

INFORMATION PAPER
RECREATION USE OF LAND AND WATER ACT

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Background: Pennsylvania is one of 49 states with some form of legislation protecting landowners who hold their lands and waters open for free public recreational use.¹ In 1966, Pennsylvania enacted model state legislation suggested by the Council of State Government. Pennsylvania's law is set forth in the Act of February 2, 1966, P.L. (1965) 1860, No. 586, as amended, 68 P.S. § 477-1 *et seq.* Pennsylvania amended this law in 1992 to include "cave exploration" in the list of recreational purposes. The law was amended again in 2007 to limit the liability of property owners with regard to injuries to individuals or property caused by hunting,² and again in 2011 to include certain recreational noncommercial aircraft activities."³

Purpose: The purpose of the Recreation Use of Land and Water Act (also known as "RULWA") is "to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability."

Who's Protected and When: The Act protects public and private landowners from liability for simple negligence for injuries arising out of the **free** recreational use of lands and waters. Pennsylvania courts have held that an easement holder who has sufficient control over a piece of property so as to be deemed in possession also may benefit from liability protection under the Act.⁴ Under Pennsylvania precedents, the Act applies to lands that are largely unimproved in character and where no admission fee is charged.

When the Act Doesn't Apply: Landowners can still be liable for "willful or malicious failure to guard or warn against a dangerous condition." Landowners may be liable when they have actual knowledge of a dangerous condition and the danger is not obvious to those entering the land.⁵

Implications of Allowing Public Access: RULWA protects owners of unimproved property held open for free public use for fishing, boating, hunting and other recreational purposes. However, landowners must recognize that the scope of RULWA's protection is not completely clear. Several court cases have provided guidance in determining the scope of the Act.

Improvements to Land: The primary issue is whether RULWA's protections apply to improvements to real estate, such as access ramps and paths, including ramps for persons with disabilities, fishing and boating piers, boat launch ramps, docks, stream improvement projects, dams and impoundments. In narrowing the protections afforded by this law, the Pennsylvania Supreme Court has observed that the act was intended to apply to large land holdings for outdoor recreational use. Even though the definition of "land" in the 1966 law (68 P.S. § 477-2) clearly includes buildings, structures, machinery or equipment when attached to the real estate, Pennsylvania courts have held its protections do not apply to some situations involving substantially improved real property. A court has found that RULWA did apply in the case of a foot path created by continuous usage. In that case, the court ruled the property owner was not required to install a warning sign or fence between his property and the adjacent municipal park.⁶

The courts also have held that the Act doesn't protect owners of improved property such as an indoor swimming pool,⁷ a basketball court in an urban park,⁸ a playground,⁹ an outdoor swimming pool,¹⁰ a lacrosse field,¹¹ bleachers at a softball field located in a rural area,¹² the pathway between two softball fields,¹³ Penn's Landing in Philadelphia¹⁴ and a giant slide at a county park.¹⁵ The courts have observed that users of these improved facilities may reasonably expect them to be subject to regular safety inspection and maintenance.

On the other hand, courts have held that the Act's protections do apply to a pond and a football field in a city park in the City of Philadelphia,¹⁶ an embankment in a county park in Allegheny County,¹⁷ a sledding hill in Valley Forge National Historic Park¹⁸ and an electric utility easement with a swing gate and gravel road.¹⁹

To some extent, litigation has clarified the extent of the so-called "improvements exception" to RULWA's protections. In 1998, the Pennsylvania Superior Court ruled that the damming of the Susquehanna River was an "improvement" and that the RULWA did not protect power companies who maintained the dam from liability in a drowning case.²⁰ This broad holding was narrowed by the State Supreme Court. In 2000, the state's highest court reviewed this case and ruled that the RULWA applied to the lake created by damming the Susquehanna River. Thus, the owner of the dam could claim the protections of RULWA with regard to claims arising from boating, swimming, etc. on the lake (as opposed to maintenance of the dam). However, the court held that RULWA did not limit the dam owner's liability with regard to claims related to the dam itself.²¹ Also in 2000, the Commonwealth Court held that a township was entitled to the immunity provisions of RULWA in a claim by a minor who drowned near a low head dam situated on a creek located in a county park. The court carefully analyzed the factors involved in determining how to treat the low head dam for RULWA purposes and concluded that the Township was insulated from tort liability.²² Similarly, in 2013, the Superior Court applied the protections of RULWA to boating activities on a man-made lake, even though the land surrounding the lake had been highly developed for recreational uses.²³

