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## Ravenscroft v. Washington Water Power Co., 969 P.2d 75 (Wash. 1998)

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without having to prove that Subsidiary caused or knew of the pollution.

The court also rejected Subsidiary's argument that this was an abuse of the state's police powers. The court held Subsidiary failed to explain or demonstrate that the DEP's directive would have a severe economic impact on its business, or that the directive was a physical intrusion by the government.

*Melody Divine*

## WASHINGTON

**Ravenscroft v. Washington Water Power Co., 969 P.2d 75 (Wash. 1998)** (holding that submerged tree stumps which caused plaintiff's injuries while boating were "artificial" within the meaning of the applicable statute as a matter of law, but whether stumps represented a "latent" condition was a question for the trier of fact).

To increase the production of electricity from Long Lake Dam, the Washington Water Power Company ("WWP") raised the level of water in Long Lake Reservoir over a period of years. Raising the water level submerged the bases of trees around the perimeter of the lake. WWP removed the trees but left their stumps, which, when WWP holds the reservoir at maximum level, lie below the surface of the water. While boating on Long Lake Reservoir, the plaintiff was injured when his motor hit one of the submerged tree stumps. The stump flipped the motor into the boat, striking the plaintiff in the head and shoulders.

The Washington Supreme Court's analysis turned upon the Washington recreational use statute, RCW 4.24.200-.210. Washington's Revised Code 4.24.210 exempts landowners from liability for injuries sustained by the public while recreating on the landowner's property except where the injury stems from a "known dangerous artificial latent condition for which warning signs have not been conspicuously posted."

The purpose of the statute is to encourage landowners to hold their property open to the public for recreational purposes without the fear of liability. A landowner's potential for liability is narrow—it applies only to specific, limited conditions over which the landowner presumably has more control.

The issues in this case pertaining to the first defendant, WWP, were whether the stumps created an "artificial" and "latent" condition as a matter of law, thereby supporting summary judgment in favor of the plaintiff. The court held that the condition was artificial due to the "man-made change in the natural condition of the water channel . . . ." The court reasoned WWP created the injury-causing condition by cutting dead trees down, leaving their stumps near the middle of the

water channel, raising the level of water covering the stumps, and failing to place buoys where the stumps remained. The court reasoned that human effort creates an "artificial" condition.

"Latent," as defined by Washington case law, means "not readily apparent to the recreational user." An additional inquiry is whether the injury-causing condition is "readily apparent to the general class of recreational users, not whether one user might fail to discover it." The court held the record inconclusive about the latency of the tree stumps; thus, the issue was a matter of fact precluding summary judgment.

The dissent disagreed with the court's interpretation of "artificial." The dissent stated that the purpose of the statute combined with the statutory language and previous case law dictate that "artificial" should be construed narrowly; thus, the majority's definition was overbroad and contrary to the purpose of the statute. The dissent also attacked the majority's latency analysis.

Against the second defendant, the County of Spokane, the plaintiff challenged the public duty doctrine's barring of his claim that he was a third party beneficiary of a funding agreement between the County and the State Parks and Recreation Commission. In Washington, the public duty doctrine bars negligence claims by individuals against a governmental entity absent clear statutory legislative intent to identify and protect a "particular and circumscribed class of persons"— the "legislative intent exception." The intent to protect a specific group must be clearly expressed; it will not be implied. The exception allows a plaintiff to bring a claim against the governmental entity for statute violation if the plaintiff can show his or her membership in the clearly identified class.

Here, the plaintiff argued that an agreement between State Parks and the County made pursuant to the state boating safety grants and contracts program defined the duty of the County toward recreational boaters thereby creating a specific class apart from the public at large. The court held that the County, in the agreement, did not assume responsibilities beyond those existing in statutory and tort law; therefore, the public duty doctrine barred the plaintiff's claim.

*Amy Beatie*

**Wedden II v. San Juan County, 958 P.2d 273 (Wash. 1998)** (holding that an ordinance banning personal watercraft is not in conflict with other state law, and does not violate county's police powers or substantive due process).

After reviewing the negative effects of motorized personal watercraft (essentially "jet skis" or "PWCs") on marine life and tourism, San Juan County passed an ordinance banning the use of them "on all