Land & Water Law Review

Volume 2 | Issue 2 Article 9

1967

The Status of Visitors in the National Parks Located in Wyoming - Federal Liability under Current Applicable Wyoming Law

John R. Hursh

THE STATUS OF VISITORS IN THE NATIONAL PARKS LOCATED IN WYOMING--FEDERAL LIABILITY UNDER CURRENT APPLICABLE WYOMING LAW

During the year 1966, visitation to the National Parks located in Wyoming continued to show an increase.[1] As a consequence of the increasing traffic, there was a corresponding increase in the number of personal injuries incurred while the visitors were within the Park boundaries. In 1966 there were 177 non-motor vehicle accidents in Grand Teton National Park while in Yellowstone 197 were reported. In both Parks, falls accounted for the majority of the reported injuries. In Yellowstone, 68 of the 197 injuries were inflicted by bears.[2] Nevertheless, in Grand Teton no tort claims based on such injuries were filed, while in Yellowstone, only two claims were filed.[3] Yellowstone had a half million fewer visitors, but reported 40% more personal injuries. This higher percentage is attributed to the existence in Yellowstone of the seemingly friendly but dangerous wild animals. With respect to the tort claims filed, the instances of recovery by the Park visitor have been limited.[4]

This comment will analyze the status of the visitor in Wyoming's National Parks in the context of those injuries arising from non-motor vehicle accidents placing special emphasis on the dangerous animal problem in Yellowstone.

In the determination of liability for negligence, persons coming on the premises of another are ordinarily classified as either trespassers, licensees or invitees, with such classifi-

1. An example of increased visitation is found in the following statistics from Yellowstone National Park: 1964—1,929,316; 1965—2,062,476, and in 1966—2,130,313. Between 1965 and 1966, 67,837 more visitors entered that Park, and over the two year period from 1964 to 1966, the increase totals 200,997.
2. In Grand Teton 80% of the injuries other than motor vehicle which were reported were attributable to falls, while in Yellowstone the figure approximates nearly 45% of the total.
3. In considering the validity of the number of tort claims filed it must be noted that the Statute of Limitations is three years and some claims from 1966 have not as yet been filed. The figures for 1965 would have more validity in this context, and in Yellowstone for that year three claims have been filed from bear injury or damage, three from falls, and eight from motor vehicle accidents.
4. These figures, as well as those statistics and percentages used in notes 1-3 above, were furnished by the Park Headquarters Offices in Grand Teton and Yellowstone National Park through the efforts and cooperation of Mr. Claude W. McClain, Chief Ranger and Mr. Duane Graf, Assistant Chief Park Ranger in Grand Teton National Park; and Mr. Edward Widmer, Law Enforcement Officer in Yellowstone National Park.

cation being of primary importance in fixing the duty of care which must be exercised.[5] For the purposes of determining status of the visitors, the current law of Wyoming is applicable to anyone injured while within the boundaries of Grand Teton and Yellowstone National Parks.[6] The problem of the Park visitor's status is determined by the Wyoming court's distinctions with reference to the licensee and invitee; the duty of care required; the defenses of contributory negligence and assumption of risk; the Wyoming statutory provision; and the effects of the Federal Tort Claims Act.

INVITEE STATUS AND DUTY OF CARE

In the recent case of *Ashley v. United States,*[7] decided in 1963 by the United States District Court of Nebraska, Wyoming law was applied to determine the status of the visitor. In *Ashley* a Park visitor, while traveling with his family through Yellowstone National Park, was bitten on the arm by a bear. The visitor was asleep at the time of injury and had his arm resting on the rim of an open automobile window. The court determined the visitor's status to be that of an invitee under Wyoming law and held that the injury was not proximately attributable to the government's failure to exercise ordinary care.[8] In the *Ashley* decision the court discussed significant issues relating to the status and the duty of care applicable to a park visitor; the rule of absolute liability as it may apply to the harboring of dangerous animals in the parks; proximate cause; and the possible application of the defenses of contributory negligence and assumption of risk.

