

## Lake Associations Beware: Access Lots Pose Liability Issues

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Lake associations often have control of lots which permit lake access by back-lot owners. Those lots are typically undeveloped, overgrown and only sporadically maintained. Most lake associations are managed by volunteers and have little structure. While that relative informality may be understandable, it can also be costly.

In February, 2014 the **Michigan Court of Appeals** issued its decision in ***Gibbons v. Horseshoe Lake Corporation***. In *Gibbons*, the plaintiffs' home was adjacent to Lot 40, one of eight lake-access lots scattered throughout the four subdivisions that surrounded Horseshoe Lake in Washtenaw County. Defendant Horseshoe Lake Corporation (the "Corporation") was led by a board of directors elected by the subdivisions' four homeowner's associations. A large branch from a tree located on Lot 40 fell through the Plaintiffs' roof, causing significant damage to both Plaintiffs' home and Mr. Gibbons. The Plaintiffs' complaint included claims for negligence, nuisance and trespass. The trial court dismissed the lawsuit, reasoning that the Corporation had no duty to Plaintiffs because it neither owned nor had possession of the access lot.

The Court of Appeals reversed the trial court as to the negligence claim, holding that the Plaintiffs were entitled to a trial as to: 1) whether the Corporation "possessed and controlled" the access lot, and 2) whether the Corporation breached the duty it voluntarily assumed with respect to trees on outlots. There was evidence that the Corporation mowed the grass, performed sporadic clean-up and even had a tree committee to identify dead or diseased trees. Because the Corporation had assumed some responsibilities for the access lot, it was obligated to discharge those responsibilities in a non-negligent manner. A jury will now decide whether the Plaintiffs are entitled to recover damages and the amount of those damages. Even if the Corporation prevails at trial, litigation is an expensive endeavor.

The following questions are not answered by the Court's opinion, but are important for any lake association:

- Did the Corporation have liability insurance coverage?
- Are the volunteer board members covered by an errors and omission policy?
- Was the Corporation properly established and operated?

If the answer to any of these question is "no," or if the insurance purchased is insufficient in kind or amount, the association's directors, officers or even members could face the possibility of personal liability. My next post will likely discuss in more detail what lake associations can do to adequately protect themselves.

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