BEAL V. WESTCHESTER SURPLUS LINES INS. CO.: THE JUDICIARY'S UNWARRANTED EXPANSION OF RECREATIONAL USE IMMUNITY

I. INTRODUCTION

Louisiana Revised Statues §§ 9:2791 and 9:2795 grant immunity from liability to owners, lessees, and occupants of land when a person is injured on that land while using it for "recreational purposes."[1] The recreational use immunity statutes are intended to motivate owners, lessees, and occupants of land to allow others to use their land for recreational purposes by broadly reducing the threat of liability to the owners, lessees, or occupants.[2] Consequently, Louisiana courts have interpreted the

1. LA. STAT. ANN. §§ 9:2791(C), 9:2795 (2022).

2. Broussard v. Dep't of Transp. and Dev., La., 539 So. 2d 824, 829–30 (La. Ct. App. 3 Cir. 1989) (quoting Keelen v. La., Dep't of Culture, Recreation and Tourism, 463 So. 2d 1287, 1290 (La. 1985)) ("The purpose of the [recreational use immunity statutes] is to encourage owners of land to make land and water areas available to the

statutes' list of recreational purposes as illustrative and non-exclusive and have routinely expanded the scope of immunity to serve the statutes' purpose.[3]

In *Beal v. Westchester Surplus Lines Insurance Co.*,[4] the Louisiana Fourth Circuit Court of Appeal addressed the novel issue of whether attending the French Quarter Festival (the Festival), an outdoor music festival, qualified as recreational use of land under the immunity statutes.[5] The Fourth Circuit found that the Festival qualified as recreational use under §§ 2791 and 2795 because of the Festival's proximity to historic and scenic sites.[6]

This Note proposes that, although the *Beal* court correctly concluded that attending an outdoor music festival constitutes using land for a recreational purpose as defined by §§ 2791 and 2795, the *Beal* court's reasoning was overly broad and permits an unwarranted expansion of immunity beyond the Louisiana Legislature's intended reach of the statutes because of an activity's proximity to historic or scenic locations. Section II of this Note discusses the facts relevant to the court's decision in *Beal*, and Section III provides a brief history of §§ 2791 and 2795 through the lens of Louisiana jurisprudence. Section IV discusses the reasoning by which the *Beal* court found that attending an outdoor music festival qualifies as a recreational purpose.[7] Finally, Section V proposes that the *Beal* court could have reached the same conclusion on narrower grounds and considers the impact of the broad reasoning employed by the court.

II. FACTS AND HOLDING

In April 2017, Plaintiff, Annette Beal and her husband attended the French Quarter Festival, a free music festival

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public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.").

3. *Infra* Section III of this Note.

4. Beal v. Westchester Surplus Lines Ins. Co., 2021-0187, p. 1 (La. App. 4 Cir. 12/15/21), 334 So. 3d 438, 440.

5. *Id.* at 445.

6. *Id.* at 446–47.

7. While this Note briefly addresses all three issues before the court, this Note primarily focuses on the issue of whether attendance at an outdoor music festival qualifies as a recreational purpose.

produced by the non-profit organization French Quarter Festivals, Inc. (FQF), in the French Quarter of New Orleans, Louisiana.[8] After finding seating by a music stage in Woldenberg Riverfront Park, Beal walked to the portable toilets.[9] As Beal walked back to her seat, she stumbled over an exposed tree root and fell to the ground.[10] Paramedics came and transported Beal to the hospital via ambulance.[11] Beal alleged that as a result of the fall she sustained a trimalleolar fracture in her ankle that required surgery.[12]

In February 2018, Beal filed suit in Louisiana's Civil District Court of Orleans Parish against FQF, its insurer Westchester Surplus Lines Insurance Company, an unidentified alleged Festival employee, and the City of New Orleans.[13] In July 2018 Beal filed a supplemental and amended petition for damages that added Audubon Nature Institute (Audubon), which leased Woldenberg Park from the city of New Orleans, and XYZ Insurance Company—Audubon's alleged insurer—as defendants.[14] Beal sought damages for injuries sustained in her trip and fall at the Festival.[15]

In June 2020, FQF and Audubon filed a motion for summary judgment, which Beal opposed.[16] The trial court granted FQF and Audubon's motion for summary judgment.[17] The trial court held that: (1) FQF and Audubon were entitled to immunity pursuant to Louisiana Revised Statutes §§ 9:2791 and 9:2795, (2) FQF and Audubon's actions did not qualify as willful or malicious failure to warn against a dangerous condition, and (3) the tree root that caused Beal to trip and fall was "an open and obvious hazard."[18] Beal appealed the trial court's grant of summary judgment to the Louisiana Fourth Circuit Court of Appeal.[19]

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8. *Beal*, 334 So. 3d at 440.
9. *Id.*
10. *Id.*
11. *Id.* at 440–41.
12. *Id.* at 441.
13. *Beal*, 334 So. 3d at 441.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Beal*, 334 So. 3d at 442.
19. *Id.* at 441.

The Fourth Circuit, however, was unmoved, holding that the definition of "recreational purposes," as defined in the statutes, is sufficiently broad to include attending an outdoor music festival.[20]

III. BACKGROUND

Carving out a space from tort liability, states began enacting recreational use immunity statutes in 1953 to promote public use of private lands.[21] Since then, each state has developed its own legislation to shield landowners who permit recreational use of their lands.[22] Louisiana's recreational use immunity statutes were enacted in two parts: § 2791 enacted in 1964,[23] and § 2795 enacted in 1975.[24] The Louisiana Legislature's intent in creating the statutes was to make more land areas available for recreational use by the public through limiting liability for landowners.[25]

A. SECTIONS 2791 AND 2795: LOUISIANA'S RECREATIONAL USE IMMUNITY STATUTES

The legislative history and development of Louisiana jurisprudence surrounding §§ 2791 and 2795 demonstrate that the statutes should be construed broadly,[26] allowing for continued expansion pursuant to the legislature's intent in drafting the statutes.[27] The first immunity statute, § 2791, protects "owners,

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20. *Id.* at 446–47.

21. Richard v. Hall, 2003-1488, p. 25 (La. 4/23/2004), 874 So. 2d 131, 149 (citing Terrence J. Centner, *Tort Liability for Sports and Recreational Activities: Expanding Statutory Immunity for Protected Classes and Activities*, 26 J. Legis. 1, 12 (2000)).

