PROFIT

PLANNING RECREATION OPPORTUNITIES FOR INCOME AND TOURISM

Liability and Protection in Private Outdoor Recreation

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Foreword

This publication is designed largely for the landowner, farmer, rancher, non-farmer or potential guide who is not trained or experienced in operating a recreation business.

Principles of liability and insurance protection will apply to most recreation enterprises regardless of the size of the operation. The objective is to identify these principles and to show how they apply. It is our special hope that this work will encourage potential recreational operators to discuss this phase of business management with legal counsel and insurance representatives prior to any investment committment.

Special appreciation is given to Mr. Robert Y. Thorton, State Attorney General (1968) and his staff for reviewing this publication and giving the author some valuable guidance.

If you need additional assistance feel free to contact your County Extension Agent. Assistance is also available from the Soil Conservation Service, Farmer's Home Administration, Forest Service, Agricultural Stabilization and Conservation Service, State Highway Department, State Parks Division and the State Game Commission.

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LIABILITY AND PROTECTION IN PRIVATE OUTDOOR RECREATION

Age of Recreation Opportunity

This is the age of recreation opportunity. The past few years recreation has been very much in the limelight due primarily to concern for increasing leisure, more vacations, shorter work weeks and days, greater freedom through greater mobility and greater income. These all relate back to and imply greater livability for the individual.

A continuing high demand for outdoor recreation opportunities in an increasingly urbanized and affluent society, along with the changing pattern of public land-use policy, encourages the development of outdoor recreation enterprises by many landowners throughout the State of Oregon.

This publication is designed largely for the landowner, farmer, rancher, nonfarmer or potential guide who is not trained or experienced in operating a recreation business. The large scale recreation operator with all the knowledge and skills normally associated with a high investment operation generally plans for liability as a preliminary step to investment.

The principles of liability and insurance protection will apply to most private recreation enterprises regardless of the size of the operation. Our objective is to identify these principles and to show how they apply.

We hope in this publication to provide the potential or practicing recreation operator with an understanding of the basic legal concepts of liability, principles of insurance and the type of liability insurance applicable to recreation enterprises. Accident prevention and loss

reduction principles will be discussed along with the citing of specific enterprise problems.

It is our special hope that this work will encourage potential recreation operators to discuss this phase of business management with legal counsel and insurance representatives prior to any investment commitment.

I mentioned earlier the surging demand for outdoor recreation facilities has generated interest and opportunity for landowners and ambitious individuals to develop recreational facilities and services as a means of increasing income. However, with the recreation opportunity we have an increasing responsibility. Those considering recreation as an auxiliary land use or service should recognize that the operation of commercial recreation enterprise is not unlike the operation and management of any private business. There is more to the establishment and operation of the recreation enterprise than simply "collecting the money" to make the service or area available for public use.

As soon as the recreation operator makes his land or service available for public use, he creates many new problems. One which he must immediately face is the liability he will incur through the operating of such an enterprise.

The Law

Although liability suits may be involved in the ownership of any property, or the provision of any service, the operator is generally in a more vulnerable position when he charges a fee to others for the use of his property, facilities or services. The point is further emphasized in Oregon's Revised Statute (ORS 30.790) which states:

Liability of owner or person in possession of land used for

recreational purposes. (1) Except as provided by subsection (2) of this section, when the owner or person in possession of land which may be used for recreational purposes, including but not limited to hunting, fishing, trapping, camping or hiking, has granted permission to any person to enter upon or use the land for recreational purposes, neither the owner nor the person in possession of the land shall be liable for the injury, death or loss sustained by any person entering upon or using the land for recreational purposes, resulting from the condition, structures or activities on or uses of the land or as a result of an act or omission of the owner or person in possession of the land.

(2) Subsection (1) of this section is not intended to limit the duty owed by or liability of an owner or person in possession of the land:

(a) When there has been a direct business benefit conferred to the owner or person in possession of the land as a substantial motivating factor in the grant of permission for entry or use of the land for recreational purposes.

(b) In cases of willful or wanton misconduct of the owner or possessor of the land.

(c) Where an affirmative obligation exists dependent upon a relationship other than that arising from the entry or use of the land for recreational purposes.

(3) This section is not intended to apply to or affect the so-called doctrine of attractive nuisance.

(4) As used in this section, "owner or person in possession" does not include a governmental body or political subdivision or a public corporation. (1963 c. 524-1,2)

The recreation operator who desires to increase his income by operating an outdoor recreation enterprise should realize that an award in court for injuries to a patron may be enough to take all the profit from the enterprise, his life savings, his home and property.

The laws relating to liability continue to be drawn from common law, or a set of general legal principles rather than having been firmly incorporated into statute law. Because strict interpretation of the law therefore depends primarily upon the decision of a jury, this presentation will present the common law doctrines upon which liability is founded. The recreation operator is encouraged to consult his lawyer for further

interpretation of liability in the operation of a particular outdoor recreation enterprise.

Before proceeding too far in legal terminology, I would recommend you refer to the "Glossary of Terms" presented in the back of this publication to assist you.

Trends

A trend toward the extension of liability which has been proceeding both in the legislative and judicial fields for a considerable period of time. In the legislative field liability has even been imposed upon public agencies for the negligent operation of their motor vehicles, for accidents caused by the dangerous or defective condition of public property and upon school districts for general negligence on the part of their employees.

Insurance companies report an increasing public awareness of liability, resulting in "claim conscious public." The increase in the amount of claim settlements awarded by courts in recent years, and the tendency for court decisions to favor the plaintiff or injured patron, shows the operator of the recreational facility cannot afford to risk operation without protection against liability claims or law suits. The recreation operator should protect himself against these types of judgements by: (a) obtaining special liability insurance which provides legal aids in the event of law suit and (b) will pay any claim or awards by the court up to the limit of the policy.

In most cases the ordinary personal liability policy or the general farm liability policy will not provide coverage for liabilities incurred through the commercial operation of recreational facilities or services.

This being the case, the recreation operator should obtain additional insurance protection before he invites the public to sample what he has to offer.

Negligence

"Negligence" is defined as the essential element that must be proved before a person can be legally held liable for unintentional injury to others. The law of negligence is based on precedent as established by previous court decisions.

Negligence is generally considered to be the omission by an individual to do something which a "reasonable man" would do under similar circumstances; conversely, negligence may be the act of doing something which a reasonable and prudent man would not do. The standard used to determine negligence then, is the behavior of "a reasonable and prudent man."

In court, it is this hypothetical "reasonable man" against whom the defendant's action is measured. It will be up to the jury to determine if the individual has acted in agreement with this standard. If the jury decides that the defendant's behavior does not measure up to that action expected of a reasonable man under similar circumstances, the individual will almost certainly be held liable.

Negligence is further gauged by one's ability to anticipate danger. Thus, the foreseeability of danger is an important factor in determining liability.

Generally, if the unintentional injury is the result of a danger which could be foreseen by a reasonable man, and thus avoided, the operator who failed to see the danger or failed to act may be held liable for damages because of negligence. When a jury decides that an injury

could not have been foreseen nor prevented by reasonable precaution, usually the operator will not be held liable.

