



KNUTSON & ASSOCIATES
ATTORNEYS AT LAW

America Outdoors 2023 – Phoenix

The Full View – Do You Have All
the Pieces of the Puzzle to Run a
Programmatic or Commercial
Recreation Operation?

Structural Issues

- Type of Corporation and Why
- Policies and Procedures
 - For the business
 - For the activity
 - Committed to Paper
- Employee-Ownership-Responsibility Hierarchy
 - Are You BOD Driven?

YOUR Structural Issues/Questions

Insurance

- What Types Do You Need?
- Note the Exclusions
- COI or AI and How to Do That
- Use an Experienced Recreation Broker

YOUR Insurance Issues/Questions

Staffing

- Obviously Critical
- Documenting Types of Credentials Needed (Do You Know Why?)
- Program for Monitoring Certs – Capturing Info
- What Results in Termination
- Admin vs. Field
- Hierarchies

YOUR Staffing Issues/Questions

Role of Counsel

- On the BOD?
- In Emergencies
- Routine Types of Advices
- Frequency of Document Review
- Qualifications
- Conflicts

YOUR Counsel Issues/Questions

Various Defenses We Rely On in Recreation/Adventure Sports

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

Review: 2.) Legal Elements of Negligence Claim

- Duty – this is where standards come in to play. Standards of care that are used in the industry or published or enunciated can and will be used to establish the duty that an operator owes to an injured person
- Breach – and consequently then, the standard may be used in an evidentiary sense to establish whether the duty of care was actually breached.
- Causation
- Damages

The Defenses

- Releases (A Contract)
 - Does It Express ALL the Defenses?
- Statutory Schemes
- Inherent Risk
- Assumption of the Risk

YOUR Defenses Issues/Questions

How Are You Contracting With Other Entities?

- Via Actual Contract?
- Termination Clauses...
- Cancellation Clauses
- Receive and Exchange AI/COI's?
Notifying Your Insurance Company
- Non-competes...
- Due Diligence on Them?

YOUR Contracting Issues/Questions

Geographical Nuances

- Weather Issues
- Topo or Geo Issues
- What Type of SARs Available?

YOUR Geographical Issues/Questions

Standards of Practice - General

- Standards of practice published by professional organizations are commonly referred to as standards, guidelines, recommendations or position statements.
- Organizations publish or enunciate “standards” to provide benchmarks of desirable practices.
- Because these published or enunciated standards can be entered into evidence in a trial or claim proceeding to determine the standard of care or **duty** that the operator or educator owes to the injured person, it is critical for recreation entities to know what standards are being published or enunciated.

Types of Standards

- Occupational Standards – competencies necessary for someone to effectively perform in the occupation
- Training Standards – these very often build on occupational standards and derive from them
- Operational standards – used to evaluate operational practices, for the public to evaluate quality, for insurance company evaluations

YOUR Standards Issues/Questions

Bottom Line

- No Cookie Cutter Answers
- But Building a Structure that Considers All these Pieces Likely to Provide a Solid Foundation
- Think of Pieces of evidence





KNUTSON & ASSOCIATES
ATTORNEYS AT LAW

Knutson & Associates

Attorneys at Law

P.O. Box 3504

Homer, AK 99603

PH: 907-235-2026

Fax: 907-235-2028

tracey.knutsonlaw@alaska.net

www.traceyknutson.com