22. *Id.* at 150. Many states' statutes are based on a 1965 model statute, which resulted in substantial similarities between different jurisdictions' recreational use immunity statutes. *See id.*

23. LA. STAT. ANN. § 9:2791 (2022).

24. *Id.* § 9:2795.

25. Keelen v. La., Dep't of Culture, Recreation, and Tourism, 463 So. 2d 1287, 1290 (1985) (citing Act No. 615, 1975 La. Acts 1312) ("The purpose of the [recreational use immunity statutes] is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.").

26. *Beal*, 334 So. 3d at 443 (citing *Richard*, 874 So. 2d at 149–51).

27. *Id.* at 443 (citing Doyle v. Lonesome Dev., LLC, 2017-0787, p. 12 (La. App. 1 Cir. 7/18/18), 254 So. 3d 714, 722).

lessees, and occupants of premises"[28] from liability when they allow others on their land for recreational use:

> An owner, lessee, or occupant of premises owes no duty of care to keep such premises safe for entry or use by others for hunting, fishing, camping, hiking, sightseeing or boating or to give warning of any hazardous conditions, use of, structure, or activities on such premises to persons entering for such purposes, whether the hazardous condition or instrumentality giving the harm is one normally encountered in the true outdoors or one created by the placement of structures or conduct of commercial activities on the premises. If such an owner, lessee, or occupant gives permission to another to enter the premises for such recreational purposes he does not thereby extend any assurance that the premises are safe for such purposes or constitute the person to whom permission is granted one to whom a duty of care is owed, or assume responsibility for or incur liability for any injury to persons or property caused by any act of person to whom permission is granted.[29]

The second immunity statute, § 2795, amended § 2791 and included an illustrative and non-exhaustive list of recreational uses of land, all of which require the outdoors in some capacity.[30] Section 2795 protects anyone in control of any property[31] from liability when an injury results from recreational use:

> A.(3) "Recreational purposes" includes *but is not limited to* any of the following, or any combination thereof: hunting, fishing, trapping, swimming, boating, camping, picnicking, hiking, horseback riding, bicycle riding, motorized, or nonmotorized vehicle operation for recreation purposes, nature study, skate boarding, sledding, snowmobiling, snow skiing, summer and winter sports, or viewing or enjoying historical, archaeological, scenic, or scientific sites.

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28. LA. STAT. ANN. § 9:2791(A), (C) (2022) ("Premises . . . include lands, roads, waters, water courses, private ways and buildings, structures, machinery, or equipment thereon.") (internal quotations omitted).

29. *Id.* § 9:2791(A).

30. *See id.* § 9:2795.

31. *Id.* § 9:2795(A)(1) ("Land means urban or rural land, roads, water, watercourses, private ways or buildings, structures, and machinery or equipment when attached to the realty."); *id.* § 9:2795(A)(2) ("Owner means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.") (internal quotations omitted).

> . . . .
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> B. (1) Except for willful or malicious failure to warn against a dangerous condition, use, structure, or activity, an owner of land, except an owner of commercial recreational developments or facilities, who permits with or without charge[32] any person to use his land for recreational purposes as herein defined does not thereby:
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> (a) Extend any assurance that the premises are safe for any purposes.
>
> (b) Constitute such person the legal status of an invitee or licensee to whom a duty of care is owed.
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> (c) Incur liability for any injury to person or property caused by any defect in the land regardless of whether naturally occurring or man-made.[33]

B. LOUISIANA COURTS HAVE HISTORICALLY AND ROUTINELY EXPANDED THE SCOPE OF §§ 2791 AND 2795

The recreational use immunity statutes have been interpreted extensively in Louisiana jurisprudence, with courts recognizing the expansive scope of statutory immunity in accordance with the Louisiana Legislature's intent. The legislature intended that immunity should apply generally and broadly to incentivize landowners to open their lands for recreational use,[34] and courts have consistently recognized this intent and expanded the scope of the statutes. When a defendant claims recreational use immunity, courts generally recognize that defendant's immunity from liability.

Immunity applies to recreational acts that are not for commercial purposes. In *Broussard v. Department of Transportation and Development, Louisiana*, plaintiff sued the

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32. *See* LA. STAT. ANN. § 9:2795(A)(5) (2022) ("Charge means the admission price or fee asked in return for permission to use lands.") (internal quotations omitted).

33. *Id.* § 9:2795 (emphasis added).

34. *Broussard*, 539 So. 2d at 825–26 (quoting Keelan v. La., Dep't of Culture, Recreation, and Tourism, 463 So. 2d. 1287, 1290 (La. 1985)) ("The purpose of the [recreational use immunity statutes] is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.").

State of Louisiana for damages sustained when he slipped and injured himself on a boat ramp.[35] On the merits, the trial court entered judgment in favor of defendant, holding that the state was immune to liability under the recreational use immunity statutes.[36] Plaintiff appealed, arguing that the state had forfeited its immunity by allowing the area in question to be used for commercial, as well as recreational uses.[37] The Louisiana Third Circuit Court of Appeal found that "the inquiry in any given case is whether *the permitted use in question* is for recreational purposes on a noncommercial basis."[38]

Accordingly, the Third Circuit affirmed the trial court's judgment, holding that plaintiff's use of the property was recreational and, thus, the state was entitled to immunity under the statutes.[39] The court relied on a two-part test,[40] which required that (1) the land "must be undeveloped, nonresidential, and rural or semi-rural;" and (2) the injury must result from recreation consistent with the "true outdoors."[41] This two-part test has been expanded to a three-part test by subsequent decisions.[42] Additionally, the *Broussard* court noted that the purpose of the recreational use immunity statutes is to open more land to public use by generally protecting land owners from the risk of liability for any injury that may occur on their lands.[43] Subsequent courts have continued to rely on the legislative-purpose analysis initiated by the *Broussard* court.

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35. *Id.* at 825–26.

36. *Id.* at 826 (citing LA. STAT. ANN. §§ 9:2791, 9:2795 (2022)).

37. *Id.* at 831.

38. *Id.* (emphasis added).

39. *Broussard*, 539 So. 2d at 832.

40. *Id.* at 827–28 (citing Ratcliff v. Town of Mandeville, 502 So. 2d 566 (La. 1987)).

