senate Journals concerning Engrossed House Bill No. 258. Senator Woodall, advocating in support of House Bill No. 258, explains the exposure private landowners would have under the new law if a person who is permitted to come on the property and hunt is injured by a latent hole.

Let me give you an example. Senator Donohue buys a section of range land. He has not explored it by foot. Someone says, 'Can I hunt on this range land?' and the Senator says, 'Yes, you can hunt.' Unbeknownst to Senator Donohue, the prior owner somewhere dug a well and didn't properly cover it. Now this is an artificial, latent defect – artificial because its man made, latent because it appears to be covered and isn't. Senator Donohue has not personally explored this whole section. This amendment says that the Senator does not have to post something he doesn't know about. If there is an open well that is known about, he has to post it. But he shouldn't be liable for something on this land that he doesn't know about.

H.R. 258, Wash.S.Jour. 42nd Legis. 875 (1967); see also Morgan v. United States, 709 F.2d 580, 584 (9th Cir. 1983) the court quoted the same legislative history in the opinion to interpret RCW 4.24.210 for an injury sustained on Lake Roosevelt).

This intent to limit the application of the recreational use statute to potentially a single person who asks permission to come on the property is reiterated by Senator Woodall when asked the following question by Senator Canfield:

My last question is a little more serious. Some fishermen were down on my place one day and they thought they saw something on the bottom of the river and upon closer inspection it looked like it was a car; whereupon, they reported that to the sheriff's office and they sent down a crew and dragged the place and dragged out a car and it had a dead body in it of a young man who had been dead for some time. Now the deceased apparently ran his car or by having his car run down this steep hill and over this bank that I referred to a minute ago landed in the water and was either killed when he hit or drowned. Now am I

liable because I didn't post these signs against that hazard?

Senator Woodall:

No, under that condition you are not because you did not give him permission. He did not request permission. He entered solely at his own risk. We are only talking about persons who come up and say, 'Mr. Canfield, may I hunt on your property?' and you want to be a good guy and you say, 'Yes, go ahead.' That is the type of situation we are talking about. When a man comes in and doesn't ask you, he clearly takes everything at his own risk.

H.R. 258, Wash.S.Jour. 42nd Legis. 876-77.

Riverview Bible Camp cited to those examples to demonstrate that the drafters of the statute intended that private property could be allowed to be used as recreational use for specified persons, and for a specified time period. A farmer does not have to leave his property open all the time for any and all persons to hunt and roam over as they please. The farmer can use his property as a working farm when he needs to, and in the Fall after the harvest is in, he may allow hunters, hikers, or whomever, to come on to the property to use it for recreational purposes provided they ask for permission. If they do not, then they would be considered trespassers. Like the farmer, Riverview Bible Camp wanted to give back to society and allow a worthy 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, Riverview Bible Camp maintains that it is exactly this type of charitable act that was the Legislature intended to

encourage.

c. Charging a fee to past groups does not forever preclude the recreational use act from applying to Riverview Bible Camp.

The Court relied upon Mr. Cregan's reference to the case of Plano v. City of Renton, 103 Wn. App. 910, 14 P.3d 871 (2000), for the proposition that if a landowner charges a fee for the use of the land some of the time, that the recreational use act does not apply. Mr. Cregan also cites to the case of Nielsen v. Port of Bellingham, 107 Wn. App. 662, 27 P.3d 1242 (2001), which followed the holding of Plano.

When the Court applies the undisputed facts to the plain wording of the recreational uses act, it is clearly applicable to this case. Mr. Cregan asked the Court instead to graft additional language to the statute that no fee was charged "at any time in the past." If the Court applies the undisputed facts to the plain wording of the statute, the recreational use act clearly applies. The statute provides in relevant part:

(1) Except as otherwise provided in subsection (3) or (4) of this section, **any public or private landowners** or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, **who allow members of the public to use them for the purposes of outdoor recreation**, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking,

bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, **without charging a fee of any kind therefor**, shall not be liable for unintentional injuries to such users.

RCW 4.24.210 (emphasis added).

To determine whether the recreational use act applies, the Court simply needs to apply the undisputed facts to answer two questions: (1) Were Mr. Cregan and Beats & Rhythms allowed to use Riverview Bible Camp's property for the purposes of outdoor recreation? (2) Were Mr. Cregan and Beats & Rhythms charged a fee of any kind for the use of that property?

First, there is no dispute that Riverview Bible Camp's purpose was to allow Beats & Rhythms, and all of the children, counselors, and chaperones, to use the slide at Riverview Bible Camp for the purpose of outdoor recreation. Riverview Bible Camp decided to allow Beats & Rhythms to use their facility free of charge for one weekend during the summer of 2008

Second, it is undisputed that Riverview Bible Camp did not charge either Mr. Cregan or Beats & Rhythms a fee of any kind for the use of the Riverview Bible Camp facility. When applying those undisputed facts to

the statute, Riverview Bible Camp clearly comes within the protection of RCW 4.24.210.

If the Court applies those same two questions to the cases of Plano or Nielsen, primarily relied upon by Mr. Cregan, the answers would be different from the case at hand, and would support the conclusions reached by the courts in those cases. First, were the members of the public in Plano and Nielsen allowed to use the property for the purposes of outdoor recreation? In both Plano and Nielsen, on the day of the injury, the property was not simply maintained for the public for recreational purposes. Rather, these were fee generating docks. As explained in Nielsen, the dock was more akin to a busy public road that happened to run through a public park, citing the case of Smith v. Southern Pac. Transp. Co., Inc., 467 So.2d 70 (La.Ct.App.1985). In the Smith case, a commercial truck driver was injured as the result of the city's failure to post a sign warning of the low clearance of a railroad overpass while driving on a roadway that happened to run through a city park. The roadway was built and maintained primarily for commercial use, as opposed to recreational use. Nielsen, 107 Wn. App. at 668.

Second, were members of the public being charged a fee of any kind for the use of the docks on the day of the accidents? In Plano, the City of Renton charged moorage fees for day use and overnight stays on

the day of the accident. In Nielsen, the Port of Bellingham was a commercial marina that leased moorage to both commercial and pleasure-boat owners on the day of the accident. The courts in those cases appropriately answered the second question “yes”, a fee was being charged. It makes sense for the court in Plano would reject the argument put forth by City of Renton that merely because some boat owners can moorage at the dock for free up to four hours in a day, or persons can walk on the decks for free if not mooring a boat, while all the rest are charged moorage and overnight fees, this does not change the fact that the City of Renton was charging fees for the use of the dock on the day of the injury. The court in Plano did not deal with, nor did it hold, that once a property owner charges a fee at some point in time in the past, it is forever precluded from falling within the protection of the recreational use act. That type of interpretation would have the exact opposite affect then the statutory purpose, which is to encourage private landowners to open their property up to the public for recreational use.

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.

RCW 4.24.200. “The interpretation that the court adopts should be the

one that best advances the legislative purpose. Strained meanings and absurd results should be avoided.” Woo v. Fireman's Fund Ins. Co., 150 Wn. App. 158, 165, 208 P.3d 557, 560 (2009).

The Washington Supreme Court rejected the same type of argument being raised by Mr. Cregan that the courts should look at the predominant use when deciding whether the recreational use act applied. See McCarver v. Manson Park & Recreational District, 92 Wn.2d 370, 377, 597 P.2d 1362 (1979).

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

The court must instead to look at how the property is being used on the date of the accident.

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 plaintiff was using the land.^{FN6} **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.**^{FN7}

Home v. North Kitsap School District, 92 Wn. App. 709, 714, 965 P.2d 1112 (Div. II 1998) (citing in 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).

Riverview Bible Camp wanted to allow Beats & Rhythms to use the camp facility free of charge, as it was Riverview Bible Camp's opportunity to give back to the community. Riverview Bible Camp did not fully staff the camp with counselors to supervise the activities because Beats & Rhythms was a guest group, and thus was left to supervise the activities in the camp. The Recreational Use Act was enacted to promote this opening of private property with the exchange for immunity from liability for accidents that may occur on the property while it was being used. Therefore, Riverview Bible Camp should be afforded immunity under the Recreational Use Act.

F. CONCLUSION

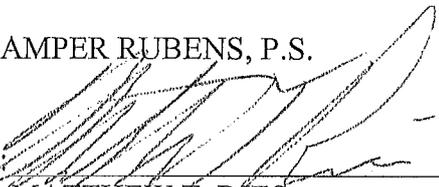
Riverview Bible Camp respectfully requests that this Court accept discretionary review under RAP 2.3, because review will materially advance the ultimate resolution of this litigation in an efficient and less expensive manner than an appeal after trial. There are no questions of fact in the present case that would preclude the Court from dismissing the matter in its entirety if the Court of Appeals determined that the recreational use act applied. The benefit to having the Court of Appeals considering this legal issue now on discretionary review is that if the Court

of Appeals decides that recreational use act is applicable, it will save parties the enormous expense of trying this case. The purpose of discretionary review under RAP 2.3(b) is to narrow and advance the litigation to avoid a useless trial. This is exactly the type of issue and situation where the Court of Appeals should intervene and accept review of this fundamental legal question of law.

As outlined above, the Superior Court committed probable error by determining that because Riverview Bible Camp typically charged a fee for the use of the facility, this precluded the Recreational Use Act from ever applying to Riverview Bible Camp even when Beats & Rhythms was not charged any fee for the use of the facility. The Superior Court's decision has altered the status quo of Riverview Bible Camp because an affirmative defense has been denied, and that decision was probably made in error.

RESPECTFULLY SUBMITTED this 1 day of December, 2010.

STAMPER RUBENS, P.S.

By: 

MATTHEW T. RIES
WSBA #29407
Attorney for Petitioner/
Defendant Fourth Memorial
Church

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jay Leipham	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
Richter-Wimberley, PS	<input checked="" type="checkbox"/>	Hand Delivered
422 W. Riverside Ave., Ste. 1300	<input type="checkbox"/>	Overnight Mail
Spokane, WA 99201	<input type="checkbox"/>	Telecopy (Facsimile)
	<input type="checkbox"/>	Email

John P. Bowman	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
Keefe, Bowman & Bruya, P.S.	<input checked="" type="checkbox"/>	Hand Delivered
601 W. Main, Ste. 1102	<input type="checkbox"/>	Overnight Mail
Spokane, WA 99201-0613	<input type="checkbox"/>	Telecopy (Facsimile)
	<input type="checkbox"/>	Email



LAUREL K. VITALE

APPENDIX

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FEB 09 2010

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

GAVIN J. CREGAN, a married man,

Plaintiff,

vs.

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

Defendant.

NO. 10200572-7

COMPLAINT FOR DAMAGES

I. PARTIES, JURISDICTION AND VENUE

1.1 At all times pertinent hereto, Defendant FOURTH MEMORIAL CHURCH has been a non-profit Washington corporation which does business in part under the name and style RIVERVIEW BIBLE CAMP, (RIVERVIEW, hereafter). This court has jurisdiction over the Defendant and venue is appropriate in the above-captioned court pursuant to RCW 4.12.025, as the defendant does business and maintains its headquarters in Spokane County, State of Washington.

1.2 At all times material to jurisdiction and venue, GAVIN CREGAN has been a married man living in Spokane County, State of Washington.

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II. THE RELATIONSHIP BETWEEN THE PARTIES

2.1 RIVERVIEW owns and occupies property and facilities in Stevens County, Washington, adjoining the Pend Oreille River, in the Selkirk Mountains, which it operates as a rental retreat and camp for groups willing to rent the facility for their own programs. It generally charges rental fees to rent its property to such groups.

2.2 RIVERVIEW entered into a rental agreement with Beats & Rhythms, a non-profit group which provides support and services to children suffering from congenital heart defects, particularly patients of Sacred Heart Children's Hospital. The agreement provided occupancy of the camp facilities to 75 or more attendees for the weekend of June 27, 2008, planning a weekend of activities for the children served by the group. Beats & Rhythms and its volunteer supervisors, including GAVIN CREGAN, and child camper participants were business invitees of RIVERVIEW for the activities at RIVERVIEW during the weekend of June 27, 2008.

2.3 GAVIN CREGAN is a registered nurse employed by Sacred Heart Children's Hospital, and was recruited by Beats & Rhythms leadership to volunteer his services as a health-care trained camp supervisor for the weekend activities the group planned to hold at RIVERVIEW over the weekend of June 27, 2008.

III. THE GIANT SLIDE

3.1 One of the featured attractions of RIVERVIEW was a large fiberglass slide, which RIVERVIEW invited all camp attendees and supervisors to use. This slide was originally built for Spokane's Expo '74. At some point in time, it was acquired by RIVERVIEW, disassembled and

1 moved to its Selkirk mountains camp, where it was reassembled and placed into operation. It has
2 been operated there by RIVERVIEW for many years. It is commonly referred to as The Giant Slide.
3

4 3.2 The Giant Slide is designed for users of all ages to seat themselves on a burlap sack
5 at the top and slide down the length of the apparatus in separate lanes, remaining in contact with the
6 slide at all times.

7 3.3 On June 27, 2008, The Giant Slide was in a state of partial disrepair, such that it failed
8 to operate as designed. Over the years, some of the pieces of the apparatus had become misaligned,
9 and had been so misaligned for an extended period of time, probably years. These misalignments
10 caused some slide users to become launched into the air, out of contact with the surface of the slide,
11 a potentially dangerous circumstance RIVERVIEW knew or should have known was occurring and
12 knew or should have known was dangerous to slide users. RIVERVIEW should have expected that
13 the danger was not apparent to such users or should have expected that such users would fail to
14 protect themselves against the danger. Such defects rendered the slide unreasonably dangerous to
15 slide users.
16
17

18 3.4 On June 27, 2008, The Giant Slide did not comply with applicable Consumer Product
19 Safety Commission or ASTM standards for playground slides, and its violations of those standards
20 rendered it unsafe to an extent beyond that which should be expected by the average slide user.
21 RIVERVIEW knew or should have known of these violations of standards and failed to take action
22 to bring the slide into compliance with such standards.
23

24 3.5 No written warning of the defects and resulting potentially dangerous circumstance
25 alleged in Paragraph 3.3 was posted on or near The Giant Slide.
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IV. PLAINTIFF'S INJURY

4.1 On June 27, 2008, GAVIN CREGAN reported to the RIVERVIEW camp to begin his supervisory duties, as directed by Beats & Rhythms. He was directed to The Giant Slide, where other group supervisors and child campers were using the slide while waiting for the rest of the group to arrive.

4.2 GAVIN CREGAN complied with all instructions regarding use of the slide. Using a burlap sack, he slid down the slide successfully once or twice. However, on his next trip down the slide, he encountered the defects alleged in Paragraph 3.3, and was thrown into the air, out of contact with the slide surface, as a result of the those defects. As a consequence, he landed back on the slide in such a manner that his left foot impacted the slide lane divider and came to an abrupt stop while the rest of his body continued down the slide at a substantial rate of speed, twisting his left foot and ankle underneath his body and causing a tri-malleolar fracture of the bones of his left foot and ankle.

4.3 GAVIN CREGAN was unaware of the defects and standard violations alleged in Paragraph 3.3 and 3.4, above, and was unaware of the unreasonable risk of harm to which those defects and standards violations exposed him, and was therefore unable to protect himself against that risk of harm, to his detriment.

V. LIABILITY OF DEFENDANT

5.1 RIVERVIEW owed its invitees, including GAVIN CREGAN, a duty to exercise ordinary care for their safety, including keeping The Giant Slide in good, safe operating condition, including elimination of the misalignments and standards violations alleged in Paragraphs 3.3 and

1 3.4, above and prevention of users from being launched into the air and out of contact with the slide
2 surface.
3

4 5.2 RIVERVIEW failed to keep The Giant Slide in good, safe operating condition,
5 allowed it to develop misalignments as alleged above, allowed it to violate applicable standards and
6 failed to repair such misalignments and standards violations, exposing users, including GAVIN
7 CREGAN, to an unreasonable risk of bodily harm.

8 5.3 RIVERVIEW owed its invitees, including GAVIN CREGAN, a duty to warn of the
9 danger presented by the defects and standards violation of The Giant Slide, and failed to do so.
10

11 5.4 GAVIN CREGAN's injury and damages were proximately caused by RIVERVIEW's
12 violation of its duties alleged above.
13

14 VI. PLAINTIFF'S DAMAGES

15 6.1 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer a tri-malleolar
16 fracture of his left foot and ankle, to incur substantial medical expense for its treatment and to lose
17 substantial income during recuperation from treatment, in amounts which will be proven at trial.

18 6.2 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer pain, suffering
19 and mental anguish, which will continue into the future.

20 6.3 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer disability, in the
21 past and into the future, including permanent restriction of motion of his left ankle.
22

23 6.4 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer disfigurement
24 of his left ankle by virtue of permanent surgical scarring.
25

1
2 3.5 No written warning of the defects and resulting potentially dangerous circumstance
3 alleged in Paragraph 3.3 was posted on or near The Giant Slide.

4 IV. PLAINTIFF'S INJURY

5 4.1 On June 27, 2008, GAVIN CREGAN reported to the RIVERVIEW camp to begin
6 his supervisory duties, as directed by Beats & Rhythms. He was directed to The Giant Slide, where
7 other group supervisors and child campers were using the slide while waiting for the rest of the
8 group to arrive.

9 4.2 GAVIN CREGAN complied with all instructions regarding use of the slide. Using
0 a burlap sack, he slid down the slide successfully once or twice. However, on his next trip down the
1 slide, he encountered the defects alleged in Paragraph 3.3, and was thrown into the air, out of contact
2 with the slide surface, as a result of the those defects. As a consequence, he landed back on the slide
3 in such a manner that his left foot impacted the slide lane divider and came to an abrupt stop while
4 the rest of his body continued down the slide at a substantial rate of speed, twisting his left foot and
5 ankle underneath his body and causing a tri-malleolar fracture of the bones of his left foot and ankle.