Unavoidable accidents do happen, and where there is no negligence, such accidents do not form the basis for legal action. The outdoor recreation operator must also consider that negligence could be found even where he has taken careful consideration and precaution in conformity with his own best judgement. In such a case, if a jury decides that the operator's judgement falls short of what a reasonably prudent person would have done under similar circumstances, the operator may still be held negligent and legally liable.

Lewis F. Twardzik and Richard E. Cary[1] find the following elements of negligent action. They stressed that the successful maintenance of a negligent suit requires consideration of more than just conduct. Most legal authorities concur that four general elements are necessary to support a negligent suit. These are:

(1) A legal duty to conform to a standard of behavior to protect others from unreasonable risks.

(2) A breach of that duty by failure to conform to the standard required under the circumstance.

(3) A sufficiently close casual connection between the conduct of the individual and the resulting injury to another.

(4) Actual injury or loss to the interests of another.

Duty

An individual's duty is recognized in the courts as an obligation to use reasonable care to prevent exposing another to unreasonable risks of

injury when the relationship between the two parties is of a nature to warrant such duty.

The failure to conform to a behavior or standard of a reasonable man would be a breach of duty. Negligence will not be maintained unless there is a duty to use reasonable care and a breach of this duty. Therefore, not every accident resulting in injury will mean that liability exists, for injury or damage alone is not adequate support for legal action.

In support of negligent action, the causal connection must establish that the defendant's act of omission or commission was a contributing factor in bringing about the damage to the plaintiff. In order for the defendant to be held liable, it must be proven that he has, in fact, caused the injury to the plaintiff. Once it has been established that the defendant's conduct was one of the causes of injury to the plaintiff, it must be further determined that there were no intervening acts or events, such as an Act of God or the negligence of a third person. In many cases, if such intervening acts make the causal connection between the defendant's behavior and the resulting harm seem too remote, then there will be no liability.

It must be shown that damage or injury actually happened to the plaintiff before negligent action may be taken. Damages cannot be recovered from a law suit without proof of such damage or injury.

The Land Owner

One who has physical possession of the land or real property is known as the possessor. He may be a fee simple owner, a renter, or a person who is in possession of the land by some other method.

The fee simple owner is one with the highest degree of control that the law allows over the land. He is entitled to full exercise of his

powers concerning the land and he may exclude or bring persons onto the property as he sees fit.

The renter of real property has rights similar to a fee simple owner, with respect to excluding and allowing persons to come upon the property, but these rights may be modified somewhat by the rental agreement. These are the two most common types of possessors of land.

A possessor of property may voluntarily or involuntarily create relationships with other parties concerning his right to possession of property. His rights can be shared with a person who desires to enter upon the premises in various ways, depending upon such factors as permission to enter and the purpose for which entry is obtained. The person entering the premises may be classified as:

(1) an invitee (or business visitor),

(2) a licensee,

(3) a trespasser.

The rights and duties owed to each type of person vary depending upon the classification in which he falls. Let's discuss them one at a time.

Invitee: An invitee is a person who comes on the land with the possessor's permission and bestows a benefit or consideration upon the possessor. This benefit may or may not consist of a fee paid to the possessor. For example, the invitee may be investigating the property prior to the payment of a fee. While doing this, he is nevertheless classified as an invitee. Usually, however, an invitee is considered to be a person who has paid a fee to enter upon the land.

In some cases it has been the opinion of the court the "indirect" payment can and does in fact make a person a paying customer. Examples of such consideration might be where an individual:

(1) pays for all or part of the food or refreshments,

(2) gives the possessor an expensive gift,

(3) provides special favors to the possessor.

The duty to exercise ordinary care to prevent injury to the invitee is imposed upon the possessor of the land, and for a breach of this duty a law suit may be well founded. The occupier of land is not an insurer of the invitee, but he is liable for certain acts of negligence which result in injury to the invitee. Such negligence is failure to exercise care that the circumstances properly demand. For example, the possessor may be liable for injury to an invitee caused by a concealed, dangerous condition on his property, even though the possessor does not know of the condition, if it could have been known by a reasonable inspection of the premises.

A hunter who pays a fee to the possessor of land for permission to hunt upon the land is an example of an invitee. If the hunter falls into a concealed well, the possessor of the land might be liable for resulting injuries.

Licensee: A licensee is a person who enters the premises for his own purposes and with the expressed or implied consent of the possessor. The possessor is under no duty to make the premises safe or to warn of dangerous conditions unless he knows they exist and they are concealed. He is liable only for "wanton or willful" acts or "active negligence." The licensee must take the premises as he finds them. The liability proposed for injury caused by dangerous conditions on the premises is very slight. In the absence of traps or other instruments used to produce intentional harm, the liability imposed upon the possessor for injuries to licensees by reason of dangerous conditions is very limited.

An example of a licensee is a man who has permission to walk across the possessor's land. If the permission is given, then this person becomes a

licensee. If this man should fall into an unconcealed well, the possessor of the land probably would not be liable.

The possessor is liable if he carries on activities without reasonable care for the safety of the licensee and the licensee receives an injury from such conduct. However, the licensee is expected to be on the alert to discover dangers; therefore, the liability of the possessor extends only to dangers known to him which the licensee does not know about or cannot reasonably be expected to discover for himself. For example, if the possessor of land is using dynamite to clear construction and a licensee is not warned of the activity, the possessor might be liable for any injury caused to the licensee by the explosion of the dynamite.

The possessor of land can protect himself by warning of dangerous activities that are to be conducted on the land. Conduct that is normally carried on in the farming or ranch enterprise, such as operation of farm machinery, driving cattle, and other associated activities will not ordinarily create liability for injuries to licensees. The licensees assume the risk of injury from ~~these~~ normal activities when he enters upon the land.

The law also recognizes social custom as an aspect of liability. A neighbor who calls socially cannot ordinarily recover damages from a host for injury while on the premises, unless it can be proven that the host was grossly negligent and that this negligence contributed to the accident.

A word of caution is in order when dealing with children, for example: If the parent is a licensee, the license will usually extend to an accompanying child. Since children seem to be more susceptible to personal injury than adults, it may be unwise to permit children on the premises when a dangerous activity, such as deer hunting, is involved.

Trespasser: A trespasser is a person who comes upon a possessor's land without permission. His actions constitute a trespass.

In most states, the liability imposed upon the possessor of the land for injuries to trespassers is very slight. In absence of traps or essential harm to the trespasser, such as shooting him, there is usually court liability imposed for injuries received by the trespasser from dangerous conditions upon the land. If a trespassing hunter should fall into an abandoned well, there usually will be no liability to the possessor; or if a farmer is clearing brush by burning it, an undiscovered trespassing hunter who receives injury as a result of this activity will not be able to impose liability upon the possessor of the land. If he is discovered, reasonable care should be exercised to protect him from such affirmative activity such as dynamiting or other dangerous acts.

The courts state that the duty owed to a child is the same duty as that owed to an adult. If a child accompanies a parent who is an invitee, the child is owed all the privileges and protections owed the parent. However, the standard of care is put on a child's standard. The facilities must be reasonably safe for children. If not, any injury that may result might impose liability upon the possessor.