To determine the status of the visitor, the court in *Ashley* cited the Wyoming case of *Loney v. Laramie Auto Co.,*[9] de-

5. 65 C.J.S. *Negligence* § 63(1) (1966).
6. Federal Tort Claims Act of June 25, 1948, c. 646, § 1346(b), 62 Stat. 933; as amended, April 25, 1949, c. 92, § 2 (a), 63 Stat. 62; as amended, May 24, 1949, c. 139, § 80 (a), (b), 63 Stat. 101; as amended, October 31, 1951, c. 655, § 50 (b), 65 Stat. 727; as amended July 30, 1954, c. 648, § 1, 68 Stat. 589; as amended July 7, 1958, Pub. L. 85-508, § 12 (e), 72 Stat. 348, 28 U.S.C. § 1346 (1964) Act of February 1, 1928, c. 15, 45 Stat. 54, 16 U.S.C. § 457 (1964).
7. 215 F. Supp. 39 (D.C. Neb. 1963), *aff'd per curiam,* 326 F.2d 499 (8th Cir. 1964). *See also* Recent Decisions, 24 MD. L. REV. 222 (1964); Recent Decisions, 15 SYRACUSE L. REV. 131 (1963).
8. Prior to the *Ashley* case the Department of the Interior considered the visitor in the National Parks located in Wyoming to be a licensee. Claim of Mrs. Kathryn L. Rogers, 63 Interior Dec. 150 (1956).
9. 36 Wyo. 339, 255 P. 350 (1927).

cided in 1927. The latter decision distinguished an invitee from a licensee when the plaintiff-passenger was injured in the defendant's garage while watching a repairman fix a flat tire on the driver's automobile. The court rejected the defendant's contention that the passenger was a licensee and found that the injured party enjoyed invitee status on the basis that he was acting as an agent for the owner of the automobile. The court also indicated that the duty of care owed to an invitee was to keep the premises reasonably safe and to warn of any hidden dangers. On the other hand, it indicated that a licensee must only be warned of a trap upon the premises.

In 1948 the case of *Dudley v. Montgomery Ward*[10] expanded the invitee distinction by the court's recognition and approval of the Ohio case of *J. C. Penny Co. v. Robinson.*[11] In *Dudley* the court said:

> When he (the owner or lessee) expressly or by implication invites others to come upon his premises, whether for business or any other purpose, it is his duty to be reasonably sure that he is not inviting them into danger, and to that end he must exercise ordinary care and prudence to render the premises reasonably safe for the visit.[12]

This distinction with the critical words "whether for business or any other purposes" combined with the sole requirement of an invitation was also approved in *Honan v. Moss.*[13] In this case, an action was brought by a customer's guest who fell into an open grease pit while looking for a restroom in a service station. In *Ashley,* the rule stated in *Dudley* and *Honan* was cited as the applicable Wyoming criterion from which the court determined that a park visitor was an invitee.

Generally, two theories are used to determine an invitee classification. The older theory is the "invitation" theory and is contrasted with the more strict "economic benefit" approach.[14] In both *Loney* and *Honan,* the Wyoming Supreme Court clearly adopted the "invitation" theory which is derived from the early English case of *Intermaur v.*

10. 64 Wyo. 357, 192 P.2d 617 (1948).
11. 128 Ohio St. 626, 193 N.E. 401 (1934).
12. 2 COOLEY, TORTS § 1259 (3d ed. 1906).
13. 359 P.2d 1002 (Wyo. 1961).
14. 65 C.J.S. *Negligence* § 63(41) (1966); PROSSER, TORTS § 61 (3d ed. 1965); 2 HARPER & JAMES, TORTS § 27.12 (1956); Annot., 95 A.L.R.2d. 986-992 (1964).

