



How to Stay Out of the Headlines

The Latest Legal Trends and Case Law Impacting Parks & Recreation

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Introduction

Welcome to our third session in this series:

- *Exploring nuclear verdicts, relevant cases and the importance of developing risk management strategies to address the high profile cases.*
- **Presenters & Panelists**
- **Sponsors:**
 - **Who are they?**
 - Created by local government to jointly group-self insure.
 - **What do they do?**
 - Coverage
 - Defense Counsel
 - Training and Education
 - Risk Management Resources
 - **Why are they important to WRPA?**





Roadmap for Today

- **Today's Environment – Nuclear Verdicts**
- **What this means to Parks Professionals**
- **High Profile Losses Making the Headlines**
 - Recreational Trails, Aquatics and Consumer Abuse
- **What Parks Professionals Can Do**
 - Policies & Training
 - Incident & Claims Reporting
 - Working with your risk management team



Today's Environment

- **Litigious Society – Nuclear Verdicts**
 - Deep Pockets
 - Joint & Several Liability
 - Liability “Lotto”
- **Erosion of Immunities**
 - Recreational Immunity
- **Perceptions of government**



Future Concerns

- Continuing erosion of recreational immunity
- Initiatives and budget cuts
- Staffing shortages – increased use of Volunteers
- Expanding requests for services

What This Means for Parks Professionals

- **You or your staff may be deposed in a lawsuit**
 - If so, what should you anticipate and prepare for
- **You or your staff will likely encounter issues with media, publicity & public disclosure requests**
 - If so, how do you respond, what is the internal process
- **You will need to provide documentation**
 - This could be inspection, maintenance, waivers, etc.
- **You need to educate yourself and your staff**
 - Keep everyone informed on high profile issues and responses



Overview of a Lawsuit

- **What to expect regarding a Lawsuit**
 - Summons & Complaint
 - Jurisdiction
 - Discovery
 - Depositions
 - Motions
 - Settlement
 - Trials

Publicity and the Media

Publicity

- Plaintiffs will occasionally issue press releases and hold press conferences
- Complaints cannot contain a dollar figure, but claims can
- It is a client call, but we prefer to make a public response

Answers:

- An investigation into issues is done.
- Answer prepared. Responds to allegations in Complaint.
- Affirmative Defenses?
- Counterclaim?

Public Records Disclosure

- You can expect to receive a Public Records Request
- Know how to recognize the request and the internal process for response

High Profile Cases Recreational Pathways

- **Risk Exposure**
 - Public use of trails and pathways for pedestrians
- **Case Law**
 - Schwartz v. King County Case
- **Lessons Learned**
 - Why did this make the headlines?
- **Risk Management Practices**
 - Signs and Markings for Mixed Use or Removal of bollards



Schwartz v. King County 200 Wn.2d 231 (2022)



Schwartz v. King County

- **Background**

- The appearance of the bollard went from being dark against a lighter background, through zero contrast and to being light against a dark background. The contrast of the majority of the north exposed surface went to and through zero. This contrast change occurs remarkably fast. As the contrast approached nearly zero ... the bollard was not readily apparent to a normal observer unless you knew from previous experience or memory that a bollard had been installed at this location

- **Learned**

- A condition is latent if recreational users are not reasonably able to discover or protect themselves from that condition while engaged in recreational use of the land.

Photo's Pavement Markings

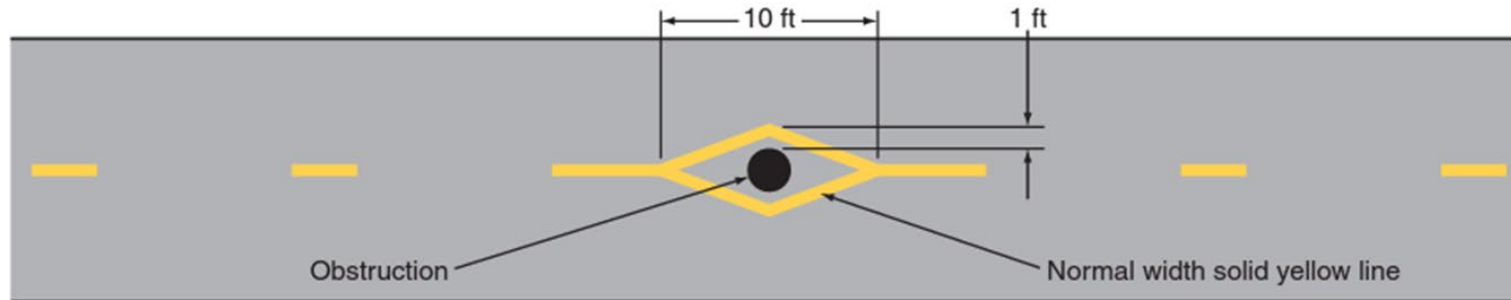


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Figure 9C-8. Examples of Obstruction Pavement Markings



A - Obstruction within the path



Schwartz v. King County

Outcome

- Summary Judgment problems
- Jury Trials
- \$\$\$\$\$\$

Risk Management Takeaways

- Signs and Markings Critical



High Profile Cases Aquatics

- **Risk Exposure**
 - Swimming pools or Bodies of Water owned or operated by entities
- **Cases**
 - Swimming Pools
- **Lessons Learned**
 - Why did this make the headlines?
- **Risk Management Practices**
 - Policies & Training, Supervision and Participant Agreements & Waivers



Aquatics

Risk Management Takeaways

- Policies & Procedures for operation, maintenance and testing
- Swimming Pools - Written operation plan
 - Physical components (no water ponding)
 - Signage: for no lifeguards; more with a spa pool
 - Training - Lifeguards, shallow water lifeguards and swim coaches shall guard assigned pool users and provide a rescue response time of thirty seconds or less. (WAC 246-260-131)
- Adequate Supervision depending on type of body of water and possible events
- Participant Agreements and Waivers for use of aquatic facilities

High Profile Cases Consumer Abuse

- **Risk Exposure**
 - Recreational Programs offered to public involving underage kids
- **Cases**
 - Supervision Inadequate
- **Lessons Learned**
 - Why did this make the headlines?
- **Risk Management Practices**
 - Background Checks, Mandatory Reporting Requirements and Staff Training



Consumer Abuse

- **Risk Management Takeaways**
- Know your blind spots
- Have adequate ratio of supervision to individuals
- No one is left alone
- Background Checks – just a start, not always reliable
- Required and recommended Training for staff
- Mandatory Reporting Requirements



Summary

- Risk management practices are crucial
 - Loss Prevention – Document actions to prevent loss
 - Loss Control – Demonstrate responsiveness in treating loss
- Have a plan for response to high profile incidents
- Provide adequate and necessary supervision
- Educate your staff on incident and accident follow up
- Train your staff in the required and recommended trainings

Resources

Risk Pool or Insurance Provider

- Training, Education, Publications, Risk and Consulting Services
 - Washington Cities Insurance Authority (WCIA) www.wciapool.org
 - Washington Counties Risk Pool (WCRP) www.wcrp.info

Municipal Research Services Center (MRSC)

- Local government legal and policy guidance, through research, training and publications www.mrsc.org

Washington Recreation and Park Association

- Parks & Recreation resources for training, legislative efforts, professional development www.wrpatoday.org