6 4.3 GAVIN CREGAN was unaware of the defects and standard violations alleged in
7 Paragraph 3.3 and 3.4, above, and was unaware of the unreasonable risk of harm to which those
8 defects and standards violations exposed him, and was therefore unable to protect himself against
9 that risk of harm, to his detriment.

0 V. LIABILITY OF DEFENDANT

1 5.1 RIVERVIEW owed its invitees, including GAVIN CREGAN, a duty to exercise
2 ordinary care for their safety, including keeping The Giant Slide in good, safe operating condition,
3
4

1 including elimination of the misalignments and standards violations alleged in Paragraphs 3.3 and
2 3.4, above and prevention of users from being launched into the air and out of contact with the slide
3 surface.
4

5 5.2 RIVERVIEW failed to keep The Giant Slide in good, safe operating condition,
6 allowed it to develop misalignments as alleged above, allowed it to violate applicable standards and
7 failed to repair such misalignments and standards violations, exposing users, including GAVIN
8 CREGAN, to an unreasonable risk of bodily harm.
9

10 5.3 RIVERVIEW owed its invitees, including GAVIN CREGAN, a duty to warn of the
11 danger presented by the defects and standards violation of The Giant Slide, and failed to do so.
12

13 5.4 GAVIN CREGAN's injury and damages were proximately caused by RIVERVIEW's
14 violation of its duties alleged above.
15

16 VI. PLAINTIFF'S DAMAGES

17 6.1 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer a tri-malleolar
18 fracture of his left foot and ankle, to incur substantial medical expense for its treatment and to lose
19 substantial income during recuperation from treatment, in amounts which will be proven at trial.
20

21 6.2 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer pain, suffering
22 and mental anguish, which will continue into the future.
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24 6.3 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer disability, in the
25 past and into the future, including permanent restriction of motion of his left ankle.
26

27 6.4 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer disfigurement
28 of his left ankle by virtue of permanent surgical scarring.

1
2 6.5 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer loss of
3 enjoyment of life, including severe limitation of his favorite forms of recreation, biking and hiking.

4 6.6 RIVERVIEW's breaches of duty caused GAVIN CREGAN to suffer loss of spousal
5 and parental consortium by virtue of adverse changes in his relationships with his wife and children,
6 through curtailment of outdoor activities in which he formerly engaged with his family or in which
7 he anticipated future engagement as his children became older, especially biking and hiking.

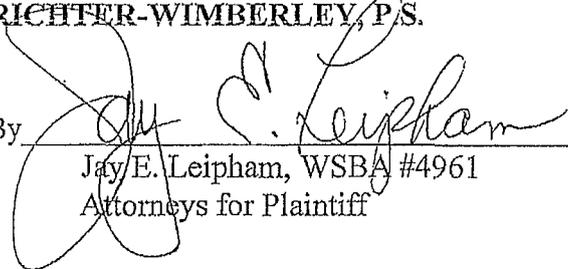
8 6.7 As a result of said injuries, the Plaintiff has received, and will in the future continue
9 to receive, medical and hospital care and treatment provided by and through the United States of
10 America. The Plaintiff, for the sole use and benefit of the United States of America, under the
11 provisions of 42 U.S.C. §§ 2651-2653 et seq. and 10 U.S.C. § 1095, and with its express consent,
12 asserts a claim for the cost of said medical and hospital care and treatment and the value of future
13 care.

14 **WHEREFORE**, the Plaintiff prays that this Court award Plaintiff judgment against the
15 Defendant, as follows:

- 16 1. For past and future special and general damages to be proved at trial, as alleged
17 above;
- 18 2. For costs of the suit and attorney's fees and costs;
- 19 3. And for such other and further relief as the Court may deem just and proper.

20 **DATED** this 23rd day of March, 2010.

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

22
23 By 

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

RECEIVED

APR 14 2010

RICHTER-WIMBERLEY, P.S.

COPY ORIGINAL FILED

APR 14 2010

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,)

ANSWER TO COMPLAINT AND)
AFFIRMATIVE DEFENSES AND THIRD)
PARTY COMPLAINT)

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. 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 P.S.
ATTORNEYS AT LAW

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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

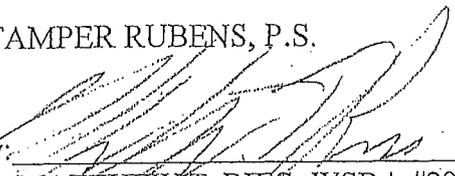
WHEREFORE, Riverview prays this Court for the following relief:

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 P.S.
ATTORNEYS AT LAW

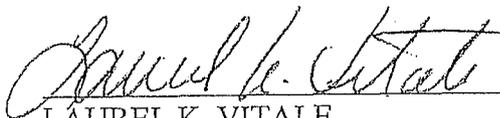
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CERTIFICATE OF SERVICE

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

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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,)

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,)
Third Party Plaintiff,)

vs.)

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

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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.

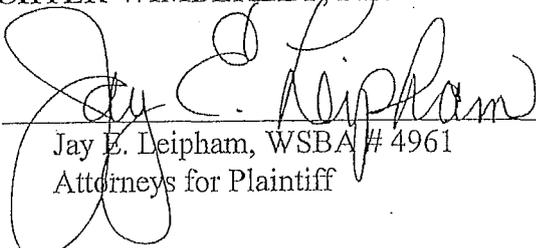
11 IV. CONCLUSION

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

1 RESPECTFULLY SUBMITTED this 20th day of September, 2010.

2 RICHTER-WIMBERLEY, P.S.

3
4 By: 

5 Jay E. Leipham, WSBA # 4961
6 Attorneys for Plaintiff

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10 CERTIFICATE OF SERVICE

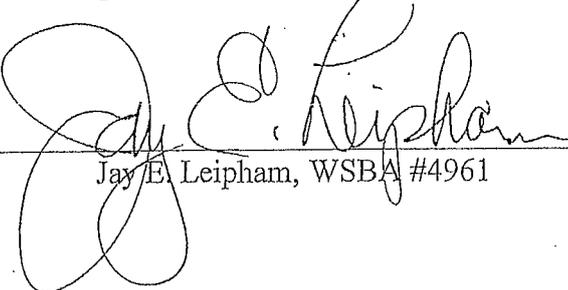
11 I hereby certify that on the 20th day of September, 2010, I caused to be delivered the
12 foregoing Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment Striking
13 Affirmative Defense of Immunity to the following counsel of record in the manner indicated:

14 Matthew T. Ries
15 Stamper Rubens, P.S.
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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

GAVIN J. CREGAN, a married man,)	
)	No. 10-2-00572-7
Plaintiff,)	
vs.)	DEFENDANT'S RESPONSE
)	MEMORANDUM TO PLAINTIFF'S
FOURTH MEMORIAL CHURCH, a non-)	MOTION FOR PARTIAL SUMMARY
profit Washington corporation, d/b/a)	JUDGMENT AND MEMORANDUM IN
RIVERVIEW BIBLE CAMP,)	SUPPORT OF DEFENDANT'S CROSS-
)	MOTION FOR PARTIAL SUMMARY
Defendant.)	JUDGMENT
<hr/>		
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 of record, Matthew T. Ries of Stamper Rubens, P.S. hereby files its Response Memorandum to Plaintiff's Motion for Partial Summary Judgment to strike Riverview Bible Camp's affirmative defense based upon immunity afforded under the recreational use act set forth in RCW 4.24.200-210. This memorandum is further being filed in support of Riverview Bible Camp's cross-motion for summary judgment to establish as a matter of law that that recreation use act (RCW 4.24.200 - 210) is applicable to this case.

DEFENDANT'S MEMORANDUM RE: MOTIONS FOR PARTIAL SUMMARY JUDGMENT: 1

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I. FACTUAL BACKGROUND

Riverview Bible Camp is a privately owned camp that is located outside of Cusick, Washington. Riverview Bible Camp is owned by Fourth Memorial Church, a non profit organization (hereinafter referred to cumulatively as "Riverview Bible Camp"). (Mason Deposition, pg. 27, ll. 3-7; 36; pg. 20, ll. 22-24 attached as Exhibit "A" to the Affidavit of Matthew T. Ries).

Riverview Bible Camp was purchased 51 years ago by the Fourth Memorial Church. (Mason Dep. pg. 12, ll. 14-17). Tim Mason is the current Camp Director for Riverview Bible Camp, and has been employed in that position since 2002. He is currently studying at Whitworth University to complete his Masters Degree in Theology. (Mason Dep. pg. 86, ll. 21-23). Mr. Mason explains that a purpose of the camp is "to increase the Kingdom of God. Another purpose is to provide a facility for the entire community to rent or be guests of." (Mason Dep. pg. 12, ll. 23-25, pg. 13, ll. 1-2).

Groups are allowed to either rent the facility, or to be guests of Riverview Bible Camp. There are no restrictions on who can rent the facility. (Mason Dep. pg. 13, ll. 15-17). However, if Riverview Bible Camp is going to allow a group to use the facility for free, they have an informal policy of allowing either Christian or secular groups, such as Beats & Rhythms, to use the facility. (Mason Dep. pg. 13, ll. 15-23). Groups that are admitted as guests are offered free food and lodging. (Mason Dep. pg. 14, ll. 16-18).

Riverview Bible Camp remains financially viable through the payment of admission fees, third-party donations, and assistance from Fourth Memorial Church. (Mason Dep., pg. 31; 32). When Riverview Bible Camp sets its budget, the purpose is not to make a profit. If money is left over after expenses, it is to be used for further facility needs and staffing needs to provide better service. (Mason Dep. pg. 31, ll. 21-25; pg. 32, ll. 1-3). Riverview Bible Camp tries to keep its fees consistent with other camps in the area. The goal is to simply make enough money to keep its camp functional. (Mason Dep. pg. 35, ll. 17-21). In 2009, its expenses exceeded its income, and the camp obtained some funding from Fourth Memorial Church to make up the difference. (Mason Dep. pg. 35, ll. 22-25, pg 36, ll. 1-5).

Riverview Bible Camp decided to allow Beats & Rhythms to use their facility free of charge for one weekend during the summer of 2008. Beats & Rhythms is an organization that provides a camp for children with congenital heart defects. (Mason Dep. pg. 20, ll. 14-18). Mr.

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1 Mason explains why Riverview Bible Camp selected Beats & Rhythms to be a guest group
2 because: "We wanted to, as a camp, be able to give something back, help another nonprofit, be a
3 blessing to a group of people, at least once a year, we wanted to do this." (Mason Dep. pg. 20, ll.
4 21-24).

5 Beats & Rhythms used the facility for free the weekend of June 27, 2008. (Mason Dep.
6 pg. 20, ll. 3-13). Riverview Bible Camp operates its facility in different manners depending on
7 the group that will be using the facility. Riverview Bible Camp offers program camps, where
8 Riverview Bible Camp provides all of the staffing to operate a camp. (Mason Dep. pg. 33, ll. 16-
9 19). Riverview Bible Camp also allows the camp to be used by guest groups. A guest group
10 provides its own program, counselors, and chaperones. Riverview Bible Camp allows the group
11 to use the facility. Beats & Rhythms was considered a "guest group" when they used the facility
12 during the summer of 2008. (Mason Dep. pg. 34, ll. 10-19). As such, they were responsible for
13 having counselors and chaperones for the campers.

14 On Friday, June 27, 2008, Gavin Cregan drove to the Riverview Bible Camp late in the
15 afternoon after work and checked in with the Beats & Rhythms personnel who organized the
16 event. (See pg. 110-112 to the Dep. of Gavin Cregan, attached as Exhibit "B" to the Aff. of M.
17 Ries.) Beth Dullanty, is a nurse at the Sacred Heart Medical Center, and one of the organizers
18 for Beats & Rhythms. She was at the check-in table along with another parent chaperone and
19 took Mr. Cregan's paperwork. Ms. Dullanty then gave Mr. Cregan a walking tour of the
20 Riverview Bible Camp facility. (Cregan Dep. p. 115). There were no Riverview Bible Camp
21 counselors working that weekend because Beats & Rhythms was a guest group, and was therefore
22 responsible for supervising its own members and guests. Mr. Cregan explains that he did not
23 observe any Riverview Bible Camp staff members when he arrived, except for a few persons
24 working in the camp kitchen. (Cregan Dep. p. 129-130).

25 After getting a tour of the facility by Beth Dullanty, Mr. Cregan explains that he and Ms.
26 Dullanty walked over to the outdoor slide where people were congregating. (Cregan Dep. p. 115-
27 116). When he arrived at the slide, he saw children, parents, and Beats & Rhythms counselors
28 using the slide. After watching people use the slide for about ten minutes, he decided to try it for
29 himself. He had been on this type of slide before as a child while attending a fair. (Cregan Dep.
30 p. 23-24). Mr. Cregan went down the slide two times in two different lanes without any
31 problems. (Cregan Dep. p. 27). Sliders sit on top of burlap sacks and slide down the nine
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1 separate lanes on the slide. The slide has two "humps" that sliders go over. Mr. Cregan explains
2 that as he went over the first hump the previous two times he went down the slide, that he felt a
3 lifting sensation in his stomach. However, he explains that his body remained in contact with the
4 slide the first two times. (Cregan Dep. p. 53-54).

5 On the third time down the slide, Mr. Cregan started at the top of the slide the same time
6 as one of the ten (10) year-old campers that he was assigned to supervise. (Cregan Dep. p. 32,
7 145,146). Although they started at the same time on the top of the slide, Mr. Cregan denies that
8 he was racing his camper down the slide. (Cregan Dep. p. 31-32). He describes that on this third
9 time down as he went over the first hump that his legs went straight, and he felt his legs lose
10 contact with the slide. (Cregan Dep. p. 36). He does not know if his buttocks ever lost contact
11 with the slide. All that he can recall is about his legs. (Cregan Dep. p. 34, ll. 18-25). He explains
12 that the burlap sack had bunched up back under his left foot. The burlap sack remained under his
13 right foot though. As his left foot came back down, it made contact with the slide surface, and he
14 sustained his injury to his ankle. (Cregan Dep. p. 37, ll. 21-25, p. 38, ll.1-10).

15 The slide has been used at the camp for over fifteen (15) years. (Mason Dep, pg. 9-10).
16 Riverview Bible Camp has never had a similar type of injury from a person using the slide. The
17 only accident that resulted in any serious injury occurred when a girl was struck by another slider
18 while she stood posing for a photograph by her father at the end of the slide. That is wholly
19 unrelated to the situation in this case. The slide has continued to be used by the campers at
20 Riverview Bible Camp since Mr. Cregan's accident without any similar type of problems or
21 injuries. (See Exhibit "C" to Aff. of M. Ries.)
22

23 Despite Mr. Cregan having retained an attorney and having made a claim against
24 Riverview Bible Camp, Beats & Rhythms was allowed to use the facility for free again in the
25 summer of 2009. (Mason Dep. pg. 21, ll. 3-7). This lawsuit was then filed by Mr. Cregan in
26 February, 2010. Now that Beats & Rhythms and Riverview Bible Camp are parties to this
27 lawsuit, Riverview Bible Camp decided to not invite Beats & Rhythms back to be a guest of the
28 camp for free for the summer of 2010. (Mason Dep. pg. 21, ll. 12-14, pg. 22). The recreational
29 use act was enacted to promote private landowners to allow their property to be used for
30 recreational purposes for free. Riverview Bible Camp asks that the Court uphold the legislative
31 intent, and find that the recreational use act applies to this case.
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II. LEGAL ARGUMENT

A. The Recreational Use Act limits Riverview Bible Camp's liability because they admitted Beats & Rhythms free of charge on the day Plaintiff's alleged ankle injury occurred.

In this case, Riverview Bible Camp allowed Beats & Rhythms to use the camp facilities without charging Beats & Rhythms a fee. The Director of the Riverview Bible Camp explained in his deposition that he wanted to be able to give back to the community by allowing a group to use the facility without a charge. The Washington legislature enacted the recreational use act for this very type of benevolent act of generosity.

The Plaintiff makes three arguments as to why the recreational use act is inapplicable. First, he argues that because the Riverview Bible Camp normally operates a summer camp that typically charges campers and groups fees for the use of the facility, the recreational use act is inapplicable even though Beats & Rhythms was not charged a fee of any kind to use the facility. Second, the Plaintiff argues that the statute is inapplicable because this Christian Bible Camp uses discretion on who they allow to use the facility for free of charge, and therefore it does not fall within the scope of the statute. The Plaintiff is arguing that a landowner has to open his or her land up to any person, all of the time in order to fall within the parameters of the recreational use act. Third, the Plaintiff argues that because Beats & Rhythms allowed him to participate in the weekend because he was a nurse, that he felt his services somehow constituted a "fee" as contemplated by the statute. None of these arguments are supported by the plain language of the statute, nor the case law that has interpreted the statutes.

1. The recreational use act was enacted for the purpose to allowing specific persons on private property.

The recreational use act provides in relevant part:

1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, *who allow members of the public to use them for the purposes of outdoor recreation*, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding,

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1 paragliding, rock climbing, the riding of horses or other animals, clam digging,
2 pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating,
3 nature study, winter or water sports, viewing or enjoying historical,
4 archaeological, scenic, or scientific sites, without charging a fee of any kind
therefor, shall not be liable for unintentional injuries to such users.