Dames.[15] Under this approach the existence of an express or implied invitation to come upon one's premises will designate any person so accepting the invitation as an invitee. The invitation theory is now followed by a great majority of American jurisdictions.[16]

The court in *Ashley* could have benefited by the use of the public invitee theory. The Restatement of Torts (Second) has now recognized the existence of the public invitee which is defined as a person who is invited to enter on land which is held open to the public.[17] As early as 1925, the Wyoming court in *Ramirez v. City of Cheyenne*[18] recognized the principle of a public invitee in the context of a child on a public playground. There is even stronger support for the public invitee distinction where a public entity is involved as is illustrated in jurisdictions other than Wyoming.[19] In the Virginia case of *City of Richmond v. Grizzard,*[20] the court stated that when the status depends upon an implied invitation, the visitor is an invitee if the premises are open to the public and the visitor enters pursuant to the purposes for which they are open. The New York Court in *Caldwell v. Village of Island Park,*[21] conferred public invitee status upon those accepting an implied invitation to enter upon governmental premises. The court held that a municipality which extends to its citizens an invitation to enter and use recreational areas owes to those accepting the invitation a duty of reasonable and ordinary care against foreseeable dangers. The court further held that it is not a prerequisite for the imposition of these duties that the municipality charge an admission fee. Illustrative of the public invitee in federal jurisdictions is *Smith v. United States,*[22] where the plaintiff was injured by a falling tree limb in a United States Forest Service campground located in California. The court found that there was both an express invitation, in the form of a Department of Agriculture Booklet inviting public use, and an implied invi-

15. L.R. 1 C. P. 274, 287 (1866).
16. PROSSER, TORTS § 61 (3d ed. 1965).
17. RESTATEMENT (SECOND) OF TORTS § 332 (1965).
18. 34 Wyo. 67, 241 Pac. 710 (1925).
19. *See also* Fuchs v. Mapes, 74 Nev. 366, 332 P.2d 1002 (1958); Dowd v. Portsmouth Hospital, 105 N.H. 53, 193 A.2d 788 (1963); Schlicht v. Thesing, 25 Wis. 2d 436, 130 N.W.2d 763 (1964).
20. 205 Va. 298, 136 S.E.2d 827 (1964).
21. 304 N.Y. 268, 107 N.E.2d 441 (1952).
22. 117 F. Supp. 525 (S.D. Cal. 1953).

tation by the mere setting aside of a particular campsite in a National Forest. In *Smith* no fee was charged by the Forest Service for the use of the campground. The court in *Ashley* stated that the fact that an entry fee was charged was not determinative of invitee status. The Restatement[23] notes that where land is held open to the public, it is immaterial that the visitor does not pay for his admission.[24]

By the very purpose and function of the National Park Service, an express invitation is extended to the public to use the Parks.[25] Wyoming law, which follows the invitation theory, clearly indicates that a visitor injured within the boundaries of a National Park located in Wyoming will be a public invitee.[26]

It is to be noted that the visitor may lose his invitee status if he exceeds the scope of the invitation. If entry is made into a restricted or closed area, trail, or road of the Park, he would then become a licensee if the entry was made with the consent of the Park Service. If no consent was given, the visitor would be a mere trespasser.[27] In *Honan* the court indicated that the reasonableness of the plaintiff's conduct is the criterion for determining if status changes from an invitee to a licensee. The court stated that "the trier of fact may infer an invitation extends to those parts of the premises on or in which an invitee naturally or reasonably would go."[28]

We have previously noted that, according to the *Loney* and *Dudley* decisions, the Wyoming court defines the duty owed an invitee to be that of ordinary care and prudence in rendering the premises reasonably safe and to warn of any hidden dangers. In *Fisher v. Robbins,*[29] the court indicated, however, that a higher duty of care might be imposed on those

23. RESTATEMENT (SECOND) OF TORTS § 332, comment *d* (1965).
24. For state court decisions following the RESTATEMENT rule, *see* 65 C.J.S. *Negligence* § 63(41) (1966).
25. The purpose and function of the National Park Service is set forth in 16 U.S.C. § 1 (1964).
26. In Williams v. United States, unreported, (E.D. Mich. 1961) the plaintiff was a temporary employee of an independent contractor in Glacier National Park and the court designated him as an invitee.
27. 65 C.J.S. *Negligence* § 63(48) (1966); PROSSER, TORTS § 61 (3d ed. 1965); RESTATEMENT (SECOND) OF TORTS § 332, comment *c* (1965).
28. In the Claim of Mrs. Hannah Cohen, 70 Interior Dec. 188 (1963), the Department of the Interior has recognized the invitee status of a park visitor under Wyoming law and has overruled the finding of a licensee in the Claim of Mrs. Kathryn L. Rogers, *supra* note 8.
29. 78 Wyo. 50, 319 P.2d 116 (1957).