A child trespasser is generally treated in the same manner as an adult. He may be evicted and in the absence of intentional harm, no liability is imposed for his injury. While the foregoing is generally true with regard to trespassing children, there is one important exception--the Attractive Nuisance Doctrine.

Attractive Nuisance Doctrine

This doctrine applies when there is an attraction and children are induced to come upon the land as a result of this attraction. They are not

mere trespassers. The children are considered to have come upon the land with some duty owed to them by the possessor. The instrumentality causing damage must be inherently dangerous. A pile of lumber, pond, and other instruments of high utility and use have not been considered to be inherently dangerous.

The child must also be induced to come on the land by the very instrumentality which caused the harm. If the attraction which caused a child to trespass was the presence of a piece of machinery and he falls into an unconcealed well injuring himself while on the premises, liability probably would not be imposed upon the possessor of land.

In most states, bodies of water have not been classified as inherently dangerous instrumentalities. The presence of these resources on the average farm is considered to be a necessity. Many tourist or recreation enterprises use water in operation of the facility. However, the possessor of land may need to guard against suits for damages where children are involved because of the law of Attractive Nuisance might be applicable.

An example of the tragedy that can occur around bodies of water that attract children was recently pointed out in California.

Two small boys were playing in the vicinity of a swimming pool under construction in a County park. Because of heavy rainfall, muddy water had accumulated in the bottom of the pool and the contractor had erected only a temporary barricade around the construction area. Children playing in the park were attracted to this pool of water and played in the area at times when there was no supervision in the park. On a Sunday morning one child slipped from a scaffolding into the water, disappearing from sight. His brother jumped in after him, but since neither could swim, both were drowned before anyone could rescue them.

In retrospect, it was clear that this accident could have been avoided if the contractor had been required to either pump the water out of the pool or to erect an adequate fence around the construction area. An action has been filed and is now awaiting trial. The County took the position that since the contractor was obligated to hold the County harmless from any liability, that they could leave the responsibility for safeguarding the premises entirely up to the contractor. While the contractor may be required to hold the County harmless, this indemnity provision does not relieve the County of liability in the first instance and further does not relieve the County of its moral obligation to protect the lives and safety of persons visiting its parks.

Personal Property

At this particular point a comment should be made about personal property and the problems associated by loaning said property.

When one person gives possession of personal property to another, the former becomes a bailor (supplier) and the latter a bailee (borrower). If the property is in an inherently dangerous condition or unsuitable for the intended use, the bailor (supplier) of property may be held liable for injuries the bailee (borrower) sustains in its use. The bailor may also be held liable for injuries caused to a third party by the bailee in the use of the instrument supplied.

If the bailor has failed to exercise reasonable care in making the property safe for the use for which it was supplied he may be held liable. For example, a bailor renting a boat that has a defective bottom may be held liable for injuries caused by such a defect to the person or other members of the party who rented it. However, the bailor may not be liable if he warned the third party of the defect, or if he did not know of the danger and

a reasonable inspection of the property would not have disclosed the defect.

When the property is supplied free of charge, there is no duty to inspect, if the bailor (supplier) did not know of the defect, he is not liable to the bailee.

If an invitee at a fishing pond borrowed a rifle which the supplier believed to be free from defect, a subsequent injury to the borrower ordinarily would impose no liability. However, a person who regularly "lends" personal property to his invitees may find that the law will not classify the transaction free of charge. If personal property is regularly loaned to customers in pursuit of business, liability may be imposed because of the benefit received by the business.

Liability Considerations

It is at once apparent that the best way of avoiding liability is to prevent accidents from occurring. Accident prevention serves in the first instance as a humanitarian practice to prevent the loss of life or injury to person. It is also obvious that where a private business operates on limited funds, money is much better used for expanding and improving recreational facilities than in paying judgments. Therefore, it is only good business to avoid accidents whenever possible. In general, accident prevention is accident foreseeability and foreseeability depends, in general, upon past experience.

Experience has shown that certain activities and facilities create a greater risk of injury than others. Horseback riding, diving boards, and slides frequently cause accidents. The high incidence of accidents from such facilities will be reflected in higher insurance costs. The

operator should consider avoiding liability by not providing, or taking special and extra care of, facilities associated with high risk. Not only will insurance costs be less, but there will be less chance of an accident or law suit.

Examples of special problems as they relate to specific recreation enterprises will be stated in detail later in this presentation. Cases of costly experience are now in order.

Golf Courses: Of particular interest is the large number of claims that are filed for broken windows resulting from golf balls driven from private and public operated courses. Many times it is found that a fairway has been laid out parallel to a major highway with the result that a hooked or sliced drive will carry the ball over the fence into the highway. If it is found that the course is improperly laid out or inadequate safety devices have been installed, these claims are paid without contest. On the other hand, there have been situations where a subdivision has been laid out in such a manner as to provide view lots on a golf course. In such a situation it would appear that there is a certain assumption of risk where the homeowner installs a large picture window facing onto the golf course. With the view, goes the risk of damage by flying golf balls.

Animals: Of interest are claims involving animals and birds. One action was brought on behalf of a small boy who was attacked by a peacock and another claim was filed by a woman who was attacked by an angry or amorous rooster, another was a claim by a man who was assaulted by a goose. Claims have been filed for bites received from rattlesnakes, raccoons, lizards, and mice.

Trees: Trees in public parks are a continuing problem. Branches fall onto parked cars and one poor old codger playing pinochle was flattened when

a dead tree collapsed on a clear, windless day. The difficulty is in determining what trees should be removed and in doing so before damage occurs.

Broken Glass: Another frequent accident is one that occurs when a small child while barefoot steps on broken glass. We have seen quite a series of these accidents which have occurred where small children have disregarded signs that say "no wading" and have cut their feet on broken glass at the bottom of lakes located in public parks.

Fences: Fences also provide a problem. The absence of a fence may render property in a dangerous or defective condition, and on the other hand, barbed wire fences and chain link fences with barbed tops can present a hazard to small children attempting to climb the fence or to ball players who run into the fence while attempting to catch a fly ball or pass.

Slippery Floors or Obstructions: We have heard of many claims and accidents filed for injuries alleged to have been caused by overly waxed floors. This is true despite the fact that in many cases no wax is used at all or the wax that is used is of a nonslip variety which actually reduces the slipperiness of the floor. Smooth finished cement around pools and shower rooms, slippery sidewalks, highly waxed boat decks or carelessly placed tools and equipment all have taken their toll.

Crowds: With people come people problems. With the extension of liability it is apparent that greater efforts must be made to supervise recreational activities and to control crowds on private and public beaches and parks. An action is now pending against a public agency on behalf of a girl whose eye was injured when a firecracker exploded while she was sitting on a beach, it being contended that there was negligence in supervising a crowd of teenagers that had been invited by a radio station to a beachcombers ball and grunion hunt.

