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REPORT FROM COUNSEL MAY 2014 ISSUE

RECREATIONAL-USE IMMUNITY FOR GOLF INJURY

The purpose of recreational-use tort immunity statutes, which are common across the country, is to encourage private and public landowners to make their property available for public recreational use. To advance this public interest, these laws usually immunize the owners or occupants of real property from negligence liability toward people entering the land for recreation, often on the condition that the property is made available for use free of charge.

Typically the statutory immunity stops short of protecting defendants from liability for greater degrees of wrongdoing, such as acts or omissions that can be characterized as willful, malicious, or grossly negligent. Originally the perceived need for immunity arose because of the impracticability of keeping large tracts of mostly undeveloped land safe for public use, but the concept has evolved so that it need not necessarily involve vast expanses of wilderness.

The conditions for recreational-use immunity can vary somewhat with the wording of the states' statutes, requiring case-by-case rulings depending on the facts before a court and the wording of each state's law. In keeping with a commonly recognized rule of statutory construction, because recreational-use immunity statutes limit common-law liability that predates such laws, a court must strictly construe

language in the statutes in order to avoid any overbroad statutory interpretation that would give unintended immunity and take away a right of action for injured persons.

When a golfer at a city-owned golf course slipped and fell on a walkway leading to a tee box, he claimed that the walkway was dangerously steep and narrow, causing his injuries. The city defended on the basis of a state recreational-use immunity law. Before an intermediate appellate court, the city prevailed on one issue, about the golf course's coming within the statute, but the case was sent back to the trial court for resolution of a second issue, concerning the legal status of the injured golfer.

The golf course was sufficiently similar to "park" lands to be included in the definition of "premises" under the recreational-use immunity statute even though there is no express mention of golf courses by the legislature. The golf course fit within the common definition of a "park," as it was a parcel of property kept for recreational use that was designed and maintained for the primary purpose of allowing users to engage in a recreational activity. Not only that, but the statute's list of types of land uses constituting covered "premises" includes a catch-all reference to "any other similar lands."

However, for the immunity to apply to the city, it was also necessary for the golfer to have been a “recreational user” under the law. This, in turn, meant that the golfer must have paid either no admission fee or no more than a “nominal fee,” to use the term from the statute. In this case, there was no question that a fee was paid to play golf, but since the lower court had not reached the question of whether that fee was “nominal,” it would have to decide that issue.

Generally a nominal fee is one charged only to offset the cost of providing the educational or recreational premises covered by the immunity statute. Some of the factors affecting this issue might include, for example, the amount of the fee, the extent to which it approximates the value of the service received in exchange for it, and the fees charged for similar recreational uses in the community.

In something of an ironic twist, if it were to be found that the golfer had paid no more than a “nominal fee,” then in exchange for that inexpensive round of golf, the golfer will have ultimately paid a higher “price” in the form of being precluded from recovering damages from the golf course owner for negligence.

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