who maintain places for public patronage. *Fisher* involved a business invitee and the court apparently limited the higher duty of care to those classes of public use where experience has shown violent disturbances are most likely to occur, such as in a barroom. The plaintiff in *Ashley* asserted the higher duty of *Fisher,* but the court rejected the contention. The *Loney* and *Honan* cases, therefore, stand today as the applicable Wyoming law with respect to the duty of care owed to the park visitor and to invitees in general.[30]

The duty to warn of danger is critical in relation to two aspects of the operation of the Parks: the distribution of information at the entrance stations; and, the individual disclosure functions carried on by the Park personnel. When the visitor enters a National Park he is given an informational booklet. Included within this booklet, especially in Yellowstone, is a special "animal warning insert" which denotes the existence of dangerous animals and contains specific warnings not to feed or molest them. The visitor is also cautioned to remain in his vehicle and to take pictures with vehicle windows closed. Included within the booklet are specific warnings to stay on the established trails and boardwalks when observing hydrothermal and other geological features of the Parks. At each entrance station in Yellowstone the Park Service has erected large roadside warning signs to this same effect.

In *Ashley* the plaintiff contented that the failure to tell

30. The Department of the Interior has noted:
Of course, any comparison of the legal status of visitors to Federal property in the various states must be made with caution since the difference in the facts of the cases make any direct comparison difficult. The following are examples of how visitors to Federal property have been classified in other jurisdictions. In the District of Columbia the ordinary visitor is considered a licensee by invitation. Firfer v. United States, 208 F.2d 524 (D.C. Cir. 1953) (Jefferson Memorial); Martin v. United States, 225 F.2d 945 (D.C. Cir. 1955) (Washington Monument). In McNamara v. United States, 199 F. Supp. 879 (D.D.C. 1951 (Capital Building); Judge Holtzoff states: "Under the law of the District of Columbia a sightseer in a public building is not an invitee but is a licensee by invitation." The McNamara case is of particular interest since Judge Holtzoff while sitting in the Southern District of California in Peets v. United States, 165 F. Supp. 177 (S.D. Cal. 1958) (Fort Ord, Cal., Cafeteria), considered a visitor at Fort Ord, California, to be an invitee where plaintiffs visited their son stationed there while in military service. In Smith v. United States, 117 F. Supp. 525 (N.D. Cal. 1953) (Los Padres National Forest), the camper was also held to be an invitee. However, a would-be hunter in Chinca v. United States, 190 F. Supp. 643 (N.D. Cal. 1961) (Shasta National Forest), was considered by the court as a licensee.
70 Interior Dec. 188, 190 n.5 (1963).

him to keep his vehicle windows rolled up and of the danger of an unprovoked attack was a violation of the duty to warn an invitee of danger.[31] The court rejected these contentions, stating that this went beyond the duty of care required of the Park Service. Judge Van Pelt in his opinion stated, "Experience has undoubtedly taught the Park personnel that such a warning given on a nice day such as the one on which plaintiff was injured, would fall on deaf ears. Were the Park Service to attempt by regulation to force visitors to take such a precaution, enforcement would, as a practical matter, be impossible."[32] Yet the Park Service, particularly in Yellowstone, has undertaken every possible and practical method of warning the visitor of the dangers inherent in that Park and of the precautions to be taken for his own safety.