41. Doyle v. Lonesome Dev., LLC, 2017-0787, p. 12 (La. App. 1 Cir. 7/18/18), 254 So. 3d 714, 722 (citing Deumite v. State, 1994-1210, pp. 7–8 (La. App. 1 Cir. 2/14/1997), 692 So. 2d 1127, 1133). The "true outdoors" includes activities such as: "hunting, fishing, trapping, swimming, boating, camping, picnicking, hiking, horseback riding, bicycle riding, motorized, or nonmotorized vehicle operation for recreation purposes, nature study, skate boarding, sledding, snowmobiling, snow skiing, summer and winter sports, or viewing or enjoying historical, archaeological, scenic, or scientific sites." LA. STAT. ANN. § 9:2795 (A)(3) (2022); *see also* Glorioso v. City of Kenner, 2019-298, p. 5 (La. App. 5 Cir. 12/18/19), 285 So. 3d 601, 605.

42. *Doyle*, 254 So. 3d at 722 (citing *Deumite*, 692 So. 2d at 1133) (noting "the injury-causing instrumentality must be of the type normally encountered in the 'true outdoors' and not 'of the type usually found in someone's backyard.'").

43. *Broussard*, 539 So. 2d at 829–30.

Legislative intent and statutory amendments have guided courts in extending broad immunity under the dual statutes. In *Richard v. Hall*, plaintiffs brought a wrongful death action against decedent's employer and Hall, who was its employee and decedent's co-worker.[44] During a company hunting trip, Hall fatally shot decedent on land subject to a hunting lease.[45] The trial court granted summary judgment for the employer based, in part, on its immunity under the recreational use immunity statutes.[46] The appellate court affirmed the decision, holding that the employer was a lessee and, therefore, qualified for recreational immunity.[47] The Louisiana Supreme Court granted writ of certiorari to consider the applicability of recreational use immunity to lessee-used land.[48] The court first held that the employer's hunting lease was a valid lease under the Louisiana Civil Code;[49] thus, it next turned to whether the recreational immunity statutes applied to the instant case.[50] Because the statutes do not extend immunity to land used primarily for commercial recreational use,[51] the high court then considered whether the statute excludes only the owner of such commercially used land from immunity, or whether the statute also excludes the lessee of such land from immunity, regardless of how the lessee uses the land.[52]

Importantly, the Louisiana Supreme Court determined that Louisiana Revised Statutes §§ 9:2791 and 9:2795 "should be construed with reference to each other."[53] The court found that § 2791 does not consider a party's use of the land, but rather

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44. *Richard*, 874 So. 2d at 135.

45. *Id.*

46. *Id.*

47. *Id.* at 136.

48. *Id.* at 135.

49. LA. CIV. CODE ANN. art. 2670 ("[V]alid lease requires price, consent between parties, and an object of the lease."). Louisiana jurisprudence specifically recognizes hunting leases as valid leases under the Civil Code. *Richard*, 874 So. 2d at 146.

50. *Richard*, 874 So. 2d at 146.

51. LA. STAT. ANN. § 9:2791(B) (2022) ("[T]he provisions of this Section shall not apply when the premises are used principally for a commercial, recreational enterprise for profit.").

52. *Richard*, 874 So. 2d at 147.

53. *Id.* at 148 (citing Frank L. Maraist & Thomas C. Galligan, Jr., *Louisiana Tort Law* § 11.5 (1996)).

excludes immunity "when the *premises* are used principally for a commercial purpose."[54] However, the court also found that § 2795 grants immunity to a lessee who does not use the premises for a primarily commercial purpose.[55] Section 2795 instructs that only "an owner of commercial recreational developments or facilities" is excluded from immunity, thereby permitting lessees and occupants of commercial recreational land to claim immunity.[56] Yet, the court recognized that §§ 2791 and 2795, when read together, created an ambiguity around the proper interpretation as it pertained to the facts of the case.[57] It resolved the ambiguity by adhering to the interpretation most consistent with the purpose of the law.[58]

Thus, the court concluded that when a conflict exists, § 2795, rather than § 2791, controls, and that the legislature intended to create "broad immunity from liability."[59] Specifically, the court reasoned that because "[§] 2795 was a later expression of legislative will and [had] been amended six times" since the statute's enactment in 1975, the legislative history indicated the intent that § 2795 would control over § 2791.[60] Accordingly, the Louisiana Supreme Court affirmed the appellate court's decision, holding that when "an owner lessor [uses the land] as a commercial recreational enterprise," the lessee may qualify for immunity if the lessee does not utilize the land for a primarily commercial purpose.[61] In other words, immunity depends on the lessee's immediate use of the land, "not the underlying classification of the premises as a commercial recreational enterprise for profit . . . ."[62]

Additionally, courts have extended "recreational use" to acts which are accessory to traditional recreational uses. In *Webb v. Parish of St. Tammany*, plaintiff was injured while leaving an organized softball game in which he had participated at a parish-

54. *Id.*

55. *Id.* at 148–49.

56. LA. STAT. ANN. § 9:2795(B)(1) (2022).

57. *Richard*, 874 So. 2d at 149.

58. *Id.* (citing LA. CIV. CODE ANN. art. 10).

59. *Id.* at 151 (citing Peterson v. W. World Ins. Co., 536 So. 2d 639, 643 (La. Ct. App. 1 Cir. 1988)).

60. *Id.*; *see also Doyle*, 254 So. 3d at 720 (noting that § 9:2791(B) was "repealed by implication" after the *Richard* decision).

61. *Richard*, 874 So. 2d at 152.

62. *Id.*

run park.[63] Because the field lights were turned off, no lighting illuminated the parking lot, which ultimately caused the plaintiff to "los[e] control of his motorcycle" and crash into a ditch.[64] Plaintiff sued numerous defendants, including Recreation District Number One of St. Tammany Parish, the operator of the park, for his personal injuries sustained in the crash.[65] The trial court granted St. Tammany's motion for summary judgment, ruling that St. Tammany was entitled to recreational use immunity.[66] On appeal, plaintiff averred that defendant could not claim recreational use immunity because plaintiff was not "engaged in recreational activity at the time of his injury."[67] The appellate court affirmed,[68] holding that the statutes apply when "the person injured [i]s on the property for a recreational purpose[,]" regardless of whether the injury arose directly from the recreational activity.[69]

Even completely passive activities, such as spectating at a recreational activity, qualify as recreation under the statutes. In *DeLafosse v. Village of Pine Prairie*, plaintiff sued defendant, Village of Pine Prairie, on behalf of her minor daughter, for damages the daughter sustained when a baseball struck her in the head at a high school baseball game.[70] Defendant claimed recreational use immunity and moved for summary judgment.[71] The trial court granted defendant's motion, thereby prompting plaintiff's appeal.[72] Plaintiff maintained that defendant willfully or maliciously failed to warn the minor child of the hazard of stray baseballs.[73] The court noted that plaintiff failed to introduce evidence establishing that the defendant knowingly acted, or did not act, in a manner likely to cause injury, or with conscious

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63. Webb v. Par. of St. Tammany, 2006-0849, p. 2 (La. App. 1 Cir. 2/9/07), 959 So. 2d 921, 923.

