Pennsylvania's Recreational Use of Land and Water Act

Statutory Protection for Property Owners Who Open Their Land to the Public

Pennsylvania's Recreational Use of Land and Water Act limits the liability, resulting from personal injury or property damage, of landowners who make their land available to the public for recreation free of charge.

Introduction

Pennsylvania's Recreational Use of Land and Water Act limits landowners' liability for personal injury or property damage if they make their land available to the public for recreation. The purpose of the law is to encourage landowners to allow hikers, fishermen, and other recreational users onto their properties by limiting the traditional duty of care that landowners owe to entrants upon their land. **So long as no entrance or use fee is charged, the Act provides that landowners do not have to keep their land safe for recreational users and have no duty to warn of dangerous conditions.** This immunity from liability does not protect landowners who willfully or maliciously fail to warn of dangerous conditions.

Because courts have tended to interpret narrowly the types of "land" covered by the Act, landowners and easement holders should not rely solely on the Act's protection, but should couple the protection, where appropriate, with the steps and tools outlined in the guide *Reducing Liability Associated with Public Access*.

Scope of Immunity Defense

Like every state in the nation, Pennsylvania has a statute that provides a degree of immunity to landowners who make their properties available to the public for free recreational use. The Recreational Use of Land and Water Act (referred to as "RULWA" or the "Act"), found in Purdon's Pennsylvania Statutes, title 68, sections 477-1 et seq., provides that:

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

Landowners who permit or invite members of the general public onto their properties for recreational purposes, free of charge, can raise this statute as a defense if they are sued for personal injury or property damage. Landowner immunity expressly includes injury or damage occurring off of the landowner's property caused by a hunter who is on the landowner's property. For example, if a bullet fired from the landowner's property strikes someone on a neighboring property, this would be covered by the Act.

On its face, RULWA applies to all recreational "land" – improved and unimproved, large and small, rural and urban. "'Land' is defined in RULWA to mean "land, roads, water, watercourses, private ways and buildings, structures and machinery or equipment when attached to the realty." 68 P.S. §477(2)(1).

However, Pennsylvania courts have read the Act narrowly, finding that it applies only to largely unimproved land (*see* "Types of Land Covered by the Act" below).

RULWA does not prevent landowners from being sued; it provides them with an immunity defense to claims that their *negligence* caused the plaintiff's injury. Negligence is the failure to exercise ordinary care such as a reasonably prudent and careful person under similar circumstances would exercise. The level of duty of care that landowners owe to entrants depends on the classification of the entrant. Landowners owe a high duty of care to people invited or permitted onto the land (i.e., "invitees" or "licensees"). But landowners owe trespassers only the duty not to deliberately or recklessly harm them. RULWA essentially *reduces* the duty of care landowners would otherwise owe to recreational users to the lower duty owed to trespassers.

Under this lower duty of care, plaintiffs must prove that landowners acted "willfully or maliciously," rather than negligently. ("Nothing in this act limits in any way any liability which otherwise exists…[f]or wilful [sic] or malicious failure to guard or warn against a dangerous condition, use, structure, or activity." 68 P.S. §477(6)(1)). While willful or malicious behavior is less than "intentional" misconduct, it requires reckless or egregious behavior well beyond mere carelessness. Proving this is a heavier burden than proving negligence, and thus plaintiffs are much more likely to have their suits dismissed before trial (on a motion for summary judgment, i.e.) or ultimately to be unsuccessful in their litigation.

Who Does the Recreational Use of Land and Water Act Cover?

"Owners" of land protected by the Act include public and private landowners as well as tenants, lessees (hunt clubs, e.g.), and other persons or organizations "in control of the premises." Grantors of trail or fishing access easements would be "owners" for purposes of the Act. Holders of conservation easements and trail easements also are protected under RULWA if they exercise sufficient control over the land to be deemed "possessors." *See Stanton v. Lackawanna Energy Ltd.*, 820 A.2d 1256 (Pa. Super. 2003), *aff'd*, 584 Pa. 550, 886 A.2d 667, 673 (2005). If, on the other hand, easement holders don't exercise enough control to be possessors, they would not be subject to liability at all, under common law principles of negligence (*see Stanton*).

What Types of Land Does the Recreational Use of Land and Water Act Cover?