Methods of Accident Prevention

One means of dealing with the risk of liability is reducing or eliminating factors that may cause injury or loss. Not only will accident prevention reduce the chance of injury, but as already indicated, legal liability may be reduced through reasonable care in making the premises safe and providing safety facilities. Indeed, insurance companies are particularly interested in accident prevention programs of recreation enterprises. Before agreeing to write liability insurance, many companies will carefully consider the degree of safety built into an enterprise, as well as the awareness and desire of the operator to prevent injury. Some companies provide for premium reductions after a period of demonstrated safe operation.

Safety Program

A safety program should begin with a study of the entire area to identify existing hazards and determine methods of eliminating them through design and layout of facilities. Professional assistance should be obtained to assist in the planning and development of an enterprise. The grounds and facilities should be frequently inspected and any necessary repair or improvement promptly made. A thorough maintenance program is an important part of the safety program. The recreation enterprise should be equipped with appropriate safety precautions, particularly at swimming areas, shooting ranges, and similar places of increased danger. An operator may have a difficult time defending a claim or lawsuit if there is a lack of proper safety precautions, even though the absence of safety precautions may not be the actual cause of the accident.

Supervision

Overall supervision of the enterprise should be provided to assure maximum safety. A plan for emergency medical treatment should be prepared, including emergency communication between the recreation area and medical facilities. Insurance companies warn that the legal consequences of not doing this kind of planning can be severe.

Regulations pertaining to the use of recreation areas should be posted to provide reasonable safeguards for those who may use the area.

The possessor of land is obligated to protect an invitee from injury caused from other guests. This duty is similar to that relating to dangerous conditions and affirmative acts of negligence. It is the duty of the possessor of real estate to control the conduct of all invitees while they are on his property. Unruly invitees may be more dangerous than objects or conditions. If the possessor knows or, in the exercise of ordinary care, should have discovered a troublesome guest, he may be liable for injuries to other invitees caused by the unruly person. For example, if an invitee becomes drunk while fishing and the possessor knows of his condition, the possessor may be held liable for injuries to other invitees caused by actions of the drunken guest.

The operator of a lake or a swimming pool may be held liable for injuries to patrons caused by disorderly conduct or rough play.

If the proprietor of a picnic area knew or should have known that his invitees were target practicing with fire arms or other weapons in a congested portion of the area, he might be held liable if a guest is injured.

Limiting Liability

Several methods for limiting or transferring liability should be

carefully considered or implemented by the owner of property. They include warning of dangerous conditions, exclusion of unwanted guests, incorporation and carrying liability insurance.

(1) Dangerous conditions: If a person coming upon the land is alerted to possible dangerous conditions existing on the land, probably no liability will be incurred by the possessor if this person is injured by such conditions. This rule applies to invitees and licensees.

It should be noted that this duty is limited to the area of invitation--that part of the premises which is open for use to the invitee. This area extends to the entrance and safe exit from the property and to all parts of the property which are open to the invitee, or so arranged that the invitee could reasonably think they are open to him.

If a patron is free to use the premises, he will be considered an invitee unless the proprietor specifically warns the patron that the area intended for use is more narrowly restricted.

If the patron then goes outside the area specified in his business invitation, he may be considered a licensee or a trespasser, depending upon whether he goes with or without the proprietor's permission.

If a visitor is led to believe that a particular area is part of the business area intended for his use, he is entitled to the protection owed an invitee.

In view of these considerations, the recreation operator should be aware that he may reduce the chance of accident as well as his legal liability by specifically delineating the recreation area and restricting guests from barns, pastures, storage sheds, and other hazardous areas not integral to the recreation enterprise.

(2) Selective loaning: Goods should not be loaned to an incompetent.

If a gun, boat or other dangerous piece of equipment is loaned to a child, the supplier may be held liable for injuries caused in the use of the article regardless of warnings.

(3) Children considerations: Normal methods of reducing liability, such as signs and oral warnings of danger may not apply to young children. Children may not comprehend the danger involved. Some practices and devices which may reduce liability for injuries, especially to children, are:

(A) Signs should be placed at the entrance of facilities reminding parents that children should be under their control at all times. An attentive parent is the best guard against injury.

(B) The facilities should have rules and regulations posted to inform the invitee as to what is permissible conduct. The children should not be allowed to wander over the premises unless accompanied by parents.

(C) Signs giving speed limits and other warnings to motorists should be posted on roads in the area.

Proprietors of picnic grounds, camping sites, and other family type facilities should realize that they may be liable if children are injured on their premises. It is inconceivable that a possessor could maintain a business that is completely free from hazards of personal injury to children. This fact suggests that the facility should be insured against these risks.

(4) Exclusion of unwanted guests: I mentioned earlier the exclusion of unwanted guests help the possessor of a recreational facility limit his liability. The possessor of the recreational facility may limit his liability by evicting an unruly guest. A "lookout" should be kept to discover any boisterous or unruly patron. If such conduct is known, or should have been known by the possessor, liability may be incurred if an unruly guest injures another invitee.

(5) Membership: Some operators may wish to consider limiting the use of their facilities to members only. Such a practice, if strictly controlled to exclude guests or new visitors, can reduce liabilities. If a member frequently uses the facilities and has become familiar with the hazards, there is less likelihood of a suit in the event of injury. In fact, his familiarity might reduce the chance of recovery for an injury or even completely void his right to recovery.

Operators adopting this practice have found that insurance policies are considerably less than when the facilities are open to public use. From a management viewpoint, the operator is relieved of many problems encountered in dealing with the public and less time is required for administration.

(6) Incorporation: A corporation is an artificial person which is created under and operates according to state corporation laws. The assets of a corporation are owned by it. The ownership interests of the individuals involved are represented by shares and do not extend to the assets of the operation. The corporation owns the property. The liability of this type of business concern usually is limited to the value of its assets.

If a landowner incorporates his recreation enterprise, he must not act as a sole proprietor, for he may incur personal liability even though he is incorporated. In the operation of a corporate business, it must be made clear to persons dealing with the recreation enterprise that they are dealing with the corporation and not with a stockholder as an individual. Contracts should be made in the corporate name and not by a stockholder as an individual.

The corporation may prove to be an advantagous method of conducting a business, especially where the cost of insurance is high. Instead of paying a large fee for liability insurance, the operator may incorporate

his recreational enterprise, thereby limiting recovery for a liability claim to the extent of the value of the corporate assets. Since there are many problems involved in organizing and operating a corporation, and the benefits may be negligible, the advice of an attorney and a business analyst is desirable.

(7) Release: Some recreation operators believe they relieve themselves of this obligation to an invitee by obtaining releases from paying guests, or by displayed signs that imply that the invitee uses the facilities at his own risk and the operator will not be responsible for accidents. Operators should be aware that they cannot contract away their legal responsibility. While this practice may tend to discourage the filing of suits, it will not usually provide a defense to legal action.

The law frowns upon the attempt of anyone to limit or escape liability for his or her own negligence. At the same time, it must be conceded that a good release from liability is better than no release at all.

A release would be worthless, as a practical tool, if the procedure of obtaining one from an invitee or licensee was so complicated it caused unpleasantness. The answer is a form release which the invitee or licensee would gladly sign and yet which would protect the possessor against all but gross or wanton negligence.

