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SPORT LEAGUE FEES: EXCEPTION TO RECREATIONAL USE STATUTE IMMUNITY?

With minor jurisdictional variations, most states provide limited landowner immunity under the state recreational use statute. In addition to providing limited immunity to the owners and occupiers of private land, some jurisdictions have found limited landowner immunity under the state recreational use statutes applicable to governmental entities.

In general, these recreational use statutes provide that an owner or occupier of land who opens up the land for public recreation use *free of charge* owes no legal duty to guard, warn, or make the premises reasonably safe for such recreational use. In so doing, these state recreational use statutes effectively lower the applicable legal standard of care for landowners from ordinary negligence to willful or wanton misconduct. Moreover, under the fee exception, this statutory immunity does not apply where the owner or occupier of the premises charges a fee for recreational use of the premises. Generally, the fee exception applies if money was paid by the recreational user for the use of that particular portion of the premises where the injury occurred.

As illustrated by the following description of reported court opinions, sport registration fees are more likely to trigger the fee exception where the payment, in part, provided the recreational user with priority use of a particular ballfield or facility. Conversely, the fee exception is less likely to apply to other individuals, like spectators, whose presence on the land at the time of the injury was not conditioned on the payment of a fee for recreational use of the premises.

FEE RESERVED PRIORITY USE OF BALLFIELD

In the case of *Prince v. City of Apache Junction*, Ariz.App. 1996, plaintiff was injured while playing softball on a ballfield in defendant's city park. The facts of the case were as follows:

Prince was injured on the softball field during the course of an official, city-sponsored league softball game. The participation of Prince's team and its members, including Prince, on the accident date depended on the team's required payment of a \$250 entry fee to the city. Parsons' Trucking, the sponsor of Prince's team, made that payment with the "understanding that this entry fee was a requirement of entering a team into the league and to use the league facilities." During league play, the softball fields were reserved for such play. Thus, payment of the entry fee entitled Prince's team to reserved, "priority use" of the softball field at the time of Prince's accident.

The trial court found the recreational use statute was applicable and granted the city's motion to dismiss Prince's negligence claims. On appeal, plaintiff contended, at the time of his injury, he was not a

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“recreational user” within the meaning of the statute because an entry fee had been paid to the city for his team’s exclusive use of the ballfield.

As cited by the appeals court, the state recreational use statute, “as amended in 1993 and applicable to this case,” provided ,in pertinent part, as follows:

A. A public or private owner, easement holder, lessee or occupant of a premises is not liable to a recreational... user except upon a showing that the owner, easement holder, lessee or occupant was guilty of wilful, malicious or grossly negligent conduct which was a direct cause of the injury to the recreational... user...

3. "Recreational User" means a person to whom permission has been granted or implied without the payment of an admission fee or other consideration to travel across or to enter upon premises to hunt, fish, trap, camp, hike, ride, exercise, swim or engage in similar pursuits. The purchase of a state hunting, trapping or fishing license is not the payment of an admission fee or other consideration [i.e., providing economic benefit] as provided in this section. A.R.S. Section(s) 33-1551 (1993)

In the opinion of the appeals court, “recreational user status” under the state recreational use statute would be excluded “if an admission fee or other consideration was paid, at least in part, to enter upon premises to engage in any of the defined recreational activities.” Prince argued on appeal that he was not a “recreational user” within the meaning of the statute because, at the time of his injury, an entry fee had been paid to the city for his team’s exclusive use of the ballfield. The appeals court agreed:

But for the payment of the entry fee, Prince could not have used the softball field at the time his accident occurred. The city's "Softball Rules & Regulations" do not alter that conclusion. Those rules simply provided that the entry fees "are based on several factors, including the number of games a team will play, day or night games, umpire costs, softballs, scorebooks, lighting, field preparation, bases, staff costs, league awards, etc . . ." and "help to offset the expenses of running a league"...

Part of the entry fee paid by league softball teams was for "field preparation," which included "[m]aintenance personnel dragging the field and chalking the lines and stripes" and installing bases. A portion of the entry fee also was "allocated towards the light use fee for the softball fields at night use"...

