

Prepare For Your Day in Court

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About

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Disclaimer

This presentation is for educational purposes only. We are providing legal information, not legal advice.

If you need legal advice, please reach out.

PREPARING FOR COURT

Playing out Reality in a
Lawsuit, Demystifying
Litigation and Court

*Narratives drive both
sides' case.*

*Facts take on a life of
their own.*

*Being prepared is
knowing what to
expect.*

Mock Testimony

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Minor Releases

2

Marketing / Website

3

Policy / Training

4

Preserving Evidence

Hypotheticals

*Kids' friend go on trips. Nieces and nephews go on trips. The actual parent or guardian is sometimes not on the trip. Releases, policies and procedures need to address the reality that there is **heightened liability exposure with minors** which must be addressed/mitigated*

*Without **marketing**, there is no sales, no profit, no business. Marketing must out people's minds at ease to some degree. Marketing looks different in litigation after an injury or death. Some marketing-based claims might be uninsured.*

*Having policies and procedures is a must. Following them is a must. Not **following policies** is usually the result of those policies being outdated, taken for granted, overly ambitious or not read.*

*"Spoliation of evidence" or missing evidence ranges from being a bad optic to sanctionable conduct that can sink a case. Not **preserving evidence** is the result of inadvertence, innocent oversight and sometimes inevitability. But Plaintiffs portray lost or missing evidence as much worse.*



Scenario:
*A Stand-Up
Paddleboarding
Trip Gone
Wrong...*



Scenario

- Family (mom, dad, son and daughter) go on trip to a small resort, and bring their kids' cousin, James ("Cousin James"). Cousin is 15 years old.
- On day 2 of their stay, they sign up for a SUP guided adventure.
- Manager assigns two relatively inexperienced guides to the trip, Ryan and Fred.
- Fred, who has seen other guides do this, offers the family the option of jumping off a high rock into deep water, during a break.
- Cousin James takes him up on it.
- Fred leads Cousin James to a spot, instructs him to jump at least a few feet out.
- The "spot" may have been off.
- Witnesses testifying that they see Ryan (at bottom) "messaging around" on his phone at the time Cousin James is positioning himself to jump. One witness speculates that he recorded it or took photos of it.
- James suffers serious spinal injuries and a traumatic brain injury after jumping.



Scenario



- Fred has trouble using inReach® satellite texting device, leads to a delay in the medical evacuation.
- Ryan and company fail to set aside, photographically document Cousin's helmet and PFD and gear/equipment used to immobilize Cousin James after the fall.
- That night, distraught and guilt-riddled, Ryan texts friends, says he told his manager Fred didn't feel comfortable guiding the trip, felt his managers put Fred in a "bad spot", and that neither was certain where exactly to do the rock jump.
- Company never asked Fred or Ryan if they messaged anybody and never told them told to preserve messages.
- Ryan gets a new phone for Christmas the following year and discards old phone without transferring

An aerial photograph of a person in a yellow and white stand-up paddleboard (SUP) navigating a narrow section of a river with white water rapids. The water is dark green and turbulent, with white foam from the rapids. The person is wearing a red life vest and is positioned in the center of the frame, moving towards the bottom. The surrounding area is lush green with trees and rocks.

Marketing Statements on Website

- We specialize in creating unforgettable experiences for families of all ages and skill levels.”
- “You can enjoy the trip without any worries.”
- “Our beginner/intermediate SUP trip is a safe and fun option.”
- “Our guides have more training than any other in the State.”



Minor Waivers



- Can an uncle sign a waiver for his nephew?
- What if he has the parents' permission to do so?
- Is specific identification of inherent risks important?

PARTICIPANT WAIVER

The undersigned voluntarily agrees to participate in the the activities at SUP Ranch Resort.

The undersigned recognizes that SUP Ranch cannot guarantee your safety. The participant assumes the inherent risks of participating in the activity. I agree to follow the instructions of SUP Ranch staff at all times.

By my signature, I hereby surrender any right to seek reimbursement from SUP Ranch and its directors, officers, employees, volunteers and other agents for injury sustained and liability incurred during my participation in the activity described above. I waiver my right to sue SUP Ranch for any death or bodily injury that may occur during the activities. By my signature, I warrant that I am not relying on any oral representations, statements or inducement apart from the statements made on this form.

By signing below, the parties confirm that they have read, understand, and consent to the terms of this waiver agreement.



Signature

James Smith

Printed Name

5/25/2023

Date

Policies Training

- What happens when you have a policy that is violated?
- How does it play when your guides/staff aren't trained in important skills?



Not Preserving Evidence



- The helmet/PFD/First Aid equipment – are they really that important/relevant?
- Guide's phone
 - What steps could have been taken to prevent him from writing the critical texts to his friends?
 - What steps could have been taken to retrieve the data from the phone?
 - Why is the loss of a phone a bad optic?
 - What are the consequences in court?

Not Preserving Evidence



- Inform everybody, before an incident, not to text *anybody* about the incident (or to go on social media about the incident). Make that a policy
- Create and implement a “Litigation Hold” or an “Evidence Preservation Policy”
 - Spell out what needs to be done, what should be saved, after an incident
- With all guides and responding personnel involved, collect data they may have created.
- Have a checklist for things to save/preserve

What To Preserve?

- Releases for everybody on the trip that day
- Written statements
- Itineraries and manifests
- Invoices/receipts
- Your entire policies and policies as they exist
- Your entire website as it exists
- Safety speech “checklist” (if any)
- PFD, Helmet, all other equipment (and photographically/videographically document)
- Any and all emails exchanged with group before or after the trip and incident
- All GoPro, video, photographs *whether or not such data captures the actual incident*
- All communications possible (email, text, etc.)



Not Preserving Evidence

Video and photographs must be researched, located and preserved. Preserve the native format. Do not save clips of “just the incident.” Save all video.

Preserve all equipment. Set it aside indefinitely. If that cannot be done, document the reasons why. If it cannot be set aside for too long, photographically and videographically preserve; take measurements

Texts, messaging, emails, social media are the most difficult things to corral. Need to take reasonable steps to ensure that evidence is not created beyond your control or knowledge, and if it is, then take all reasonable steps to discover and preserve it.

A scenic view of a mountain valley with a river and rocky terrain. The image shows a river flowing through a valley with steep, rocky mountainsides. The foreground is dominated by large, dark rocks, and the background shows a deep valley with a river and more mountains under a clear sky.

BE PREPARED TO:

Control, lend credibility to your narrative

Resist, knock down the false narrative



You accomplish this with conviction,
facts, professionalism and patience.
...And the 3Ps:

PREPARATION
PREPARATION
PREPARATION



Questions?

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