64. *Id.*

65. *Id.* at 923 (footnote omitted).

66. *Id.*

67. *Id.* at 925.

68. *Webb*, 959 So. 2d at 926.

69. *Id.* at 925.

70. DeLaFosse v. Vill. of Pine Prairie, 2008-0693, pp. 1–2 (La. App. 3 Cir. 12/10/08), 998 So. 2d 1248, 1249–50.

71. *Id.* at 1250.

72. *Id.*

73. *Id.* at 1251.

indifference to the likelihood of that injury.[74] Therefore, the court affirmed, holding that the daughter was on the premises for a recreational purpose because she was an observer of a baseball game, which is a recreational event.[75] The *DeLafosse* decision recognized that passive observation qualifies as a recreational use, thereby expanding recreational uses beyond the active participation previously recognized in *Webb*.[76]

Even when land is operated commercially, courts may still consider it to be noncommercial if the land use generates no profits. In *Robinson v. Jefferson Parish School Board*, plaintiffs brought a wrongful death and survival action against defendant campground owners after plaintiffs' son drowned in the campground's lake while on a school trip.[77] Defendants claimed immunity under §§ 2791 and 2795, and successfully moved for summary judgment.[78] The Louisiana Fifth Circuit Court of Appeal, relying on *Hall*, held that the defendant lessee did not forfeit its immunity because the defendant did not use the land for a primarily commercial recreational purpose.[79] The campground did not make profits, and its operations were subsidized by a local church. Thus, the court found no commercial recreational use existed in its use of the land.[80] Additionally, the court held that under the language of the statutes, defendants did not act in a willful or malicious manner with regard to failing to warn the decedent of the lake's hazards; all the students were instructed to stay out of the lake while on the property.[81] Accordingly, the Fifth Circuit affirmed the trial court's decision,[82] concluding that defendants were immune under §§ 2791 and 2795.[83]

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74. *Id.* at 1252.

75. *DeLaFosse*, 998 So. 2d at 1253.

76. *Compare Webb*, 959 So. 2d at 925 (holding attending a baseball game is covered under LA. STAT. ANN. § 9:2795), *with DeLaFosse*, 998 So. 2d at 1253 (holding "participation in recreational activities" is covered under LA. STAT. ANN. § 9:2795).

77. Robinson v. Jefferson Par. Sch. Bd., 2008-1224, p. 3 (La. App. 5 Cir. 4/7/08), 9 So. 3d 1035, 1037.

78. *Id.* at 1042.

79. *Id.* at 1045 (citing *Richard,* 874 So. 2d at 151).

80. *Id.*

81. *Id.* at 1046.

82. One member of the court dissented, reasoning that the facts of the case were not subject to summary judgment. *Robinson*, 9 So. 3d at 1048 (Winsburg, J., dissenting).

83. *Id.*

Acts preparatory to recreational activity are included within the scope of recreational use. In *Richard v. Louisiana Newpack Shrimp Company, Inc.*, plaintiffs sought damages for injuries that were sustained when one plaintiff fell in a hole while walking on a levee to get to a boat.[84] In response to plaintiffs' assertion that defendant failed to warn customers of potentially hazardous conditions, defendant asserted recreational use immunity and successfully moved for summary judgment.[85] On appeal, plaintiffs asserted that the alleged injury occurred while plaintiff prepared to "engag[e] in recreational activity," and the injury was only "incidentally" related to the recreational activity.[86] The court held that under "[t]he plain wording of the [statutes,]" and pursuant to *Webb*,[87] an activity which is ancillary to recreational activities—be it walking on a levee or riding a motorcycle—qualify as recreational activities.[88] Regarding plaintiffs' contention that immunity was improper because of defendant's willful or malicious conduct, the court found that plaintiffs were aware of the ruts that caused the plaintiff's injuries and therefore, defendant had no duty to warn plaintiffs of the hazard.[89] The court affirmed the trial court's grant of summary judgment, holding that defendant was immune from liability under §§ 2791 and 2795.[90]

Recreational use contingent upon charges levied by nonprofit companies is still noncommercial. In *Doyle v. Lonesome Development, LLC*, plaintiffs sued defendant neighborhood and development company for damages sustained by their minor child when a dead tree fell on him while he played soccer at an open field in his gated neighborhood.[91] Both defendants—non-profit homeowners' association Natchez Trace (Natchez) and land developer Lonesome Development (Lonesome)—maintained an

84. Richard v. La. Newpack Shrimp Co., 2011-309, p. 2 (La. App. 5 Cir. 12/28/11), 82 So. 3d 541, 542 [hereinafter *Newpack Shrimp*]. The hole in the ground was allegedly caused by the repeated tire tracks left by the defendant's trucks. *Id.*

85. *Id.* at 542, 544.

86. *Id.* at 544–45.

87. *Id.* at 546–47 (citing *Webb*, 9 So. 2d at 925) ("The statute does not require that the injury arise out of the recreational activity *per se*, as long as the person injured was on the property for a recreational purpose.").

88. *See id.* at 547.

89. *Newpack Shrimp*, 82 So. 3d at 548.

90. *Id.*

91. *Doyle*, 254 So. 3d at 717.

ownership interest in the neighborhood, prompting each to claim recreational use immunity and move for summary judgment.[92] The trial court granted Natchez's motion for summary judgment but denied Lonesome's motion; plaintiffs and Lonesome appealed.[93] Plaintiffs contended that Natchez was not entitled to immunity because "the common areas were for commercial profit," as the space was only available "to homeowners who paid quarterly dues [and their guests.]"[94] Lonesome contended that recreational immunity did not apply because the injury occurred in a gated neighborhood.[95] Although neither appellant argued the point, the Louisiana First Circuit identified that soccer is clearly included as a recreational activity for the purposes of immunity.[96] Thus, the only issue regarding "recreation" before the court was whether the injury occurred on land that qualified for immunity.[97] The court considered and modified a three-part variation of the two-part *Broussard* test to determine whether the land qualified for immunity:

> (1) [T]he land upon which the injury occurs must be undeveloped, non-residential, and rural or semi-rural; (2) the injury itself must be the result of recreation that can be pursued in the 'true outdoors;' [and] (3) the injury-causing instrumentality must be of the type normally encountered in "the true outdoors" and not "of the type usually found in someone's backyard."[98]

The court noted that the first prong of the test was effectively negated in 2001 when the legislature altered § 2795(A) and 2795(E)(2)(a) to include "urban or rural" land.[99] Accordingly, the court determined that "a developed, residential area [is included] within the definition of 'land' [found in § 2795.]"[100] Regarding the plaintiffs' contention that immunity was unavailable to Natchez because recreational use of the field was limited to homeowners

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92. *Id.* at 717.

