

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SHANNON C. ADAMSON, Husband
and Wife; NICHOLAS ADAMSON,
Husband and Wife,
Plaintiffs-Appellees,

v.

PORT OF BELLINGHAM, a
Washington Municipal
Corporation,
Defendant-Appellant.

No. 16-35314

D.C. No.
2:14-cv-01804-
MJP

OPINION

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Argued and Submitted May 11, 2018
Seattle, Washington

Filed May 14, 2019

Before: Ronald M. Gould and Sandra S. Ikuta, Circuit
Judges, and John R. Tunheim, * District Judge.

Per Curiam Opinion

* The Honorable John R. Tunheim, United States District Judge for
the District of Minnesota, sitting by designation.

SUMMARY**

Washington Law

The panel affirmed the district court’s judgment after the panel certified two questions to the Washington State Supreme Court, which held that a priority usage agreement did not absolve a landlord as a possessor of property.

Specifically, the Washington State Supreme Court held “that a priority use provision, an affirmative obligation to maintain and repair, and the ability to lease the property to others together create sufficient control of the property such that a landowner who leases the property is held liable as a premises owner.” *Adamson v. Port of Bellingham*, 438 P.3d 522, 525 (Wash. 2019).

COUNSEL

Michael Barr King (argued), Jason W. Anderson, and Rory D. Cosgrove, Carney Badley Spellman P.S., Seattle, Washington; Frank J. Chmelik and Seth A. Woolson, Chmelik Sitkin & Davis P.S., Bellingham, Washington; for Defendant-Appellant.

Philip A. Talmadge (argued), Talmadge/Fitzpatrick/Tribe, Seattle, Washington; James Jacobsen and Joseph Stacey, Stacey & Jacobsen LLP, Seattle, Washington; for Plaintiffs-Appellees.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

OPINION**PER CURIAM:**

We certified two questions to the Washington State Supreme Court. *Adamson v. Port of Bellingham*, 899 F.3d 1047 (9th Cir. 2018). We said that if “the Washington State Supreme Court decides that a priority usage agreement does not absolve a landlord of liability as a possessor of property, we will affirm the district court.” *Id.* at 1051.

The Washington State Supreme Court so decided. “The fact that AMHS was in berth and using the passenger ramp at the time of the incident does not affect the Port’s liability as a landowner-lessor. We answer the first certified question in the affirmative.” *Adamson v. Port of Bellingham*, 438 P.3d 522, 528 (Wash. 2019). Specifically, it held that “that a priority use provision, an affirmative obligation to maintain and repair, and the ability to lease the property to others together create sufficient control of the property such that a landowner who leases the property is held liable as a premises owner.” *Id.* at 525.

We affirm the district court.

AFFIRMED.