

MITIGATING LEGAL RISK

NOLS WRMC 2023

Evaluating and Creating
Release and Waiver Contracts
(or...what does your release
really mean?)



Value of Outdoor Industry

- **6.1 million American jobs**
- **\$646 billion in outdoor recreation spending**
- **each year**
- **\$39.9 billion in federal tax revenue**
- **\$39.7 billion in state/local tax revenue**



What is a Release?

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

HIERARCHY of DEFENSES

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

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.
- Look for 2 things: was the risk foreseeable and was the risk unreasonable.

4. Release and Waiver of Rights Including for ALL Claims of NEGLIGENCE I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless C.P.G. from ANY AND ALL claims, demands, or causes of action, which are in any way connected with my participation in this activity or my use of C.P.G.'s equipment or facilities, including **any such Claims which allege any theory of negligence including negligent acts or omissions of C.P.G.** ('C.P.G.' being its employees and those defined in the opening paragraph of this document). What I am agreeing to in this clause is that, beyond the legal application of the inherent risk and assumption of the risk provisions, this separate provision means I am waiving **all claims** I might have against C.P.G. sounding in negligence. I agree that the risks of death, injury, property loss or other damages are known and unambiguous to me and that, even if a specific type of loss is not listed in this document it is my express agreement not to hold C.P.G. liable for negligence related to any death, injury or other style of damage encountered.

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.

1. **Inherent Risks** I acknowledge that flight assisted and snowcat skiing (the term "skiing" shall include "snowboarding" and "telemarking" and "randonnée") entails known and unanticipated risks that could result in physical or emotional injury, death, or damage to myself, to property, or to third parties. I understand and acknowledge that the enjoyment and excitement of this type of activity is derived in part from inherent risks created by activity beyond the accepted safety of life at home or in my normal day to day activities and that these inherent risks contribute to my enjoyment and excitement and are an integral reason for my participation in this activity. **I acknowledge that I AM ULTIMATELY RESPONSIBLE for my own safety during my participation in C.P.G. activities.** I understand that such risks simply cannot be eliminated without jeopardizing the essential qualities of the activity. I understand that skiers with retention straps and/or boot and binding systems not designed or intended to release have an increased risk of not surviving an avalanche. I also understand and acknowledge that failing to use or properly use safety type equipment (IE – beacons/ transceivers, harnesses, airbags, etc.) increases my risk of injury or of not surviving an accident or incident while helicopter or snowcat skiing.

I specifically acknowledge that flight assisted and snowcat skiing also includes a wide range of 'experiential' type activities such as flightseeing, photo opportunities, back country ski touring with minimal aircraft assistance and landing in beautiful environments to access the mountains and unique places accessible in areas near the ski zones used by C.P.G. I acknowledge I will be afforded these activities where available on the various C.P.G. programs and they are a normal part of 'flight assisted and snowcat skiing' provided by C.P.G. I also expressly acknowledge that the normal recreational activities which are offered by C.P.G. and which are the subject of this release contract may involve 'staging' or deploying in and out of areas that include C.P.G.'s wholly owned properties, various private properties and permitted and public properties.

EXPRESS Assumption of Risk

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



2. Express Assumption of Risk I expressly agree and promise to accept and assume **all the risks** existing in this activity. This means I am not just assuming the inherent risks of the activity but rather that I am assuming **all of the risks** of the activity, *even if they are not expressly stated in this document*. My participation in this activity is purely voluntary, and I elect to participate in spite of the risks. I agree and understand that my decision to encounter the risks in this activity is the most substantial factor causing any ultimate harm that may come to me during this activity. This is a purely voluntary un-necessary activity for me and even if I do not (or claim that I do not) have knowledge of a particular risk, this express agreement to assume **all risks** whether they are known or unknown to me is intended to defeat all claims I might have against C.P.G.


Various Other Types of Agreements/Terms



- Name everyone who is seeking to ‘get out”
- Personal skill and insurance
- Medical Issues
- Photographic Assignment

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.



4. Indemnity Should C.P.G. or anyone acting on their behalf, be required to incur attorney's fees and costs to enforce this agreement or to defend against lawsuits or claims brought by me or someone on my behalf, I agree to indemnify and hold them harmless (in other words, I agree to pay for...) for **all** such fees and costs. Plainly put – if I or anyone else violates this release contract and brings suit against C.P.G. I agree to pay all of C.P.G.'s legal fees in defending themselves.


Further Terms to Consider

- Title of the Document
- Colors
- Additional Warnings Above Signature
- Kiddos

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



11. Forum Selection, Severability, Breach of Contract/Warranty Waiver, Etc. In the event I file a lawsuit against C.P.G., I agree to do so solely in the Third Judicial District of the State of Alaska, and I further agree that the substantive law of Alaska shall apply in that action without regard to the conflict of law rules of that state. I hereby irrevocably waive any other jurisdiction or venue to which I or my estate might otherwise have been entitled. I agree to submit to the jurisdiction of the Alaska courts. I agree that if any portion of this agreement/contract is found to be void or unenforceable, the remaining portion shall remain in full force and effect; this document is intended to be interpreted as broadly as possible. A copy of this release contract can be used as if it was the original. I understand that this document constitutes the entire Agreement/Contract between myself and C.P.G. and that it cannot be modified or changed in any way by representations or statements of any nature (be they vocal, advertising, etc.) outside of this document; in other words, I am also waiving any claims I might have for breach of contract or warranty for statements or representations made outside of this release contract.

Finally...

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



By signing this document, I acknowledge that if anyone is hurt or killed or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against C.P.G. on the basis of any claim from which I have released them herein.

I HAVE HAD SUFFICIENT OPPORTUNITY TO READ THIS ENTIRE DOCUMENT (ALL 4 PAGES).

I HAVE READ AND UNDERSTOOD IT, AND I AGREE TO BE BOUND BY ITS TERMS DURING THE FULL 2022 C.P.G. OPERATING SEASON.

My express intention in signing this complete release of claims document is to voluntarily exchange this release contract with C.P.G. for the opportunity to participate in recreational activities with C.P.G.

THE END

THANK YOU



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