5 RCW 4.24.210(emphasis added).

6 The Plaintiff has made the argument that “members of the public” means that the property
7 must be open to all of the public, all of the time. To support this argument, the Plaintiff attempts
8 to add words to the statute. The Plaintiff also misstates the holding of Plano v. City of Renton,
9 103 Wn. App. 910, 14 P.3d 871 (2000), and asserts that the Court observed in Plano that “the
10 stated purpose of the statute is to encourage property owners to make their land available for free
11 recreation by the *general public*.” Pl. Memo. in Supp. of Summ. Judge. Pg. 6 (Emphasis added).
12 There is no language in the statute that requires it to be open to the “general” public. There is
13 likewise no such discussion in the Plano case.

14 This same type of argument was raised and rejected by the Missouri Supreme Court in the
15 case of State ex. rel. Young v. Wood, 254 S.W.3d 871, 873 (2008). In that case, two separate
16 hunters asked the landowner for permission to enter on to the farm for the purpose of hunting
17 wild turkeys. The landowner gave permission to the hunters. While they were hunting, one of
18 the hunters mistook the noise made by the other hunter as being a turkey, and he ended up
19 shooting the other hunter. Missouri has a similar recreational use act that protects landowners
20 from liability who open their property up for persons from the public to use the property for
21 recreational purposes. The plaintiff attempted to make the same argument that Mr. Cregan is
22 attempting to do in this case. Namely, that the farm property had to “open their property to the
23 entire *general public*.” State ex. rel. Young, 254 S.W.3d at 873 (emphasis added). The plaintiff
24 had relied upon a statement in a previously reported opinion that the purpose was to encourage
25 landowners to open their land to *the public* for recreational use by restricting the landowner’s
26 liability. The court rejected the argument explaining that there was no such language in the
27 statute.

28
29 The use of the term “public” merely reflects the fact that the statute is designed to
30 encourage landowners with property suitable for certain recreational activities to
31 allow members of the public to participate in those activities. Nowhere does the
32 RUA require that land be opened to the entire general public, and this Court will
not add language to a statute that is clear and unambiguous. *Lombardi*, 846

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1 S.W.2d at 202 n. 9. This reading of Missouri's RUA mirrors that of the Eighth
2 Circuit. *Wilson v. United States*, 989 F.2d 953, 957 (8th Cir.1993).

3 State ex rel. Young, 254 S.W.3d at 873 -874 (Mo.,2008).¹

4 The Eighth Circuit Court of Appeals addressed the same argument in Wilson v. United
5 States, 989 F.2d 953, 957 (8th Cir.1993). That case involved a Boy Scout group that was allowed
6 on to a military base for an activity. Several boys were injured while playing with an aluminum
7 irrigation pole that came into contact with an overhead power line. The argument was raised that
8 inviting a specific group such as the Boy Scouts does not constitute the "members of the general
9 public." The Court rejected the argument because the plaintiff was attempting rely upon a
10 distinction not made within the language of the Missouri Recreational Land Use Statute. There
11 was no such language requiring that it be made available and open to the "general public." "The
12 plain language of the statute indicates that a landowner owes no duty of care 'to any person who
13 enters on the land without charge' for recreational purposes." Wilson, 989 F.2d at 957 (quoting
14 Mo.Rev.Stat. § 537.346)(emphasis in original).

15 There is no language in RCW 4.24.210 that requires the property to be opened up to the
16 entire general public in order for a property owner to be afforded the protection under the
17 recreational use act. Washington Courts likewise decline to insert words into a statute when the
18 language, taken as a whole, is clear and unambiguous. State v. Watson, 146 Wn.2d 947, 955, 51
19 P.3d 66 (2002). Courts also do not add or subtract from the clear language of a statute unless an
20 addition or subtraction is imperatively required to make the statute rational. Id. There is certainly
21 no imperative need to add words to the statute to make it rational. The landowner has that right to
22 allow one member of the public, or thousands of members of the public on to the owner's
23 property for free for recreation uses. That is what the statute clearly states, and it should be
24 interpreted as such. Just as a person or group is permitted to give to the charity of their choice,
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26
27 ¹ Courts from other states have reached similar conclusions. For example, in Howard v. U.S., 181 F.3d 1064 (1999),
28 the Ninth Circuit reviewed the applicability of Hawaii's recreational use statute where an injury was sustained by a
29 sailing student on a dock closed to the non-military public. The government did not lose its immunity under the
30 Hawaii recreational use statute when it restricted use of a floating dock to instructors and students of sailing course,
31 due to weather conditions, on day that student was injured on dock. The Court held that the dock where the injury
32 was sustained was open to military personnel, their families and their guests, and even though it was closed to the
"general" public, the fact that it was open to the military public without charge was sufficient to qualify for
immunity.

1 Fourth Memorial Church is likewise permitted to give charitably of the use of its facilities free of
2 charge to Christian or non-denominational groups, such as Beat & Rhythms.

3 **2. The legislative history and the language of the statute support Riverview Bible**
4 **Camp's interpretation of the statute.**

5 The term "members of the public" is clear and unambiguous. However, to the extent that
6 the Court believes that the term is susceptible to more than one reasonable interpretation and
7 ambiguous, it is appropriate to look to the legislative history. A review of the legislative history
8 further supports Riverview Bible Camp's interpretation of the statute.

9 " '[I]f the statute's meaning is plain on its face, then the court must give effect to
10 that plain meaning as an expression of legislative intent.' " *Id.* (quoting *Dep't of*
11 *Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002)).
12 A statutory provision's plain meaning is to be discerned from the ordinary
13 meaning of the language at issue, the context of the statute in which that
14 provision is found, related provisions, and the statutory scheme as a whole. *Id.* A
15 provision that remains susceptible to more than one reasonable interpretation
16 after such an inquiry is ambiguous and a court may then appropriately employ
17 tools of statutory construction, including legislative history, to discern its
18 meaning. *Campbell & Gwinn*, 146 Wash.2d at 12, 43 P.3d 4.

19 Tingey v. Haisch 159 Wash.2d 652, 657, 152 P.3d 1020, 1023 (Wash.,2007) The court will
20 examine the floor debate stated in the Senate Journal as part of a statute's legislative history. See
21 e.g. Tingey, 159 Wn.2d at 661.

22 The statutes were first enacted in 1967. Laws of 1967, ch. 216. Commentators have said
23 that it is patterned after a model act proposed in 1965 by the Council of State Governments. See
24 Suggested State Legislation, Public Recreation On Private Lands: Limitation On Liability,
25 150-52 (1965). See also J. Barrett, Good Sports And Bad Lands: The Application Of
26 Washington's Recreational Use Statute Limiting Landowner Liability, 53 Wash.L.Rev. 1 (1977).
27 Although the statute has been amended over the years to broaden the activities, the relevant
28 language pertaining to the term "members of the public" at issue in this case has not been
29 changed or modified. This purpose of the statute is plainly stated in RCW 4.24.200:

30 The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in
31 lawful possession and control of land and water areas or channels to make them
32 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.

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1 (Emphasis added).

2 The legislative intent can be seen in the 1967 Senate Journals concerning Engrossed
3 House Bill No. 258. Senator Woodall, advocating in support of House Bill No. 258, explains the
4 exposure private landowners would have under the new law if a person who is permitted to come
5 on the property and hunt is injured by a latent hole.

6 “Let me give you an example. Senator Donohue buys a section of range land. He
7 has not explored it by foot. Someone says, ‘Can I hunt on this range land?’ and the
8 Senator says, ‘Yes, you can hunt.’ Unbeknownst to Senator Donohue, the prior
9 owner somewhere dug a well and didn’t properly cover it. Now this is an artificial,
10 latent defect – artificial because its man made, latent because it appears to be
11 covered and isn’t. Senator Donohue has not personally explored this whole
12 section. This amendment says that the Senator does not have to post something he
13 doesn’t know about. If there is an open well that is known about, he has to post it.
14 But he shouldn’t be liable for something on this land that he doesn’t know about.”

15 H.R. 258, Wash.S.Jour. 42nd Legis. 875 (1967)(see copy attached hereto); see also Morgan v.
16 United States, 709 F.2d 580, 584 (9th Cir. 1983)(the court quoted the same legislative history in
17 the opinion to interpret RCW 4.24.210 for an injury sustained on Lake Roosevelt).

18 The most important aspect of this example, for the purposes of our argument, is that the
19 Senate, in considering the passage of this new legislation, considered the land only being opened
20 to *one* member of the public--specifically, a hunter who was going to use the land for hunting.
21 Clearly, if the legislature intended the statute to only apply to landowners who allowed the
22 general public, or anyone and everyone to use the land, the example presented by Senator
23 Woodall would have been inadequate to explain the liability of the landowner.

24 This intent to limit the application of the recreational use statute to potentially a single
25 person who asks permission to come on the property is reiterated by Senator Woodall when asked
26 the following question by Senator Canfield:

27 “Mr. President:

28 My last question is a little more serious. Some fishermen were down on my
29 place one day and they thought they saw something on the bottom of the river
30 and upon closer inspection it looked like it was a car; whereupon, they reported
31 that to the sheriff’s office and they sent down a crew and dragged the place and
32 dragged out a car and it had a dead body in it of a young man who had been dead
for some time. Now the deceased apparently ran his car or by having his car run
down this steep hill and over this bank that I referred to a minute ago landed in

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1 the water and was either killed when he hit or drowned. Now am I liable because
2 I didn't post these signs against that hazard?"

3 Senator Woodall:

4 "No, under that condition you are not because you did not give him
5 permission. He did not request permission. He entered solely at his own risk.
6 We are only talking about persons who come up and say, 'Mr. Canfield, may I
7 hunt on your property?' and you want to be a good guy and you say, 'Yes, go
8 ahead.' That is the type of situation we are talking about. When a man comes in
9 and doesn't ask you, he clearly takes everything at his own risk."

10 H.R. 258, Wash.S.Jour. 42nd Legis. 876-77.

11 What can be seen from this rather grisly hypothetical exchange, is that the drafters of the
12 statute intended that private property could be allowed to be used as recreational use for specified
13 persons, and for a specified time period. A farmer does not have to leave his property open all the
14 time for any and all persons to hunt and roam over as they please. The farmer can use his
15 property as a working farm when he needs to, and in the Fall after the harvest is in, he may allow
16 hunters, hikers, or whomever, to come on to the property to use it for recreational purposes
17 provided they ask for permission. If they do not, then they would be considered trespassers.

18 In this case, Riverview Bible Camp is acting in just the same manner as the farmer who
19 allows a hunter to come on his property. Riverview Bible Camp is a non-profit organization that
20 operates a camp. It manages to usually make a slim profit with the help of donations and the fees
21 charged to groups and campers for the use of the facility. Although in 2009, it actually lost
22 money. Like the farmer, Riverview Bible Camp wanted to give back to society and allow a
23 worthy organization such as Beats & Rhythms to use the facility for a weekend free of charge.
24 That was the only group allowed to use the facility without a charge in the summers of 2008 and
25 2009. Given the language of the statute, and the legislative history, it is apparent that Riverview
26 Bible Camp's charitable act was exactly what the Legislature intended, and the conduct they
27 hoped would occur with the enactment of the statute.

28 Washington Courts have recognized that property can be used for different purposes at
29 different times. Courts must focus on the landowner's use of the land at *the particular time of the*
30 *injury* being litigated. Home v. North Kitsap School District, 92. Wn. App 709, 715, 965 P.2d
31 1112, 1116 (1998). The court analyzes the purpose for which the landowner intended the
32 property to be used, as opposed to the purpose for which the plaintiff was using the land. Gaeta v.
Seattle City Light, 54 Wn. App. 603, 608-09, 774 P.2d 1255 (1989). Furthermore, the Court

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1 explained that courts should not differentiate between the primary and secondary uses of the
2 property. That is to say, courts are not to analyze whether a property is used primarily as a
3 business, and only secondarily as a recreational use, in determining whether the recreational use
4 statute applies. McCarver, 92 Wn. 2d 370, 377, 597 P.2d 1362. Instead the court looks at the use
5 of the property at the time of the injury.

6 In this case, Riverview Bible Camp does operate a camp most of the summer. If Mr.
7 Cregan was injured on the slide while he had paid the normal costs, and with Riverview Bible
8 Camp's full staff there watching over the events, then his classification may very well be
9 different. However, the Court must focus its analysis on the weekend in question, June 27, 2008.
10 Riverview Bible Camp intended to allow Beats & Rhythms, including its campers, chaperones,
11 parents, and counselors, all to use the facility free of charge. Riverview Bible Camp clearly falls
12 within the protection of RCW 4.24.210.

13 The cases that the Plaintiff relies upon are distinguishable because they address the spatial
14 issue of a property containing a fee area, and an area that is free of charge. The Plano v. City of
15 Renton case can be distinguished from the present case because Plano's injury occurred in the
16 recreational area in which Renton charged users a fee. Plano v. City of Renton, 103 Wn. App.
17 910, 915, 14 P.3d 871 (2000). The City of Renton had a boat launch area and floating dock for
18 boat moorage. The floating moorage dock is accessible to the rest of the park by means of the
19 two gangways that connect the dock to a fixed pier. Plano slipped and fell on the wet metal ramp
20 that attaches the gangway to the floating dock. Renton charges a fee for overnight moorage. The
21 purchase of annual boat launch permit entitles a boater to one free night of moorage. Plano
22 moored her boat overnight at the park the first night, and did not pay the moorage fee because she
23 had purchased an annual boat launch permit. On the second night she paid the \$10 fee. On the
24 third day she left her boat moored at the dock during the day and was returning to pick it up after
25 6pm when the accident occurred. She had not paid for the fourth night, presumably because she
26 was going to leave that evening. Moorage was free between 8 am and 6 pm for up to four hours.
27 She was required to pay the overnight fee of \$10 if she moored her boat for the evening.
28

29 The City of Renton claimed it was immune because Plano did not pay the fee. The Court
30 rejected the argument and explained whether a person sneaks in and does not pay the fee, is not
31 the determining factor. Rather, the question is whether Renton charges a "fee of any kind" for
32 using the moorage. In other words, did the City of Renton intend to charge Plano a fee for the

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1 moorage. Plano, 103 Wn. App. at 913. The Court followed the rationale of Gaeta, supra. The
2 focus is not on what the *user* intended to use the property for, but rather it depends on the
3 landowner's perspective. Plano, 103 Wn. App. at 913. In this case, looking at it from the
4 perspective of the landowner, Riverview Bible Camp, it is clear that the intent was to allow the
5 property to be used without charging a fee of any kind to Riverview Bible Camp. Thus, the
6 recreational use act is applicable.

7 The Court in Plano went on to explain that a portion of the property can charge a fee, and
8 other parts of the property can be left open to the public and subject to the protection of the
9 recreational use act. "A landowner must only show that it charges no fee for using the land or
10 water where the injury occurred." Plano, 103 Wn. App. at 915. Renton did charge a moorage fee
11 for the use of the particular area where Plano's injury occurred. Thus the court concluded that the
12 recreational immunity act did not apply to that situation.

13 The Court was also not persuaded by the argument that because the mooring area was free
14 for up to four hours of the day that the City could fall within the protection of the recreation use
15 act. If during that day the City is charging a fee for the use of the dock or gangway, for persons
16 to moor their boats, the court held that constituted charging a fee. Plano, 103 Wn. App. at 913.
17 In that situation, the court's rationale is that if the area of the dock is generating fees, the fact that
18 some come on the fee generating area for a few hours a day without charging a fee, does not
19 convert it to being covered under the recreational use act.
20

21 It is important to realize that the court in Plano engaged in a spatial analysis primarily.
22 That is to say, the court was concerned about whether a portion of the property could be free and
23 open to the public, and therefore afforded the protection of the recreational use act, while other
24 areas that charged fees and revenue for the City could be excluded from the recreational use act.
25 Plano did not address a situation where a property that may normally charge a fee for the use of
26 the facilities, nevertheless charitably allows its property to be used free of charge for a weekend,
27 such as Riverview Bible Camp did in the case at hand. As explained above, Washington Courts
28 have explained that a property use can change, and thus a court must look at how the property is
29 being used at the particular day of the injury. Home v. North Kitsap School District, 92. Wn. App
30 at 715; see also McCarver, 92 Wn. 2d 370, 377, 597 P.2d 1362 (where the court rejected the
31 argument that a property's primary and secondary use needs be analyzed to determine whether
32 the recreational use act is applicable.)

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1 The Plaintiff also cites to the case of Nielsen v. Port of Bellingham, 107 Wn. App. 662, 27
2 P.3d 1242 (2001), which likewise deals with a spatial analysis. The Port of Bellingham entered
3 into leases to commercial and pleasure boat owners for moorage. Nielsen was visiting Dr.
4 Sheldon Wilkins on his boat that moored to the dock. Dr. Wilkins is a “live-aboard” which
5 means he pays increased moorage fees associated with his resident-status at the Harbor. Nielsen
6 slipped when she got to the foot of the ramp leading to the parking lot and sustained an injury.
7 Nielsen brought the lawsuit claiming that the Port negligently maintained the float at Gate One,
8 proximately causing her fall and injuries. The Port argued that visitors are permitted to walk on
9 the floats and docks without paying any fee for the privilege, and therefore the recreational use
10 act applied. The court disagreed and concluded that that the recreational use act did not apply.
11 The use of the dock where the accident occurred was for commercial use, as opposed to
12 recreational use. Thus it differed from Gaetna, supra, where the road used over the dam was
13 primarily for recreational use. Nielsen, 107 Wn. App. at 668.