We agree with Prince's contention that it is irrelevant that "at other times, a fee need not be paid to enter upon the premises to play softball," or that the city may have been immunized under Section(s) 33-1551 had Prince been injured at a different place or

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time in the park. At the time of his accident Prince had permission "to enter" the softball field and to participate in the league game on that field. That permission, however, was at least implicitly conditioned on the team's payment of the required entry fee to the city.

In so doing, the appeals court rejected "the city's contention that the entry fee in no way constituted consideration for Prince's use of the field at the time of the accident."

Contrary to the city's contention, in order to avoid recreational user status, the "admission fee or other consideration" need not be paid solely "to travel across or to enter upon premises... [U]nder the facts presented here, the permission granted to Prince "to enter upon" the softball field to "exercise . . . or engage in similar pursuits" was not "without the payment of an admission fee or other consideration," ...

The statute does not specifically require that the "admission fee or other consideration" be paid by the individual claimant rather than by a team to engage in a sporting event at a particular site in the park. The city does not contend otherwise. A fee does not necessarily have to be paid by the injured party himself to take a case outside the recreational user statute so long as someone in the plaintiff's party has paid a fee to utilize the overall benefits.

As a result, the appeals court held that "under the particular facts of this case, Prince was not a 'recreational user' at the time of his accident, and therefore the city is not immune from liability under the recreational use statute." Accordingly, the appeals court reversed the trial court's dismissal of Prince's claims and remanded (i.e., sent back) this case to address Prince's allegations of negligence against the city.

HIGHER FEE FOR "PRIORITY" USE OF FIELDS

Similarly, in the case of *Johnson v. Rapid City Softball Association*, 514 N.W.2d 693 (S.D. 1994), the state supreme court found a player registration fee and a one dollar fee to lease the ballfield could constitute a "charge" as defined in the state recreational use statute, i.e., "the admission price or fee asked in return for invitation or permission to enter or go upon the land."

In this case, plaintiff was injured playing softball on fields leased to defendant softball association by defendant city. Plaintiff alleged that defendants were negligent in their maintenance of the ballfield. The trial court granted summary judgment to defendants based upon the state recreational use statutes.

According to the state supreme court, the initial issue on appeal was "[w]hether the Recreational Use Statutes apply to a city-owned softball complex leased to an organized association for valuable

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consideration when there is a \$15 player fee." As cited by the court, the South Dakota Recreational Use Statutes provided, in pertinent part, as follows:

[A]n owner of land owes no duty of care to keep the land safe for entry or use by others for outdoor recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on his land to persons entering for outdoor recreational purposes...

Nothing... limits in any way any liability which otherwise exists: (2) For injury suffered in any case where the owner of land charges any person who enters or goes on the land for the outdoor recreational use thereof.... (4) "Charge," [is] the admission price or fee asked in return for invitation or permission to enter or go upon the land.

Applying these principles of statutory interpretation to the facts of the case, the state supreme court found that "the fee of \$1.00 combined with 'other good and valuable consideration' may constitute a charge within the purview of the statutes."

Johnson paid a \$15.00 "player fee." According to the roster, the deadline for payment of fees at the Robbinsdale Softball Office was April 22, 1989. The use of the term "deadline" and the deposition of Ronald Jeffries, the team's coach, indicate that if Johnson had not paid her "player fee," she would not have been able to play in the Association...

Additionally, Association leased the fields from City for \$1.00 and "other good and valuable consideration." The "other" consideration included administration of a softball league open to the public, maintenance of the general grounds, and responsibility for mowing the field and all electrical bills.... While under the terms of the lease, other persons or organizations were allowed to use the softball fields, the Association had "priority use of the facilities during the lease period." Clearly, the City granted the Association "priority use" of the fields in exchange for "other good and valuable consideration" in lieu of a higher fee.

South Dakota has granted land occupier immunity "where an entrant comes upon an occupier's land for recreational purposes without conferring any economic benefit, or consideration upon the occupier." Clearly, the lease of the fields conferred an economic benefit or consideration upon City.

Having found the fee exception applied to the facts of this case, the state supreme court further held that softball and softball fields were not an "outdoor recreational purpose" under the state recreational use

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statutes.

