



KNUTSON & ASSOCIATES
ATTORNEYS AT LAW

America Outdoors 2011-
Crisis Response Primer
(Think: 'Risk Management')

Review: 1.) Negligence

- Negligence under the law is generally defined as the failure to use ordinary care; that is, failing to do what a person of ordinary prudence would have done under the same or similar circumstances.
- Essentially we are looking to determine whether an operator, educator or land administrator could or should have recognized an unreasonable risk and then did nothing to warn the participant or to reduce or eliminate the unreasonable risk.
- To examine negligence in behavior or conduct, look for 2 things: was the risk foreseeable and was the risk unreasonable

Negligence Claims Brought Against Recreation Providers

1. Co-participant liability
2. Premises Liability
3. Negligent Rescue/Response/Med. Care
4. Negligent Hiring, Inexperienced Guides/Instructors – Negligent Supervision
5. Failure to Warn
6. Equipment Issues

Evidence - Case Structure

During the process of discovery all the pieces of the story are obtained by gathering pieces of evidence. There are only three types of evidence and being aware of them will help you think through risk management issues and situations.

- Real Evidence - the documents, the broken ski, etc.
- Demonstrable Evidence - charts/graphs/creations
- Testimonial Evidence -
 - Witness
 - Expert
 - Party
- All evidence, including real and demonstrable, must come in through a person with testimony

Bottom Line

- Bottom line then is to think about how the claimant (plaintiff) or former client/participant is going to make out a case against you.
- What pieces of evidence will he/she marshal against you?
- What types of real evidence exist for you or against you?
- Who will testify for you or against you?
- What types of expert testimony could be offered against you?
- Patient and family care and attention (preventing suits caused by anger)

Notify:

- Local ER Response
- Public Land Administrator
- Insurance Company
- Counsel

Obtain (1):

- Witness statements, complete lists of participants and addresses
- Physical evidence and evidence of scene
- Staff/guide/instructor statements
- Documents from ER and land administrator –
- Principal investigators observations...
- Photographs/video tapes - did your clients or others shoot photos? Can you get them?

Obtain (2):

- Participant agreements
- Releases/exculpatory agreements
- Radio logs or trip manifests
- Media reports
- Your current ops plan
- Copies of your advertising
- Discovery and discoverable materials

Key Elements of a Response Plan

- Emergency Response Protocols: outlining decision-making and financial authorities, response level categories
- Roles: who does what, use of prepared checklists
- Communication: within the organization and to lawyers & insurers. Devices necessary to summon help: what the current standard is.
- Information: what to transmit – injuries & treatment, what you need, information on client group
- Coordination/Organization: initial communication with outside entities, roles/responsibilities, rendering first aid, evacuation of injured person/body, consolidation of equipment, tending to needs of other clients, addressing needs of staff after incident, CISD

Good & Bad Wording in Promotional Materials

- Because promotional materials are full of visuals they make strong impressions about the activity, the weather, the fun, etc. Use visual/written materials to attract appropriate (think: capable and informed) clients and to transmit information regarding the nature of your trips.
- Describe the levels of physical conditioning and activity required of participants. Let potential clients know outdoor recreation activities include inherent risks that cannot be eliminated.
- Describe the nature of those inherent risks and the potential injuries that can result from those risks. The objective is to fully warn and inform potential clients of the risks inherent in your trips and of

- Advise clients that they will be required to sign a liability release form before participating in your activities.
- Lastly, written or oral statements sometimes contradict the statements made in a participant agreement, potentially weakening the document, providing the basis for a breach of contract claim and/or giving a court cause to find it unenforceable.

Media - Don'ts (1)

- **Do Not** divulge the names of fatality victims or those in life threatened situations before the next-of-kin has been notified (and notification has been confirmed) by either the authorities.
- **Do Not** alter facts.
- **Do Not** provide information as factual unless it has been confirmed and **do not** speculate on anything that is unconfirmed.
- **Do Not** provide any more information than is necessary or asked for but, also,

Media - Don'ts (2)

- **Do Not** give the impression that you are hiding facts. This only leads to media speculation. If some elements of the incident are unconfirmed or information is still incomplete do assure the media that when all the facts are in hand and confirmed that the information will be readily available to them.
- **Do Not** speculate about fault or blame.
- **Do Not** issue any statement that could be construed as an admission of negligence.
- **Do Not** assume that a conversation is “off the record”.

Miscellaneous

- Dealing with insurers
- Dealing with lawyers
- Accident investigation procedures: internal and external reviews, disclosure and discoverability.
- Review public disclosure pitfalls and benefits.
- The role of management, owner and guide in the litigation process (little to no decision making, lawyers-insurers carry out decision-making strategy, employee vs contracted guides, contracted service providers and the role of their insurance policies...)



KNUTSON & ASSOCIATES
ATTORNEYS AT LAW

Tracey Knutson
Knutson & Associates
P.O. Box 1026
Girdwood, AK 99587
907-264-6610

tracey.knutsonlaw@alaska.net

www.traceyknutson.com