14 The Court also looked at the area where the injury occurred to determine if it is an area
15 where the fees are charged, following the holding Plano. If the landowner intended to charge a
16 fee for the use of that portion of the dock, and was charging for that portion of the dock, such as
17 Dr. Wilkins, and the other commercial tenants, then that portion is not covered by the recreation
18 use act. This is again a spatial analysis. What is the space being used for? If that space is
19 commercial and generates fees, then the recreational use statute would not apply. If fees are
20 being charged on a given day for a particular area, the fact that some are allowed on the fee
21 generating area for free does not convert it to the recreational use. Nielsen, 107 Wn. App. at 668.

22 The Nielsen and Plano cases cited by the Plaintiff did not address the temporal issues of
23 how a property is being used on a particular day, or weekend. To the extent that they touch on
24 the issue of time at all in the opinions (ie. the four hour free period of time during a day for
25 moorage), it is simply secondary to the spatial analysis. The areas where the injuries occurred in
26 Plano and Nielsen were no doubt being used as commercial or fee generating areas on the date of
27 the accidents. It makes sense for the courts to conclude that merely allowing some people on to
28 the dock for free for a few hours of the day is not enough to convert it to recreational use. It is
29 being used that day for commercial or fee generating purposes. That is a far different scenario
30 and situation than what we are involved with in the case at hand. Riverview Bible Camp did not
31 charge Beats & Rhythms any fee for the use of the facility for that entire weekend. Nor did
32 Riverview Bible Camp charge Mr. Cregan any fee for the use of the camp during that weekend.

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1 In this type of scenario, it is appropriate to look at the cases of Home v. North Kitsap School
2 District, 92. Wn. App at 715, and McCarver, 92 Wn. 2d at 377, since they make it clear that
3 property can be used for different purposes on different days. Just as a farmer can use his
4 property as a working farm for most of the year, and he can allow an occasional hunter to come
5 on the property, so too can Riverview Bible Camp allow a worthy group to come and use the
6 facilities for free one weekend. That is exactly the charitable conduct that the recreational use
7 act was designed to promote in society.

8 **3. Riverview Bible Camp did not charge Plaintiff a “fee of any kind” for the use**
9 **of the facility.**

10 The Plaintiff next argues that he felt that he was providing services since he was required
11 by Beats & Rhythms to be a nurse to participate in the event, and that this somehow constitutes a
12 non-financial fee. First, the Plaintiff has cited to no authority which would support the contention
13 that a non-financial fee can somehow make the RCW 4.24.210 inapplicable. The statute
14 specifically states: “without charging a *fee* of any kind.” RCW 4.24.210. Not only has there not
15 been a case which supports the Plaintiff’s non-financial fee argument, the fact that the statute
16 specifically references a “fee” bolsters the interpretation that there must be a monetary fee paid.

17 The reference in R.C.W. § 4.24.210 to a “fee of any kind” arguably excludes non-
18 monetary forms of consideration, such as advertising and other incidental
19 benefits. Indeed, under the recreational use act, even one who accompanies a
20 paying guest may be denied invitee status unless it can be inferred that the fee
21 was charged for both entrants.

22 J. Barrett, Good Sports And Bad Lands: The Application Of Washington's Recreational Use
23 Statute Limiting Landowner Liability, 53 Wash.L.Rev. 1, 12 (1977).

24 Second, it is important to look at who was supposedly requiring Mr. Cregan be a nurse in
25 order to participate that weekend. There is no allegation that Riverview Bible Camp required him
26 to be a nurse. If anyone, it would have been Beats & Rhythms. Riverview Bible Camp simply
27 opened up its camp to Beats & Rhythms. Who they used as counselors, or supervisors, was up to
28 them. However, even if Beats & Rhythms could somehow be found to be charging a non-
29 monetary fee to Mr. Cregan to participate, it is irrelevant for purposes of determining whether
30 RCW 4.24.210 applies. The analysis is whether Riverview Bible Camp charged Mr. Cregan a
31 fee. Again, courts look at the purpose for which the landowner intended the property to be used,
32 as opposed to the purpose for which the plaintiff was using the land. Gaeta v. Seattle City Light,

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1 54 Wash.App. at 608-09. In Gaeta, a motorcyclist was travelling across the country on a sight-
2 seeing tour and decided to drive across the Diablo Dam. While driving across the dam, which
3 was open to the public for recreational use, the motorcycle got caught in the track causing the
4 rider to fall and sustain an injury. Seattle City Light operated the road over the dam for the public
5 recreation. It had no commercial activities or business interest in a resort that was across from the
6 dam. The motorcyclist argued that the recreational use act did not apply because his sole purpose
7 in using the roadway over the dam was commercial, to reach the resort where he could purchase
8 some gasoline for his motorcycle. The court rejected the argument and explained:

9 We find the proper approach in deciding whether or not the recreational use act
10 applies is to view it from the standpoint of the landowner or occupier. If he has
11 brought himself within the terms of the statute, then it is not significant that a
12 person coming onto the property may have some commercial purpose in mind. By
13 opening up the lands for recreational use without a fee, City Light has brought
14 itself under the protection of the immunity statute, and it therefore is immaterial
that Gaeta may have driven across the dam in search of gasoline at the resort.

15 Gaeta v. Seattle City Light, 54 Wn. App. at 608-609.

16 Likewise, in Jones v. United States, 693 F.2d 1299, 1300 (9th Cir.1982), the plaintiff was
17 injured in Olympic National Park while snow-sliding on an inner tube she had rented from a
18 concessionaire. The concessionaire, located in the park on Government property, paid the
19 Government a fixed rental fee and a percentage of its gross receipts. Id. at 1303. In holding that
20 no fee had been charged which would deny the Government its immunity under Washington's
21 recreational use statute, this court noted that members of the public were not charged a fee to
22 enter onto the land or to use the land, and that the plaintiff could have used the slope for free of
23 charge if she had brought her own tube. Id. at 1303-04. The fee that the plaintiff had paid was
24 simply a fee for use of the tube, not for use of the Government's land. Id. at 1303. The
25 Government was therefore immune from liability. Id. at 1303-04.

26 Analyzing this case from the perspective of the landowner, Riverview Bible Camp did
27 not charge a fee of any kind, and clearly comes within the protection of the recreational use act.
28 Whether the Plaintiff had some commercial purpose, or felt that there was a quid pro quo
29 requirement with Beats & Rhythms is irrelevant to the analysis of whether the recreational use
30 act applies. No fee ever made its way to Riverview Bible Camp.
31
32

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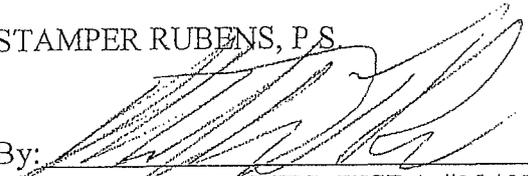
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III. CONCLUSION

The legislative history, the clear wording of the statutes, and cases that have interpreted the statutes, all clearly support the conclusion that Riverview Bible Camp should be afforded protection from liability under Washington's recreational use act. The legislature enacted the statute to encourage public and private landowners to open their land for members of the public to use the land for free. Denying protection to Riverview Bible Camp under the recreational use act would chill future charitable acts by similarly situated landowners. Based upon the foregoing, Riverview Bible Camp asks that the Court deny the Plaintiff's Motion for Summary Judgment to strike Riverview Bible Camp's affirmative defense based upon RCW 4.24.200-210. Riverview Bible Camp further asks that the Court grant its cross-motion for summary judgment finding as a matter of law that RCW 4.24.200 - 210 are applicable to this case.

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

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CERTIFICATE OF SERVICE

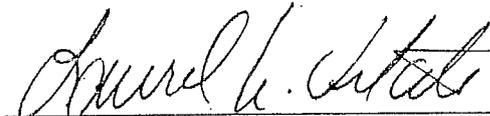
I hereby certify that on the 11 day of October 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

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Spokane, WA 99201-0613

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LAUREL K. VITALE

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ATTACHMENT "A"

SENATE JOURNAL
OF THE
Fortieth Legislature
OF THE
STATE OF WASHINGTON
AT
Olympia, the State Capital

Convened January 9, 1967
Adjourned Sine Die March 9, 1967

Compiled, Edited and Indexed by
WARD BOWDEN, *Secretary of the Senate*



DOROTHY B. GREELEY, *Journal Clerk*

JOHN A. CHERBERG, *President of the Senate*
AL HENRY, *President Pro Tempore*
GEORGE W. KUPKA, *Vice President Pro Tempore*

There being no objection, the title of the bill was ordered to stand as the title of the act.

House Bill No. 11, by Representatives Harris and Bottiger (by Legislative Council request):

States law governing when securities issued by corporation organized under United States laws; amends uniform act for simplification of fiduciary security transfers.

The bill was read the second time by sections.

On motion of Senator Woodall, the rules were suspended, House Bill No. 11 was advanced to third reading, the second reading considered the third, and the bill was placed on final passage.

Debate ensued.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 11 and the bill passed the Senate by the following vote: Yeas, 45; nays, 0; absent or not voting, 2; excused, 2.

Those voting yea were: Senators Andersen, Atwood, Bailey, Canfield, Connor, Cooney, Donohue, Dore, Faulk, Foley, Freise, Gissberg, Greive, Guess, Hallauer, Hanna, Henry, Herr, Herrmann, Keefe, Knoblauch, Kupka, Lennart, Lewis, McCormack, McCutcheon, Mardesich, Marquardt, Metcalf, Morgan, Neill, Peterson (Lowell), Peterson (Ted), Rasmussen, Redmen, Rieder, Ryder, Sandison, Stender, Talley, Twigg, Uhlman, Washington, William Woodall—45.

Absent or not voting: Senators McMillan, Pritchard—2.

Excused: Senators Chytil, Durkan—2.

House Bill No. 11, having received the constitutional majority, was declared passed.

There being no objection, the title of the bill was ordered to stand as the title of the act.

Engrossed **House Bill No. 258**, by Representatives Bledsoe, Beck, Finnegan and Thompson:

Limiting liability of owner of property and water areas made available to the public for recreational purposes.

REPORTS OF STANDING COMMITTEE

Engrossed **House Bill No. 258**:

Senate Chamber,
Olympia, Wash., March 1, 1967.

Limiting liability of owner of property and water areas made available to the public for recreational purposes (reported by Judiciary Committee):

MAJORITY recommends that it do pass with the following amendment:

Beginning on page 1, line 10 of both the engrossed and original bills, after "Sec. 2.", strike all of the material down to and including "affected." on page 3, line 24 of the engrossed and original bills and insert the following:

"Any landowner who allows members of the public to use his agricultural or farm land for the purposes of outdoor recreation, which term includes hunting, fishing, camping, picnicking, hiking, pleasure driving, nature study, winter sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users. Provided, That nothing in this section shall prevent the liability of a landowner for injuries sustained to users by reason of a dangerous artificial latent condition to

which warning signs have not been conspicuously posted. *Provided Further*, That nothing in this act limits or expands in any way the doctrine of attractive nuisance."

Wes C. Uhlman, *Chairman*,

_____, *Vice Chairman*.

We concur in this report: James A. Andersen, R. Frank Atwood, Martin J. Durkan, Frank W. Foley, H. B. (Jerry) Hanna, Karl Herrmann, Mike McCormack, John T. McCutcheon, Marshall A. Neill, Robert W. Twigg, Perry B. Woodall.

Senate Chamber,
Olympia, Wash., March 2, 1967.

Limiting liability of owner of property and water areas made available to the public for recreational purposes (reported by Judiciary Committee):
MINORITY recommends that it do not pass.

_____, *Chairman*,
Fred H. Dore, *Vice Chairman*.

The bill was read the second time by sections.

It was moved by Senator Woodall that the committee amendment be adopted.

It was moved by Senator Woodall that the following amendment to the committee amendment be adopted:

Amend the Senate committee amendment to section 2, on line 18 of the amendment, after "a" insert "known"

Debate ensued.

POINTS OF INQUIRY

Senator Dore:

"Mr. President, would Senator Woodall yield to a question:

"How do you reconcile the word, 'known,' and the word, 'latent,' in the same sentence?"

Senator Woodall:

"Latent is something which does not meet the common eye."

Senator Dore:

"You can't see it so it isn't known."

Senator Woodall:

"No."

Senator Dore:

"Then you say, 'known, artificial, latent.' The terms nullify each other. How do you reconcile the words, 'known,' and, 'latent,' in the same section?"

Senator Woodall:

"Latent is something which does not meet the common eye. Let me give you an example. Senator Donohue buys a section of range land. He has not explored it foot by foot. Someone says, 'Can I hunt on this range land?' and the Senator says, 'Yes, you can hunt.' Unbeknownst to Senator Donohue, the prior owner somewhere dug a well and didn't properly cover it. Now this is an artificial, latent defect—artificial because man made, latent because it appears to be covered and isn't. Senator Donohue has not personally explored this whole section. This amendment says that the Senator does not have to post something he doesn't know about. If there is an open well that he knows about, he has to post it. But he shouldn't be liable for something on this land that he doesn't know about."

Debate ensued.

Senator Woodall:

"Mr. President, would Senator Dore yield to a question now?"

Senator Dore, we don't normally contemplate renting apartment houses for recreational purposes, do we?"

Senator Dore:

"You don't represent my district!"

Debate ensued.

Senator Stender:

"Mr. President, would Senator Uhlman yield to a question:

"Senator Uhlman, I notice that the amendment from the Senate Judiciary Committee strikes out most of the House bill. When I read the House bill it seems to be pretty broad in its coverage and I was wondering what purpose was there in striking out the House bill and then putting in this short amendment?"

Senator Uhlman:

"Just precisely that: The House bill changes the whole tort concept. Senator Dore pointed out, and the Senate amendment limits it to just what the original proponents of the bill intended and that was just to cover agricultural and forest lands. This is the thinking of our committee."

Further debate ensued.

Senator Canfield:

"Mr. President, members of the Senate, I'd like to ask Senator Woodall to stand and preface the question by giving a little information. I am not an attorney but I do have some property which would come under the scope of this act and I have posted it lately because I like to have people come down and hunt or fish if they want and anyway all of my signs have been torn down year after year and it takes a lot of work to keep them up. But I do have, Mr. President and members of the Senate, over a mile of river frontage which is quite a hazard and one of my questions to Senator Woodall is this: Do I have to post signs along that mile of river frontage to the effect that water is wet and if people get in there they might drown?"

Senator Woodall:

"If it wasn't apparent that water is wet you would have to put a sign on it. It was. If you were here you heard the hypothetical I gave about the poorly covered well, that you didn't know about. The way the amendment reads, if my amendment is not adopted, you would be charged with knowledge. Take for example your property bottom lands. You would be charged with knowledge of any dangerous thing that is down in that ground even though you weren't aware of it."

Senator Canfield:

"My second question, Senator Woodall:

"I also have about a half a mile of a high bank which comes on my property and is immediately joining a railroad track and this is a steep bluff. It is almost a 90 degree bluff straight up and approximates a possible fall of about seventy feet which would be fatal in case anybody would fall over it. Now am I supposed to post that half mile of cliff for fear somebody might fall? When you answer that I have another question."

Senator Woodall:

"You are now getting closer into the kind of things that make lawsuits. Probably not in this case if the bank was in its natural state, but if there was anything on the bank where the dirt had ever been disturbed which would cause an individual to step in a hole and then fall over the bank, you probably would be liable."

Senator Canfield:

"Mr. President:

"My last question is a little more serious. Some fishermen were down on my property one day and they thought they saw something on the bottom of the river and after closer inspection it looked like it was a car; whereupon, they reported that to the sheriff's office and they sent down a crew and dragged the place and dragged out a car and it had a dead body in it of a young man who had been dead for some time. The deceased apparently ran his car or by having his car run down this steep bluff over this bank that I referred to a minute ago landed in the water and was killed when he hit or drowned. Now am I liable because I didn't post signs against that hazard?"

Senator Woodall:

"No, under that condition you are not because you did not give him permission. He did not request permission. He entered solely at his own risk. We are only talking about persons who come up and say, 'Mr. Canfield, may I hunt on your property?' and you want to be a good guy and you say, 'Yes, go ahead.' That is the type of situation we are talking about. When a man comes in and doesn't ask you, he clearly takes responsibility at his own risk."

The motion was carried and the amendment to the amendment was adopted.

It was moved by Senator Atwood that the following amendment to the committee amendment be adopted:

Amend the Senate committee amendment to section 2, in the first proviso after "without the liability of" insert "such"

The motion was carried.

POINT OF INQUIRY

Senator Stender:

"Mr. President, I have a question of the committee chairman. I tried to get this inserted before.

"I read the amendment, the committee amendment strikes the entire House bill, section 2, section 3, section 4, section 5, section 6, section 7 and sections 8 and 9, does it not?"

Senator Uhlman:

"That is correct."

Senator Stender:

"And in its place, it adds this short amendment, is that correct?"

Senator Uhlman:

"That's correct."

Senator Stender:

"And is it the consensus of the Judiciary Committee that that short paragraph provides the same coverage as the House bill does in the several sections that were deleted?"

Senator Uhlman:

"That is not correct."

Senator Stender:

"Is the bill then not actually in the same condition? Is this not actually the same as it was? In other words, it doesn't protect the landowner as it does under the original House bill?"

Senator Uhlman:

"It does not protect the landowner as the original House bill intended."

The President declared the question before the Senate to be the adoption of the committee amendment as amended.

The motion was carried and the committee amendment as amended was adopted.

On motion of Senator Herrmann, the rules were suspended, Engrossed Bill No. 258 as amended by the Senate was advanced to third reading, second reading considered the third, and the bill was placed on final passage.

Debate ensued.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 258, as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 44; nays, 1; absent or not voting, 2; excused, 2.

