

# **Bond Case Briefs**

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## **IMMUNITY - WASHINGTON**

### **Camicia v. Howard S. Wright Const. Co.**

**Supreme Court of Washington, En Banc - January 30, 2014 - P.3d - 2014 WL 333159**

Bicyclist brought negligence action against city after bicyclist was thrown from her bicycle after colliding with a wooden post on portion of bicycle trail located in city. The Superior Court granted summary judgment in favor of city. Bicyclist appealed. The Court of Appeals reversed. City sought further review, which was granted.

The Supreme Court of Washington held that genuine issue of material fact existed regarding whether bicycle trail served a recreational purpose or a transportation purpose, and therefore summary judgment was precluded in favor of city on the basis of recreational use immunity in negligence action by bicyclist who was injured while riding on trail in city, where it was disputed whether city had authority to close the trail to public transportation, and bicycling was not necessarily a recreational activity.

To be immune under the recreational use immunity statute, a landowner must establish that the land in question: (1) was open to members of the public; (2) for recreational purposes; and that (3) no fee of any kind was charged.

For purposes of recreational use immunity, a landowner has “lawful possession and control” over land if it holds continuing authority to determine whether the land should be open to the public.

In order to be entitled to recreational use immunity, a landowner must have authority to close the land to the recreating public because extending recreational immunity to landowners who lack authority to close the land to the public would not further the purpose behind the act, namely to encourage landowners to open land that would not otherwise be open.

Where the land at issue is shown to be recreational, recreational use immunity does not depend on whether the plaintiff was actually engaged in recreation at the time of injury.