

# IMMUNITY DEFENSES

Fairgrounds, by virtue of the activities they attract, tend to foster claims against the agricultural society that operates them. Individuals injured while frequenting a member-owned fairgrounds may look to the agricultural society for payment of their damages. The defense of these claims often involves the application of common law and statutory defenses, including several immunity arguments.

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IMMUNITY DEFENSES





These immunities are granted because the law recognizes the valuable but sometimes risky role fair activities play in the community. The threat of litigation and liability may otherwise hinder municipalities from offering these activities.

Caps on damages and statutory immunities are governed by Minnesota Statutes, Chapter 466.

Agricultural societies formed pursuant to Minnesota Statutes, Chapter 38, are municipalities within the meaning of that statute. Tort liability is limited and, in certain situations, is completely eliminated because of the immunities delineated in the law. There are also common law immunities that may apply.

## PARK AND RECREATION IMMUNITY

The first immunity that is important to an agricultural society’s operations is park and recreation immunity. Minnesota Statutes, Section 466.03, subdivision 6e provides that a municipality is immune from liability for “[a]ny claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality [agricultural society] that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services, or from any claim based on the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, if the claim arises from a loss incurred by a user of the park and recreational property or services. Nothing in this subdivision limits the liability of a municipality for conduct that would entitle a trespasser to damages against a private person, except as provided in subdivision 23.”

In essence, this statute provides that fairgrounds users are to be treated with the same standard of care applicable to trespassers. The trespasser standard of care (from Restatement (Second) of Torts § 335) is as follows.

A possessor of land is subject to liability for bodily harm caused by *an artificial condition on the land if the condition:*

- is one which the *possessor has created or maintains;*
- is, *to his or her knowledge, likely to cause death or serious bodily harm* to such trespassers;
- is of such a nature that he or she *has reason to believe such trespassers will not discover it;* and
- the possessor has failed to exercise reasonable care to warn of the risk involved.



The injured party has the burden of presenting specific facts to support each element of the claim.

### ELEMENT 1: AN ARTIFICIAL CONDITION THAT IS EITHER CREATED OR MAINTAINED BY THE AGRICULTURAL SOCIETY

Fairgrounds contain artificial conditions that are created by the member during the improvement of the property. Provided the alleged incidents occur in the general vicinity of improvements on the property, it is likely that the first element will be satisfied unless it can be demonstrated that the particular condition duplicates nature.

A rationale for the standard only applying to artificial conditions is that natural conditions are to be expected in a recreational area, and the owner should not be required to patrol the area or to make it safe for those who enter upon it.

### ELEMENT 2: TO THE AGRICULTURAL SOCIETY’S KNOWLEDGE, THE ARTIFICIAL CONDITION IS LIKELY TO CAUSE DEATH OR SERIOUS BODILY HARM

This element has two parts. First, the owner must have actual knowledge of the dangerous condition; potential for harm is insufficient. Actual knowledge can come from complaints, personal observation or



prior activities on the property resulting in the same or similar claims of injury or harm.

The second part of this element is whether the condition is likely to cause death or serious bodily harm. This is usually satisfied and not often the subject of scrutiny by the courts, because the conditions that cause bodily harm generally have inherently dangerous propensities. The main caveat is that these conditions must be likely to cause serious bodily harm, not that serious bodily injury might actually result.

**ELEMENT 3: THE ARTIFICIAL CONDITION IS OF SUCH A NATURE THAT THE AGRICULTURAL SOCIETY HAS REASON TO BELIEVE SUCH TRESPASSERS WILL NOT DISCOVER IT**

The issue is not whether the injured person actually saw the hazard, but whether the hazard would have been visible to someone paying attention to conditions on the land. When a brief inspection (by the trespasser) would have revealed the condition, it is not concealed. Trespassers are required to be alert to conditions existing on the land.

**ELEMENT 4: THE AGRICULTURAL SOCIETY HAS FAILED TO EXERCISE REASONABLE CARE TO WARN OF THE RISK INVOLVED**

This is the one element that is in the sole control of the landowner. A landowner can greatly reduce or eliminate the potential for claims by simply posting appropriate signs warning of potential danger and enforcing the rules regarding use on the fairgrounds.