Those voting yea were: Senators Andersen, Atwood, Bailey, Canfield, Connor, Cooney, Donohue, Dore, Faulk, Foley, Freise, Gissberg, Greive, Guess, Hallauer, Hanna, Henry, Herr, Herrmann, Keefe, Knoblauch, Kupka, Lennart, Lewis, McCutcheon, McMillan, Mardesich, Marquardt, Metcalf, Morgan, Neill, Peterson (Lowell), Peterson (Ted), Pritchard, Rasmussen, Ridder, Ryder, Sandison, Stender, Talley, Twigg, Washington, Williams, Woodall.

Voting nay was: Senator Uhlman—1.

Absent or not voting: Senators McCormack, Redmon—2.

Excused: Senators Chytil, Durkan—2.

Engrossed House Bill No. 258 as amended by the Senate, having received the constitutional majority, was declared passed.

There being no objection, the title of the bill was ordered to stand as the title of the act.

House Bill No. 12, by Representatives Harris, Bottiger and Glendon (by Legislative Council request):

Allows fiduciary to hold in trust securities issued by the fiduciary.

The bill was read the second time by sections.

On motion of Senator Woodall, the rules were suspended, House Bill No. 12 was advanced to third reading, the second reading considered, the bill read and the bill was placed on final passage.

Debate ensued.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 12 and the bill passed the Senate by the following vote: Yeas, 44; nays, 0; absent or not voting, 3; excused, 2.

Those voting yea were: Senators Andersen, Atwood, Bailey, Canfield, Connor, Cooney, Donohue, Dore, Faulk, Foley, Freise, Gissberg, Greive, Guess, Hallauer, Hanna, Henry, Herr, Herrmann, Keefe, Knoblauch, Kupka, Lennart, Lewis, McCutcheon, McMillan, Mardesich, Marquardt, Metcalf, Morgan, Neill, Peterson (Lowell), Peterson (Ted), Pritchard, Rasmussen, Ridder, Ryder, Sandison, Stender, Talley, Twigg, Uhlman, Washington, Williams.

Absent or not voting: Senators McCormack, Redmon, Woodall—3.

Excused: Senators Chytil, Durkan—2.

House Bill No. 12, having received the constitutional majority, was declared passed.

There being no objection, the title of the bill was ordered to stand as the title of the act.

House Bill No. 101, by Representatives Newhouse, Brazier, Jr. and Hausler (by Departmental request):

Repealing statute which provides for use of certain pesticide poisons for control of rodents or predatory animals under special permit.

On motion of Senator Donohue, House Bill No. 101 was ordered to retain its place on second reading at the beginning of the second reading calendar for tomorrow.

House Bill No. 297, by Representatives Hubbard, Wanamaker and Hausler (by Departmental request):

Changing generally the Washington pesticide application act.

On motion of Senator Donohue, House Bill No. 297 was ordered to retain its place on second reading at the beginning of the second reading calendar for tomorrow.

House Bill No. 494, by Representatives Chapin and Perry (by Departmental request):

Permitting importation of liquor for personal or household use.

The bill was read the second time by sections.

On motion of Senator Connor, the rules were suspended, House Bill No. 494 was advanced to third reading, the second reading considered the third, and the bill was placed on final passage.

Debate ensued.

POINTS OF INQUIRY

Senator Lennart:

Mr. President, would Senator Connor yield:

Senator Connor, what is the financial impact of this?"

Senator Connor:

"It's not very much, I can assure you of that, Senator."

Senator Ridder:

Mr. President, would Senator Connor yield:

"What is the present status of entry of liquors?"

Senator Connor:

"In practically every state in the Union I believe you can take a half gallon in. In the case of Washington you have to pay a special duty on it."

Senator Ridder:

"That would then make it unlimited?"

Senator Connor:

"No, it would be just what they have in other states in the Union."

Senator Ridder:

"On, but they could bring it in free?"

Senator Connor:

"Duty free, yes."

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 494, and the bill passed the Senate by the following vote: Yeas, 43; nays, 1; absent or not voting, 2; excused, 3.

Those voting yea were: Senators Andersen, Atwood, Bailey, Canfield, Connor, Cooney, Donohue, Dore, Faulk, Foley, Freise, Gissberg, Greive, Guess, Hallauer, Hanna, Henry, Herr, Herrmann, Keefe, Knoblauch, Kupka, Lewis, McCormack, McMillan, Mardesich, Marquardt, Metcalf, Morgan, Neill, Peterson (Lowell), Peterson (Ted), Pritchard, Rasmussen, Redmon, Ridder, Ryder, Sandison, Stender, Twigg, Uhlman, Washington, Williams, Woodall.

Voting nay was: Senator Lennart—1.

Absent or not voting: Senators McCutcheon, Talley—2.

Excused: Senators Chytil, Durkan—2.

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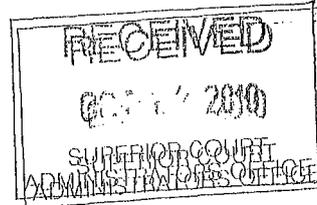
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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

GAVIN J. CREGAN, a married man,

Plaintiff,

vs.

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.

No. 10-2-00572-7

**AFFIDAVIT OF MATTHEW T. RIES IN
SUPPORT OF DEFENDANT'S
RESPONSE TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT AND IN SUPPORT OF
DEFENDANT'S CROSS-MOTION FOR
SUMMARY JUDGMENT**

STATE OF WASHINGTON)

) ss.

County of Spokane)

I, MATTHEW T. RIES, being first duly sworn, upon oath, depose and state:

1. I am over the age of eighteen (18) years and I am competent to testify herein.

2. I am the attorney for Defendant Fourth Memorial Church d/b/a Riverview Bible Camp and make this Affidavit in Support of Defendant's Response to Plaintiff's Motion for Partial Summary Judgment.

STAMPER RUBENS PS
ATTORNEYS AT LAW

**AFFIDAVIT OF MATTHEW T. RIES IN SUPPORT OF
DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT: 1**

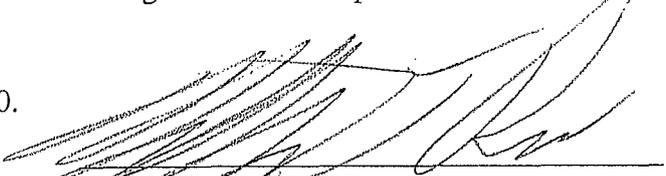
720 WEST BOONE, SUITE 200
SPOKANE, WA 99201
TELEFAX (509) 326-4891
TELEPHONE (509) 326-4800

1 3. Attached hereto as **Exhibit "A"** are true and correct copies of pages 9, 10, 12, 13,
2 14, 20, 21, 22, 27, 31, 32, 33, 34, 35, 36, 86 from the Deposition Transcript of Tim F. Mason
3 taken on June 28, 2010.

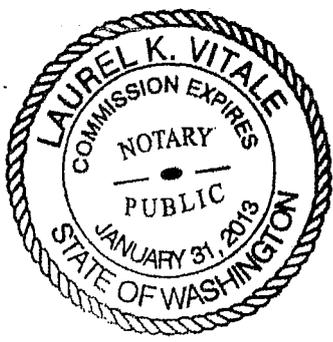
4 4. Attached hereto as **Exhibit "B"** are true and correct copies of pages 23-24, 27,
5 31-32, 34, 36, 37, 38, 53-54, 110-112, 115, 116, 129-130, 145, 146. from the deposition of
6 Gavin Cregan taken on September 23, 2010.

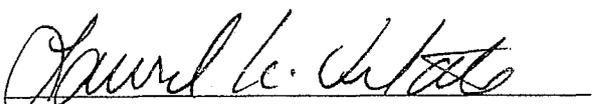
7 5. Attached hereto as **Exhibit "C"** is a true and correct copy of Defendant's Answer
8 to Interrogatory No. 13 to Plaintiff's First Set of Interrogatories and Requests for Production of
9 Documents Directed to Defendant.

10 DATED this 11 day of October 2010.

11 
12 _____
13 MATTHEW T. RIES

14 SIGNED AND SWORN to before me this 11 day of October 2010.



33 
34 _____
35 NOTARY PUBLIC in and for the State of
36 Washington, residing at Spokane.
37 My Commission expires: _____

CERTIFICATE OF SERVICE

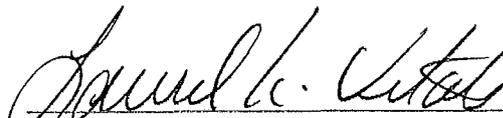
I hereby certify that on the 11 day of October 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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
Keefe, Bowman & Bruya, P.S.
601 W. Main, Ste. 1102
Spokane, WA 99201-0613

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


LAUREL K. VITALE

H:\Clients\Brotherhood Mutual\Fourth Memorial Church\Pleadings\AffMTRResponseMSJ.doc

STAMPER RUBENS PS
ATTORNEYS AT LAW

**AFFIDAVIT OF MATTHEW T. RIES IN SUPPORT OF
DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT: 3**

720 WEST BOONE, SUITE 200
SPOKANE, WA 99201
TELEFAX (509) 326-4891
TELEPHONE (509) 326-4800

EXHIBIT "A"

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

GAVIN J. CREGAN, a married man,

Plaintiff,

vs.

No. 10-2-00572-7

FOURTH MEMORIAL CHURCH, a nonprofit
Washington corporation, d/b/a RIVERVIEW
BIBLE CAMP,

Defendant.

FOURTH MEMORIAL CHURCH, a nonprofit
Washington corporation, d/b/a RIVERVIEW
BIBLE CAMP,

Third Party Plaintiff,

vs.

BEATS & RHYTHMS, a Washington
corporation,

Third Party Defendant.

DEPOSITION OF TIM F. MASON

Deposition upon oral examination of TIM F. MASON, taken at
the request of the Plaintiff, before David Storey, Certified
Court Reporter, CCR No. 2927, and Notary Public, at the
conference room of the US Bank Building, Spokane,
Washington, commencing at or about 9:00 a.m., on June 28,
2010, pursuant to the Washington Rules of Civil Procedure.

1 Q. And why did you leave Calvary Chapel?

2 A. The job as director of Riverview Bible Camp opened up,
3 and I applied and received it.

4 Q. Okay. Had you been to Riverview Bible Camp at all
5 before you became director of the camp?

6 A. Yes.

7 Q. Tell me about that, how many times, how long?

8 A. I would say I was there 18 times as a -- I rented the
9 facility for, as a youth pastor and as an associate pastor
10 with youth to do camps and retreats.

11 Q. Had you used or rented Riverview Bible Camp at all while
12 you were a counselor at the Excelsior?

13 A. No.

14 Q. It looks to me like you had been using the camp for over
15 the course of a little bit more than three years before you
16 became the director, is that fair to say?

17 A. Yes. It was probably six.

18 Q. Six years?

19 A. We did two summer, two week-long summer camps every year
20 when I was, from 1990 -- 1995, so five years, as well as
21 retreats in the winter in the spring we rented it.

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.

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.

9 Q. Was the, what I have termed the giant slide, do you know
10 what I mean by the giant slide?

11 A. Yes.

12 Q. All right. Was the giant slide in place the first year
13 that you were attending or using the camp?

14 A. Yes.

15 Q. I presume you've used the slide yourself?

16 A. Yes.

17 Q. Did you have any involvement with Fourth Memorial Church
18 before becoming a director, the director of its Bible camp,
19 Riverview Bible camp --

20 A. No.

21 MR. RIES: Just let him finish his question before you
22 jump in.

23 A. Oh, I'm sorry.

24 Q. (BY MR. LEIPHAM) Do you hold any position with Fourth
25 Memorial Church other than director of Riverview Bible Camp?

1 A. Yes.

2 MR. LEIPHAM: Is there any problem getting a copy of
3 that?

4 MR. RIES: No.

5 Q. (BY MR. LEIPHAM) We'd request that you get a copy to
6 your lawyer or the church's lawyer, so we can get a copy of
7 it.

8 Have there been any changes in that job description
9 since you've been camp director that you are aware of?

10 A. No.

11 Q. Are you familiar with the history of the development of
12 Riverview Bible Camp?

13 A. A little.

14 Q. All right. When was it originally established, if you
15 know?

16 A. I believe 1949. It's, I know it is, well, it is
17 51 years old when it was purchased, so, is that --

18 Q. Good enough.

19 A. Okay.

20 Q. What's the camp's function?

21 MR. RIES: I guess I'll object to the form on that.

22 Go ahead.

23 Q. (BY MR. LEIPHAM) What's the purpose of the camp, or
24 what are the purposes? Nothing ever has a single purpose.

25 A. Right. Well, one of the purposes is to increase the

1 Kingdom of God. Another purpose is to provide a facility
2 for the entire community to rent or be guests of.

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?

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 2008 other than what's in Exhibit No. 1?

2 A. No.

3 Q. I notice the cover letter, the first page of Exhibit 1,
4 second paragraph says, "To finalize your registration at
5 Riverview return one copy of the rental agreement, the
6 signed indemnity agreement, and the deposit."

7 What deposit was required at that point, at that time?

8 A. Zero.

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.

14 Q. What was your understanding was the purpose of Beats &
15 Rhythms?

16 MR. RIES: Object to the form.

17 A. To provide a camp for kids with congenital heart
18 defects.

19 Q. (BY MR. LEIPHAM) Did they request a fee waiver?

20 A. I do not remember.

21 Q. Why did they get one?

22 A. We wanted to, as a camp, be able to give something back,
23 help another nonprofit, be a blessing to a group of people,
24 at least once a year, we wanted to do this.

25 Q. Was Beats & Rhythms the only free stay group that you

1 approved in the 2008 season, if you remember?

2 A. I do not remember.

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.

16 Q. Why is that?

17 MR. RIES: Object to the extent it calls for a legal
18 conclusion, gets into advice of counsel.

19 Q. (BY MR. LEIPHAM) I don't want to know anything, any
20 legal advice that you have been given, nor do I want to know
21 any legal opinion that you hold.

22 Setting that aside, can you answer the question as to
23 why they were told not to come back this year?

24 MR. RIES: Same objections. Object to form.

25 Go ahead and answer to the extent you can.

1 A. I told them they cannot come back because we were in a
2 lawsuit based on one of the people that came with them as a
3 group, that was suing us.

4 Q. Okay. And what was your reasoning as to why the
5 existence of this lawsuit necessitated your denial of access
6 to the camp facilities to Beats & Rhythms?

7 MR. RIES: Same objections. To the extent it calls for
8 a legal conclusion object to form.

9 Answer to the extent you know.

10 Q. (BY MR. LEIPHAM) Again, I'm not inquiring about any
11 legal conclusions, either yours or the advice you've been
12 given, I just want to know your thought processes to the
13 extent you can answer them?

14 A. It didn't make any sense for me to have them come up
15 when we are in the middle of a lawsuit that involves them.
16 I didn't think that would be wise at this time for 2010.

17 Q. Okay. Once the lawsuit is over, would you expect a
18 change in the decision?

19 MR. RIES: Object to the extent it calls for speculation
20 something that happens in the future.

21 Answer to the extent you know. Don't speculate.

22 Q. (BY MR. LEIPHAM) Yes. If you have thought about it,
23 have a decision, tentative decision, then I'd like to know
24 what it is?

25 A. I haven't thought about it.

1 Q. (BY MR. LEIPHAM) And was Amanda in that position?

2 A. Yes.

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.

10 Q. Is Fourth Memorial a denominational church or
11 nondenominational?

12 A. It is a nondenominational church.

13 Q. Is the board of elders the governing body of the church?

14 A. Yes.

15 Q. Is your employment contract with the board of elders?

16 MR. RIES: Object to the form.

17 Go ahead.

18 A. Could you clarify your question?

19 Q. (BY MR. LEIPHAM) Do you have a written employment
20 contract?

21 A. I believe so.

22 Q. And is that contract between you and the board of elders
23 or between you and somebody else?

24 A. I do not know.

25 Q. Who, to the extent anybody directs your activities as

1 church?

2 A. Yes.

3 Q. Do you have a role in determining the per-person charge
4 for purposes of guest group rental agreements at Riverview
5 Bible Camp?

6 A. Yes.

7 Q. What's your role?

8 A. To give advice and counsel as to what I believe would be
9 the best charge, the most appropriate charge for a person.

10 Q. So the survey is just one of the things that's
11 considered, is that true?

12 A. Yes.

13 Q. Besides the survey and your advice, what other things
14 are taken into account, if you know, in determining the
15 per-person charge for guest group rental agreements?

16 A. What our cost to stay open has risen or fallen in the
17 previous year.

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.

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.

7 Q. How does a camp generate income, other than the user
8 charges under the guest group rental agreements that groups
9 execute with the camp?

10 A. Donations.

11 Q. Any other source of revenue?

12 A. Not that I know of.

13 Q. Does the camp advertise?

14 A. Define advertising?

15 Q. How does the camp go about getting the word of its
16 availability out to the general public so that people can
17 register as, register their groups as guests?

18 A. We have a website.

19 Q. Okay.

20 A. We, I contact groups, people that look like they fit the
21 profile to be a group for Riverview, and take them out to
22 coffee, and share with them about camp. One year, and I
23 don't remember the year, we did advertise on the Garland
24 Theater, before you see the movie, they run your deal. I
25 did that for one year.

1 Q. Any other advertising or promotional activities that the
2 camp does?

3 A. We make brochures that I take when I meet with people.
4 And we had a video that I, goes with the brochure.

5 Q. Any other promotional activities, other than what you
6 have described so far?

7 A. The, we have flyers for our summer camps, our winter
8 camps where we'll have a flyer and a poster, and a little
9 promotional DVD that we'll give to the groups that want to
10 join us for those camps.