In the Appendix C, a sample form of release is shown. It is doubtful that you would wish to go to the bother of obtaining a release in all situations, but if any occasion arises, it might be helpful.

(8) Insurance: Insurance can serve as a buffer against claims arising from injuries sustained through the use of outdoor recreation facilities. Insurance does not eliminate the risk, but shifts it to a professional risk bearer. If a guest is injured, the insurance company will pay the damages

according to the conditions in the policy or contract. The operator substitutes a known loss, (the premium) for the chance of a greater loss (the amount of damages that an injured guest might be awarded).

With some careful shopping, adequate liability insurance for most outdoor recreation enterprises can be obtained. Campground operators particularly have had little difficulty in obtaining insurance. However, some insurance companies have been reluctant to provide this type of insurance because recreation as a business is relatively new and unfamiliar.

Accident Procedure

If despite all the precautions that are taken to avoid an accident, an accident still occurs, there are still certain things that can be done in lessening the risk of litigation. First, adequate but proper first aid should be rendered. In case of doubt, call for a doctor or an ambulance. The threat of tetanus exists with any cut or laceration and insurance companies frequently pay claims for anti-tetanus shots simply as a precautionary measure. In case of any animal bite the danger of rabies must be recognized and the offending animal kept in custody for observation. It has been frequently asked after an accident whether steps should be taken to remedy the alleged dangerous condition, it being felt that any remedial measures are in fact an admission of guilt. Since lightning can strike twice in the same place, some companies have advised that the condition be remedied despite the hazard that it might be contended that this was an admission of guilt. Normally corrective measures taken after an accident are not evidence of negligence. If an accident occurs, the possibility of litigation should be kept in mind. Therefore, the names of witnesses should be obtained and photographs taken. Prompt notification

of your attorney or your insurance agent is of great assistance in preparing a proper defense.

Often if you have people working for you, an accident report form will be very helpful. Have your attorney and insurance agent review them as to content. Explain the purpose of these forms to your employees in detail.

Personnel should be reminded not to make damaging admissions at the scene of the accident, as such statements sometimes taken out of context can be very damaging at the time of the trial.

Importance of Insurance

Insurance companies warn that liability claims are becoming more prevalent, verdicts tend to favor the injured person, and settlements awarded by the courts are spiraling upward.

In seeking insurance, the operator should first consult his regular agent. Even hesitant insurance representatives will often agree to write the necessary insurance if the operator has obtained his personal and other insurance through the same company.

Some insurance companies have policies that cover outdoor recreation enterprises specifically; others attach a rider to a general farm liability policy. General farm liability policies do not cover liability where a fee is charged for entrance or for services on the insured's property.

Commercial recreation includes such a wide variety and numerous types of businesses, including farm and rural recreation. Because of this, insurance rates for specific types of recreation enterprises are not always comparable between companies. Considerable savings can often be made by shopping for the desired insurance through several agencies.

A word of caution, be certain that the insurance agent understands the nature of the operation and all of the activities and hazards. When a policy is written, you should be sure you thoroughly understand any limitations or exclusions of the policy. Sometimes operators have obtained insurance at low cost, but later discovered that certain hazards or facilities were not covered by the policy.

I must emphasize that insurance cannot eliminate the risk nor prevent loss, but it transfers the risk to a professional risk bearer, who is able to shoulder a potential economic loss. In essence, insurance substitutes a known loss for an unknown loss. Budgeting a recreational enterprise is important because the insurance premium is a fixed cost for which you can plan.

Liability insurance is indispensable if a recreation operator wishes to avoid the risk of staggering financial losses.

The shock of a large judgement may completely destroy the financial foundation of the recreation business. Even small damage claims can seriously affect the financial stability of the enterprise.

Although lawsuits have not frequently occurred in recreation enterprises, an operator cannot afford to assume the risk of liability without insurance protection. Even the most prudent and careful operator should not assume that he will not be sued. A court decides whether the case is justified. Even though the defendant may not be proved negligent and liable, he may be faced with high defense and legal fees. Liability insurance can provide protection against such legal costs. The insurance company can also represent the defendant in a law suit, so that it is possible that the defendant would not even have to appear in court.

The Insurance Policy

The standard liability insurance contract is usually an agreement to pay on behalf of the insured, up to the limits of the policy, all sums that the insurer is obligated to pay as a result of accidents resulting in bodily injury or property damage to others. This includes payment of expenses incurred by the insured for immediate medical treatment at the scene of the accident, whether or not the insured is negligent. In the event of a law-suit, the insurer agrees to pay all expenses of investigation, defense, and settlement of the accident even if the suit sould be groundless or fraudulent.

The two types of insurance policies which are used for the protection of recreation enterprises are the owner's, landlord's and tenant's policy (OL&T) and the comprehensive general liability policy.

(1) The Owner's, Landlord's and Tenant's Policy (OL&T): The basic contract for covering legal liability to the general public is the owner's, landlord's, and tenant's (OL&T) policy. Under it, commercial enterprises such as archery ranges, boats for hire, skeet- and trap-shooting, ski lifts, and even farms, may be covered. The rates, which vary by enterprise and by State, are usually quoted per $100 of receipts from the operation insured, subject to a specified minimum annual premium in dollars. There are a few exceptions, however; for example, saddle horses used for hire are covered at a flat rate per animal, subject to a minimum annual premium applicable to the policy.

For an additional premium, the recreation operator may obtain additional coverage for product liability or for structural alterations.

Operators of refreshment stands, snack bars, or stores should consider this liability for damages resulting from goods sold to guests. Products

liability coverage protects against accidents occurring away from the premises as a result of purchasing the product.

Structural alteration coverage may be needed to provide adequate coverage for recreation enterprises undergoing further development or improvement of facilities. Without adding this coverage, the OL&T policy will not cover liability for injuries relating to new construction or the demolition of existing structures.

(2) Comprehensive General Liability Policy: A policy designed to provide a business with protection for all exposures, including products of liability unless specifically excluded is the comprehensive general liability policy. Generally, policy is regarded as providing more complete protection than the OL&T policy because there is less chance that an unknown hazard will not be covered.

The comprehensive policy has the major advantage in that it automatically covers any hazards, such as facilities added during the year, without notifying the insurance company. A survey of all existing hazards is made by the insurance company at the beginning of the insurance contract. At this time an estimated premium is determined, frequently on the basis of estimated income. When ending the policy period, an audit is made which reveals the addition of any other source of liability that was not present at the beginning of the contract. At this time the insured will be required to pay an additional premium for facilities that were added during the policy term.

Insurance Costs: Simply stated, insurance premiums are rated according to the policy coverage. A policy with 5/10/5 coverage will not cost as much as one with 100/300/5. (5/10/5 means that the coverage limits are $5,000 for bodily injury to one person, $10,000 per accident for injuries to two or more persons, and $5,000 for property damage.) However, the cost

difference is not in direct proportion to the amount of coverage and may be only slight for some types of coverage. The amount of coverage available depends on personal preference and what the operator can afford. A survey of recreational enterprises revealed that the majority of operators choose a coverage of $25,000 or more per person and $50,000 or more per accident.

