1 Recreation Immunity Statutes
Governmental Immunity

2 § 8.01-195.3 Commonwealth “liable like a private individual” for negligence.

Claimant limit 100K or limit of any liability policy

3 § 15.2-1809. Liability of localities in the operation of parks, recreational facilities and playgrounds

4 Town of Big Stone Gap
v. Johnson

35 S.E.2d 71, 184 Va. 375
(Va. 09/05/1945)
Virginia Supreme Court

5 FRAZIER
v.
CITY OF NORFOLK
362 S.E.2d 688 (Va. 1987)
Supreme Court of Virginia

6 Frazier, 13, fell while attending a religious convention in a convention hall

owned by defendant City of Norfolk..

7 Asked to perform with a church choir by playing the drums.

8 ☐ drum set placed at the rear of the orchestra pit.

Pit had been lowered so that a gap existed between the rear of the pit and the front of the stage.

9 ☐ No barriers or railings were in place on the rear perimeter of the platform.

10 ☐ During the performance, Frazier dropped a drumstick.

reached to the rear "blindly" groping for the stick.

11 ☐ Frazier was injured when he fell from the pit platform

through the gap approximately 18 feet into the basement of the building.

12 ☐ Frazier provided expert testimony "the city was in violation of its own building code

because the railings were not in place on the pit platform.“

13 ☐ Evidence "the city possessed barriers specifically designed to provide protection against falls through the gap

14 ☐ created on the stage side of the pit when the pit was in a lowered position."

15 ☐ Evidence that "two years prior to this incident, a child six years of age

fell from the orchestra pit into the basement when pit barriers were in place."

Trial court found that Chrysler Hall was a "recreational facility"

within the meaning of state immunity statute

No city or town which shall operate any bathing beach, swimming pool, park, playground or other recreational facility

shall be liable in any civil action or proceeding for damages resulting from any injury to the person or property of any person

Caused by any act or omission constituting simple or ordinary negligence

on the part of any officer or agent of such city or town

In the maintenance or operation of any such recreational facility.

Every such city or town shall, however, be liable in damages

for the gross or wanton negligence

of any of its officers or agents in the maintenance or operation of any such recreational facility.

The immunity created by this section is hereby conferred upon counties

25 in addition to, and not limiting on, other immunity existing at common law or by statute.

(Virginia Code §15.1-291.)

26 Trial court, Frazier "had failed to prove that city was grossly negligent."

27 dismissed Frazier's case against Norfolk.

Frazier appealed to the state supreme court.

28 On appeal, Frazier argued trial court erred in finding Chrysler Hall was a recreational facility within the meaning of the statute.

29 Should apply only to such things as parks, playgrounds and pools

not an auditorium rented for profit.

30 statute's application is NOT conditioned

on profit, free public use, or "highly participatory" activity.

statute is clear and unambiguous

31 Adjective "recreational" and the noun "recreation" have settled meanings

too plain to be misunderstood...

"Recreation" is commonly understood as "a means of getting diversion or entertainment."

Record plainly shows Chrysler Hall used as a place for citizens' diversion and entertainment.

It is a place, like a bathing beach, swimming pool, park, or playground

where members of the public are entertained and diverted, either by their own activities or by the activities of others.

State supreme court concluded "the use of Chrysler Hall for these functions qualifies the building as a 'recreational facility'

within the meaning of the statute,

whether evidence submitted support allegations of gross negligence

that degree of negligence which shows an utter disregard of prudence

amounting to complete neglect of the safety of another.

It is a heedless and palpable violation of legal duty respecting the rights of others.

trial court correctly ruled Frazier failed to establish a prima facie case [i.e. sufficient evidence to support a claim] of gross negligence.

The city's failure to install protective devices or to post warnings for

children at a platform edge

which was open and obvious

42 amounts, at the most, to ordinary negligence and a failure to exercise reasonable care.

43 Such acts of omission do not rise to that degree of egregious conduct

44 which can be classified as a heedless, palpable violation of rights showing an utter disregard of prudence.

45 The state supreme court, therefore, affirmed the judgment of the trial court

dismissing Frazier's case against the City of Norfolk.