11 Q. And who produces the flyers?

12 A. Myself and a staff member.

13 Q. Were brochures and video done for the 2008 camp season,
14 summer season?

15 A. For our program camps, yes.

16 Q. What's a program camp?

17 A. A program camp is where we invite individual groups,
18 church groups to join us for us putting on their week of
19 camp.

20 Q. Okay. And I take it those church groups, although they
21 are invited to participate, there's still a -- what do you
22 call it -- a rental agreement and rental fee charged?

23 MR. RIES: Object to the form.

24 A. That is on the individual basis. So they come as a
25 group, they can only come with their church group, but they

1 have to -- everybody, including their leadership, because
2 they provide cabin leaders, fill out the release form.

3 Q. (BY MR. LEIPHAM) Okay. And the question was about the
4 charge. Is there -- do you charge a fee of any kind for
5 attendance at a program camp?

6 A. Yes.

7 Q. And is it the same charge for a program camp as it would
8 be for any other group use?

9 A. No.

10 Q. How does the program camp charge, how does that differ
11 from what's done for other groups?

12 A. It depends on the length of the camp, the amount of
13 meals and what we provide in the program.

14 Q. Was the Beats & Rhythms' 2008 rental agreement part of a
15 program, what you've called a program camp, or is that
16 something else?

17 A. It was not a program camp. It was a guest group.

18 Q. Okay. What, a guest group?

19 A. They provide their own program.

20 Q. Of the overall use of the camp in any given season,
21 approximately what are the percentages between program camps
22 and guest groups?

23 MR. RIES: Object to the form.

24 A. Guest groups are 80 percent, is my estimate of 80 to
25 even maybe a little bit more of an overall year, calendar

1 year of who attend Riverview.

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.

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.

11 Q. All right. Who prepared the website or who plans the
12 website for the camp?

13 A. A Riverview staff.

14 Q. How long have you had a website?

15 A. I believe six years. I am not sure.

16 (Ex. No. 2, Website screen shots, marked.)

17 Q. (BY MR. LEIPHAM) I ask you to look at what's been
18 marked as Exhibit 2. Can you identify that exhibit for us?

19 A. The front page looks like our front page of our website.

20 Q. Okay. And I'd ask you to look at the remainder of the
21 pages. Do they all appear to be screen shots taken from the
22 website?

23 A. I haven't looked at the calendar, so I can't say about
24 the calendars on the third page and fourth page, but other
25 than that, I believe so.

1 MR. LEIPHAM: Can you read it back?

2 (Pending question read.)

3 MR. RIES: Same objections. Are you asking firsthand
4 knowledge or what investigation has been done?

5 Q. (BY MR. LEIPHAM) I'm just asking for any information of
6 any kind?

7 A. I'm not aware of any thing that Gavin Cregan did.

8 MR. LEIPHAM: I think those are all the questions I have
9 at this time.

10 MR. RIES: Want to take a short break?

11 (Short recess was taken.)

12

13 EXAMINATION

14 BY MR. BOWMAN:

15 Q. Mr. Mason, we met before the start of your deposition,
16 my name is John Bowman and I represent Beats & Rhythms who
17 has been brought into the case. And I will be just a short
18 while with you here. I just want to ask for some
19 clarification on some things, and I'll try to avoid any
20 repetition.

21 Do you have any formal education in the ministry?

22 A. I am wrapping up a master's in theology right now.

23 Q. Oh, you are. Where are you doing that at?

24 A. Whitworth.

25 Q. When did you start that?

EXHIBIT "B"

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.

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.

DEPOSITION OF GAVIN J. CREGAN

BE IT REMEMBERED that on the 23rd day of
September 2010, at the hour of 8:56 a.m., the deposition of
GAVIN J. CREGAN was taken at the request of the Defendant,
before Allison R. Stovall, a notary public and court
reporter, CCR No. 2006, at 720 West Boone, Suite 200,
Spokane, Washington, pursuant to the Washington Rules of
Civil Procedure.

A P P E A R A N C E S:

FOR THE PLAINTIFF:

RICHTER-WIMBERLEY, P.S.
By: JAY E. LEIPHAM
Attorney at Law
422 W. Riverside Ave., Suite 1300
Spokane, Washington 99201

1 Q So if we call it the slide or the giant slide, you know
2 what I'm talking about?

3 A Yes.

4 Q When you went over there, were you given any
5 instructions by Beth Dullanty or anyone else at Beats &
6 Rhythms about how to use the slide?

7 A No.

8 Q Had you ever been down this type of slide before?

9 A I believe once as a child.

10 Q Okay. And where did you go down such as a child?

11 A At a fair.

12 Q All right. And same type of thing where you're sitting
13 on top of a gunnysack -- or actually, let me ask you this.

14 Was a gunnysack used in the one you used as a child?

15 A That I don't remember.

16 Q Do you remember how old you were when you used it?

17 A Less -- less than 13 years old. It was a trip we took
18 as a child.

19 Q Do you recall where it was?

20 A Someplace in Northern Canada, Northern Ontario.

21 Q Was it an established theme park or was it just a
22 county fair that kind of moved around?

23 A I don't recall.

24 Q Do you remember how often you used it as a child?

25 A Probably just one time.

1 Q When you were -- on June 27, 2008 -- out there at the
2 camp, did you watch people go down the slide?

3 A Yes.

4 Q How long did you kind of watch people go down the slide
5 before you did it yourself?

6 A 10 minutes.

7 Q And, you know, were kids using it at that time when you
8 were watching 10 minutes?

9 A Yes.

10 Q And were parents out there as well?

11 A Yes.

12 Q As well as counselors?

13 A Yes.

14 Q When you're watching people go down the slide, you
15 know, I know there's multiple lanes. Did people start at
16 the same time and try to race each other down?

17 A I'm not sure. I didn't notice the -- from where I was
18 standing at the bottom of the slide, it was very difficult
19 to see the top of the slide, and I don't think I could see
20 exactly how people were starting.

21 Q Were you standing at the base of the slide?

22 A Yes. Off -- off on the grass to the side of the slide.

23 MR. RIES: We'll go ahead and mark this as an
24 exhibit.

25 (Exhibit No. 6 marked.)

1 Q And how many times did you go down the slide prior to
2 your accident?

3 A I believe two.

4 Q And was it always in the same lane?

5 A No. I used a different lane each time.

6 Q Okay. And the first time, which lane did you use?

7 A I don't recall exactly which lane. I remember it was
8 over towards the left side looking down from the top, but it
9 could've been any of these six up at the top on the
10 left-hand side.

11 Q Okay. So any of the six lanes farthest away from the
12 stairs?

13 A Correct.

14 Q And sitting here today, you can't tell me which --
15 which of those six lanes you went down the first time?

16 A No, I can't.

17 Q All right. The second time, which of the -- which lane
18 did you go down?

19 A I moved towards the stairs. I don't recall exactly,
20 but I believe it was one of the middle three lanes.

21 Q Okay. And then the third time, as I understand, is
22 when you had the accident?

23 A That's correct.

24 Q And do you recall which lane that was?

25 A There are photos of which lane that was. I don't

1 Q Were you kind of racing to see who gets to the bottom
2 first?

3 A No.

4 Q Why do you start at the same time?

5 A Because it's a group activity, something to do with --
6 with kids.

7 Q And how many people were doing it at the same time with
8 you the second time?

9 A I believe two or three other people.

10 Q The second time, who were the two or three other
11 people? Do you know their names?

12 A No, I don't. They were -- they were campers.

13 Q Children?

14 A Yes.

15 Q And roughly what ages?

16 A 10.

17 MR. RIES: Let's go ahead and mark this as an
18 exhibit.

19 (Exhibit No. 7 marked.)

20 Q (BY MR. RIES) I've handed you what's been marked as
21 Exhibit 7. Is that you in the photograph?

22 A Yes, it is.

23 Q Okay. Is that the time of the accident?

24 A Yes, it is.

25 Q And it appears to me you're on the third lane from the

1 right when you're looking down the slide?

2 A That's correct.

3 MR. BOWMAN: Can we just identify for the record
4 these are the photographs that were provided by Beats &
5 Rhythms in response to discovery request?

6 MR. RIES: Correct.

7 Q (BY MR. RIES) Was the third lane the lane you were in
8 when the accident occurred?

9 A Yes, it was.

10 Q The third time when you went down this slide, did you
11 start with other people next to you?

12 A Yes, I did.

13 Q And who was -- who were the people that you were
14 starting with?

15 A One of the other campers.

16 Q Was it just the two of you?

17 A Yes.

18 Q Did you know the camper's name?

19 A I don't know his name, no.

20 Q Was it a little boy?

21 A Yes.

22 Q And roughly what age?

23 A 10.

24 Q Did you start at the same time?

25 A Yes.

1 Q And do you recall what your hands were -- what position
2 your hands were in the third time?

3 A Probably in my lap also.

4 Q Okay. Describe to me what happened that third time as
5 you went down the slide.

6 A The bump, the wave part, the first wave, I remember
7 being a rougher jolt. I was looking down. I saw the bag
8 move backwards while it was out of contact with the slide.
9 When it hit -- or when I returned to the slide, my foot was
10 off the edge of the bag. It caught on the slide. It rolled
11 under my leg in a way that just wasn't -- wasn't normal.
12 There was this sickening crunch, and I screamed, and then
13 came to a stop where I was in Exhibit No. 7.

14 Q You said that your bag made contact again. Did you
15 feel that you went airborne over that first hump?

16 A Yes. I felt like -- like my legs -- yes, that my legs
17 left contact with the slide.

18 Q Was it just your legs that left contact or did your
19 buttocks leave contact as well?

20 A I was not in a position to tell exactly. I could see
21 that my -- that my legs were above the slide. I couldn't
22 see what my rear was doing.

23 Q You don't know, sitting here today, if your buttocks
24 actually came off the slide?

25 A I don't know if my entire body went airborne, no.

1 clarification.

2 Q (BY MR. RIES) So do you understand my question?

3 A Not exactly, no, please.

4 Q So help me understand here.

5 A Okay.

6 Q As your foot came up, came down, you don't know what
7 part of the slide, whether it was the rail or whether it was
8 just the face of the slide, that your foot made contact
9 with?

10 A Right. I'm not sure I -- I'm not sure we're thinking
11 same thing. I don't feel that my legs went up. I feel like
12 I went straight out and the slide dropped from beneath me.
13 I don't feel like I raised my legs at all. I just feel like
14 the slide fell from under me.

15 Q Okay. When you're describing this third time, you said
16 as you went over the first hump, you felt a rougher jolt?

17 A Yes.

18 Q Could you explain what you meant by that?

19 A The slide -- the slide was sections. Some of the
20 sections, you went over and you didn't really feel the
21 transitions. That one, I did feel the transition. I felt
22 the joint.

23 Q Was that joint that you felt right before your legs
24 went straight and you felt the slide dropped away?

25 A The -- the joint was, I believe, at the top of the

1 hump.

2 Q Do you think that joint had any impact on what happened
3 to the bag or is it something you felt?

4 A I noticed that going down the slide the third time,
5 that part was different than the other two times, that it
6 was a rough -- a rough bump, and then I saw the bag move
7 from under my legs.

8 Q I'm just asking you, if you know, do you think the
9 rough bump had any impact on the bag moving?

10 MR. LEIPHAM: I object. You're asking him to
11 speculate.

12 A I would guess that it did.

13 Q (BY MR. RIES) Why do you guess that it did?

14 A Because it was different than the other two times; and
15 the other two times, nothing like this happened.

16 Q In the other two times, did your legs stay straight and
17 it dropped away or did it just stick to the surface of the
18 slide and went down?

19 A It stuck to the surface of the slide. My body,
20 everything followed the contour of the slide.

21 Q I think you also said you saw the bag move backwards as
22 your legs were straight. Did the bag bunch up or --

23 A Yes.

24 Q -- the whole bag move? Explain that to me.

25 A The front left corner of the bag seemed to bunch up. I

1 don't -- I'm not aware of whether it caught on something on
2 the slide or just not having my legs in contact with it, not
3 having it in contact with the slide, it -- it blew
4 backwards, but I saw the front left corner of the bag move
5 out from under my shoe.

6 Q What about the right front corner? Did that bag move?

7 A Not that I'm aware of.

8 Q So as your leg came down and made contact, it was
9 sitting on top of the burlap, your right leg?

10 A Yes.

11 MR. RIES: Let's go ahead and mark these two
12 exhibits.

13 (Exhibit Nos. 8 and 9 marked.)

14 Q (BY MR. RIES) I'm going to hand you Exhibit 8; and for
15 the record, this is a photograph that was produced by Beats
16 & Rhythms, and I just want you to identify for me who these
17 people are that are assisting you.

18 A This is Beth Dullanty.

19 Q She's in the top right corner?

20 A This is Hrair, Dr. Hrair Garabedian.

21 Q What type of physician is he?

22 A He's a cardiologist, a pediatric cardiologist. And I
23 believe -- I can't see her face, but I believe this is
24 Kristen Funruie.

25 Q How do you spell her last name?

1 Q Okay. You didn't see -- did you see any person riding
2 down the slide that did maintain contact 100 percent of the
3 time when they were riding?

4 A I had no way of noticing that from the distances. This
5 is -- this is a very large slide.

6 Q Okay. Looking at Exhibit 16, when you saw the scuff
7 marks on lane three, which you were injured on, do you have
8 any idea why there were scuff marks like that?

9 A No idea.

10 Q Did you have any thought about the fact that there were
11 scuff marks about halfway down the hump on the slide there?

12 A No, I didn't.

13 Q Did you ever ask anyone about the slide, the condition
14 of the slide, or anything of that nature before you used it?

15 A No, I didn't.

16 Q During the time you used it when you went down it three
17 times prior to your injury, did you ask anyone about the
18 slide?

19 A No, I did not.

20 Q Based upon your experience both as a child sometime
21 before 13 when you were using this slide, as you're going
22 down the slide with humps on it, did it ever cross your mind
23 that maybe there might be a rise as you go over the top of a
24 hump?

25 MR. LEIPHAM: Object to the form.

1 A I don't understand what you mean by a rise.

2 Q (BY MR. RIES) Did it ever cross your mind that there
3 might be a sensation of lifting or any of that nature as you
4 go down over a hump on this type of slide?

5 A Did it ever occur to me? The other two times, you do
6 feel yourself going over the bump. I didn't feel myself
7 lose contact with the slide the first two times.

8 Q The first times when you said you feel it go over the
9 hump, do you actually feel like your stomach's lifting up
10 and you're kind of -- a sensation like that when you're
11 going over that first hump?

12 A Similar to that, yeah.

13 Q Just you feel elevation, correct?

14 MR. LEIPHAM: Object to the form.

15 A You feel -- you feel it in your stomach. I didn't feel
16 my body come out of contact with the slide.

17 Q (BY MR. RIES) You just kind of get a lifting sensation
18 as you go over the hump, correct?

19 A Yes.

20 MR. RIES: Let's go ahead and mark that as an
21 exhibit.

22 (Exhibit No. 17 marked.)

23 Q (BY MR. RIES) I've handed you what's been marked as
24 Exhibit 17. This is your declaration, apparently signed on
25 the 16th of September 2010, correct?

1 A Yes.

2 Q And so your sense is they understood that you would be
3 arriving perhaps after a lot of the other people had
4 arrived?

5 A Yes.

6 Q Okay. All right. And then as I understand it, when
7 you arrived, where did you park? Some of those pictures
8 that we've had, exhibits of the slide that were taken by the
9 Beats & Rhythms people on the day of the accident, some of
10 those show some cars down toward the -- toward the end of
11 the slide and off to the right. I don't -- if you're
12 sitting on top of the slide. I don't know what directions
13 those are.

14 A That is where I remember parking.

15 Q Okay.

16 A I didn't notice my car in any of the photos.

17 Q If you'd just take a look at a couple of those, and
18 maybe you could allude to an exhibit number.

19 A Okay.

20 Q That might help us just confirm that that's the area
21 where you parked. I don't have color copies in front of me.
22 I've got black-and-whites, but that's -- that's okay.

23 A In --

24 Q Do you see any in there that might show that?

25 A Yeah. In No. -- No. 9.

1 Q Okay. Exhibit 9?

2 A There's a picture of a van. And I believe looking down
3 at the van, I was parked to the right of that van; not right
4 next to the van. I believe it was a couple spaces over --

5 Q Okay.

6 A -- from there.

7 Q Okay. I appreciate that. All right. And I take it
8 this was the first time you'd ever been to this facility?

9 A Yes, yes.

10 Q All right. And then just take me through, if you
11 would, when you got out of your car, did you have anything
12 with you? Did you have, you know, any bags or overnight
13 things or anything of that nature?

14 A I did. I left everything in the car. I remember
15 getting out of my vehicle, seeing Beth and another parent
16 volunteer there.

17 Q Let me -- I'm sorry to interrupt you. I may need to do
18 that just to make sure:

19 A That's okay.

20 Q And you knew who she was by virtue of the fact that she
21 had conducted this orientation a few weeks before?

22 A Yes.

23 Q Okay. You had not worked with her?

24 A No.

25 Q Okay. And so how was it you recognized the other

1 person who you, I think, identified as a parent volunteer?

2 A It was somebody with Beth. I believe they were sitting
3 at a table.

4 Q Okay. All right. And so do I understand, then, you
5 went from the parking lot, and you left whatever you brought
6 with you in the car?