Once the visitor has entered the Park there is a high probability that he will inquire of a Ranger as to any number of topics of general curiosity or specific information. A resultant negligent disclosure by the individual Park employee is another area where liability for injury can arise. The most significant case on this point is *Claypool v. United States*[33] decided in 1951. In *Claypool* the plaintiff asked a Park Ranger about the safety of sleeping in a tent in the Old Faithful campground. The Ranger, even though he had a reasonable belief to the contrary, replied that the visitor would be safe, that hundreds of people did it every night and that bears never attacked unless provoked or the campers had food located in the area. Relying on this information, the plaintiff slept in his tent and was injured by a bear. The court, after discussing the distinctions between invitees, licensees, and gratuitous licensees under Wyoming law, found that it was unnecessary to determine the status of the plaintiff in as much as the liability was predicated upon a negligent statement of false information by an individual Ranger acting within the scope of his employment. The court imposed a strict duty upon the disclosure and informational functions of the Ranger personnel.

31. At the time of the *Ashley* case the Yellowstone informational booklet given to the visitor did not specify that vehicle windows should be closed while in the vicinity of dangerous animals. A specific warning to this effect is now included in the animal warning inserts given to each visitor as he enters Yellowstone.
32. Ashley v. United States, *supra* note 7, at 47.
33. 98 F. Supp. 702 (S.D. Cal. 1951).

In *Ashley* the plaintiff asserted the stricter liability imposed in *Claypool* on the theory that the ommission in the warning literature was a violation of the duty to make an adequate disclosure or warning. The court noted with approval the result in *Claypool* if the negligent disclosure is made by an individual Park employee, but refused to extend the principle to the general warnings given the visitor by the Park Service upon entrance into the Parks.

It is evident that two standards have developed relative to the duty of care: (1) that the invitee status and the duty of care owed to the invitee is relevant when considering the general duty of the Park Service to warn of danger and to keep the premises reasonably safe; and (2) even if the general duty of care has been satisfied, a negligent disclosure of information by an individual Park employee acting within the scope of his employment, after an inquiry by a visitor, will lead directly to the liability question without a consideration of the invitee status.[34]

THE DISCRETIONARY FUNCTION UNDER THE FEDERAL TORT CLAIMS ACT

It is important to note that liability is not imposed for the performance of functions which are found to be discretionary within the meaning of the Federal Tort Claims Act.[35] The court in *Ashley* applied this exclusion when considering plaintiff's contention that the premises were not kept in a safe condition because of the presence of a known dangerous animal. The court cited *Dalehite v. United States*[36] where, in discussing Section 2680 of the Federal Tort Claims Act,[37] the United States Supreme Court said, "It necessarily follows that acts of subordinates in carrying out the operations

34. It is interesting to note the extent to which the distinction was carried in Williams v. United States, *supra* note 26, where the government was held liable upon the negligent disclosure by a manager of an independent contractor to an employee. The court imputed the manager's negligent disclosure to the government on the theory of apparent authority and indicated that a higher duty of care of disclosure is owed to those using the Park's trails.
35. Act of June 25, 1948, c. 646, § 2680 (a), 62 Stat. 984; July 16, 1949, c. 340, 63 Stat. 444; Sept. 26, 1950, c. 1049, §§ 2 (a) (2), 13 (5), 64 Stat. 1038, 1043; August 18, 1959, Pub. L. 86-168, Title II, § 202 (b), 73 Stat. 389, 28 U.S.C. 2680 (a) (1964).
36. 346 U.S. 15 (1953).
37. *Supra* note 35.

of the government in accordance with official directions cannot be actionable.'"[38] The *Ashley* court held that the handling of troublesome roadside bears was in the nature of a discretionary function especially if the policy of control had been instituted at the District Ranger level. The court justified this holding on the basis that a good deal of discretion is involved not only in formulating a policy which balances the safety of visitors and employees in a National Park and the preservation of the wild animals in their natural state for the benefit of the public, but also in the making of the decisions pursuant to that policy.[39] It appears that, in the context of animal control, the exclusion of liability for the performance of a discretionary function bars the contention of a visitor that because of the existence of these animals the premises were inherently dangerous to him and as such violates the duty of care owed to him as an invitee.