Although on its face the statute applies to both developed and undeveloped "land," Pennsylvania courts have limited RULWA immunity to land that remains largely in its natural state. The state supreme court has explained that "[t]he need for immunity arises because of the impracticability of keeping large tracts of mostly undeveloped land safe for public use." *Stanton*, *above*. It has further noted that RULWA "was not intended to insulate owners of fully developed recreational facilities from the normal duty of maintaining their property in a manner consistent with the property's designated and intended use by the public." *Mills v. Commonwealth* 534 Pa. 519, 633 A.2d 1115 (1993). Courts have refused to extend RULWA protections to facilities such as: outdoor swimming pools (*City of Philadelphia v. Duda*, 141 Pa. Cmwlth. 88, 595 A.2d 206 (1991)); basketball courts (*Walsh v. City of Philadelphia*, 526 Pa. 227, 585 A.2d 445 (1991)); playgrounds (*DiMino v. Borough of Pottstown*, 142 Pa. Cmwlth. 683, 598 A.2d 357 (1991)); and athletic fields (*Brown v. Tunkhannock Twp.*, 665 A.2d 1318 (Pa. Cmwlth. (1995)).

While it is clear that a completely undeveloped property will enjoy full RULWA protection, what if the property in question has both developed and undeveloped features? Courts will examine whether

the particular area of land involved in the injury is developed or not, rather than considering the facility as a whole. For example, in *Bashioum v. County of Westmoreland*, 747 A.2d 441 (Pa. Cmwlth. 2000), the plaintiff was injured on a giant slide located within a 400-acre park that was otherwise unimproved. The appellate Commonwealth Court sided with the plaintiff, noting that the analysis properly centered on the specific site where the injury occurred (the slide), rather than on the totality of the largely undeveloped park. Because the slide was a "developed" feature, the defendant county could not claim RULWA protection. Other cases of note include *Pomeren v. Department of Environmental Resources*, 121 Pa. Commw. 287, 550 A.2d 852 (1988), which found that an earthen hiking trail in a state park was not an "improvement" even if other areas of the park were developed, and *Stone v. York Haven Power Co.*, 561 Pa. 189, 749 A.2d 452 (2000), which found that an artificial lake is just as subject to RULWA protection as a natural lake, although the dam structure itself is not covered.

Recent cases provide additional insight into how courts will determine whether RULWA immunity covers land that is partially improved. In *Davis v. City of Philadelphia*, 987 A.2d 1274 (Pa. Cmwlth. 2010), the plaintiff was injured after he fell in a hole while playing flag football on a field located in Fairmount Park, an urban park replete with roads, museums, and statues. Although groups sometimes played sports on the field, its primary purpose was as overflow parking for the Philadelphia Zoo. The grassy field was lined with trees maintained by the park department, and the grass was mowed every two weeks during warmer months. The *Davis* court concluded that although the field "must have been cleared of trees and brush at some point," this clearing and the minimal maintenance conducted since then was insufficient to take the land out of the scope of RULWA. The deciding factor, reasoned the court, was that there were no improvements at the field that required regular maintenance.

In contrast, in *Hatfield v. Penn Township and Penn Township Athletic Association*, 12 A.3d 482 (Pa. Cmwlth. 2010), the appellate court found that a 20-foot-wide grass and dirt pathway between two fenced-in ballfields was sufficiently altered to remove it from RULWA protection. Employees of the defendant township cut the grass on and around the heavily used path every two weeks and fixed occasional defects in the path, including spreading topsoil and fixing impressions in the ground with front loaders. There was no evidence before the court that the grass/dirt path had ever been graded or altered from its original state -- merely that it had been regularly maintained. The appellate court reversed the trial court and ruled that RULWA immunity was not available because the pathway was an improvement requiring regular township maintenance to be used in a safe manner.

Similarly, in *Brezinski v. County of Allegheny*, 694 A.2d 388 (Pa. Cmwlth. 1997), the plaintiff suffered injuries when he fell down an "earthen embankment in a county-owned park, walking downhill from a picnic pavilion to the parking lot." The court ruled that the one-time modification of the hill by sculpting it into an embankment that did not necessitate regular maintenance did not alter the land's essentially unimproved character). (*Compare Rightnour v. Borough of Middletown*, 48 Pa. D&C 4th 117 (Dauphin C.C.P. 2000) which found that private property containing a footpath leading to the Swatara Creek, created by continuous usage, was covered by RULWA, and the landowner had no duty to erect a warning sign or fence between his property and the adjacent municipal park.)

Recreational Purpose

Though not all recreational land is covered by the Act, as noted above, the law's definition of "recreational purpose" is broad enough to include almost any reason for entering onto undeveloped land, from hiking to water sports to motorbiking. *Liability immunity is available even if landowners haven't expressly invited or permitted the public to enter the property for these recreational purposes.* In fact, even when landowners post "No Trespassing" signs they are covered by RULWA. (*See Friedman v. Grand Central Sanitation, Inc.*, 524 Pa. 270, 571 A.2d 373 (1990) which

found an owner of posted landfill not liable to hunter who fell in trench.)

