



Real-Time Risk



TIMELY NEWS AND TIPS TO HELP REDUCE RISK

March 2016

Managing Risk Without Recreational Use Immunity

The photo above is of a basketball court in the City of Talent - a court that is now closed until the City can resurface it. It's one of many facilities across the state at which local officials are taking a closer look, since the Oregon Supreme Court's recent decision in *Johnson v. Gibson*. The decision has effectively called a halt to recreational use immunity.

In this issue of Real-Time Risk, we take a look at recreational use immunity and at some risk management strategies CIS members should consider in light of the *Johnson* decision.

Until the *Johnson* decision, recreational immunity protected both the owners of public lands and the landowners' employees. In *Johnson*, however, the Court held that when Oregon's legislature passed the Public Lands Act (ORS 105.672) it intended only to immunize the actual landowner, but never intended recreational immunity to immunize employees and agents who act on behalf of landowners.

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The plaintiff in the case, named Johnson, was a legally blind jogger who stepped in a hole while running through a Portland park. Rather than suing the City of Portland directly, Johnson sued the maintenance employee, Gibson, who dug the hole in order to repair a sprinkler. Johnson also sued Gibson's direct supervisor.

Effects of the Supreme Court Decision

Although the trial court initially held that recreational immunity shielded Gibson and his supervisor from the lawsuit, the Oregon Supreme Court held that employees are no longer protected by recreational use immunity and that Johnson could proceed with her lawsuit against the employees directly. Because Portland is legally required to indemnify its employees for actions taken within the scope of their employment, the City is still financially responsible for the claim.

CIS expects to see a sharp increase in lawsuits filed against public employees who operate, maintain, or repair recreational areas. The public entity itself, as a landowner, is still shielded by recreational immunity. By suing an individual employee, however, trial lawyers can make an end run around recreational immunity and go forward with cases that were completely blocked prior to *Johnson v. Gibson*.

Additional Considerations

In addition to undertaking the risk management activities on the next page, discuss the loss of recreational immunity with elected officials, park user groups, Friends of Parks Foundations, skate and bike clubs & merchants, and other stakeholders. Ask these groups to provide solutions and resources.

For more information

Your CIS risk management consultant is available to assist you as you plan to evaluate and mitigate the heightened risk that comes from the loss of recreational use immunity as a result of *Johnson v. Gibson*.

The complete Oregon Supreme Court decision in *Johnson v. Gibson* can be found at <http://www.publications.ojd.state.or.us/docs/S063188.pdf>

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For cities and counties to minimize this increased legal exposure and try to protect employees from being individually named in lawsuits, CIS encourages the following actions:

- Identify and evaluate all parks and facilities which are provided free to citizens. Direct recreation and maintenance staff to thoroughly inspect these facilities and quickly identify areas in need of improvement, maintenance or repair. Erect warning signs or close facilities that cannot immediately be repaired because of time or expense. In light of *Johnson v. Gibson*, local governments should consider authorizing staff members to make these decisions in the field.
- Assess each inventoried park and facility. Prepare a “hazard treatment improvement plan” for each park and facility. Carefully inspect playground equipment and the grounds. Remove any possible hazards or dangers. CIS recommends staff obtain the Certified Playground Safety Inspector (CPSI) certification from the Oregon Recreation and Park Association.
- Assign a “risk owner” for each park to ensure regular inspection and repair. Give “risk owners” the responsibility and the accountability to remove hazards and make parks safe.
- Review all prior incidents and accidents at parks. Close and fence off parks or equipment where prior injuries occurred.
- Consider closing parks, equipment and facilities that are outdated or in various states of disrepair.
- Consider closing skate parks, bike parks, or other high-hazard facilities. Stop moving forward with plans to build new facilities supporting high-risk activities.
- Add warning signs that instruct participants that they use the park/facility at their own risk.
- Restrict the hours of park use and activities.
- Consider transferring the exposures of parks and facilities by contracting for their construction, maintenance, and inspection.
- Consider charging a fee for maintained parks. In the past, CIS asked that members not charge for the use of maintained parks and facilities to take advantage of recreational immunity. Charging may be appropriate now to help with maintenance and reduce potential damage.
- Require groups using facilities to provide insurance. CIS offers a link to *Event Helper* on our website. User groups can purchase insurance from *Event Helper*, which provides coverage to both the users and the local government.