Because of the many possible combinations of activities involved and the extent and nature of these activities, the concensus of insurance rating organizations is that a "rating" has to be made in each case, based on the "exposure" or risk involved. This means that a landowner should contact his property-insurance agent, who can furnish (or have his home office furnish) more definite information as to the premium.

Just as a rough example, if fees were charged for hunting or fishing, the premium for liability coverage at 5/10/5 might amount to from 50 cents to 65 cents per $100 of receipts. As a floor on the premium, the company might set a minimum of about $35, so that the landowner would have to pay at least that much, regardless of his receipts from the hunting or fishing operation. He could obtain higher coverage limits for a slight increase in his premium rate per $100 of receipts.

The rates per $100 vary by state as well as by activity involved. Some of the possible activities, such as operating a vacation farm, or providing facilities for camping (family basis), picnicking, and hiking, have not been classified, and rates for them would have to be determined from the individual situations. Even where activities have been classified, an individual rating provides the necessary flexibility whereby more consideration can be given to the circumstances involved. And where two or more activities are involved, particularly when one is more risky than the others but one

admission fee applies to all, an individual rating becomes even more necessary in order for the company to determine an appropriate premium rate and minimum premium.

Available information on a few income-producing recreational projects in the Midwest that have been individually rated, together with the annual premiums paid for liability insurance, is given as follows:

RECREATION PREMIUM RATES - EXAMPLES

$5000/$10,000/$5000 Coverage

Recreation Enterprise	Reporting Numbers	Basis for Rating	Premium Range (1963 prices)
Vacation farms..no horseback riding	8	Per year	$35-75
Vacation farms..with horseback riding	2	Per year	180-200
Lake resort			
Boat dock	4	Per year	10-20
Snack bar	4	Per year	40-50
Cabins	4	Per cabin	3-10
Boats - row	3	Per boat	$.75-1.50
Boats - motor	3	Per boat	$1.75-2.50
Swimming	3	Per year	25-150
Access to fishing	3	Per year	40-45
Fishing guide	4	Per year	25-40
Hunting preserve	4	Per year	40-75
Duck & Goose Blinds	4	Per year	40
Fee fishing ponds		Per year	50-75
Deer Hunting	4	Per year	40-75
Vacation farm	4	Per year	40-75
Campgrounds	2	Per year	26-40
	3	Per space	$3.85-5

Recreation Enterprise	Reporting Numbers	Basis for Rating	Premium Range (1963 prices
Picnic grounds	2	Per year	40
	2	Per space	$3.85-4
Pony ride	2	Per year	60-65
	2	Per horse	27.50
Riding academy	2	Per year	115-135
	2	Per horse	27.50
Riding stable	3	Per horse	27.50
	3	Per year	125-200
Combination project (camping, cabins, trailer spaces, boat rentals and retail sales)	1	Per year	110

Special Recreation Problems

Each type of recreation enterprise has unique characteristics which create different problems of liability. The major enterprises as treated here are from the publication "Liability Risks in Operating A Farm Recreational Enterprise" by James F. Crews and Ronald Bird.

Deer Hunting: It is common practice in some areas to charge for permission to come upon the land to hunt deer. Hunters who pay the fee become invitees. The owner of the land has a duty to keep them safe from dangerous conditions that may cause physical injury. Every hunter coming upon the land for a fee should be warned of abandoned wells, dangerous animals, unsafe structures such as cabins and old outbuildings in the area. If injury results from a condition that has been explained to the hunter, no liability will be imposed. The use of signs to point out specific dangers is a good practice. A map of the premises with the dangerous areas "set out," may also be effective in limiting liability.

Some farmers have been issuing permits to hunt upon their land which state "not responsible for accidents incurred while on the premises." These phrases are of no legal effect. Such a disclaimer does not relieve the farmer of liability. For example, if a hunter is injured by a dangerous animal or any other dangerous condition of which the hunter had no knowledge, the farmer may be held liable.

A farmer may be held liable for injuries caused by one deer hunter to another under certain conditions. Allowing drunken patrons to come upon the premises with dangerous weapons may impose liability upon the owner. A farmer may also be held liable for permitting too many hunters on his land at the same time. The proprietor of a deer hunting enterprise should caution his patrons as to the number of hunters already on the premises.

The legal risks are such that insurance may or may not be required. If the above precautions are taken, liability should be reduced greatly.

When a farm is leased to a group of deer hunters, the liability for injury is greatly reduced. The hunters should be warned of concealed dangers. This is especially true where there is a dwelling on the land and a promise to repair is included in the lease. Liability may be imposed for injuries caused by disrepair of the premises. It is suggested that a promise to repair a building should not be included in the terms of such a lease. An attorney should be consulted where such a lease is to be used.

If rooms are rented to hunters, liability may arise for injuries to the hunters while on the premises. Most general farm liability policies do not insure against this risk. Before carrying on this type of enterprise, the provisions of insurance policies should be checked. Liability may be imposed for unsafe food served to hunters who pay for their meals. While

the probability of such injury seems small, it may be wise to examine existing insurance policies covering the farm and the home.

Riding Stables: The rule in the ordinary contract of bailment is when a person lets a horse for hire, he is under an obligation to furnish a reasonably safe animal for the purposes known to be intended. For failure to use due care to discover dangerous propensities in such animals, or to disclose them to the hirer, he may be held liable for damages. Also, the proprietor will be held liable if lack of ordinary care or negligence results in the selection of an animal which is not suitable for the intended use. However, the proprietor may be liable for injuries caused by a horse even though he does not have actual knowledge of the wild and dangerous character of the horse.

The duty to protect the patron from injury is the same as in other bailments. If the horse is unfit for children, under no circumstances should the animal be hired to a child. If the horse is high-spirited, a statement as to the temperament to an experienced rider should be enough to save the proprietor from liability for subsequent injuries.

The disposition of the horse is only one phase of liability. If the riding equipment furnished to the patron is in an unsafe condition, resulting injuries may create liability. In order to limit liability, all saddles and other riding paraphernalia should be thoroughly examined before each hiring. The measuring stick for imposing liability would seem to be, "Is this particular horse and equipment safe for this particular rider?"

When the horse or pony is under the sole control and management of the proprietor, another method may be used to impose liability. The duty owed the patron is the same but the proprietor must show absence of negligence if injury occurs. Proof of negligence is easier to establish in this

situation than in one in which the patron is in sole control of the horse. For example, if a patron is thrown from a horse which is being led, liability may be readily established; whereas if the patron is riding a horse of which he is in sole control, proving negligence is more difficult.

Methods of limiting liability include careful selection of animals used in the enterprise, and regular examination and repair of all equipment. Animals which show dangerous propensities, such as to run away, to kick, or other non-gentle characteristics, should not be used in a riding stable enterprise. If a horse is high-spirited, there would seem to be no valid reason for excluding its use from the business. However, a high-spirited horse should not be hired to a "low-spirited" customer without full disclosure of its character.

If a horse is hired to an individual, the proprietor should explain that no other person is to ride it. Possible liability may arise if the animal is turned over to a wife, child, or other person.