7 A That's correct.

8 Q And went -- how did you know where to go when you got
9 out of your car?

10 A I saw Beth there.

11 Q Okay. And so you thought, I know that person.

12 A That was a contact person so --

13 Q Gotcha. Okay. And you went to those people who were
14 at a table?

15 A Yes.

16 Q All right. And there was Beth at the table. Was she
17 seated, do you remember?

18 A I believe she was standing at the time.

19 Q Okay. What about the other person?

20 A I -- I don't remember.

21 Q Did you have a general sense that when you arrived that
22 you were going to need to go someplace to, quote, unquote,
23 check in? Did you have some sense of that from that
24 orientation meeting a few weeks before?

25 A No, I did not.

1 Q So let's go, then, from the table to where you then
2 went on the grounds there at RBC. Take me through that, if
3 you would, just briefly.

4 A Okay. Beth gave me a quick walking tour of the
5 facility.

6 Q When you say "the facility", can you be more specific?
7 What facility?

8 A Of Riverview Bible Camp.

9 Q Okay.

10 A Of the areas that we were going to be using. We walked
11 by the pool. We went to the cafeteria. Somewhere along the
12 way, we met up with Pam Berg, Dr. Pam Berg.

13 Q Okay.

14 A I received a water bottle and went to the cafeteria,
15 filled up the water bottle. I don't remember if the nurses'
16 cabin was before or after the cafeteria. Then we walked up
17 to the cabin that I was going to be staying in. She just
18 pointed it out to me, and then we went back to the slide.

19 Q Okay. Did you know what cabin you were assigned to
20 prior to getting there?

21 A No, I did not.

22 Q Okay. You don't recall receiving anything that
23 assigned cabins in materials or anything like that?

24 A I knew I was going to be in one of the -- in the boys
25 cabin; but as far as cabin number 1 or -- no, I didn't.

1 Q Okay. Now how long do you think that process -- and
2 maybe you haven't finished. I've interrupted you. Any
3 other area that you observed or you inspected?

4 A Those are the only areas that I recollect being in.

5 Q And then from there, where did you go?

6 A Back to the slide.

7 Q Back to the slide. Had you -- had they shown you the
8 slide in this tour of the camp, if you will?

9 A That's where everybody was congregating when I got
10 there.

11 Q Okay.

12 A And the table that Beth was at was not too far away
13 from that.

14 Q Okay. Could you -- when you arrived in your car, got
15 out of you car, could you tell that that's -- that the -- at
16 the slide, that's where people were, as you say,
17 congregating?

18 A Yes.

19 Q I mean you assume. There's young kids. Did you
20 recognize anyone over there?

21 A Because I was brand new to the area, I didn't know -- I
22 didn't really know anybody. I knew Beth Dullanty just
23 briefly 'cause I'd met her a few times.

24 Q Did you know Dr. Garabedian?

25 A I had seen him at the meeting. I'd never worked with

1 gunnysack or are you simply --

2 A No.

3 Q Explain to me how that --

4 A Sitting with my legs straight out in front of me, heels
5 on the gunnysack.

6 Q Okay. That's understood. I appreciate that
7 explanation. Did you recognize anyone -- I realize you'd
8 never been to this camp before, but was there anyone from
9 RBC perhaps with a T-shirt on saying "staff" or something to
10 identify anybody from RBC? Do you remember seeing anybody
11 from RBC there at the slide?

12 MR. LEIPHAM: RBC being Riverview Bible Camp?

13 MR. BOWMAN: Yeah, good point.

14 Q (BY MR. BOWMAN) RBC being Riverview Bible Camp.

15 A I didn't notice anybody with a T-shirt or anything that
16 identified them as being from the camp. There were a lot of
17 people that I'd never met before so I'm not clear exactly
18 who was who.

19 Q Okay. But in terms of anyone who might have been RBC
20 people, nobody pointed anybody out to you?

21 A No.

22 Q And you didn't see anyone wearing any type of
23 designation as an RBC person, if you will, or staff member?

24 A The only people that I was made aware of that were not
25 part of our group were the people that were working in the

1 kitchen.

2 Q And as you indicated, the speed that you experienced
3 the previous two rides -- now, I realize you didn't complete
4 the third one, but the speed you experienced on the previous
5 two rides and the speed that you experienced up until the
6 injury occurred, they were essentially the same; you didn't
7 notice any difference?

8 A I didn't notice any difference.

9 Q You were asked some questions about an injury to your
10 right knee. This is when you were, I think, living in San
11 Diego?

12 A Yes.

13 Q And you referenced a clinic where you were treated.
14 Was this a military clinic?

15 A Yes, it was.

16 Q What would the name of that be?

17 A Balboa Medical Center.

18 Q Okay. You talked, Mr. Cregan, about the situation
19 involving depression beginning when you were 15 and talked
20 about that. At the time of this accident back at the
21 Riverview Bible Camp, back in June of '08, were you at that
22 time taking antidepressant medication?

23 A I was not.

24 Q Okay. Can you give me a sense as to the last time
25 prior to that occasion that you had been taking a

1 doesn't.

2 Q Okay. And then downhill, what frequency had you
3 downhill skied prior to the injury?

4 A It really depended on the location that we were in.

5 Q You grew up in Michigan so I assume did you learn that
6 as a child?

7 A Yes.

8 Q Okay. And how long had it been since you'd been active
9 in downhill skiing? Were you doing it on a regular basis?

10 A No, a very -- a fairly sporadic basis. I think Japan
11 was the last time I had skied, a couple years before.

12 Q Okay. That had to have been interesting?

13 A Everything over there was interesting.

14 MR. BOWMAN: That's all i have, Mr. Cregan.

15 Thanks again for your time and your patience.

16 MR. CREGAN: Thank you.

17 RE-EXAMINATION

18 BY MR. RIES:

19 Q Mr. Cregan, just a couple of follow-up questions. When
20 you were going down the slides the three times, were they
21 always with the kids that were going to be in the cabin with
22 you that was assigned to you?

23 A Yes.

24 Q And the third time you went down, do you recall if it
25 was Traden Gifford that was next to you?

1 A No.

2 Q Where's that list?

3 A I believe it was a little guy with glasses. I believe
4 it was Josiah, Josiah or Trey.

5 Q Josiah McCall or Trey Scott?

6 A I believe it was Josiah, though.

7 Q Do you remember the first time you went down, was it --
8 was it just with one other person or was it two other
9 people?

10 A I don't really -- I think the first time, I just went
11 with whoever was up there; and I believe the second time, it
12 was with Josiah and somebody else; and then the third time
13 was with Josiah, if Josiah is the kid that I'm thinking of.

14 Q Josiah was about, what, 10 years old?

15 A Yes.

16 Q And he had glasses?

17 A Yes. He's in one of the photos. No.

18 MR. BOWMAN: That's not him.

19 MR. RIES: Okay. I believe that's all the
20 questions I have for you.

21 (Deposition adjourned at

22 1:30 p.m.)

23 (Signature is reserved.)

24

25

EXHIBIT "C"

RECEIVED

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
)
)

) PLAINIFF'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 E. Leipham of Richter-Wimberley, P.S., U.S. Bank

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

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(509) 455-4201
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COPY

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.

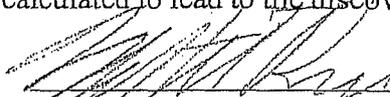
INTERROGATORY NO. 13: With regard to the slide upon which Gavin Cregan was injured, state the following:

- 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.

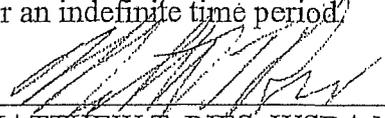

 MATTHEW T. RIES, WSBA No. 29407

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 McAnerin 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.

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**PLAINTIFF'S FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT: PAGE 11
WITH ANSWERS THERETO**

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STATE OF WASHINGTON)

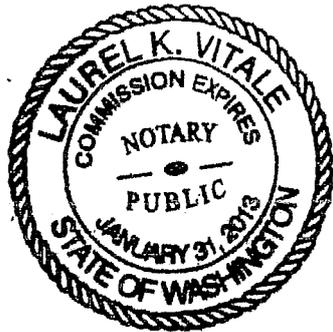
County of Spokane)
:SS

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

Matthew T. Ries
MATTHEW T. RIES, WSBA #29407
Attorney for Defendant

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Ih:\brotherhood mutual\fourth memorial church\discovery\pltfrogstodefs.doc
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
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SPOKANE, WASHINGTON 99201-0305
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THOMAS R. FALLOUST
SPOKANE COUNTY CLERK

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OCT 19 2010
SUPERIOR COURT
ADMINISTRATORS OF

RECEIVED

OCT 19 2010

RICHTER-WIMBERLEY, P.S.

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

GAVIN J. CREGAN, a married man,)

No. 10-2-00572-7

Plaintiff,)

vs.)

REPLY MEMORANDUM IN SUPPORT
OF DEFENDANT'S CROSS MOTION
FOR SUMMARY JUDGMENT

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.)

The Fourth Memorial Church, d/b/a Riverview Bible Camp (hereinafter "Riverview Bible Camp"), by and through its attorney of record, Matthew T. Ries of Stamper Rubens, P.S., hereby files this Reply Memorandum in Support of Defendant's Cross Motion for Summary Judgment.

I. INTRODUCTION:

In the Plaintiff's initial memorandum, the Plaintiff made three arguments as to why he believes that the recreational use act did not apply in this case. He argued, first, that since the property was not open to the general public all the time, that the recreational use act did not

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ATTORNEYS AT LAW

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT'S
CROSS MOTION FOR SUMMARY JUDGMENT: 1

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TELEFAX (509) 326-4891
TELEPHONE (509) 326-4800

1 apply. Second, Plaintiff argued that since Riverview Bible Camp typically charges a fee for the
2 use of the facility, the recreational use act can never apply even if Beats & Rhythms was
3 admittedly not charged any fee for the use of the facility. Third, the Plaintiff argued that he
4 believed he was being charged a non-monetary fee by having to provide services as a nurse to
5 participate in the event, and thus the recreational use act did not apply.
6

7 The Plaintiff abandons the first and third arguments in his reply memorandum filed with
8 the Court on Friday, October 15, 2010. The Plaintiff concedes that he and the rest of the Beats &
9 Rhythms participants were “members of the public” as contemplated by RCW 4.24.210. The
10 Plaintiff further gives up on trying to make the tenuous argument that his volunteering as a nurse
11 at the request of Beats & Rhythms somehow constitutes a fee. Thus the only argument that the
12 Plaintiff continues to make in this case is his second argument that if Riverview Bible Camp ever
13 charged a fee at any point in time, the recreational use act can never apply. To support this
14 argument, the Plaintiff wants the Court to disregard the plain wording in the statute; ignore the
15 legislative history on the statute; and ignore the Washington cases that have explained that
16 property can be used for different purposes for different times, and thus the use of the property
17 needs to be analyzed at the time of the injury. The Plaintiff only wants the Court to focus on a
18 statement taken out of context from the case of Plano v. City of Renton, 103 Wn. App. 910, 14
19 P.3d 871 (2000), which dealt with a wholly different factual and legal scenario than the case at
20 hand. Riverview Bible Camp hopes that the Court will decline the Plaintiff’s invitation to only
21 look at the out of context statement. When looking at the statutory language, the legislative
22 history, and the cases that have interpreted the statute, it is abundantly clear that the recreational
23 use act applies to this case. As such, the Court should dismiss the Plaintiff’s lawsuit, as
24 Riverview Bible Camp is immune from liability for his injury.
25
26
27

28 II. LEGAL ARGUMENT:

29 A. When the Court Applies the Undisputed Facts to the Plain Wording of the 30 Recreational Uses Act, It Is Clearly Applicable to this Case.

31 The Plaintiff argues in its reply memorandum on the one hand that the Court should
32 simply look at the plain language of the statute. (Pg. 3, ll.19-25, to Pl. Reply Memo. For Summ.

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1 Judg.) Then the Plaintiff goes on to argue on the other hand that the Court should graft in
2 additional language that no fee was charged "at any time in the past." The Plaintiff cannot argue
3 it both ways. If the Court applies the undisputed facts to the plain wording of the statute, the
4 recreational use act clearly applies. The statute provides in relevant part:

5
6 (1) Except as otherwise provided in subsection (3) or (4) of this section, **any**
7 **public or private landowners** or others in lawful possession and control of any
8 lands whether designated resource, rural, or urban, or water areas or channels and
9 lands adjacent to such areas or channels, **who allow members of the public to**
10 **use them for the purposes of outdoor recreation**, which term includes, but is
11 not limited to, the cutting, gathering, and removing of firewood by private
12 persons for their personal use without purchasing the firewood from the
13 landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling,
14 skateboarding or other nonmotorized wheel-based activities, hanggliding,
15 paragliding, rock climbing, the riding of horses or other animals, clam digging,
16 pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating,
17 nature study, winter or water sports, viewing or enjoying historical,
18 archaeological, scenic, or scientific sites, **without charging a fee of any kind**
19 **therefor**, shall not be liable for unintentional injuries to such users.

20 RCW 4.24.210 (emphasis added).

21 As discussed previously, the Plaintiff does not dispute that both he and Beats & Rhythms
22 were "members of the public" that fall within the meaning of the statute. Thus, in order to
23 determine whether the recreational use act applies, the Court simply needs to apply the
24 undisputed facts to answer two questions: (1) Was Mr. Cregan and Beats & Rhythms allowed to
25 use Riverview Bible Camp's property for the purposes of outdoor recreation? (2) Was Mr.
26 Cregan and Beats & Rhythms charged a fee of any kind for the use of that property?

27 First, there is no dispute that Riverview Bible Camp's purpose was to allow Beats &
28 Rhythms, and all of the children, counselors, and chaperones, to use the slide at Riverview Bible
29 Camp for the purpose of outdoor recreation. Riverview Bible Camp decided to allow Beats &
30 Rhythms to use their facility free of charge for one weekend during the summer of 2008. As Mr.
31 Mason, the Director of Riverview Bible Camp explained, they wanted to be able to give back and
32 help out another nonprofit organization at least once a year. (Mason Dep. pg. 20, ll. 21-24). As a
guest group, Beats & Rhythms was left in charge of monitoring and supervising the outdoor

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1 activities, such as the use of the slide. (Mason Dep. pg. 34, ll. 10-19).

2 Second, it is undisputed that Riverview Bible Camp did not charge either Mr. Cregan or
3 Beats & Rhythms a fee of any kind for the use of the Riverview Bible Camp facility. When
4 applying those undisputed facts to the statute, Riverview Bible Camp clearly comes within the
5 protection of RCW 4.24.210.
6

7 The Plaintiff wants this Court to rewrite the statute to provide that if Riverview Bible
8 Camp ever charged a fee at some point in time, to some other group, that the Riverview Bible
9 Camp is forever precluded from the protection of the recreational use act. Under Plaintiff's
10 construction, Riverview Bible Camp would have to give up ever charging a fee for the operation
11 of its camp in order to obtain the statutory immunity contemplated by the recreational use act.
12 There is no such temporal language in RCW 4.24.210.
13

14 If the Court applies those same two questions to the cases of Plano or Nielsen, primarily
15 relied upon by the Plaintiff, the answers would be different from the case at hand, and would
16 support the conclusions reached by the courts in those cases. First, were the members of the
17 public in Plano and Nielsen allowed to use the property for the purposes of outdoor recreation? In
18 both Plano and Nielsen, on the day of the injury, the property was not simply maintained for the
19 public for recreational purposes. Rather, these were fee generating docks. As explained in
20 Nielsen the dock was more akin to a busy public road that happened to run through a public park,
21 citing the case of Smith v. Southern Pac. Transp. Co., Inc., 467 So.2d 70 (La.Ct.App.1985). In
22 the Smith case a commercial truck driver was injured as the result of the city's failure to post a
23 sign warning of the low clearance of a railroad overpass while driving on a roadway that
24 happened to run through a city park. The roadway was built and maintained primarily for
25 commercial use, as opposed to recreational use. Nielsen, 107 Wn. App. at 668.
26
27

28 Second, were members of the public being charged a fee of any kind for the use of the
29 docks on the day of the accidents? In Plano, the City of Renton charged moorage fees for day use
30 and overnight stays on the day of the accident. In Nielsen, the Port of Bellingham was a
31 commercial marina that leased moorage to both commercial and pleasure-boat owners on the day
32

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1 of the accident. The courts in those cases appropriately answered the second question “yes”, a fee
2 was being charged. It makes sense for the court in Plano would reject the argument put forth by
3 City of Renton that merely because some boat owners can moorage at the dock for free up to four
4 hours in a day, or persons can walk on the decks for free if not mooring a boat, while all the rest
5 are charged a moorage and overnight fees, does not change the fact that the City of Renton was
6 charging fees for the use of the dock on the day of the injury. The court in Plano did not deal
7 with, nor did it hold, that once a property owner charges a fee at some point in time in the past, it
8 is forever precluded from falling within the protection of the recreational use act. That type of
9 interpretation would have the exact opposite affect then the statutory purpose, which is to
10 encourage private landowners to open their property up to the public for recreational use.
11

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

17 RCW 4.24.200. “The interpretation that the court adopts should be the one that best advances
18 the legislative purpose. Strained meanings and absurd results should be avoided.” Woo v.
19 Fireman's Fund Ins. Co., 150 Wn. App. 158, 165, 208 P.3d 557, 560 (2009).
20

21 Again, there is nothing in the language of RCW 4.24.210 that supports the Plaintiff's
22 temporal argument. The Plaintiff is taking the comments in Plano out of context, and trying to
23 apply them to a wholly different factual scenario. The Plaintiff is further asking this Court to
24 interpret the statute to lead property owners to not open their properties up to the public for
25 recreational purposes, which is exactly opposite to the stated purpose of the statute. The Court
26 should disregard the Plaintiff's attempt to rewrite RCW 4.24.210. Applying the undisputed facts
27 in this case to RCW 4.24.210, Riverview Bible Camp is entitled to the protection afforded by the
28 recreational use act.
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1 **B. The Court Must Look at the Purpose for Which the Property is Being Used at the**
2 **Time of the Accident.**

3 The Washington Legislature that enacted the recreational use act, and the Washington
4 Courts that have interpreted the recreational use act, have both recognized that the use of property
5 changes. How property is used one day does not control whether the recreational use act is
6 applicable another day.