NO ADMISSION FEE FOR SPECTATOR

In contrast to *Prince v. City of Apache Junction* and *Johnson v. Rapid City Softball Association*, the appeals court in *Seich v. Town of Canton*, (Mass.App. 1997) found the registration fee was not a fee for plaintiff's recreational use of the land. In this case, plaintiff Amy Seich alleged that she was "injured as a result of a slip and fall on an unnatural accumulation of ice on the town's property while attending her daughter's basketball game." The defendant Town of Canton raised the Commonwealth's recreational use statute as a defense to plaintiff's negligence claims. In pertinent part, the fee exception to the state recreational use statute provided as follows:

The liability of an owner who imposes a charge or fee for the use of his land by the public for recreational purposes shall not be limited by any provision of this section. No contributions or other voluntary payments not required to be made to use such land shall be considered a charge or fee within the meaning of this section. General Laws c. 21, Section 17C

Based upon the following evidence, the trial judge had found that "the registration fee was used to defray the costs of the players' T-shirts, the referees, necessary athletic equipment and the league's expenses for custodians to open school gymnasiums for weekday evening and weekend practices and games":

The town's recreation department had organized a youth basketball league and charged a \$65 registration fee (except in cases of financial hardship) for participation to cover the league's incidental costs. The town charged no admission fee to Seich. The registration fee that Seich paid for her daughter was used to reimburse the league for its incidental expenses a portion of the registration fee used to pay custodians to open the town's property after hours is not the equivalent of the town imposing a fee for the use of its land for recreational purposes.

As a result, the trial judge concluded that "the registration fee was a charge for participation in the basketball league and not an entrance fee for members of the public to use the property." The trial judge, therefore, granted summary judgement to the Town based upon the state recreational use statute.

On appeal, Seich did not dispute she was engaged in a recreational pursuit. Seich also admitted that she was not charged an admission fee to watch the game. Seich, however, contended that "G. L. c. 21, Section 17C, does not apply because she paid a registration fee to the defendant's recreation

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department to enable her daughter to participate in the youth basketball league.” The appeals court rejected this argument. As characterized by the appeals court, the fee in this particular instance was not a fee for recreational use of the land:

Whether or not Seich ever went to the school to watch her daughter, she still had to pay a fee for her to register with the basketball team. On the other hand, even if Seich did not register her daughter to play on the team, Seich, along with any other member of the public, could have gone to the school and observed the basketball game without paying a fee. To conclude otherwise would contravene the purposes of the Commonwealth's recreational use statute and discourage landowners from allowing free public access to their land for recreational purposes.

The appeals court, therefore, affirmed the summary judgment of the trial court in favor of defendant Town of Canton.

NO FEE FOR PERMISSION TO ENTER LAND

Similarly, in the case of *Spivey v. City of Baxley*, 210 Ga.App. 772; 437 S.E.2d 623 (1993), the court found plaintiff had not been charged a fee for recreational use of the premises. In this case, plaintiff was injured when she stepped into a hole and fell while attending a softball game on defendants' baseball field. The trial court granted summary judgment to defendants based upon the state recreational use statute, the “Recreational Purposes Act” (RPA). On appeal, Spivey argued that “the fee charged for the softball team was a 'charge' for the use of the premises and that therefore, the RPA does not apply.” Specifically, Spivey argued that “the fee which was required for participation in the church softball league constituted a 'charge' and that whether the spectators were directly charged is irrelevant.”

In response, the City of Baxley stated that “the softball game which Mrs. Spivey attended was open to the public at no charge.” Rather than a fee for the use of the premises, the City of Baxley stated that “both individual youths and the teams participating in the softball program were charged a fee which helped defray the cost of the equipment, official, facilities, lighting, and various officials involved in the game.”

As described by the appeals court, the state recreational use statute “insulates owners and operators of recreational property made available for public use at no charge from liability for damages resulting from ordinary negligence.” In pertinent part, the appeals court noted that the state recreational use statute defined “charge” as follows:

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Charge means the admission price or fee asked in return for invitation or permission to enter or go upon the land." The "charge" referred to in the Act is what is imposed to obtain permission to enter the premises.

Applying this statutory definition to the facts of the case, the appeals court found "Mrs. Spivey was not charged a fee to enter the premises on the evening in question."

The evidence showed that the fee for the softball league had no relation to permission to use the spectator seating area, which was open to the general public at no charge.

The appeals court, therefore, affirmed the summary judgment of the trial court in favor of defendants.