The equipment used in the riding stable enterprise should be frequently and systematically inspected. All defects should be repaired. If a reasonable inspection would not disclose a defect in the equipment furnished, then a bailor will not be held liable for injuries caused by equipment breakdown.

Personal injuries occur more frequently in enterprises that use riding horses than in other tourist enterprises. Insurance can be used to cover the risk, but the premiums are high. Incorporation may be a better method of limiting liability. Prior to making a decision, an attorney should be consulted.

Fishing Ponds: Where permission to enter upon the premises is given for a fee, the relationship of invitee applies. A problem that is unique to this enterprise is liability imposed for accidents due to dangerous conditions of docks and boardwalks. Repair and inspection of these

facilities should be frequent and thorough.

Special problems arise when the proprietor merely posts a container and the invitee puts a fee into it. Lack of supervision permits unruly patrons to enter and they may injure other patrons. In this situation, liability may be more readily imposed. Insurance should be carried.

Because of the nature of the risk, it is best to insure or incorporate fishing ponds.

Swimming Pools: Where swimming for a fee is allowed, special precautions should be taken to prevent injury. Adequate signs noting the depth of the water, and divided areas for experienced swimmers and novices should be erected. If diving is permitted on the premises, the area should be marked and other persons excluded from the area. A competent lifeguard should be stationed at intensively used swimming facilities. He should be provided with safety equipment. The lifeguard has a duty to remain alert.

In some tourist enterprises using lakes and streams for swimming areas, there are special problems in alerting patrons to dangerous conditions. Water levels vary and current flows are difficult to define. Therefore, signs and depths markings must be frequently changed. If children frequently use the facility, a lifeguard should be employed. When unnatural and dangerous conditions arise, swimming should be prohibited. These precautions may prevent injury and limit liability.

All swimming areas should be insured.

Hunting Preserves: The liabilities involved in operating a hunting preserve are the same as those in allowing a person to hunt deer for a fee. Since the operation of the enterprise is continuous, and the concentration of use is higher than the ordinary deer hunting enterprise, more precautions to guard against liability from personal injury should be taken.

Permanent operation of a hunting preserve will depend upon the satisfactions enjoyed by the patrons and the safety precautions taken by the

management. Rules and regulations should be posted and all hazardous places clearly marked. Gun racks, special facilities for dogs, and other improvements on the shooting premises are necessary. Dangerous conditions upon the premises should be corrected. Paths should be inspected for holes, and regularly maintained. Automobiles should be excluded from the hunting area.

One regulation that might be advisable to enforce is prohibition of the use of alcoholic beverages while hunting. All unruly invitees should be excluded. The primary cause of injury on hunting preserves is negligent handling of firearms.

Boating: The use of boats in the tourist enterprise creates some special problems. Liability is imposed for injuries caused by faulty conditions of boats and for injuries caused by incompetents who are supplied a boat. All persons who rent boats should have them insured. The Federal Motor Boat Acts apply to the use of boats on navigable waters. These Acts require assistance to certain persons, and other rules of conduct and equipment standards are spelled out. The boat operator must abide by these rules and is subject to liability under the conditions stated in these Acts. Also, Admiralty Laws apply to navigable waters and further define the operator's liability. Since liability may be imposed for a variety of reasons, all boats used on navigable waters should be insured, whether rented or not.

Alex L. Parks in his book, "Protecting You and Your Boat", states that some of the more common situations in which boat owners have been liable are:

"A passenger slipping on an oil spot on the deck and breaking an arm or leg; explosions of various types due to gas fumes; navigating the boat carelessly or negligently so that the passengers are thrown violently against the side of the boat; collisions with other boats due to the

failure to have proper navigation lights; failure to have sufficient life jackets or buoyant cushions aboard if the boat sinks; failure to have sufficient familiarity with the boat to operate it in a careful, safe and prudent manner; negligently colliding with another boat due to failure to understand and observe the rules of the road; a passenger slipping or falling while getting into and out of the boat on a dock due to rickety and unsafe ladders."

Park further states:

"The principles of negligence in boating are quite similar to the principles of negligence governing the conduct of other every day activities. In some respects, the end result of the negligence in the terms of money liability may be different but the fundamental principles remain the same."

"The rules of law which govern the relationship of individuals with respect to wrongs committed against others or their property are collectively referred to as the 'law of torts'. One of the fundamental rules which is applicable to every day conduct is the legal duty of every individual to so conduct himself as to not injure another. The law of torts applies with equal force to a boat owner's obligation with respect to his boat. He has a duty, in varying degrees, towards practically all individuals who can be expected to be in the vicinity of his boat. The degree of duty is almost wholly dependent upon circumstances involved. Take a very extreme case, let us suppose that the boat owner suspects someone is tampering with his boat. He rigs a so-called "spring gun" in the deck set to go off if anyone steps aboard. It is beyond question that if a guest is accidentally injured by the spring gun, the owner will be held liable. A passerby whose hat blows onto the boat and who is shot when he steps on board to retrieve it could certainly recover. In fact, in this civilized age, it is possible

that a trespasser could bring suit against him and might even recover if he can show that his trespass was without any intention to injure the boat or appropriate the property of the boat owner."

"The first and most obvious precaution to be taken by every boat owner is a painstaking, thorough and periodic inspection of his boat to insure that it is not only equipped with the safety appliances required by the Coast Guard, but that every possible step has been taken to prevent and avoid the little hazards that may occur. The old adage that it is better to be safe than sorry can find no better illustration than in the sport of pleasure boating.

"Of equal importance is a thorough knowledge and appreciation of the rules of good boatmanship which include absolute familiarity with the rules of the road, the operating characteristics of your boat, and the common rules of safety which amount in the last analysis to the exercise of a little common sense."

"At this point, we all recognize that none of us can be absolutely infallible at all times. The element of human error cannot be eliminated. It must be assumed that even the best boat owner - as well as the best automobile driver - will some day be guilty of negligence and that such negligence may cause injury to some property or person. The answer is, of course, full insurance coverage, coupled, if possible, with a diplomatic warning and explanation to your prospective passengers as well as securing a release of liability from such passengers in appropriate instances."

Summary

When operating an outdoor recreation enterprise, an individual must exercise reasonable care for all persons entering or using his property

or services. Legally he owes the greatest degree of care to the patron who has paid a fee for the use of his facilities or services. For this patron, legally classified as an invitee, you must exercise reasonable care to prevent injury and to maintain your premises in a safe condition for his use.

Negligence in exercising reasonable care could result in an injury to an invitee. This in turn could mean a law suit or damage claims that might be enough to take all the profit from the enterprise not to mention your life savings, your home and property. Liability insurance should be obtained by all operators, regardless of the volume of business expected, for protection against shock losses and all costs connected with an accident claim. The policy with a minimum of $25,000-$50,000 bodily injury coverage is recommended, although greater coverage is preferable.

The Comprehensive General Liability insurance policy and the Owner's, Landlord's and Tenant's policy provide liability protection for recreation enterprises. Be sure that your insurance agent understands the nature of your operation and that all hazards are covered.

The availability and cost of insurance will depend upon the type of enterprise and individual circumstances. Liability insurance is available from numerous insurance companies. Rates vary among insurance companies; considerable savings can be realized by comparing insurance rates and policies offered by several agents and companies. You may then chose the insurance policy which provides the best coverage at least cost.