DEFENSES AVAILABLE TO THE GOVERNMENT

There remains to be considered the defenses available to the government in an action brought by an injured Park visitor. The defense relating to the exercise of a discretionary function has been noted, but contributory negligence and assumption of risk remain undecided issues. These defenses were raised in *Ashley* but the court declined to consider them after finding the element of proximate cause was missing in the plaintiff's action. In *Claypool,* assumption of risk was asserted by the government but the court ruled that due to the lack of information in the Park brochures and the negligent disclosure by the Ranger, the risk was a concealed one and that the plaintiff, not knowing of a risk, could not assume one.

When applicable these defenses would again require an examination of Wyoming law. In a conceptual context, *Ford Motor Corp. v. Arguello*[40] states that the distinctions be-

38. Dalehite v. United States, *supra* note 36, at 36.

39. It is conceivable that if the actual removal of a dangerous animal was done in a negligent manner, the holding of Indian Towing Co. v. United States, 350 U.S. 61 (1955), indicates that the government will be liable if negligence occurs at the operational level. *See also* Annot., 99 A.L.R.2d 1047.

40. 382 P.2d 886 (Wyo. 1963). *See also* Rocky Mountain Trucking Co. v. Taylor, 79 Wyo. 461, 335 P.2d 448, 451 (1959).

tween assumption of risk and contributory negligence have not been adopted in Wyoming and the question of these defenses is not one of law except in the clearest cases.[41] The Tenth Circuit recognized the Wyoming court's decision not to distinguish between the two defenses and noted that "it is enough that the instructions properly and fairly covered the law of negligence, contributory negligence and assumption of risk."[42] It appears that the Wyoming court has chosen not to adopt any rules or formulations of contributory negligence and assumption of risk and *Honan* indicates that the question to be considered is the reasonableness of the plaintiff's conduct.

Generally, the defenses would not be applicable if the liability could be predicated upon those circumstances which would lead to absolute liability. In *Ashley* the plaintiff asserted the rule that one who harbors or owns wild animals will be absolutely liable for injuries incurred and that this standard is applicable in the determination of the status of the parties under Section 1346 (b) of the Federal Tort Claims Act.[43] The court rejected this contention and held that under the Federal Tort Claims Act the United States cannot be held to the standards of absolute liability.

In reference to the conduct of an invitee which will bar recovery in Wyoming, the court in *Loney* stated:

> The Plaintiff, it is true was bound by what he knew or might have known by the exercise of ordinary care. And if the danger, the peril, was known to him because of his past knowledge, or if it was patent and obvious, so that a man of ordinary prudence should have known it, he cannot recover.[44]

This knowledge of danger is supplied to every Park visitor in specific detail and there is authority that one is guilty of negligence if he exposes himself or his property to danger in disregard of warnings or notices when an ordinarily prudent person similarly situated would have avoided the danger.[45] Further, conduct involving an undue risk of harm

41. McDowell v. Walters, 360 P.2d 165 (Wyo. 1961), *reh. denied* 361 P.2d 522; Templar v. Tongate, 71 Wyo. 148, 255 P.2d 223 (1953); Borzea v. Anselmi, 71 Wyo. 348, 258 P.2d 796, 800 (1952).
42. Askin v. Delgarno, 293 F.2d 424, 426 (10th Cir. 1961).
43. *Supra* note 2.
44. Loney v. Laramie Auto Co., *supra* note 9, at 353.
45. 65A C.J.S. *Negligence* § 120(3) (1966).

to the actor is contributory negligence. One who by his voluntary acts or omissions exposes himself to danger of which he has actual or imputed knowledge is guilty of negligence, if, under the same or similar circumstances an ordinarily prudent person would not have incurred the risk of injury which such conduct involved.[46] These propositions are noted to illustrate the strength of the defense which the government could assert in reference to those injuries incurred from feeding and molesting the wild animals of the Parks. This type of injury constitutes one of the most numerous of those incurred by the visitors in Yellowstone.[47] In these situations there could be a valid application of assumption of risk, which generally requires knowledge, choice and an act or acquiescence.[48]

The rule in *Claypool* as to the defense of assumption of risk is based upon a reasonable distinction if the risk is indeed concealed. This is certainly revelant in the case of visitors coming to the Parks from areas where knowledge of the dangers inherent in wilderness areas is not generally known. Yet it is conceivable that this rule, if strictly construed, would result in a fiction when applied to persons, such as those from the bordering states of Idaho, Montana, and Wyoming, who are aware of the inherent danger involved.

