

# MITIGATING LEGAL RISK

America Outdoors 2018  
Musings on 25+ Years of  
Litigating in the Recreation  
Industry

# 1. ACTUAL RECREATION INDUSTRY

- VOLUNTARY ACTIVITIES
- SIZE - \$ AND POWER
- CAN WE DO BETTER?
- MEANING OF REC?

## 2. The Big Guys are Coming

- Mandating Releases that fit them – not you
- Uses Their Culture not yours
- Complicates Your permitting processes

# 3. Constellations

- What does this mean?
- What is Reasonable and Prudent?

# 4. Understand Frequency & Severity

- If the risk that produced the injury was in no way foreseeable then we cannot say that there is a corresponding duty to respond. If it is foreseeable a response is required.
- Think: risk 'predictability' or 'probability'
- Usually 'industry standards' form or coalesce around the notion that professionals set out to minimize/mitigate risks that produce either severe or frequent results.
- As expressed in forecasting terms, questions fundamental to risk assessment and employment of mitigation techniques include an analysis of 1) the probability of any given event occurring and 2) the consequences of an event occurring

# 5. INSURANCE

- CGL
- EXCESS
- LOSS RUNS
- ATTORNEY  
SELECTION
- UNDERWRITING



## 6. PROGRAM FOCUS

- WHO ARE YOU?
- COROLLARY ACTIVITIES
- INFO MANAGEMENT
- CHANGES TO DEFENSIVE  
STRUCTURE & ERP'S (what's  
ERP?)

# 7. THE ACTUAL CLIENT PARTICIPANT

- Requisite Knowledge?
- Little to No 'Muscle Memory'
- Fear and the Prefrontal Cortex...
- Devices
- Dope
- Kids
- Are We Prepared to Rescue?



# 8. FOREIGN NATIONALS

- The Euros are Coming....
- Language Issues
- Discovery Problems – Hague Convention
- The Release....

# 9. EMPLOYEES

- OSHA
- WHEN THE EMPLOYEES GET SUED
- USING THEIR OWN GEAR
- AND AGAIN....DOPE



## 10. LITIGATION

- State of Public Discourse
- Third Party Vendors
- New Lawyers
- Experts
- Insurance Changes
- Aggregators/Wholesalers

# (1000) Final Points (of light...)

- Most expensive currency is experience
- Dr.s rx-ing hiking...
- The dissonance of on-line makes real experience vastly more important
- In a world deluged by irrelevant information – clarity is power.
- Thoughts and feelings – meta cognition
- Interconnectedness
- Virtual-recreation is here...
- Transfer of businesses....



**THANK YOU!!**

Hope you had a  
wonderful time at AO  
2018!

Happy Holidays!

# THE END

## THANK YOU



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