Ohio recreational user immunity

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For more than 50 years, Ohio law has encouraged outdoor recreation by providing significant liability protections to landowners who permit hunting, fishing, camping, swimming and other recreational activities on their nonresidential property without charging an entry fee. Lawmakers passed Ohio's Recreational User Immunity Statutes, R.C. 1533.18, *et seq.*, to "encourage users of premises suitable for recreational pursuits to open their lands to public use without fear of liability."[1] Many municipalities, colleges and universities, and other landowners are often unaware these protections exist and have not considered them when deciding whether to encourage people to experience the natural beauty of Ohio's campuses, parks, lakes, trails and forests.

Recreational user immunity laws limit a landowner's liability for injuries and damages to recreational users in three ways. First, these statutes modify traditional legal duties owed to invitees to nonresidential property providing that the landowner does not owe "*any* duty to a recreational user to keep the premises safe for entry or use[.]"[2] Next, the law informs users that permission to enter property does not create an "assurance [by the landowner] that the premises are safe."[3] And finally, the landowner is not liable for the injuries caused by recreational user.[4] Together, these legal protections provide significant incentives for landowners to make their lands available for recreational pursuits. But in order to be protected, landowners – particularly public entities with many recreational resources – must consider the nuances of these laws.

Let's start with a seemingly basic question: who qualifies as a recreation user? The law defines these users very broadly:

> [A] "Recreational user" means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of a premises, other than a fee or consideration paid to the state or any agency of the state, or the payment of fee paid to the owner of privately owned lands, to enter upon premises to

> hunt, fish, trap, camp, hike, or swim, or to operate a snowmobile, all-purpose vehicle, or a four-wheel drive motor vehicle, or to engage in other recreational pursuits.[5]

An astute reader would note that a recreational user must have permission to enter the premises. A cautious park manager would inquire what kind of permission is necessary. A growing number of courts have determined that permission can be either express (e.g., written invitation, telling someone in person) or through acquiescence.[6] Keeping in mind that the landowner must prove that the immunity applies, this cautious park manager would need to show that the injured party had permission to enter the property; the more direct evidence that the injured party was on the premise with permission the better. Consider conspicuous signage welcoming people to hiking trails and swimming areas or detailed website information about recreational events and activities on the property.

The next element of the definition is the lack of "payment or fee" paid to use the property. Many parks are open to the public free of charge. And many others charge rental fees for cabins, meeting spaces and equipment. When is a rental fee considered an admittance fee by courts, such that immunity is not available to the owner under this statutory scheme?

In *Huth v. State Dept. of Natural Resources,*[7] the Ohio Supreme Court offered some guidance. In that case, a park visitor and his wife entered Mohican State Park with a camper. They paid a parking and utility fee for the camper. Tragically, the visitor was electrocuted when he attached his camper to the electrical hook-up at the campsite. His estate and his widow sued the Ohio Department of Natural Resources. The Court found that while there were no general fees to enter the park, the couple had paid to access the park's camping facilities, which included access to the electrical outlet. The Court found that this fee related to the recreational activity (here, camping) and the acceptance of this fee barred the state's use of the recreational user immunity.

Other cases have found that renting cabins or other meeting spaces does not constitute an admission fee where the visitor can use the other recreational areas free of charge, especially when the injuries are related to a recreational activity unrelated to the rental space. For example, if a family rented a cabin for a weekend and a family member was injured hiking on a publicly available trail, it would be likely that recreational user immunity protections would apply to bar recovery against the landowner because the fee charged was unrelated to access to the trails on which the person was injured.[8]

The next part of the definition refers to the "premises" where the recreational activities are offered. It is a common misunderstanding that the immunity applies only to fields, rivers and the natural landscape. The definition of the word "premises" includes "all privately owned lands, ways, and waters, and any buildings and structures thereon, and all privately owned and stated owned lands, ways, and waters leased to a private person, firm, or organization, including any buildings and structures thereon."[9] Recreational immunity also applies to dugouts, fences and other man-made structures that "do not change the park's essential character as outdoor premises used for recreational purposes within the recreational-user statute."[10]

This definition was tested in *Pauley v. City of Circleville*, a case involving an eighteen-year-old who was paralyzed while sledding with his friends in a city park. Before the winter snowfall, the city had placed 150 to 200 truckloads of topsoil and construction debris in the park creating a large mound that proved to be an attractive sledding hill. A group of teenagers climbed the earthen piles and the plaintiff was paralyzed when he struck "an immovable object" in the debris pile. When the teenager and his mother sued the city for dumping construction debris in the park, the Ohio Supreme Court held that the city was immune from liability for his injuries stating, "[h]e entered the park, free of charge, to go sledding, thus, the City owed him no duty to keep the premises safe, and the City's alleged creation of hazard on the premises does not affect its immunity."[11]

The recreational immunity statutes do not protect against all injuries that occur on the premises. In *Ryll v. Columbus Fireworks Display Co., Inc.,* a spectator attending a City of Reynoldsburg fireworks display was killed by shrapnel from a fireworks show. The deceased spectator's estate sued the city, and the city claimed that it was immune from liability under a theory of recreational user immunity. The Ohio Supreme Court found that the injuries were caused by the shrapnel from the fireworks, which was not a "defect in the premises," and, therefore, the city could not avail itself of the recreational user immunity.[12]

Recreational user immunity can be a powerful defense for public and private landowners who permit hunters, hikers, mountain

bikers and recreational enthusiasts onto their property. Careful planning and thoughtful communication can ensure that these protections are available if and when a lawsuit is filed.

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[1] *Loyer v. Buchholz*, 38 Ohio St.3d 65, 66, 52 N.E.2d. 300 (1988).

[2] R.C. 1533.181 (A)(1).

[3] R.C. 1533.181(A)(2).

[4] R.C. 1533.181(A)(3).

[5] R.C. 1533.18(B).

[6] See, e.g. *Nelson v. Bd. of Park Comm'rs of Conneaut Twp. Park Dist.,* 2001 Ohio App. LEXIS 6001, *16, 2001-Ohio-7060.

[7] *Huth v. State, Dept. of Natural Resources*, 64 Ohio St.2d 143, 145, 413 N.E.2d 1201 (1980).

[8] See *Howell v. Buck Creek State Par*k, 144 Ohio App.3d 227, 229-230, 759 N.E.2d 892, 894-895, 2001 Ohio App. LEXIS 2944, *5-7.

[9] R.C. 1533.18(A).

[10] *Pauley v. City of Circleville,* 137 Ohio St.3d 212, 217, 2013-Ohio-4541. See also *Miller v. Dayton,* 42 Ohio St.3d 113, 537 N.E.2d. 1294 (1989).

[11] *Pauley* at ¶22.

[12] *Ryll v. Columbus Fireworks Display Co., Inc.* 95 Ohio St.3d 467, 2002-Ohio-2584, 769 N.E.2d.372.

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