

LIABILITY AND RAIL-TRAILS IN PENNSYLVANIA

New trail managers are often concerned that managing a trail will expose them to liability for trail-user injuries, or worry about the high cost of purchasing insurance to protect from potential lawsuits. However, trail managers have a number of legal protections that limit their exposure to liability. As a result of these legal tools, when coupled with sound risk management practices, liability concerns should not normally be an impediment to the development or management of a trail.

General Liability Categories

In general the liability of owners and occupiers of land is defined by the extent to which one person owes a “duty of care” to the person who sustained an injury. Under these principles, a higher duty of care is owed to persons who are invited or permitted to use another’s land, and therefore a correspondingly greater liability is owed to such permittees or invitees. The lowest duty of care is owed to trespassers, who are protected only from the infliction of intentional harm or gross negligence. Trail managers or private landowners who charge a fee are at greater risk of liability because they owe the payee a greater responsibility to provide a safe experience.

Trespasser—A person on land without the landowner’s permission, whether intentionally or by mistaken belief that he or she is on public land. Trespassers pose the lowest level of liability risk. The landowner is generally not responsible for unsafe conditions (see Children). The landowner is generally not responsible for discovery or warning against unsafe conditions, but can be held liable for deliberate or reckless misconduct, such as putting up a trip wire.

Licensee—A person on land with the owner’s permission but only for the visitor’s benefit. This situation creates a slightly higher liability for the landowner. For example, a person who is permitted to hunt on a farm without paying a fee, if there were no recreational immunity act in Pennsylvania (see information on RULWA below), would be classified as a licensee. Again, the landowner is not responsible for discovering unsafe

conditions; however, the landowner must provide warning of known unsafe conditions.

Invitee—A person on the owner’s land with the owner’s permission, expressly or implied, for the owner’s benefit, such as a paying customer. (In the example above, for instance, if the farmer charged the hunter a fee, the hunter would probably be classified as an invitee.) This is the highest level of responsibility and therefore carries the highest level of liability. The owner is responsible for unknown dangers that should have been discovered. For example, the landowner has a duty to:

- inspect the property and facilities to discover hidden dangers;
- remove the hidden dangers or warn the user of their presence;
- keep the property and facilities in reasonably safe repair;
- anticipate foreseeable activities by users and take precautions to protect users from foreseeable dangers, and;
- post signs warning of possible dangers.

The landowner does not ensure the invitee’s safety, but must exercise reasonable care to prevent injury. Generally, the landowner is not liable for injuries caused by open or obvious dangers or where there has been an appropriate warning.

Children—Most states, including Pennsylvania, accord children a higher level of protection, even if trespassing. Pennsylvania has adopted the attractive nuisance or “child trespasser” doctrine where a child is harmed by an artificial condition on land. Artificial or manmade conditions that change the natural landforms, such as a quarry, can be attractive to children who are unaware of potential danger and may be injured if they explore the area. A landowner must show that he or she has made a reasonable effort to eliminate any dangerous conditions or otherwise keep children safe from any such area where the owner knows or has reason to know that children are likely to trespass and when the artificial condition has the potential to cause death or serious bodily injury.

Legal Principles Governing Liability

Pennsylvania, like many states, alters these general legal principles governing liability through the enactment of statutes. For example, trail managers often receive special protection from liability by state-enacted Recreational Use Statutes. Recreational Use Statutes (RUS), which are in effect in some form in all 50 states, limit the liability of landowners who allow the public to use their land for recreational purposes by limiting the landowner's liability for recreational injuries when access was provided without charge. RUS's alter common law tort principles for certain landowners who allow the public free use of their land for recreational purposes. While such landowners might normally owe a higher duty of care toward recreational users as licensees, a RUS limits the duty of care and corresponding liability of such landowners to that owed to trespassers.

The distinction drawn by the RUS between ordinary negligence, for which the RUS limits the trail manager's liability, and "willfully or maliciously" inflicted harm, for which liability is retained, is often a subtle one. In Pennsylvania, liability is retained not only for "intentional infliction of harm" but also for willful or malicious failure to warn of dangerous conditions. For example, the failure to inspect the trail to identify potential hazards about which the trail manager is unaware, such as a hole, obstructions in the trail, or other potentially hazardous conditions, might be considered ordinary negligence for which the trail manager is not responsible. However, a court might find the fact that the trail manager was aware of a previous injury caused by a danger hidden to users, and did nothing to inspect, fix or warn of the danger to be willful or even malicious.