93. *Id.* at 718.

94. *Id.* at 719.

95. *Id.*

96. *Doyle*, 254 So. 3d at 722.

97. *Id.*

98. *Id.* (quoting *Deumite*, 692 So. 2d 1127).

99. *Id.* (citing Fournerat v. Farm Bureau Ins. Co., 2011-1344, p. 8 (La. App. 1 Cir. 9/21/12), 104 So. 3d 76, 81); Act No. 1199, 2001 La. Acts 2678–79.

100. *Doyle*, 254 So. 3d at 722 (citing Benoit v. City of Lake Charles, 2005-89, pp. 5–6 (La. App. 3 Cir. 7/20/05), 907 So. 2d 931, 935–36).

and their guests, the court held that immunity still applies when the recreational use is available to a limited group of people rather than the general public.[101] Therefore, a gated community is not precluded from immunity simply because it is gated and limits access to the public.[102]

The Louisiana First Circuit then addressed whether there existed an exception of commercial use or willful or malicious failure to warn. The court noted that Natchez was a nonprofit organization, that Natchez did not profit from the homeowners' dues, and that Natchez only used the dues revenue to fund maintenance within the neighborhood.[103] Therefore, the court concluded that Natchez was not precluded from immunity because Natchez's principal use of the land was not commercial in nature.[104] Turning to the willful or malicious exception, the court stated that:

> [Generally], the defendant owes a duty to discover any unreasonably dangerous condition on the premises and either correct it or warn potential victims of its existence. However, this duty does not extend to potentially dangerous conditions which should have been observed by an individual in the exercise of reasonable care or which are as obvious to a property owner as to a visitor.[105]

The court found that plaintiffs failed to present evidence which indicated that Natchez had actual knowledge of the tree, and therefore failed to prove that Natchez acted willfully or maliciously.[106] The First Circuit Court of Appeal affirmed

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101. *Id.* at 723 (quoting Domingue v. Stanley, 2001-0041, p. 9 (La. App. 3 Cir. 5/02/01), 784 So. 2d 844, 850) ("[T]he limitation of liability . . . shall not be affected by the granting of a lease, right of use, or right of occupancy for any recreational purpose which may limit the use of the premises to persons other than the entire public or by the posting of the premises so as to limit the use of the premises to persons other than the entire public.").

102. *See id.* at 729.

103. *Id.* at 725.

104. *Id.* at 725.

105. *Doyle*, 254 So. 3d at 726.

106. *Id.* at 727.

Natchez's motion for summary judgment on plaintiffs' tort claims.[107]

Further, only activities that typically take place in the true outdoors qualify as recreational use. In *Glorioso v. City of Kenner*, plaintiff brought suit for damages sustained by his minor daughter when she fell off of a stage during gymnastics class, in a gym owned by the City of Kenner, and cut herself "on a broken metal electrical box . . . ."[108] Kenner claimed immunity and filed a motion for summary judgment, which the trial court granted, prompting plaintiff's appeal.[109] The Louisiana Fifth Circuit Court of Appeal held "that gymnastics is not a recreational [activity] as contemplated by [the statute]" because the examples in the statute, and activities included by jurisprudence, all require an element of the "true outdoors."[110] Accordingly, the court reversed the lower court and remanded the matter for further proceedings.[111] In short, activities that primarily occur indoors and not in the "true outdoors" are not included in the recreational use immunity statutes.

In sum, Louisiana courts have recognized that the recreational use immunity statutes are to be interpreted broadly to convey expansive immunity. *Broussard* established that immunity applies when the use in question is "recreational on a noncommercial basis."[112] Furthermore, *Webb* recognized, and *Newpack Shrimp* affirmed, that the statutes include acts accessory to the actual recreational use.[113] Thereafter, *Robinson* affirmed *Newpack Shrimp*'s holding, declaring that § 2795 is controlling over § 2791 and that the defendant's use determines whether the use is commercial and therefore excluded from immunity.[114] *DeLafosse* included passive observation in the statutes' protections.[115] *Doyle* found that charges by non-profits do not constitute commercial use and are therefore still entitled to

107. One member of the court dissented in part, reasoning that the immunity statutes should not apply to private commercial developments such as Natchez. *Id.* at 729 (Holdridge, J., dissenting).

108. *Glorioso*, 285 So. 3d at 602.

109. *Id.*

110. *Id.* at 605.

111. *Id.*

112. *Broussard*, 539 So. 2d at 831.

113. *Compare Webb*, 959 So. 2d at 925, *with Newpack Shrimp*, 82 So. 3d at 547–48.

114. *Compare Richard*, 874 So. 2d at 151, *with Robinson*, 9 So. 3d at 1045.

115. *DeLafosse*, 998 So. 2d at 1253.

immunity.[116] Finally, *Glorioso* held that a plaintiff's injury and the activity giving rise to that injury must be consistent with the "true outdoors."[117]

C. DECISIONS FROM WISCONSIN AND WASHINGTON APPLYING THOSE STATES' RECREATIONAL USE STATUTES

Although every state has its own recreational use immunity statute, not every state has considered whether an outdoor festival qualifies as recreational use under its statute.[118] Two states that have considered the issue are Wisconsin in *Hall v. Turtle Lake Lions Club*[119] and Washington in *Matthews v. Elk Pioneer Days*.[120]

As in Louisiana, Wisconsin's courts have construed their state's recreational use immunity statute broadly. In *Turtle Lake*, plaintiff sued defendant fair sponsor for damages sustained after he "stepped in a hole on the grounds" while attending an outdoor fair in a park.[121] The trial court granted defendant's motion for summary judgment, finding that defendant was entitled to immunity under Wisconsin's recreational use immunity statute.[122] On appeal, District III of the Wisconsin Court of Appeals found that the legislative intent behind § 1 of Wisconsin Act 418 evidenced that the statute should be "liberally construed[,]" that the list of recreational activities in the statute was non-exclusive, and that the fair qualified as a recreational activity.[123] Specifically, the court found that the fair's "agricultural show involving [cattle], carnival rides and booths, [and] concessions" were "substantially similar" to the statute's examples of "nature study, sight-seeing . . .