7 This principle was recognized in the examples given by Senator Canfield when enacting
8 the recreational use act. Private property can be used for a productive farm for a majority of the
9 year, and after the harvest is in, the owner can allow hunters on to the property for the
10 recreational purpose to hunt. Moreover, in the example of the person driving over the edge of
11 bluff into the river, the Senator recognized that if that driver did not ask for permission to use the
12 property, than he would be a trespasser. Property does not always need to be left open to the
13 public. Nor does property always need to be closed off to the public. The purpose is to
14 encourage property owners to allow members of the public on the private property. H.R. 258,
15 Wash.S.Jour. 42nd Legis. 875-77 (1967)

16 The Supreme Court rejected the same type of argument being raised by the Plaintiff that
17 the courts should look at the predominant use when deciding whether the recreational use act
18 applied. In the case of McCarver v. Manson Park & Recreational District, 92 Wn.2d 370, 377,
19 597 P.2d 1362 (1979) the plaintiff attempted to argue that because the water area is available for
20 recreational purposes and opened to the public, that the statute should not apply because the act
21 should be limited to land primarily used for other purposes but with incidental recreational uses.
22 The Supreme Court rejected that argument and explained:

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

27 McCarver, 92 Wn.2d at 377. Mr. Cregan is attempting to make the same type of argument in this
28 case. Plaintiff is arguing that if the land primarily charges fees to groups to use the camp, but
29 only allows select groups to use the facility for free, that the recreational use act cannot apply.
30
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32

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ATTORNEYS AT LAW

1 Again, there is nothing in the statute that differentiates land classifications based upon primary
2 and secondary usage. Whether Riverview Bible Camp charges fees most of the summer, does not
3 control as to whether the recreational use act applies for the time that Beats & Rhythms used the
4 facility.

5
6 The need to look at how the property is being used on the date of the injury was clearly
7 explained in the case of Home v. North Kitsap School District, 92 Wn. App. 709, 714, 965 P.2d
8 1112 (Div. II 1998).¹

9
10 According to Division One, the proper approach when applying this statute is to
11 analyze the purpose for which the landowner was using the land, as opposed to
12 the purpose for which the plaintiff was using the land.^{FN6} **We agree, although we**
13 **observe that a landowner may use the land for different purposes at**
14 **different times. Here, then, it is necessary to focus on the nature of the**
15 **landowner's use at the time of the accident being litigated.**^{FN7}

16 (Citing in footnote 7 Widman v. Johnson, 81 Wn. App. 110, 114, 912 P.2d 1095, review denied,
17 130 Wn.2d 1018, 928 P.2d 414 (1996))(emphasis added).² Thus, the Court's analysis is on how
18 the property is being used at the time of the accident being litigated. What was Riverview Bible
19 Camp's purpose for using the land when the Plaintiff sustained his injury? It is undisputed that

20
21 ¹ The Plaintiff attempts to shift the focus away from the court's rule in Home v. North Kitsap School District. Home
22 dealt with the issue of the classification of a school athletic field when it is used for school events. When it is being
23 used for school sponsored events, such as a football game, the court followed the rationale of the Idaho Supreme
24 Court in a similar type of case that concluded that a school district owed a duty to protect the students and
25 participants in the school event. Students and participants in those school sponsored events are not simply members
26 of the public as contemplated by the recreational use act. The court did not have to decide the issue of what
27 constitutes "members of the public," 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. Id. at 717. However, since the Plaintiff does not challenge that he and Beats & Rhythms
constitutes members of the public, as it is a "meaningless side issue", it is not necessary to delve into the court's
rationale for its conclusion.

28
29 ² The case of Whitman v. Johnson, 81 Wn. App. 110, 912 P.2d 1095 (1996), involved a situation where a car accident
30 occurred on a logging road that had been opened up to the public for recreational use. The people were using the
31 road for fishing, hunting deer, elk and grouse, picking wild blackberries and huckleberries, and for various bird
32 watching. In years past, the road in question had been closed off to the public and "No Trespassing" signs were
posted to prevent people from driving on the logging road. However, at the times material to the injury, signs were
posted that clearly indicated that this road was open for recreational use. Whitman, 81 Wn. App. at 111-112. The
Court concluded that every reasonable person reading the record would believe that the road itself was a recreational
spot and therefore the recreational use act applied. Whitman, 81 Wn. App. at 114. The Court recognized that the
property use can change and thus it is necessary to look how the property is being used at the time of the accident.

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ATTORNEYS AT LAW

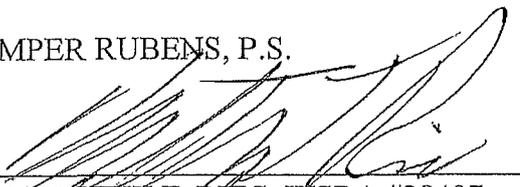
1 Riverview Bible Camp wanted to allow Beats & Rhythms to use the camp facility free of charge.
2 This was Riverview Bible Camp's opportunity to give back to the community. Following this
3 precedent, it is clear that Riverview Bible Camp's purpose at the time of the Plaintiff's accident
4 was to allow Beats & Rhythms to use the facility for recreational purposes.

5
6 **III. CONCLUSION:**

7 The Plaintiff does not dispute that both he and Beats & Rhythms were "members of the
8 public" within the meaning of the recreational use act (RCW 4.24.210). There is no dispute that
9 Riverview Bible Camp's purpose was to allow Beats & Rhythms, and all of the children,
10 counselors, and chaperones, to use the slide at Riverview Bible Camp for the purpose of outdoor
11 recreation. It is also undisputed that Riverview Bible Camp did not charge either Mr. Cregan or
12 Beats & Rhythms a fee of any kind for the use of the Riverview Bible Camp facility. With these
13 undisputed facts, the Court should therefore grant Riverview Bible Camp's motion for summary
14 judgment and rule that the recreational use act applies, and dismiss the Plaintiff's lawsuit.
15

16 DATED this 18 day of October 2010.

17
18 STAMPER RUBENS, P.S.

19
20 By: 
21 MATTHEW T. RIES, WSBA #29407
22 Attorney for Defendant Fourth Memorial
23 Church, d/b/a Riverview Bible Camp
24
25
26
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31
32

CERTIFICATE OF SERVICE

I hereby certify that on the 19 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
Keefe, Bowman & Bruya, P.S.
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Spokane, WA 99201-0613

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


LAUREL K. VITALE

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STAMPER RUBENS P.S.
ATTORNEYS AT LAW

FILED

OCT 22 2010

THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

GAVIN J. CREGAN, a married man,
Plaintiff,

NO. 10-2-00572-7

vs.

ORDER GRANTING
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
STRIKING AFFIRMATIVE
DEFENSE OF IMMUNITY
AND DENYING DEFENDANT
FOURTH MEMORIAL CHURCH'S
CROSS-MOTION FOR PARTIAL
SUMMARY JUDGMENT

31 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.

THIS MATTER came on regularly for hearing before the undersigned judge of the above-captioned Court, upon the motion of Plaintiff for an order granting Plaintiff's motion for partial

I:\EL-PL\Fregan\Pleadings\SI\MotionOrder.pld.wpd
ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT STRIKING AFFIRMATIVE DEFENSE OF IMMUNITY AND
DENYING DEFENDANT FOURTH MEMORIAL CHURCH'S CROSS-MOTION
FOR PARTIAL SUMMARY JUDGMENT - PAGE 1

RICHTER-WIMBERLEY, P.S.
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ORIGINAL

1 summary judgment striking the fifth affirmative defense of Defendant Fourth Memorial Church,
2 wherein the Defendant alleges immunity under RCW 4.24-200-210, and upon the Defendant's cross-
3 motion for an order ruling as a matter of law that such statutes apply to the matter. The court
4 considered the following documents:
5

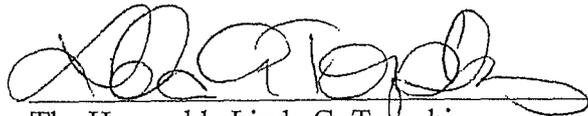
- 6 1. Plaintiff's Motion for Summary Judgment Striking Affirmative Defense of Immunity;
- 7 2. Defendant's Answer to Complaint and Affirmative Defenses;
- 8 3. Declaration of Jay E. Leipham in Support of Plaintiff's Motion for Partial Summary
9 Judgment, including the Exhibits thereto, the Deposition of Tim Mason excerpts and the
10 answers of Defendant Fourth Memorial Church to Plaintiff's Interrogatories 13 and 19;
- 11 4. Declaration of Gavin Cregan in Support of Motion for Partial Summary Judgment;
- 12 5. Plaintiff's Brief in Support of Motion for Summary Judgment Striking Affirmative Defense
13 of Immunity;
- 14 6. Plaintiff's Reply Memorandum Opposing Defendant's Motion for Dismissal (sic);
- 15 7. Defendant Fourth Memorial Church's Motion for Partial Summary Judgment;
- 16 8. Defendant's Response Memorandum to Plaintiff's Motion for Partial Summary Judgment
17 and Memorandum in Support of Defendant's Cross-Motion for Partial Summary Judgment;
- 18 9. Affidavit of Matthew T. Ries in Support of Defendant's Response to Plaintiff's Motion for
19 Partial Summary Judgment and Memorandum in Support of Defendant's Cross-Motion for
20 Summary Judgment; and
- 21 10. Reply Memorandum in Support of Defendant's Cross-Motion for Summary Judgment.
22
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1 Deeming itself fully informed, and finding that there is no dispute as to any fact material to
2 the application of RCW 4.24.200-210 to this cause, and that Plaintiff is entitled as a matter of law
3 to an order striking Defendant Fourth Memorial Church's 5th Affirmative Defense, **NOW,**
4 **THEREFORE,** it is hereby

5 **ORDERED, ADJUDGED AND DECREED** that the 5th Affirmative Defense of Defendant
6 Fourth Memorial Church, alleging immunity under the provisions of RCW 4.24.200-210, is stricken;
7 and it is further

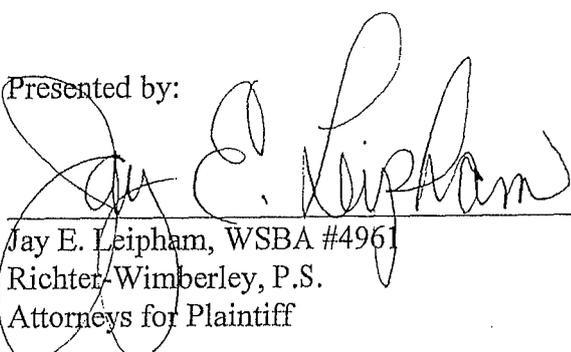
8 **ORDERED, ADJUDGED AND DECREED** that Defendant Fourth Memorial Church's
9 cross-motion for partial summary judgment is denied.

10 **DONE IN OPEN COURT** this 22nd day of October, 2010.

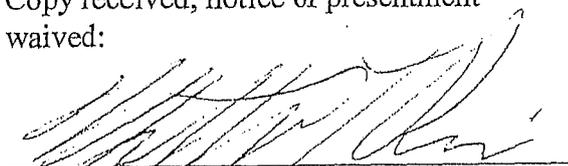
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14 The Honorable Linda G. Tompkins

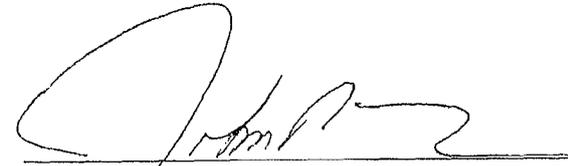
15 LINDA G. TOMPKINS

16 Presented by:

17 
18 Jay E. Leipham, WSBA #4961
19 Richter-Wimberley, P.S.
20 Attorneys for Plaintiff

21 Copy received, notice of presentment
22 waived:

23 
24 Matthew T. Riesz, WSBA #29407
25 Stamper Rubens, P.S.
26 Attorneys for Defendant Fourth Memorial
27 Church

28 
29 John P. Bowman, WSBA #5552
30 Keefe, Bowman & Bruya, P.S.
31 Attorneys for Third-Party Defendant
32 Beats & Rhythms

1 SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

2
3 GAVIN J. CREGAN, a married) No. 10-2-00572-7
man,)
4) COURT' RULING
Plaintiff,)
5)
vs.)
6)
7 FOURTH MEMORIAL CHURCH, a)
non-profit Washington)
corporation, d/b/a RIVERVIEW)
8 BIBLE CAMP,)
9 Defendant.)

10 FOURTH MEMORIAL CHURCH, a)
non-profit Washington)
11 corporation, d/b/a RIVERVIEW)
BIBLE CAMP,)
12)
Third-Party Plaintiff,)
13)
vs.)
14)
15 BEATS & RHYTHMS, a)
Washington corporation,)
16)
Third-Party Defendant.)

17 **SUMMARY JUDGEMENT MOTION HEARING**

18
19 The above-entitled matter was heard before the
20 Honorable Linda G. Tompkins, Superior Court Judge, Department
21 No. 10 for the State of Washington, County of Spokane, on
22 October 22, 2010.
23
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APPEARANCES:

For the Plaintiff:

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For Defendant Fourth
Memorial Church:

STAMPER & RUBENS, P.S.
BY: MATTHEW T. REIS
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Spokane, WA 99201

For Defendant Beats &
Rhythms:

KEEFE, KING & BOWMAN, PS
BY: JOHN P. BOWMAN
Attorney at Law
601 W. Main Avenue, #1102
Spokane, WA 99201-0636

1
2
3 THE COURT: Thank you, Counsel, once again for creating
4 the legal environment of briefing, argument and focus on the
5 material aspects of the law. It makes the job of the Judge
6 much more difficult. It is beautiful argument and analysis
7 and they are clashing in credible ways.

8 Having reviewed the entire file, and most of the legal
9 authorities, particularly what I call the boat dock cases,
10 *Plano* and *Nielsen*, the Court is tasked with determining
11 whether there is a dispute as to material facts and whether
12 the moving party is entitled to judgment as a matter of law.
13 The Court would be looking at the facts in the light most
14 favorable to the nonmoving party here.

15 The events in question took place at a time at the camp
16 where only one group was admitted, and was not charged a fee.
17 For that sole fiscal year, if you will, that was the only
18 noted exception to the fee-based use of the facility.

19 The cases really do tell us to focus on the landowner's
20 use and not necessarily the Plaintiff's use. That is somewhat
21 difficult here. One of the queries would be on that same day
22 then, in addition to Beats and Rhythms, if a member of the
23 public had driven in would they have been permitted access to
24 the slide free of charge? The evidence doesn't permit a clear
25 answer to that, but the presumption would be no, that that

1 would fall back into the usual structure of charging fees.

2 The nature of this facility is also a bit problematic
3 in that it is a constructed, unique structure that happens to
4 sit on the land. There is nothing about it that couldn't be
5 provided in an enclosed facility in the middle of a city. The
6 nexus between the structure and the whole public policy of
7 making natural outdoor facilities available to the public is a
8 bit of a stretch. Nonetheless, the Court is confining its
9 analysis to that statute as well.

10 I must impose a very narrow construction on immunity
11 here. Because I cannot negate the fact that the Bible Camp
12 and Fourth Memorial did charge fees, and for the precise same
13 use that these individuals were afforded, that eliminates
14 immunity as a matter of law.

15 The Plano and Nielsen cases do appear to be more
16 closely in line and recognize that those plaintiffs on those
17 days were not charged fees either, but defense was not able to
18 avail themselves of the immunity argument.

19 For those reasons the Court then is granting the
20 Plaintiff's Motion for Partial Summary Judgment to strike the
21 immunity defense, denying Defense Motion applying this
22 statute.

23 Mr. Leipham, I will ask you to draft the Order
24 consistent with the Court's ruling.

25 MR. LEIPHAM: I have prepared an order, Your Honor, and

1 I'm handing a copy to Mr. Ries, Mr. Bowman, and I think we can
2 get this taken care of --

3 THE COURT: All right.

4 MR. LEIPHAM: -- at this point rather than having to
5 schedule a presentation.

6 THE COURT: Thank you. This poor statute is going to
7 be subject to so many fact patterns, has been in the past and
8 will continue to be, quite frankly. I don't think this is
9 going to be a seminal ruling by any means, but we shall see.

10 *(Pause in the proceedings.)*

11 MR. BOWMAN: Your Honor, I don't have a problem with
12 the proposed order as it has been put forth by Mr. Leipham.

13 MR. REIS: I have signed as well, Your Honor.

14 MR. LEIPHAM: May I approach, Your Honor?

15 THE COURT: You may. All right. I have signed the
16 Order, Counsel. Is there anything that you need of the Court
17 with regard to scheduling or other matters as you move forward
18 in your trial preparation?

19 MR. LEIPHAM: I don't think so at this point, Your
20 Honor. Thank you.

21 MR. BOWMAN: No, Your Honor.

22 THE COURT: Thank you. Be in recess.

23 11/10/2010
24 Date


25 HONORABLE LINDA G. TOMPKINS
Superior Court Judge, Dept. 10