Pennsylvania's Statutory Protections for Trails

Pennsylvania has several statutes that are potentially available to limit the tort liability of trail managers in the event a person suffers personal or property injury while using the trail. First, Pennsylvania has enacted a recreational use statute, which is called the Recreation Use of Land and Water Act (RULWA), 68 P.S. §§ 477-1 to 477-8 (2003). Under RULWA, "an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes," 68 P.S. § 477-3. However, liability is not limited "for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity," 68 P.S. § 477-6(1). Liability is also not limited for injuries suffered if the owner charges for entry onto the land, 68 P.S. § 477-6(2). The law covers more than just pure "owners." Possessors, trail managers and lessors are protected, too. The RULWA is applicable to both public and private landowners. See *Favoroso v. Bristol Borough*, 569 A.2d 1045, 1046-47 (Pa. Commw. 1990). Even if the landowner doesn't charge a fee but the trail manager does, the parties are not eligible for RULWA protection. Consideration received for land leased to the state or one of its subdivisions is not considered a fee within the meaning of 68 P.S. § 477-6(2).



The Pennsylvania Supreme Court has held that RULWA does not insulate owners of fully developed recreational facilities from the normal duty of maintaining their property in a manner consistent with the property's designated and intended use by the public, *Mills v. Commonwealth*, 633 A.2d 1115, 1119 (Pa.1993). Instead, RULWA's protections are limited to substantially unimproved land. Therefore, if a recreational facility has been designed with improvements that require regular maintenance to be safely used and enjoyed, the owner of the facility has a duty to maintain the improvements, *Stone v. York Haven Power Co.*, 749 A.2d 452, 456 (Pa. 2000).

Pennsylvania's Rails to Trails Act, 32 P.S. § 5611 *et seq.*, also limits liability for recreational trail use in a similar manner to Pennsylvania's RUS. Liability is limited for the owner or lessee who permits trail use by the public under the Rails to Trails Act. Like the RULWA, the act applies to both private and public owners, 32 P.S. § 5621(b). Also as with RULWA, liability is not limited if there are any fees charged in connection with trail use or for "willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity." 32 P.S. § 5621(d).

Risk Management

Pennsylvania's Rails to Trails Act and RULWA are defenses that may be available to limit the liability of a trail manager in the event of a personal injury lawsuit. Nonetheless prudent trail managers should adopt risk management strategies to minimize the possibility of injuries on the trail and to protect themselves in the event they are sued. Trail managers should:

- design the trail for safety;
- use prominent signage to warn users of potentially dangerous areas;
- regularly inspect the trail and correct any unsafe conditions; keep records of inspections and remedial changes;
- prominently post hours of operation and other rules and regulations, along with emergency contact information;
- develop procedures for handling medical emergencies,
- incorporate, which may limit the personal liability of principals;
- purchase insurance or place the trail in public ownership, where it can be covered by the overall insurance policy of the city, county or state, and;
- understand the state recreational use statute and other pertinent laws.



CASE STUDIES

Youghiogheny River Trail, Pennsylvania

Regional Trail Corporation is a non-profit (501c3) partnership whose mission is to acquire, develop, and manage trail corridors in southwestern Pennsylvania and to create and promote opportunities for recreation, tourism, economic development, and historic and environmental conservation. Regional Trail Corporation is the developer and manager of the north section of the Youghiogheny River Trail (the “Yough Trail,” or YRT), and is assisting the development of three other trails in the area.

The north section of the Yough Trail is a 43-mile, crushed-limestone surfaced trail built along the railbanked right-of-way of the Pittsburgh & Lake Erie Railroad between McKeesport and Connellsville in southwestern Pennsylvania. Designed as a non-motorized, shared-use, recreational trail, the Yough Trail is just one part of a 150-mile network of trails that runs from Pittsburgh, Pa., to Cumberland, Md., known as the Great Allegheny Passage.

A total of nine local volunteer organizations report to the Regional Trail Corporation and are responsible for the maintenance of the four trails, while the corporation, with one full-time paid staff and one part-time office staff, manages and coordinates their efforts. Regional Trail Corporation has purchased each of the corridors that it manages and carries liability insurance for these properties. Although a few liability suits have been threatened over the 15-year history of the corporation, nothing has ever gone to court.

The Mon/Yough Trail Council is one of nine organizations reporting to Regional Trail Corporation, and they perform the actual maintenance on the north section of the YRT. The Mon/Yough Trail Council oversees a team of approximately 25 volunteer

monitors who patrol the trail on bikes, by foot and on horseback. The monitors are identified by their gold-and-black jerseys or T-shirts and carry first aid kits and cell phones. They complete a training program sponsored by the Regional Trail Corporation two times a year that includes First-Aid, as well as instruction on what to do when a maintenance or safety issue is confronted. The monitors report trail damage and physical injuries to the manager of the Regional Trail Corporation by phone call and written report. When maintenance issues occur that cannot be dealt with immediately, safety cones and/or tape are used to clearly mark the hazard. Photographs are taken in order to document the site. The hard copy records are kept for one year by the Mon/Yough Trail Council and then filed with Regional Trail Corporation. Signage with rules of the trail, contact information and maps are posted at each trailhead.

