

MITIGATING LEGAL RISK

America Outdoors 2018

Let's Write a Release

**(or...what does your release
really mean?)**



1. What is a Release?

- Contract Law
- Recitation of Common Law Defenses
- Bargained for Exchange



2. HIERARCHY of DEFENSES

- Negligence analysis
- Release and Waiver
Contract
- Inherent Risk
- Assumption of the Risk

3. Inherent Risk

Risks that are inherent are risks that cannot be eliminated.

If a risk is inherent to the activity, it alters the essential negligence analysis.

You want to list as many of the essential aspects of the activity.

It is critical to name the basics too – death, injury and property loss.

4. EXPRESS Assumption of Risk

- Express vs. Implied
- Note the voluntary aspect of their participation
- Clearly express consideration and risk

5. Negligence

- Review negligence
- Simple vs. gross negligence
- No release will exculpate for gross negligence
- Understand the difference between acts and omissions
- Express release from negligence

6. INDEMNITY

- This is the ramification for violating the release.
- They are agreeing to repay your attorney fees.
- This is also a chip in the judges consideration.

7. PERSONAL SKILL AND INSURANCE AND MEDICAL ISSUES

- Sufficient skill and fitness?
- Have insurance that will respond
- Have adequate insurance to cover cost of emergency response

8. Photographic Assignment

- This protects your right to use images in your marketing
- Assignment of right, title and interest in images

9. FORUM SELECTION, SEVERABILITY



- Express which forum you want to be sued in...
- Have them agree they will submit to the jurisdiction of your chosen forum.
- If any part of release found void the rest will remain in effect

10. Finally...

- Acknowledgment of Reading...
- Signature PLUS contact information
- Parent/Guardian Signature and Indemnity
- How you administer the release



THANK YOU!!

Hope you had a
wonderful time at AO
2018!

Happy Holidays!

THE END

THANK YOU



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