



Weekly Law Resume

A Newsletter published by Low, Ball & Lynch
Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

Issue By: Mark Hazelwood

August 12, 2010

Government Liability - Recreational Immunity Statute Does Not Shield Landowner From Liability Caused By Negligent Driving of Employee

Klein v. United States of America

California Supreme Court (July 26, 2010)

California Civil Code section 846 provides immunity to California landowners for injuries sustained by recreational users of the property. The issue in this case involves whether section 846 applies to acts of vehicular negligence committed by a landowner's employee that cause personal injury to a recreational user of the land.

In 2004, Plaintiff Richard Klein was riding his bicycle on a public, two-lane, paved road in Angeles National Forest. The park is owned by the U.S. Government. Klein was struck by an automobile driven by a volunteer for the U.S. Fish and Wildlife Service, and suffered serious injuries. Klein brought suit against the United States and the volunteer in U.S. District Court alleging that the United States was vicariously liable for the vehicular negligence of the volunteer.

The United States filed a summary judgment motion asserting that section 846 provided immunity from accidents occurring on its' land to recreational users. The district court granted the motion and Plaintiff appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit requested that the California Supreme Court provide clarification as to whether section 846 applies to vehicular accidents. The Supreme Court concluded that section 846's liability shield does not extend to acts of vehicular negligence by a landowner or the landowner's employee.

The United States contended that section 846 should be interpreted broadly and that landowners should not have a duty to protect recreational users. The Supreme Court held that such an interpretation of the statute was

San Francisco Office

505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office

2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com



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inconsistent with the language of section 846 and the Legislature's intent. Section 846 sets forth that: "an owner of any estate or any interest in real property ... owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose...." The Court interpreted the phrase "keep the premises safe" to infer a premises liability duty, a liability category that does not include vehicular negligence. The Court reasoned that if the Legislature had intended to provide complete immunity for recreational injuries, it would have simply included language that landowners owe not duty of care to avoid injuries to person using their land for recreation. Instead, the Legislature selected language implying a narrower immunity. The Court's research of the Legislative intent of the statute was consistent with its' conclusion. The Court also commented that from a public policy standpoint, the State has a strong interest in promoting safe driving - especially on the millions of acres of National Park and National Forest land owned by the U.S. Government. With this clarification of section 846, the case was referred back to the Ninth Circuit for further disposition.

COMMENT

This decision places a restriction on public or private landowners' reliance on recreational immunity, pursuant to Civil Code section 846. This decision may also place a similar restriction on the scope of California Government Code section 831.7, which immunizes public entities for injuries sustained during a hazardous recreational activity.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/S165549.PDF](http://www.courtinfo.ca.gov/opinions/documents/S165549.pdf)

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Web: www.lowball.com