Remember to consider all factors that will affect the success of your enterprise. Liability insurance is a fixed cost that should be considered in any feasibility study. You should obtain estimates of insurance costs before developing a recreation area, or service, or before adding any facilities so as to avoid excessive insurance costs for the type of activity

planned. Consult a lawyer about liabilities that may be incurred through operation of an enterprise or addition of new facilities and services.

Liability risk and insurance cost can be reduced by avoiding certain activities associated with high risk and/or high insurance cost. You should carefully consider the increased insurance cost and risk of injury created by the addition of high risk activities.

The potential liability of an enterprise may be reduced by specifically limiting the area intended for use by the paying guests. Boundaries of recreation areas should be well marked and guests should be warned that they are to stay within these boundaries.

Your property, real or personal, must be maintained in a reasonably safe condition. The addition of safety precautions and elimination of hazards can reduce liabilities and the chance of an accident. Not only are insurance companies more willing to insure an enterprise which has certain built-in safety precautions, but some companies may grant a premium discount after a period of demonstrated safe operation.

Liability can be reduced if reasonable care is exercised to warn visitors of any existing manmade or natural hazards or unsafe conditions. Rules and regulations pertaining to the use of a recreation area should be posted to inform the invitee of the conduct expected of him.

Be sure you understand and comply with all laws and regulations applicable to the operation of your enterprise.

You may wish to consider limiting the use of your facilities to members only. If a membership organization is properly administered, legal liability and premium rates may be reduced considerably. This type of an arrangement has an additional advantage in reducing administrative and maintenance costs.

This is but one of the publications and services provided in the PROFIT program of your Cooperative Extension Service at Oregon State University.

We hope this publication is of assistance to you. For educational information and further assistance we encourage you to contact your county agent.

Release

Date _____

To Whom It May Concern:

In _____ as a visitor upon the real
NAME (Invitee)

property owned by _____ and recognizing the
NAME (Owners)

degree of liability to guests the owners have been subjected, hereby release the owner and his property from any and all liability to me or my heirs, executors, administrators, or assigns, for any loss, claims, injuries to person or property, or damages whatsoever arising out of or connected with my participation and use of the real property.

I further agree to assume such risk as may be involved.

_____
Signature

GLOSSARY

Terms used in an insurance contract are generally defined in the contract, and the definition may possibly vary from those given in this publication. In general, however, the legal and insurance terms that you should know are as follows:

Terms and Concepts

Accident. Accident, in a strict legal sense, is an occurrence for which no one would be liable. For instance, if a rattlesnake bites someone hunting or fishing on your property, you are not to blame.

Act of God. Any occurrence which takes place without the intervention or aid of man.

Agent. One who acts for another. For example, your insurance agent acts for you in insurance matters.

Assumption of Liability. An insurance company issuing a liability policy, thereby agrees to assume, up to the amount of the policy, liability arising from acts of the kind specified in the policy. For instance, if you have purchased a $50,000 general personal liability policy, the insurance company would assume and agree to pay (up to the first $50,000) your liability arising from any unintentional act or failure to act on your part.

Attractive nuisance. Attractive nuisance refers to a dangerous object or condition expected naturally and continuously to lure children onto premises where the object or condition exists and which is likely to cause injury. An abandoned barn that may collapse at any time could be considered an attractive nuisance.

Bailee. One who receives possession of personal property from another for a specific purpose with the understanding it will be returned when the purpose has been accomplished.

Bailment. A contract by which one person transfers possession of his personal property to another, to be held for a certain purpose and to be returned when the purpose has been accomplished.

Bailor. One who transfers possession of his personal property to another to be held for a certain purpose and to be returned when that purpose has been accomplished.

Breach of Duty. The failure to conform to a behavior or standard of a reasonable man when a duty exists between two parties.

Causal Connection. When an act of ommission or commission was a contributing factor in bringing about damage to the plaintiff.

Common law. The body of law based on custom and precedent.

Comprehensive General Liability. These policies are "tailor made" to fit conditions in the policy holder's business which are likely to give rise to liability. Rates are based upon expected revenue and the probable risk the company is expected to assume.

Corporation. A group of people who get a charter granting them as a body certain legal powers, rights, privileges, and liabilities of individuals, distinct from those of the individuals making up the group.

Duty. An obligation of the individual to use reasonable care to prevent exposing another to unreasonable risks of injury when the relationship between the two parties is of a nature to warrant such duty.

Entrepreneur. It is used here to mean a person who operates an outdoor recreation business for a profit.

Farmers Comprehensive Personal Liability. This term refers to a type of insurance policy widely used by farmers and ranchers for protection of their regular operations. This kind of policy may not provide adequate protection if the farm or ranch is opened to paying recreationists. Some insurance companies might consider liability arising from a recreation enterprise to be covered by provisions of the policy and others may not.

Insurance Coverage. This is the protection provided to the purchaser by a liability insurance policy. The policy spells out the type of injury and liability and the financial limit of the insurance company's liability - $10,000, $50,000, etc.

Insurance Rates. This means the premium (cost) paid by you for the policy providing insurance coverage.

Invitee. This is a person who is invited onto property for the benefit of the landowner. A person who pays a fee for the right to hunt on the landlord's property is a business invitee.

Law of Torts. Rules of law which govern the relationship of individuals with respect to wrongs committed against others or their property. A "Tort" is a civil wrong, inflicted otherwise than by a breach of contract.

Lease. A contract granting the use of real property for a definite period, in consideration of payment of rent.

Lessening Liability. The term lessening liability refers to the reduction of potential liability to the customer by keeping your property in a reasonably safe condition at all times.

Liability. The term liability means an obligation arising through the operation of the law which requires a monetary compensation to a person for his injury or loss of property.

Licensee. A licensee is a person who, with the landowner's permission, enters property for his own purposes and not for the purpose of conferring any benefit upon the landowner. A person who requests and receives the permission of the landowner to hunt on his property without paying a fee is a licensee.

Negligence. This indicates an act which a reasonably prudent person would not have done, or a failure to do something which a reasonably prudent person would have done in similar circumstances. For instance, you are negligent when someone hunting or fishing on your property steps into an animal trap, if you had set the trap and failed to warn the person of its presence.

Owner's, Landlord's, and Tenant's Policy. The coverage provided by this policy is designated specifically for someone opening a business to serve the public. It may or may not be suitable for certain recreation enterprises.

Plaintiff. A person who brings a suit into a court of law.

Possessor. A possessor of real property is usually an owner or renter in possession of land or real property.

PROFIT. An acronym that stands for "Planning Recreation Opportunities For Income and Tourism." This publication is one part of this program which is sponsored by the Cooperative Extension Service, Oregon State University, Corvallis.

Recreationist. A recreationist (as used here) is a person paying for the use of a recreation facility or facilities, or a particular recreation service such as guiding.

Release. The surrender of a claim or of a right of action to the person against whom the claim or right exists; an instrument evidencing such surrender.

Trespasser. The term trespasser refers to a person who enters the land or property of another without his permission.

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