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Perkiomen Trail, Pennsylvania

The 20-mile Perkiomen Trail in Montgomery County, Pennsylvania, is owned and managed by the Montgomery County Department of Parks and Heritage Services. The asphalt and gravel trail connects to three separate county parks along its route. This trail is a primary bike corridor in the greater Philadelphia area with downtown Philadelphia just 25 miles away. It is accessible via a connecting rail-trail, the Schuylkill River Trail. When the Perkiomen Trail opened in 2003, the county established the position of regional trails manager within the parks department.

Since the trail is part of the county park system, Regional Trails Manager Rich Wood relies on the park maintenance staff and rangers to patrol the trail and carry out maintenance tasks. The trail does not use volunteers for any ongoing tasks, although there are special community clean-up events scheduled several times a year when volunteers are solicited. The trail does not have a friends group. Maintenance and safety procedures have been dictated by the County Department of Parks, with written Standard Operating Procedures for safety inspections and any incidents that require first-responders. Liability protection is provided via Montgomery County, which is self-insured.

Each park along the trail has accepted responsibility for a designated section of trail, and maintenance inspections are performed weekly. “The park rangers are the real eyes and ears of the trail for alerting the maintenance staff,” says Wood. Park rangers patrol the trail twice daily at a minimum and will notify the maintenance foreman of any problems. The park maintenance foreman will then decide what work is required and if necessary contact the regional trails manager.

Signage on the trail includes warnings at all road crossings, as well as signs posting expected trail etiquette, trail maps, and contact information. In many areas the Perkiomen Trail is bordered by large, old-growth trees and it parallels the Perkiomen Creek, so wind and rain storms can be the trail’s biggest problem. The staff has



Perkiomen Trail, Pa. © John Corcoran / Rails-to-Trails Conservancy

set procedures for clean-up along the trail following a storm event, when whole sections of the trail may have to be barricaded and closed until flood waters subside.

“Our trail users are our best maintenance observers,” reports Wood. “Often they will call the park office from their cell phones while they are still out on the trail.” Park rangers will inspect the area that has been reported and if necessary contact maintenance staff and/or barricade the area. The Park Maintenance Department documents their work and files the record with the appropriate park office. Park staff file an incident report for situations requiring first-responders such as police or ambulance. These reports would be accepted in a court of law. In the case of physical injury, it is likely that 911 is called first by the trail user. The police are obligated to notify the park staff that there has been an incident. “It is imperative that we maintain a good relationship with the first-responders; they are most likely to be the first on the scene in the event of a physical injury,” says Wood. The County Parks Department and the regional trails manager are currently drafting a written chain-of-command and procedures manual.

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Glossary

Contributory Negligence: If the injured party (plaintiff) was not acting in a reasonable and prudent manner, he or she may be shown to have contributed to the cause of the accident. This “contributory negligence” may result in a ruling against the plaintiff or limit damages.

Duty of Care: Before “negligence” can be proven, courts first determine what “duty of care” is owed to the injured party by the owner/operator of the premises. The duty of care owed depends on the status of the injured party as a trespasser, licensee or invitee.

Liability: Generally meaning responsible and answerable. Liability entails a legal responsibility that includes being bound to do something that may be enforced by [court] action.

Negligence: The failure to exercise a standard of care that a reasonable person would have in a similar situation; any conduct short of intentional or reckless action that falls below the legal standard of reasonable care.

Plaintiff: The party that initiates a legal action in a court of law.

Sovereign Immunity: A principle of immunity from suit that was historically available to state governments. Starting in the 1950s, courts began to erode government immunity, exposing states and political subdivisions to liability. Since that time, many states have enacted “tort claims” statutes that partially waive the government’s sovereign immunity for specified classes or categories of actions, while placing limits on such suits.

Tort: A wrongful act, not including breach of contract or trust, that results in injury to another’s person, property or the like, and for which the injured party is entitled to damages.

Resources:

Rail-Trails and Liability, A Primer on Trail-Related Liability Issues & Risk Management Techniques, Rails-to-Trails Conservancy, 2000.

“Trails for the Twenty-First Century, Planning, Design and Management Manual for Multi-Use Trails,” Rails-to-Trails Conservancy, 2001

Rail-Trail Maintenance and Operation, Ensuring the Future of Your Trail, Rails-to-Trails Conservancy, 2005

Pennsylvania’s Recreational Land and Water Use Act — fact sheet, Pennsylvania Department of Conservation and Natural Resources, 2006, www.dcnr.state.pa.us/brc/publications/

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