116. *Doyle*, 254 So. 3d at 725.

117. *Glorioso*, 285 So. 3d at 605.

118. *See Richard*, 874 So. 2d at 150; *Beal*, 334 So. 3d at 445.

119. Hall v. Turtle Lake Lions Club, 431 N.W.2d 696, 697 (Wis. Ct. App. 1988) [hereinafter *Turtle Lake*].

120. Matthews v. Elk Pioneer Days, 824 P.2d 541, 542 (Wash. Ct. App. 1992).

121. *Turtle Lake*, 431 N.W.2d at 697.

122. *Id.*

123. *Id.* (quoting Act No. 718, 1983 Wis. Sess. Laws 1846–51) ("While it is not possible to specify in a statute every activity which might constitute a recreational activity, this act provides examples of the kinds of activities that are meant to be included, and the legislature intends that, where substantially similar circumstances or activities exist, this legislation should be liberally construed in favor of property owners to protect them from liability.").

[124] [and] any other . . . educational activity[,]" respectively.[125] The District III Court affirmed the trial court's grant of summary judgment based on defendant's immunity from liability.[126]

Unlike Louisiana's recreational use immunity statutes, Washington's statute is strictly construed. In *Matthews*, plaintiff sued defendant festival sponsor for injuries sustained when a large tent fell onto her while attending an outdoor festival in Tacoma, Washington.[127] The festival was hosted by Elk Community Church and featured "entertainment, competitions, and demonstrations."[128] The trial court granted defendant's motion for summary judgment, which invoked recreational use immunity under Washington's recreational use immunity statute.[129] Plaintiff appealed to Division III of the Washington Court of Appeals, claiming that the festival was not a recreational use under Washington's recreational use immunity statute.[130] The appellate court agreed, distinguishing the case from *Turtle Lake*. The court explained that, unlike Wisconsin's immunity statute, Washington's statute required strict construction in the absence of clear legislative intent stating otherwise.[131] Applying the statutory canon of *ejusdem generis*,[132] the Wisconsin court concluded that the language of its state's statute only conveyed immunity to activities which require active involvement or the outdoors—the characteristic common to all of the enumerated activities.[133] The church festival's "entertainment, competitions, and demonstrations" did not meet this requirement.[134] The Division III Court reversed the trial court's summary dismissal in

124. It is worth noting that the *Turtle Lake* court's reasoning is almost identical to the *Beal* court's; however, this Note does not consider the decision reached in *Turtle Lake*.

125. *Turtle Lake*, 431 N.W.2d at 697 (quoting WIS. STAT. § 895.52(1)(g) (2021) (internal quotations omitted)).

126. *Id.* at 699.

127. *Matthews*, 824 P.2d at 541–42.

128. *Id.*

129. *Id.* at 542.

130. *Id.*

131. *Id.* at 543.

132. "Of the same kind, class, or nature." THE LAW DICTIONARY, *Ejusdem Generis,* https://thelawdictionary.org/ejusdem-generis (last visited Oct. 4, 2022).

133. *Matthews*, 824 P.2d at 543.

134. *Id.*

favor of defendant and remanded the case for further proceedings.[135]

IV. THE COURT'S DECISION

Because Louisiana courts had never considered whether a music festival qualified for immunity under §§ 2791 and 2795, the *Beal* court considered the legislative history and jurisprudence interpreting §§ 2791 and 2795, as well as similar cases from other jurisdictions. Beginning with *Richard v. Hall*, the Fourth Circuit noted that "legislative amendments have expanded the scope of immunity" under §§ 2791 and 2795.[136] Significantly, the court found that jurisprudence recognizes the illustrative and nonexclusive nature of the enumerated lists in Louisiana Revised Statutes §§ 9:2791 and 9:2795.[137] The court also noted that Louisiana appellate courts previously expanded the statute's scope to provide immunity even when the injured person was not injured in the scope of recreational activity, provided that the injured person was on the property for a recreational purpose.[138]

Relying on *Glorioso v. City of Kenner*,[139] Beal asserted that an outdoor music festival "is not a recreational activity within the scope of the . . . statutes."[140] The Louisiana Fourth Circuit, however, distinguished *Glorioso*, noting that the gymnastic activity at issue in that case does not typically occur outdoors and the gymnast's injury in fact occurred indoors.[141] Conversely, in *Beal*, "both the music festival . . . and the injury . . . occurred outdoors."[142] Because Louisiana courts had yet to determine the applicability of recreational immunity to an outdoor music festival,[143] the court considered *Matthews v. Elk Pioneer Days* from Washington's Division III Court and *Hall v. Turtle Lake Lions Club* from Wisconsin's District III Court.[144] The Louisiana Fourth

135. *Id.*
136. *Beal*, 334 So. 3d at 443.
137. *Id.* at 443–44.
138. *Id.* at 444 (quoting *Newpack Shrimp*, 82 So. 3d at 546).
139. *Glorioso*, 285 So. 3d 601.
140. *Beal*, 334 So. 3d at 444.
141. *Id.* at 445.
142. *Id.*
143. *Id.*
144. *Id.*; *Matthews*, 824 P.2d 541; *Turtle Lake*, 431 N.W.2d 696.

Circuit also noted the Louisiana Supreme Court's decision in *Richard v. Hall*, wherein the court concluded that the enactment of the more inclusive § 2795 "evidences an intent on the Legislature's part" that the recreational use immunity statutes grant "broad" and "expan[sive]" immunity from liability.[145] Accordingly, the court concluded that Louisiana's recreational use immunity statutes more closely resembled the statute in *Turtle Lake* than the statute in *Matthews*, and that Louisiana's recreational use immunity statutes required a liberal construction.[146] The *Beal* court specifically focused on the location and purpose of French Quarter Festival to determine whether the Festival was recreational:

> Because the Festival is intended to take place outdoors and features the natural and architectural aspects of the French Quarter, including the Mississippi River, along which Woldenberg Riverfront Park is located, we find that the definition of recreational purposes is broad enough to include the activities normally associated with attending an outdoor music festival, like the Festival.[147]

"The Festival was [originally intended to] promot[e] the French Quarter," and consequently "takes place outdoors" within view of the Mississippi River and in the heart of the historic French Quarter.[148] The court concluded that the Festival is covered by the immunity statutes.[149]

Responding to Beal's contention that Defendants' failure to warn her of the hazard was willful or malicious, the court found the record devoid of any evidence indicating that Defendants' actions were likely to cause Beal harm.[150] Therefore, the court rejected this assignment of error.[151]

Finally, the court declined to discuss whether the tree root that caused Beal to fall was an "open and obvious hazard" because Defendants were entitled to immunity and summary judgment

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145. *Beal*, 334 So. 3d at 446 (quoting *Richard*, 874 So. 2d at 151).