Generally, if a negligent disclosure of information is made by an individual Park employee acting within the scope of his employment, the defense of assumption of risk would fail, and it is equally difficult to apply the defense of contributory negligence in this context. However, those injuries incurred from acts in disregard of the warnings of the Park Service are vulnerable to both defenses as a bar to recovery since the court must consider the reasonableness of the visitor's conduct.

APPLICABLE WYOMING STATUTORY PROVISIONS

The duty of care owed to the Park visitor and the defenses available to an alleged breach of such duty must be

46. *Id.* at § 121.
47. Of the total of 197 individual injuries reported during 1966 in Yellowstone National Park, 68 were attributed to bear injuries. This is second only to falls as the most common source of injury in Yellowstone. *Supra* note 4.
48. 65A C.J.S. *Negligence* § 174(1) (1966).

considered in light of Wyoming's recently enacted statute concerning the liability imposed upon owners of land which is used for recreational purposes.[49] The statute provides that an owner of land[50] which is used for recreational purposes does not

> (1) extend any assurance that the premises are safe for any purpose, (2) confer upon such person that uses the land the legal status of an invitee or licensee to whom a duty of care is owed, and (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such person.[51]

A recreational purpose as defined by the statute would embrace all of the activities of the visitors in the National Parks located in Wyoming.[52]

The statutory exclusion from liability is not applicable in two situations, the second of which will limit its application in the National Parks.[53] First, the statute will not apply if there has been a willful or malicious failure to warn against a dangerous condition on the premises. It is beyond question that the Park Service's warnings are not willful and malicious failures as required by the statute. Second, the statute will not apply if a charge is levied on the persons entering the land for a recreational purpose. The term *charge* is defined as "the admission price or fee asked in return for an invitation or permission to enter or go upon the land."[54] In order to discuss the effect of the "charge provision," it is relevant to note the fee structure of the National Park Service.

The National Park Service regulations are contained in Title 36 of the *Code of Federal Regulations,* and, in general, the fees ordinarily charged for entrance into the National Parks are set forth in Section 6.[55] Section 6.1 excludes certain individuals and groups from the fee requirements. The

49. WYO. STAT. §§ 34-389.1 to -389.6 (Comp. 1965).
50. An owner is defined as "the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises." WYO. STAT. § 34-389.1(b) (Comp. 1965).
51. WYO. STAT. § 34-389.3 (Comp. 1965).
52. WYO. STAT. § 34-389.1(c) (Comp. 1965).
53. WYO. STAT. § 34-389.5(b) (Comp. 1965).
54. WYO. STAT. § 34-389.1(d) (Comp. 1965).
55. 36 C.F.R. § 6 must be considered in conjunction with the provisions of 43 C.F.R. §§ 18.1-.12 (1966).

entrance fees are not applicable to "vehicles institutionally owned or chartered, carrying exclusively members of bona fide educational institutions, when the trip to the area is officially initiated, organized and directed by such organizations for educational purposes."[56] In addition, entrance fees are not applicable to children under 16 years of age and those individuals traveling across areas where fees are charged to reach residences located on private land.[57] Further, the Park Superintendent is given the authority to suspend the prescribed fees for seasonal periods if in the public interest.[58]

The effect of the statute is such that (1) those visitors who are not required to pay the entrance fee qualify under the no-charge provision and as to them Federal Tort liability is eliminated, and (2) the statute is not applicable to those visitors who have paid the regular entrance fees and they will be accorded the status of an invitee. In *Ashley* and *Claypool* the court indicated that the payment of an entrance fee was not determinative of the status of the visitor. Yet under the Wyoming statute, the charge of an entrance fee becomes a critical factor in the consideration of the status of the Park visitor and the existence of any duty of care owed to him.