46 DePRIEST
v.
PEARSON
387 S.E.2d 480 (Va. 1990)
Supreme Court of Virginia

47 plaintiffs Mary DePriest and Martha Armstead injured
in a bus driven by defendant
Wayne Pearson.

48 February 22, 1986, Henrico County Department of Parks and Recreation

sponsored a recreational trip to the Williamsburg Pottery

49 Furnished one of its buses and a driver, Wayne Preston Pearson

50 recreational assistant employed by Henrico County.

51 En route to Williamsburg, Pearson lost control of the bus while attempting to avoid a pothole.

52 bus overturned DePriest and Armstead were two of the several passengers were injured.

53 Trial court found Pearson was negligent and a jury returned an $85,000 verdict for DePriest.

54 trial court, however, "set aside the verdict, and entered final judgment for Pearson

55 Entitled to the benefit of
Code § 15.1-291,
and could only be liable if he was guilty of gross negligence in the operation of the bus."

56 No city or town which shall operate any ... recreational facility shall be liable... [for]

57 ordinary negligence on the part of any officer or agent of such city or town

58 in the maintenance or operation of any such recreational facility.

59 Issue "whether a bus used by a county recreation department to transport passengers on a recreational trip
is a 'recreational facility' within the meaning of Code § 15.1-291."

60 Pearson maintained on appeal that "he is entitled to the benefit of the statute

61 because he was operating a 'recreational facility' at the time the bus overturned."

62 In the opinion of the state supreme court, "at the time of the accident, the bus was NOT being used as a 'recreational facility'
within the meaning of
Code § 15.1-291."

63 In Frazier v. City of Norfolk, 234 Va. 388, 362 S.E.2d 688 (1987), we said the statutory term "recreational facility"
was unambiguous

64 and meant "a place for citizens' diversion and entertainment.

65 It is a place, like a bathing beach, swimming pool, park, or playground,

66 where members of the public are entertained and diverted,

67 either by their own activities or by the activities of others."

68 Obviously, the county was NOT operating a "recreational facility' when it was transporting passengers by bus to an outing in Williamsburg.

69 the bus and Pearson's use of it simply served as a means of transportation.

70 jury verdicts for DePriest and Armstead should NOT have been set aside based upon Code § 15.1-291.

71 State supreme court reversed the judgments of the lower courts in favor of defendant Pearson
and entered final judgment for DePriest and Armstead in each case.

72 Chapman
v.
City of Virginia Beach
Virginia Supreme Court, 1996

73 wrongful death claim, 8 yr. old,
head entrapped in bars of broken gate

74 allowed access to beach from boardwalk for maintenance vehicles

75 Trial court set aside $300,000 jury verdict
held boardwalk was recreational facility
requiring gross negligence per Sec. 15.1-291

76 ☐ Sup.Ct found boardwalk was public recreational facility
maintenance by highway dept does not make promenade or beach access a street

77 ☐ Whether gross or wanton negligence
combined acts of negligence may have cumulative effect showing reckless or total disregard for another's safety

78 ☐ Deliberate conduct is important evidence
on the question of
gross negligence
usually matter for jury to decide

79 ☐ Here, all gates on boardwalk were to be kept closed
except for city maintenance

80 ☐ Supervisor in charge of maintaining gate
informed at least 3x prior to accident gate was broken by employee in charge of inspecting & reporting

81 ☐ Supervisor had authority, but did not direct immediate action
in response to inspection reports

82 ☐ Supervisor deliberate decision
not to order gate to be repaired or secured
at time reports made

83 ☐ Supervisor: most of the maintenance work on the boardwalk
is done in the spring,

prior to the tourist season

84 Boardwalk was recreational facility maintained by City
gates to be closed under City's operating procedures

85 Despite repeated notices by its own employee
City did not take any action
decision not to take any action was deliberate

86 Whether contributory negligence for parent to allow children to play unsupervised

87 City: parent saw children swinging on gate, did not try to stop them or secure gate

88 Parent has duty to exercise ordinary care for child's safety

89 but duty does NOT extend to absolute requirement that parent oversee and guide child's activities every moment

90 Here, daughter was familiar with area
and parent's supervision of her was reasonable under circumstances

91 DECKER v. HARLAN
SUPREME COURT OF THE STATE OF VIRGINIA
June 9, 2000

92 whether Code § 15.2-1809 bars a plaintiff's tort claims against the City of Hampton,

93 operates the Hampton Coliseum, and its employee, a building mechanic assigned to work at that facility.

