

TOUGH MUDDER TRAGEDY: LESSONS LEARNED (SO FAR)

2013 Mid-Atlantic Tough Mudder, West Virginia

Avi Sengupta jumped from a “Walk the Plank” obstacle (15 feet high) into muddy water below, and failed to surface. Despite the presence of a rescue diver and his teammates’ pleas for help, Sengupta was not pulled from the water for more than 8 minutes. He died the following day.

Sengupta’s family (“plaintiffs”) filed a wrongful death lawsuit in West Virginia state court in April 2014: [Sengupta v. Tough Mudder, LLC et al.](#) The suit is ongoing.

THE RELEASE OF LIABILITY

Sengupta signed a pre-event release of liability prior to the event, stating that “I understand that if legal action is brought, the appropriate state or federal trial court for the state in which the TM Event is held has the sole and exclusive jurisdiction and that only the substantive laws of the State in which the TM Event is held shall apply.”

Plaintiffs sued in West Virginia, and claim the release is invalid under West Virginia law.

Lessons Learned:

- Release could have specified:
 - A state law likely to uphold releases (such as California) would apply
 - Any lawsuits must be filed in a particular state.
- Release as written exposes TM to lawsuits across the country and varying state laws on enforcement of releases.
- Parties have been litigating the issue of jurisdiction (what court will hear the case) for over a year.
- Expensive dispute might have been avoided if release had been specific.



THIRD-PARTY CONTRACTORS / INCIDENT RESPONSE

Key Takeaways:

- Have these elements in place prior to the event:
 - Insurance
 - Liability Release – appropriate to event and location
 - Third Party Contract with indemnity provision
- Safety plans
- Safety training for employees/contractors
- Safety is paramount: don’t cut corners or bend to pressure to make it more “fun” at the expense of participant safety
- Clear chain of command
- Don’t delegate completely to third parties; you are still responsible

THIRD-PARTY CONTRACTORS / INCIDENT RESPONSE

TM contracted with Amphibious Medics to provide rescue divers.

Plaintiffs claim:

- TM negligently delegated its duties
- TM had no Emergency Action Plan
- There were 20 earlier rescues from the water
- Rescue diver mounted a “lethargic response” to potential drowning
- Rescue diver did not follow industry standards for readiness or response
- Rescue diver’s certification was expired

Lessons Learned:

- Have an Emergency Action Plan (“EAP”) in place
- Educate and train staff and volunteers on the EAP
- Consider changing or eliminating an activity after near-misses.
- Don’t assume a Third Party Contractor will do their job correctly.
 - Verify current credentials
 - Monitor contractors’ compliance with regulations and laws pertaining to the activity
- Require Contractor by contract to be responsible for compliance with regulations and laws.
- Have Contractor name you as an Additional Insured



ALLEGED UNDERSTAFFING AND INADEQUATE SAFETY MEASURES

Plaintiffs contend that:

- TM wanted to decrease wait times at Walk the Plank in response to social media complaints.
 - No lane dividers
 - No effort to avoid overcrowding on platform
 - No timing of jumps to avoid collisions
 - No procedures to track participants in the water
- The Walk the Plank obstacle was understaffed.
 - Only one volunteer on top
 - Another participant may have jumped on top of Sengupta.
 - No staff member noticed that Sengupta had not surfaced.
 - No one stopped the other participants from continuing to jump.

Lessons Learned:

- Don’t compromise safety as a response to complaints
- If you can’t do it safely, consider eliminating the activity
- Be sure to provide adequate staff to implement safe procedures
- Don’t rely solely on volunteers
- Use trained staff where safety is a priority
- Have someone on site with authority to stop the event and direct a rescue if necessary
- Have an insurer or attorney review your protocols in advance, if in doubt



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