CONCLUSION

If a visitor to the National Parks located in Wyoming pays an entrance fee and stays within the scope of his invitation, he is an invitee to whom the government owes the duty to exercise ordinary care and prudence in rendering the premises safe and to warn of any danger. The general duty to warn the visitor of danger has been fulfilled by the Park Service and any injuries resulting from disregard of these warnings can be effectively countered by the defense of contributory negligence combined with that of assumption of risk to consider the reasonableness of the visitor's conduct. However, if a negligent disclosure of known false information, upon inquiry by a visitor, is made by a Park employee acting with-

56. 31 Fed. Reg. 251 (1966), amending 36 C.F.R. § 6.1 (a) (1966).
57. *The Land and Water Conservation Fund Act.* Pub. L. 88-578, § 2, September 3, 1964, 78 Stat. 897, amended Pub. L. 89-72, § 11, July 9, 1965, 79 Stat. 218, 16. U.S.C. § 460(1) -5 (1964). 43 C.F.R. §§ 18.1-.12 (1966).
58. 31 Fed. Reg. 251 (1966), amending 36 C.F.R. § 6.1 (b) (1966).

* During the past three years Mr. Hursh has served the National Park Service as a Park Ranger (General) in Yellowstone National Park. In this capacity he has investigated many personal injury cases arising from non-motor vehicle accidents.

in the scope of his employment, the defense of assumption of risk is inapplicable if the risk is a concealed one. In such a case the visitor will generally recover. In the determination of the duty to keep the premises reasonably safe, in the context of the control of dangerous animals, the discretionary function exclusion from liability becomes critical. The payment of an entrance fee is a critical issue; and if not required, then by operation of Wyoming's exclusion of liability statute, the visitor has no status and the government's liability is eliminated. When the visitor pays the entrance fee, in effect, he purchases invitee status with its attendant duty of care; yet the visitors chances of recovery will remain limited under the applicable Wyoming law.

JOHN R. HURSH*

APPENDIX I

Tort Claims Filed as a Result of Incidents That Occurred During the Calendar Year 1965 in Yellowstone National Park

No. of Claims	Nature of Claim	Amount of Claim	Status
1	Bear bite	$ 976.40	Pending
1	Bear damage to tent and other camping equipment	$ 320.00	Pending
1	Bear damage to car radio antenna	$ 3.58	Denied
1	Person fell on Norris Geyser Basin Trail	$12,000.00	Pending
1	Person fell into Grand Canyon of the Yellowstone (death)	$ 2,484.52	Denied
1	Person fell on the Old Faithful Observation Point Trail	$50,000.00	Pending
1	Damage to employee's personal equipment while working	$ 52.00	Denied
5	Government vehicles involved in collision with visitor vehicles	$ 1,177.04	4 - Allowed 1 - Denied
3	Private vehicles damaged, miscellaneous	$ 335.58	3 - Allowed

Tort Claims Filed as a Result of Incidents That Occurred During the Calendar Year 1966 in Yellowstone National Park

No. of Claims	Nature of Claim	of Claim	Status
1	Bear bite	$108,830.69	Pending
1	Bear damage to trailer	$ 165.00	Pending
2	Government vehicles involved in collision with other vehicles	$ 107.00	2 - Allowed
2	Private vehicles damaged, miscellaneous Amount	$ 1,110.00	1 - Allowed 1 - Pending

All of the above claims have been legally filed through the proper channels. Although there are fewer claims for 1966, it is often the case that claims from incidents in past years will be forthcoming since the statute of limitations is three years and is sometimes extended in certain circumstances. We anticipate at least two additional claims will be filed from incidents occurring last year. A request for claim forms has been received in both instances.

An analysis of reported injuries for 1966 other than motor vehicle accidents has recently been completed. A total of 197 individual injuries indicated that the major causes were *falls* and *bear bites* and *scratches*.

Falls	88
Bear Injuries	68
All Other	41
Total	197