94 A refuse truck was regularly used to remove trash that accumulated in the Coliseum.

95 The truck is owned by the City of Hampton and "assigned by the City to the . . . Coliseum."

96 DePriest, we considered whether a bus was a "recreational facility" within the meaning of Code § 15.1-291, the predecessor statute to Code § 15.2-1809.

97 "[o]bviously, the county was not operating a 'recreational facility' when it was transporting passengers by bus to an outing in Williamsburg.

98 In these cases, the bus and Pearson's use of it simply served as a means of transportation."

Coliseum is a recreational facility within the intendment of Code § 15.2-1809.

99 We have held that the statutory term "recreational facility" contained in Code § 15.2-1809 is unambiguous and means "a place for citizens' diversion and entertainment.

100 It is a place . . . where members of the public are entertained and diverted, either by their own activities or by the activities of others."

101 City could not operate the Coliseum unless the trash was removed and that trash removal was "a part of the normal maintenance of the

building."

102 A food festival was scheduled to be held at the Hampton

103 Coliseum the day after the accident, and Harlan needed to empty the refuse truck in preparation for that event.

104 refuse truck that Harlan was operating when the accident occurred was assigned to the Hampton Coliseum

105 for specific use of transporting trash, generated by events at the Coliseum,

106 removal of trash created by the use of the recreational facility was a necessary and essential aspect of the maintenance or operation of the Coliseum

107 thus, Code § 15.2-1809 bars Decker's claims.

108 CITY OF LYNCHBURG v. BROWN
Supreme Court of Virginia
June 9, 2005

city was free of gross negligence
no notice of damaged bleacher seat

109 VIRGINIA CHARITABLE IMMUNITY FALL ON ROPES COURSE

KUYKENDALL v. YOUNG LIFE
W.D. Va.
November 7, 2006

110 Virginia's charitable immunity doctrine

Kuykendall bears the burden of proving gross or willful and wanton negligence

111 State Recreational Use Statutes

112 VIRGINIA RECREATIONAL USE IMMUNITY FOR CITY BEACH ACCESS

CITY OF VIRGINIA BEACH v. FLIPPEN
Supreme Court of Virginia

113 State recreational use statutes
Lowers landowner liability standard from ordinary negligence
To willful or wanton misconduct.

114 Every state with jurisdictional variations
Based in whole or part
On 1965 model state statute

115 Purpose: encourage owners of land to make land & water areas available
For public rec. Purposes by limiting liability to persons enteri ng for rec. Purposes

116 Owner opens land for public recreation use free of charge
no duty to guard warn or make premises reasonably safe for such use.

117 Exceptions
Willful/wanton misconduct

Fee or consideration

Willful/wanton (Malicious) misconduct

118 ☐ Applies to rec. User Traditional trespasser standard.
Willful & wanton misconduct

Willful: intent to injure

Wanton, utter disregard for physical wellbeing of others.

119 ☐ Fee exception
if money paid for use of premises where injury occurred.

Consideration, any economic benefit conferred for use of land.

120 ☐ If entrance fee
Immunity exception

For entire premises.

121 ☐ Land defined:
land, roads, water, watercourses, & bldgs, structures, &

Machinery or equipment when attached to realty.

Va. "whether urban or rural"

122 ☐ Owner defined

123 ☐ Possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

124 ☐ Recreational purposes includes, but is not limited to, and combinations of,

125 ☐ Hunting, fishing, swimming, boating, camping,...

Picnicking, hiking, pleasure driving, nature study, water skiing, winter sports,

126 ☐ And viewing or enjoying historical, archeological, scenic, or scientific areas.

127 ☐ Va. includes rock climbing, skydiving, hang gliding, engage in races, participation in water sports

"or, for any other recreational use"

128 ☐ "Charge":
the admission price or fee asked in return for invitation or permission to enter or go upon the land.

129 ☐

130 ☐