146. *Id.*

147. *Id.* at 446–47.

148. *Id.* at 446; FRENCH QUARTER FEST, *Festival Facts*, https://frenchquarterfest.org/festival-facts/ (last visited Oct. 4, 2022).

149. *Beal*, 334 So. 3d at 446.

150. *Id.* at 448.

151. *Id.*

proved appropriate.[152] Accordingly, the court found that Defendants were entitled to immunity under §§ 2791 and 2795.[153] The Fourth Circuit Court of Appeal affirmed the trial court's judgment granting summary judgment in favor of Defendants and dismissing Beal's claims.[154]

V. ANALYSIS

A. THE COURT COULD HAVE REACHED THE SAME CONCLUSION ON NARROWER GROUNDS

The Louisiana Fourth Circuit's decision relied primarily on the legislative intent behind §§ 2791 and 2795 to make the facts fit a textual interpretation of the statutes.[155] Specifically, the court noted that the legislature and the judiciary have continually "expanded the scope" of recreational use immunity.[156] Although the Fourth Circuit did not specifically mention it, "[t]he purpose of the [recreational use immunity statutes] is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes."[157] Considering the statutes' purpose, the Fourth Circuit correctly concluded that an outdoor music festival qualifies as "recreational use" under the immunity statutes. However, the Fourth Circuit's reasoning allows for an expansion of immunity beyond the legislature's intent. The court compared the outdoor music festival to the statutes' provision for historic and scenic sites, noting that "[t]he Festival is intended to take place outdoors and feature[s] the natural and architectural aspects of the French Quarter."[158] On these grounds, the Fourth Circuit concluded that the Festival qualified for recreational use immunity.[159]

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152. *Id.*

153. *Id.*

154. *Beal*, 334 So. 3d at 448.

155. *See id.* at 446.

156. *Id.* at 443 (citing *Richard*, 874 So. 2d at 149–51).

157. *Broussard*, 539 So. 2d at 829–30 (quoting *Keelen*, 463 So. 2d at 1290 (internal quotations omitted)); Act No. 615, 1975 La. Acts 1312.

158. *Beal*, 334 So. 3d at 446–47.

159. *Id.* at 447.

This reasoning was unnecessarily circuitous. French Quarter Festival is first and foremost a music festival.[160] The Festival is located in the French Quarter near historic architecture and arguably qualifies as a scenic site because of its proximity to the Mississippi River.[161] However, just as patrons of a baseball game do not attend to observe the grass on the field or the stadium's design, patrons of French Quarter Festival do not attend to observe the Mississippi River or the historic architecture—they go to hear the music. In other words, the Fourth Circuit's application of the "scenic and historic" clause is a stretch.[162] It is true that under *Richard v. Louisiana Newpack Shrimp Co.* and *Webb v. Parish of St. Tammany*, activities that are accessory to the recreational purpose of the injured party also qualify as recreational activities.[163] However, the accessory acts in *Newpack Shrimp* and *Webb*, walking to a boat and leaving the premises, respectively, were *necessary* for the enjoyment of each of those case's recreational activity.[164] In *Beal*, however, neither the viewing or enjoying of historic architecture, nor the viewing or enjoying of the scenic Mississippi River were necessary for attending the Festival. Ms. Beal's enjoyment of music from the Woldenberg stage was not conditioned on her appreciation of wrought-iron railings or the river's current. Nevertheless, the Fourth Circuit heavily relied on this comparison to accessory acts in *Newpack Shrimp* and *Webb*.[165] Furthermore, the court seems to adopt the same reasoning of the *Hall v. Turtle Lake Lions Club*[166] court. However, the facts of *Turtle Lake* require less of a stretch in logic than the facts of *Beal* to find that immunity applied. In *Turtle Lake*, the fair featured "an agricultural show involving [over one hundred cattle]."[167] An agricultural show of cattle fits much better under "nature study . . . and any other educational activity,"[168] than the Festival's proximity to a river and historic buildings fits under "viewing or enjoying historical [or] scenic . . . sites."[169] The *Beal* court could

160. *Id.* at 440.

161. *See id.*, at 446.

162. *Compare id.*, *with* LA. STAT. ANN. § 9:2795(A)(3) (2022) ("'Recreational purposes' includes . . . viewing or enjoying historical . . . [or] . . . scenic . . . sites.").

163. *Newpack Shrimp*, 82 So. 3d at 547–48; *Webb*, 959 So. 2d at 925.

164. *Newpack Shrimp*, 82 So. 3d at 547; *Webb*, 959 So. 2d at 926.

165. *See Beal*, 334 So. 3d at 444.

166. *See id.* 446 (citing *Turtle Lake*, 431 N.W.2d at 697).

167. *Turtle Lake*, 431 N.W.2d at 697.

168. WIS. STAT. ANN. § 895.52(1)(g) (2014).

169. LA. STAT. ANN. § 9:2795(A)(3) (2022).

have limited its reasoning to analogy to previous cases, employed policy-based reasoning, and applied the canon of *ejusdem generis* and still reached the same conclusion.

The *Beal* court considered rulings from Wisconsin and Washington,[170] but ignored cases within Louisiana that could have supported the same ruling.[171] The Fourth Circuit could have analogized the spectating of a music festival to the spectating of a baseball game, as neither requires active participation. This would have limited the impact of the *Beal* decision substantially. Specifically, the court could have relied on analogy to *DeLafosse*,[172] which it cited in its reasoning on the issue of willful or malicious failure to warn.[173] In *DeLafosse*, the Louisiana Third Circuit held that attending a baseball game as a spectator qualified as recreation under the statutes.[174] Instead, the Fourth Circuit applied the "historic and scenic sites" provision,[175] allowing the possibility of overly broad expansion of the scope of immunity.

