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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Michigan Supreme Court Overrules Decades of Precedent: The Recreational Land Use Act Is Now Applicable To All Types of Land

By Jennifer M. Jenkins

In *Neal v. Wilkes,* __ Mich __ (2004), Plaintiff was injured while riding an ATV on Defendant's property, an eleven acre residential lot. The trial court granted Defendant's Motion for Summary Disposition on the basis that the Recreational Land Use Act (RLUA) barred Plaintiff's cause of action. Relying on *Wymer v. Holmes,* 429 Mich 66 (1987), which held that the RLUA only applied to "large tracts of undeveloped land", the Court of Appeals reversed the dismissal and remanded the case for continued proceedings. The Supreme Court granted Defendant's application for leave to appeal.

The RLUA provides that an owner of land is not liable to a person who injures himself on the owner's land if that person has not paid for the use of the land and that person was using the land for recreational purposes specified in the Act, unless the injuries were caused by the owner's gross negligence or willful and wanton misconduct. In *Wymer,* the Supreme Court held that the RLUA was intended to apply only to large tracts of undeveloped land suitable for outdoor recreational uses. Further, urban, suburban and subdivided lands were not intended to be covered by the RLUA.

The recent *Neal* decision overruled *Wymer,* holding that the RLUA did not limit its application to any particular type of land. "There is absolutely no indication in the language of the RLUA that the Legislature intended its

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If you are defending a case involving an outdoor recreational activity, this decision may now provide a complete defense which did not exist a week ago. The Recreational Land Use Act states that an owner of land is not liable to a person who injures himself on the owner's land if that person has not paid for the use of the land and that person was using the land for a specified purpose, unless injuries was caused by the owner's gross negligence or willful and wanton misconduct. Although the act limits its application to specified activities, i.e., fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling and snowmobiling, or others of the same kind, class, character or nature of these activities, it does not limit its application to any particular type of land.

This is the latest case in a trend of cases from the Michigan Supreme Court in which the Court has overruled years of precedent which it believed misinterpreted the original statute or case law. If you are handling a claim in which the Courts of Appeals have wrongly applied or interpreted the original statute, you must seriously consider if you want to make a stand in your case and take the issue all the way up to the Supreme Court to possibly correct years of mistakes.

application to be limited to vacant or undeveloped lands." There was no distinction in the RLUA between large tracts of land, small tracks of land, undeveloped land, developed land, vacant land, occupied land, land suitable for outdoor recreational uses, land not suitable for outdoor recreational uses, etc. The Court noted that if it introduced such distinctions into the RLUA, it would engage in legislative decision making.

The Supreme Court further held that the RLUA did not apply to just any outdoor recreational activity, but only the types of activities specified in the Act. It applied to fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use, which the Court interpreted to include only those uses of the same kind, class, character or nature of the specifically identified activities in the statute.

In regard to the facts of the *Neal* case, the Court held that riding an ATV on an eleven acre lot was an outdoor recreational use of another's land within the meaning of the RLUA. Since there was no evidence that Plaintiff's injuries were caused by the gross negligence or willful or wanton misconduct of the owner, the owner could not be held liable for Plaintiff's injuries. Therefore, the trial court's dismissal was correct.

CONTACT US

Farmington Hills
30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens
94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing
6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids
1550 East Beltline, S.E., Ste. 305, Grand Rapids, MI 49506-4361
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL
2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

SECREST SW WARDLE

CONTRIBUTORS

Premises Liability Practice Group Chair
Mark F. Masters

Editor
Carina Carlesimo

We welcome your questions and comments.

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