Failure to Warn

As noted above, although RULWA immunizes landowners from negligence claims, landowners remain liable for willful or malicious failure to guard or warn recreational users of a dangerous condition of the land (the "trespasser standard," i.e.).

To determine whether a landowner's behavior was willful, courts will look at whether the owner had actual knowledge of the threat and whether the danger would be obvious to entrants. Actual knowledge might be presumed if the owner were aware of prior accidents at the same spot. But if the land contained a dangerous feature that should have been obvious to recreational users, they may be considered to be put "on notice," which generally would preclude landowner liability.

Governmental Immunity

Pennsylvania's governmental immunity statutes, the Tort Claims and Sovereign Immunity Acts, shield municipalities and Commonwealth agencies from claims of willful misconduct. Liability may be imposed upon these entities only for their negligent acts. But, as noted above, where an injury occurs on "land" within the meaning of RULWA, the Act shields landowners from negligence suits. Consequently, public agencies are granted *total* immunity for certain recreational injuries. In *Lory v. City of Philadelphia*, 544 Pa. 38, 674 A.2d 673 (1996), for example, a boy drowned jumping off a rock ledge into a creek containing submerged rocks. The city was found immune under RULWA on a claim of negligent maintenance of recreational lands and also was found immune under the Political Subdivision Tort Claims Act for willful failure to warn of hazards on the property, leading the plaintiff's suit to be dismissed.

Strengthening RULWA's Effectiveness

Recent Amendments

In a much-publicized 2007 Lehigh County case, a landowner farmer who allowed hunting on his land was found partially liable for injuries caused to an off-site neighbor by the hunter's bullet. It is unclear that the landowner's attorney ever raised the RULWA defense. Addressing the then-common – but likely mistaken – impression that RULWA had failed to protect the landowner, the General Assembly in 2007 amended RULWA to expressly immunize landowners from off-site injury or damage caused by hunters on their land.

How Could RULWA be Strengthened?

Looking at how other states have modified or interpreted their recreational use statutes (most of which were originally based on the same model statute as Pennsylvania's) sheds light on ways that Pennsylvania's Act could be amended and strengthened to keep fear of litigation from chilling the public's recreational opportunities. Potential changes to the Act would include:

- Expressly permitting access improvements for persons with disabilities. (The Pennsylvania Fish & Boat Commission supported this proposed amendment a number of years ago but the proposal did not gain sufficient legislative support.)
- Expressly permitting unpaved trails within the definition of "land."
- Allowing landowners to collect certain types of remuneration without affecting immunity (e.g., voluntary monetary donations; in-kind contributions of venison); and
- Defining the Act's use of the term "wilful [sic] or malicious;" and
- Instituting a cap on liability damages.

  - Will the holders issue separate contemporaneous written acknowledgments of the gift or issue one signed by each
  - Will they each sign IRS Form 8283? Prudence dictates that both should to avoid jeopardizing
- If one but not all of the holders is insured under?

Related Resources at ConservationTools.org

Library Categories
Liability Associated with Recreational Use

Featured Library Items
Davis v. City of Philadelphia 1/13/2010 Decision

Easement Holder Enjoys Same RULWA Immunity as Land Owner

Equine Immunity Act

Liability and Rail-Trails in Pennsylvania

Rails-to-Trails Act

Recreational Use of Land and Water Act

Related Guides
Reducing Liability Associated with Public Access

Release of Liability: A Tool for Managing the Risk of a Volunteer or Participant in an Activity Suing the Activity's Organizer or Host

Indemnity Agreements and Liability Insurance

Experts
Debra Wolf Goldstein, Esq., Conservation Matters, LLC
Goldstein authored this guide.

Patricia L. Pregmon, Esq., Pregmon Law Offices
Pregmon authored the Reducing Liability Associated with Public Access guide.

Submit Comments and Suggestions

The Pennsylvania Land Trust Association would like to know your thoughts about this guide: Do any subjects need clarification or expansion? Other concerns? Please contact Andy Loza at 717-230-8560 or aloza@conserveland.org with your thoughts. Thank you.

Acknowledgements

Debra Wolf Goldstein, Esq., of Conservation Matters, LLC, is the author of this guide. Andy Loza is the editor.

The Pennsylvania Land Trust Association published this guide with support from the William Penn Foundation and the Growing Greener Program of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.