Additionally, the court could have employed policy-based reasoning to reach its decision. "The Festival is a free event"[176] and clearly falls within the legislative intent of the statutes to promote recreation and limit land owner liability when owners allow others to access their lands for recreational use.[177] As the Fourth Circuit noted, both the legislature and the judiciary have continually expanded the scope of immunity in accordance with the legislative intent in creating the statutes.[178] In light of the legislative amendments and jurisprudence noted by the Fourth Circuit, the policy behind recreational use immunity[179] would have provided

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170. *See Beal*, 334 So. 3d at 445–46.

171. *See id.*

172. *See DeLafosse*, 998 So. 2d 1248.

173. *Beal*, 334 So. 3d at 447.

174. *DeLafosse*, 998 So. 2d at 1253.

175. *See Beal*, 334 So. 3d at 446.

176. *Id.*

177. "The purpose of the [recreational use immunity statutes] is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes." *Broussard*, 539 So. 2d at 829–30 (quoting *Keelen*, 463 So. 2d at 1290).

178. *Beal*, 334 So. 3d at 443–44.

179. *Broussard*, 539 So. 2d at 829–30 (quoting *Keelen*, 463 So. 2d at 1290) ("The purpose of [the recreational use immunity statutes] is to encourage owners of land to

ample support for the court's decision. In fact, the Fourth Circuit could have acknowledged that *even if* the Festival charged an admission fee, both § 2795 and the *Doyle* decision support a finding that immunity still applies. Section 2795 grants immunity to landowners who allow recreational use "with or without charge . . . ."[180] The *Doyle* court held that charges levied by a non-profit organization, such as FQF, do not constitute commercial use and therefore do not preclude immunity under §§ 2791 and 2795.[181]

Finally, focusing on an application of *ejusdem generis* could have limited the court's decision. Each of the activities contemplated by the illustrative list in § 2795(A)(3)[182] is an inherently outdoor activity, although some of them can also occur indoors depending on the indoor facility. Jurisprudence has interpreted the definition of "recreational purposes" to include sports such as baseball,[183] softball,[184] and soccer,[185] while excluding gymnastics.[186] A music festival is an inherently outdoor activity.[187] However, the fact that most sports can be played indoors did not preclude their inclusion in the definition of recreational purpose in the cases listed above.[188] The court could have analogized music festivals to the sports that jurisprudence has included in the definition of recreational purpose. In short, it was unnecessary to stretch the recreational use immunity statutes to include the Festival under enjoyment of historic or scenic sites; the Festival already enjoyed the statutes' protection.

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make land and water areas available to the public for recreational purposes by limiting their liability towards persons entering thereon for such purposes.")).

180. LA. STAT. ANN. § 9:2795(B)(1) (2022).

181. *Doyle*, 254 So. 3d at 723.

182. "Recreational purposes includes but is not limited to any of the following, or any combination thereof: hunting, fishing, trapping, swimming, boating, camping, picnicking, hiking, horseback riding, bicycle riding, motorized, or nonmotorized vehicle operation for recreation purposes, nature study, skate boarding, sledding, snowmobiling, snow skiing, summer and winter sports, or viewing or enjoying historical, archaeological, scenic, or scientific sites." LA. STAT. ANN §9:2795(A)(3) (2022) (internal quotations omitted).

183. *See DeLafosse*, 998 So. 2d 1248.

184. *See Webb*, 959 So. 2d 921.

185. *See Doyle*, 254 So. 3d at 722.

186. *See Glorioso*, 285 So. 3d 601.

187. *Beal*, 334 So. 3d at 445. The Fourth Circuit noted, however, that sometimes music festivals may also occur indoors. *Id.*

188. *See, e.g., Glorioso*, 285 So. 3d at 605.

B. THE PROBEMATICALLY EXPANSIVE IMPLICATIONS OF THE *BEAL* DECISION

The impact of this case has potentially broad implications. Music festivals are, at their base level, a collection of concerts in one centralized location. Considering the court's reasoning, the same recreational immunity should apply to a singular concert in the exact same location as the Festival. In truth, any event in the same location could now qualify for immunity, even an outdoor gymnastics demonstration, because of the event's proximity to the old buildings and the river. Furthermore, under *Richard v. Hall*, it is the use of the lessee, owner, or occupant that determines whether immunity applies, not the general purpose of the premises themselves.[189] Thus, any land used for a noncommercial recreational purpose, whether there is a charge for admission or not, may now qualify for immunity provided it is sufficiently close to historic architecture or a scenic location. For example, Catholic churches in Louisiana, of which there are many, commonly host outdoor fish frys and crawfish boils during the Catholic season of Lent and charge a small admission fee either to cover general operations or to direct toward a charitable cause. The *Doyle* court allowed immunity even when there is a charge for general operating costs, and charitable donations would also be included under the *Doyle* court's reasoning.[190] These events, which take place near church buildings, would now enjoy immunity because of their proximity to churches that are frequently historic.

Louisiana is filled with historic buildings, historic locations, and scenic locations. The possibilities of events that are sufficiently close to one of these locations in Louisiana are endless. Although the legislature intended for the statutes to have broad application and generally convey immunity to landowners, the legislature certainly did not intend to leave a loophole in the statute for anyone within view of a river or an old building.

While the court's decision in *Beal* likely falls within the legislative intent behind the recreational use immunity statutes,[191]

189. *Richard*, 874 So. 2d at 152.

190. *Doyle*, 254 So. 3d at 725.

191. "The purpose of the [recreational use immunity statutes] is to encourage owners of land to make land and water areas available to the public for recreational purposes

the court's reasoning in reaching that decision plainly does not. The activities that may now be included in the statutes should not qualify for recreational immunity based on proximity to historic or scenic sites. Instead, they should qualify because of legislative action or because of more narrow jurisprudence.

VI. CONCLUSION

The *Beal* court reached the correct conclusion: outdoor music festivals should be included in "recreational purposes" under the recreational use immunity statutes. The statutes themselves, the legislative intent in creating the statutes, and the existing jurisprudence interpreting the statutes makes that much clear. However, the court's reasoning reached to haphazardly jam music festivals into one of the statutes' preexisting examples of recreational uses. In so doing, the court allowed for the possibility that activities beyond the intended scope of the statutes could qualify for recreational immunity because of proximity to historic or scenic sites. Now, Louisiana plaintiffs may face summary judgment due to defendants' immunity from tortious liability because the plaintiffs' injuries occurred near historic or scenic locations. Although the result may fall within the legislature's intent, the means surely do not.

H. Ryan Flood

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by limiting their liability toward persons entering thereon for such purposes." *Broussard*, 539 So. 2d at 829–30 (quoting *Keelen*, 463 So. 2d at 1290).