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Limited Liability Statutes Can Be An Outfitter's Armor

By James W. Turner, Esq., Trial Lawyer, Huddleston Bolen LLP

Within a few hours from most anywhere in West Virginia you can escape the grind and find yourself at a resort or outfitter offering the thrill of snow skiing, the challenge of whitewater rafting and the excitement of horseback riding.

The thrill that draws people to these activities also presents significant potential and inherent dangers to participants, dangers that are unavoidable even when the operator and participants are careful. Ski conditions change throughout the day, a river rapid is always wild and horses are reactive and unpredictable animals. No amount of participant training or notice can negate these dangers and when accidents occur they can be serious.

Recognizing the great benefit we all derive from these activities, the West Virginia legislature established a series of limited liability acts to protect operators beginning in the 1980's. Following passage of these Acts, operators who provide these three recreational activities enjoy near immunity from suit. While "immunity" may be the most reassuring word in the prior sentence it is the word "near" that is, in fact, the most important. In exchange for limitations on their potential liability, operators are assigned specific legal duties under these Acts which must be satisfied before immunity attaches. Depending on the specific activity, operators are required to:

- Warn about known hazards
- Provide basic training and equipment
- Post notices where appropriate and engage in conduct consistent with the applicable standard of care

The Acts are not identical. It is important that operators read the Acts closely to determine what specific duties are charged for their activity.

Significantly, gross negligence or intentional injurious acts are not protected by these Acts. This provides a nick in the armor that plaintiffs' lawyers may seek to exploit in the event of an accident. Moreover, poor record keeping may provide opportunities for those lawyers to create questions in the minds of jurors about whether the operators performed the essential duties specified in the Acts.

These realities point up the need for operators to create and maintain adequate records proving they satisfied their legal duties and that participants engaged in the activities with full knowledge of the potential hazards.

There are several things an operator can do to put themselves in a favorable position:

1. Create checklists to be completed by their training personnel as they conduct their participant training. Be sure to keep the checklists on file.
2. Train staff on what to do when injuries occur and to preserve evidence from the injury.
3. Review releases to be sure they address the specific activities and essential text of the relevant Act. Don't rely on a release from "a friend" or, in the case of a resort, the outfitter's release. Participants should not be allowed to presume any of these activities is completely safe or that an accident cannot happen. Proving that a participant knew and understood the risks is the key to avoiding litigation or obtaining summary judgment. If educating a participant about potential hazards causes him to withdraw from the activity then that's simply a cost of doing business.

Skiing, rafting and horseback riding are wonderful ways to spend the day in West Virginia. Unfortunately, accidents can happen and it is in the interests of operators and participants alike to know the law and its reach before setting out for a day of fun on the slopes, rivers and trails.

About the Author

Jim Turner is a partner and trial attorney at Huddleston Bolen LLP. He represents transportation companies, pharmaceutical and industrial manufacturers, and resorts in occupational injury, toxic torts, and personal injury cases. For more information on Mr. Turner, visit his biography at: <http://www.huddlestonbolen.com/attorneys.php?a=35>.

For information on Huddleston Bolen, visit the firm's website at <http://www.huddlestonbolen.com/>.