



MITIGATING LEGAL RISK

NOLS WRMC 2018

**“Top 10” – Current Legal
Concerns in the Recreation
Industry**

1. ACTUAL RECREATION INDUSTRY

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

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.
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2. HIERARCHY of DEFENSES

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



3. STANDARDS OF CARE

- What does this mean?
- What is Reasonable and Prudent?
- Are There Public Enunciations?
- Do you Conform or Violate?

Frequency & Severity

- If it was foreseeable – then a reasonably prudent person (forecaster) would move to minimize/mitigate the risk.
- If the risk that produced the injury was in no way foreseeable then we cannot say that there is a corresponding duty to respond.
- 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

4. INSURANCE

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



5. PROGRAM FOCUS

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

6. THE ACTUAL CLIENT PARTICIPANT

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

7. FOREIGN NATIONALS

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

8. EMPLOYEES

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



9. LITIGATION

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

10. WHAT CAN YOU DO TO HELP?

- Inclusivity
- State Legislative Efforts
- Use Your Defenses
- Do a Bezos...



THANK YOU!!

**Have a wonderful time
at WRMC 2018!**

THE END

THANK YOU



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