

34327

---

**IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA**

---

**CARL WAYNE VAUGHAN, as Administrator of the Estate of  
RANDALL WAYNE VAUGHAN,**

**PLAINTIFFS**

v.

**CIVIL ACTION NO. 05-C-767  
Judge David M. Pancake**

**GREATER HUNTINGTON PARK AND RECREATION  
DISTRICT, INGRAM BARGE COMPANY, THE OHIO  
RIVER COMPANY LLC and THE OHIO RIVER  
TERMINALS COMPANY LLC,**

**DEFENDANTS**

---

**ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON THE ISSUE THAT THE CLAIM OF  
DEFENDANTS INGRAM BARGE COMPANY, THE OHIO RIVER COMPANY  
LLC, AND THE OHIO RIVER TERMINALS COMPANY LLC THAT  
THE WEST VIRGINIA RECREATIONAL IMMUNITY STATUTE  
APPLIES TO THE FACTS OF THIS CASE**

---

On June 14, 2007, came the parties, by Counsel, pursuant to Plaintiff's Motion for Partial Summary Judgment on the issue of the claim of the Defendants Ingram Barge Company, The Ohio River Company LLC and The Ohio River Terminals Company LLC ("Barge Line Defendants") that the W. Va. Code §19-25-2, *et seq.*, referred to herein as the West Virginia Recreational Immunity Statute, applied to the facts of this case;

The Court having reviewed the Plaintiff's Motion and the Responses of the parties hereto, and having heard oral argument on the matter, does hereby find as follows:

The West Virginia Recreational Immunity Statute, further set out in W. Va. Code §19-25-2, and as referenced in the Mitigation Agreement entered into between the Public Land Corporation and The Ohio River Company LLC, was established with the intent to encourage public recreation upon private lands while limiting the landowner's liability to those entering upon the land for such purposes.

The Court finds that the Barge Line Defendants did not hold out their real or personal property for recreational use and that, therefore, W. Va. Code §19-25-2, *et seq.* does not shield the Barge Line Defendants in this case.

Accordingly, it is ADJUDGED, ORDERED and DECREED, there is no genuine issue as to any material fact on this matter and that the Barge Line Defendants are not entitled to assert the Recreational Use Statute, W. Va. Code §19-25-2, *et seq.*, as a defense in this case.

The Court expressly finds that final judgment is entered on this issue pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure, and under West Virginia Code Section 58-5-1. The Court further finds that there is no just reason for delay. Therefore this is a final and appealable Order of this Court as to this issue.

The Clerk is directed to file this Order accordingly and to forward Copies of such Order to counsel of record at the following addresses:

Charles M. Hatcher, Jr., Esquire  
*Hatcher Law Office*  
636 Fifth Ave.  
Huntington, West Virginia 25701

R. Carter Elkins, Esquire  
Laura L. Gray, Esquire  
W. Joseph Bronosky, Esquire  
**Campbell, Woods, Bagley,  
Emerson, McNeer & Herndon, P.L.L.C.**  
Post Office Box 1835  
Huntington, West Virginia 25719-1835

Michael M. Fisher, Esquire  
Robert H. Akers, Esquire  
**Offutt, Fisher and Nord**  
Post Office Box 2833  
Charleston, West Virginia 25330-2833

E. Spivey Gault, Esquire  
Carl J. Marshall, Esquire  
**Gault, Marshall, & Miller, PLLC**  
Post Office Box 30  
Paducah, Kentucky 42002-0030

ENTERED this the 29 day of October, 2007.

/s/ DAVID M. PANCAKE

Honorable David M. Pancake

STATE OF WEST VIRGINIA  
COUNTY OF CABELL  
I, ADELL CHANDLER, CLERK OF THE CIRCUIT  
COURT FOR THE COUNTY AND STATE AFORESAID  
DO HEREBY CERTIFY THAT THE FOREGOING IS  
A TRUE COPY FROM THE RECORDS OF SAID COURT  
ENTERED ON \_\_\_\_\_  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT  
THIS \_\_\_\_\_  
*Adell Chandler* CLERK  
CIRCUIT COURT OF CABELL COUNTY WEST VIRGINIA

Drafted and Approved By:



Michael M. Fisher, Esquire (WV #4353)  
Robert H. Akers, Esquire (WV #9622)  
**Offutt, Fisher and Nord**  
Post Office Box 2833  
Charleston, West Virginia 25330-2833

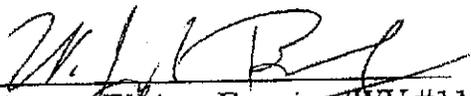
and

E. Spivey Gault, Esquire  
Carl J. Marshall, Esquire  
Gault, Marshall, & Miller, PLLC  
Post Office Box 30  
Paducah, Kentucky 42002-0030

Reviewed By:



Charles M. Hatcher, Jr., Esquire (WV #1633)  
**Hatcher Law Office**  
636 Fifth Ave.  
Huntington, West Virginia 25701



R. Carter Elkins, Esquire (WV #1116)  
Laura L. Gray, Esquire (WV #5240)  
W. Joseph Bronosky, Esquire (WV #6051)  
**Campbell, Woods, Bagley,**  
**Emerson, McNeer & Herndon, P.L.L.C.**  
Post Office Box 1835  
Huntington, West Virginia 25719-1835