The adequacies of the warnings may be the subject of debate between the agricultural society and the injured user. Nevertheless, posting signs and advising fairgrounds users of the areas where they should pay particular attention will only work to the advantage of the agricultural society.

Whether users heed the warnings is beyond the control of the organization. If it becomes known that the warnings are not being heeded, the violations must be dealt with pursuant to fairgrounds policies.

Whether park and recreation immunity would apply depends on the specific fairground’s area in question and the facts of each case.

**WHAT IS A RECREATIONAL AREA?**

The agricultural society should be mindful that individuals attempting to overcome park and recreation immunity may assert that the property was not in fact recreational property.

For example, courts have found:

- A golf clubhouse was recreational property because it was part of the same property as the golf course, provided services related to the golf course and facilitated the use of the course.
- Batting cage facilities are recreational property because they facilitate the use of the recreational baseball field properties.
- A sewer pond site used for mud bog races was a recreational area even though the city did not dedicate or specifically designate the sewer pond as a recreational site because the races themselves were recreational in nature.
- A paddleboat operation that was part of a park’s amenities was included as part of recreational property.



*Courts have found a tractor-trailer at a county fairground was included in the definition of recreational property.*

If private, independent contractors operate a certain portion of the agricultural society’s operation, the private operator may not be entitled to park and recreation immunity.

## GENERAL COMMON LAW AND STATUTORY DEFENSES AND IMMUNITY ARGUMENTS

### STATUTORY IMMUNITY

Statutory discretionary immunity is provided for in Minnesota Statutes, Section 466.03, Subdivision 6. It protects municipalities from claims “based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.”

For statutory immunity to apply, the precise governmental conduct in question must be examined. “Planning level” conduct is protected by statutory immunity. Planning level conduct includes public policy questions that require an evaluation or balancing of factors, including the financial, political, economic and social effects of a proposed plan or policy.

“Operational level” conduct is not protected by statutory immunity. Operational level conduct involves decisions relating to the public entity’s day-to-day operations. The application of statutory immunity should always be considered when evaluating potential liability for the entity and its employees.

For example, assume the agricultural society hires nighttime security to patrol the fairgrounds. Due to



*How many security guards the agricultural society decides to hire can be protected by statutory immunity.*

budget constraints, it has to reduce the amount of security guards from four to two. The agricultural society made this decision after weighing the lack of crime previously and the need to make budget cuts.

One night, a theft occurred in one of the barns. One of the victims sues the agricultural society, alleging inadequate security contributed to the theft. Because the agricultural society’s board made the decision balancing factors, it would be argued that the decision was protected by statutory discretionary immunity.

### OFFICIAL IMMUNITY

Official immunity is provided to municipalities and their employees by case law. Official immunity provides that public officials charged by law with duties that call for the exercise of judgment or discretion are not personally liable to an individual for damages unless the official is guilty of a willful or malicious wrong.

Like statutory immunity, official immunity is not limited to fairgrounds areas. The doctrine, however, should always be considered when evaluating potential liability for agricultural societies and their employees. For example, a city’s decision to close a sliding hill was protected by official immunity



*A city’s decision to close a sliding hill can be protected by official immunity*

where an employee exercised professional judgment in making the decision when the conditions required and how to close the hill.

## MANAGE RISKS WITH FORETHOUGHT

Fairgrounds are valuable and precious resources. It is not possible completely to eliminate all claims of injury and harm that may result from activities in such areas. However, as long as the appropriate rules are adopted and enforced by the board, the ability to provide an effective defense of claims arising from activities in the fairgrounds is significantly increased.

The application of the various statutory and common law immunities depends on the particular facts and circumstances of each case, as well as case law on the subject.

For a detailed discussion of Park and Recreation Immunity and other immunities, see “Immunities for Park and Recreation Areas” available at [MCIT.org](http://MCIT.org).



*Adopting and enforcing appropriate rules will help provide an effective defense of claims for fairgrounds.*