Impacts of the current state of the law: Improvements to lands and waters to provide access for outdoor recreation such as hunting, fishing and boating are much different from urban playgrounds and swimming pools. The current state of the law has created some uncertainty about whether the landowner protections apply to such "improvements" as a boat docks, parking lots (gravel, dirt or paved), launch ramps, hunting blinds, hiking trails or lakes or ponds created by impounding a stream. Although recent cases have somewhat clarified the property covered by RULWA, there remains a substantial zone where it is difficult to identify the liability exposure of a particular landowner (if any) in advance.

The uncertain state of the law on what constitutes an improvement continues to raise legal questions. It has discouraged some landowners, clubs and organizations from going forward with proposed projects for persons with disabilities. Such projects may include installation of parking areas near fishing, boating, or hunting opportunities, construction of paths, trails or ramps suitable for wheelchair use leading from parking areas to land and water areas, and installation of fishing piers and boat docks. Landowners considering adding these types of improvements to their property should consult their legal counsel.

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Notes:

¹ At this time, North Carolina is the only state without such legislation.

² Act 11 of 2007.

³ Act 47 of 2011.

⁴ *Stanton v. Lackawanna Energy, Ltd.*, 820 A.2d 1256 (Pa. Super. 2003), *aff'd*, 584 Pa. 550, 886 A.2d 667, 673 (2005).

⁵ *Flohr v. PP&L*, 821 F. Supp. 301 (E.D. Pa. 1993).

⁶ *Rightnour v. Borough of Middletown*, 48 Pa. D&C 4th 117 (Dauphin C.C.P. 2000).

⁷ *Rivera v. Philadelphia Theological Seminary*, 510 Pa. 1, 507 A.2d 1 (1986).

⁸ *Walsh v. City of Philadelphia*, 526 Pa. 227, 585 A.2d 445 (1991).

⁹ *DiMino v. Borough of Pottstown*, 142 Pa. Cmwlth. 683, 598 A.2d 357 (1991).

¹⁰ *City of Philadelphia v. Duda*, 141 Pa. Cmwlth. 88, 595 A.2d 206 (1991).

¹¹ *Seiferth v. Downingtown Area School District*, 145 Pa. Cmwlth. 562, 604 A.2d 757 (1992).

¹² *Brown v. Tunkhannock Township*, 665 A.2d 1318 (Pa. Cmwlth. 1995).

¹³ *Hatfield v. Penn Township*, 12 A.3d 482 (Pa. Cmwlth. 2010).

¹⁴ *Mills v. Commonwealth*, 534 Pa. 519, 633 A.2d 1115 (1993).

¹⁵ *Bashioum v. County of Westmoreland*, 747 A.2d 441 (Pa. Cmwlth. 2000).

¹⁶ *Lory v. City of Philadelphia*, 544 Pa. 38, 674 A.2d 673 (1996), *Davis v. City of Philadelphia*, 987 A.2d 1274 (Pa. Cmwlth. 2010).

¹⁷ *Brezinski v. County of Allegheny*, 694 A.2d 388 (Pa. Cmwlth. 1997).

¹⁸ *Blake v. United States*, 1998 WL 111802 (E.D. Pa. 1998). This case includes a discussion of state precedents on application of the RULWA.

¹⁹ *Stanton v. Lackawanna Energy, Ltd.*, 951 A.2d 1181 (Pa. Super. 2008).

²⁰ *York Haven Power Company v. Stone*, 715 A.2d 1164 (Pa. Super. 1998).

²¹ *Stone v. York Haven Power Company*, 561 Pa. 189, 749 A.2d 452 (2000).

²² *Pagnotti v. Lancaster Township*, 751 A.2d 1226 (Pa. Cmwlth. 2000) (appeal dismissed June 20, 2001).

²³ *Ruspi v. Glatz*, 69 A.3d 680 (Pa. Super. 2013).