THE THREE “L”s
LAWSUITS
LEGAL ISSUES
LESSONS LEARNED

A PRESENTATION BY
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AND
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Outline

1) Who gets sued and why?
2) Causes of action
3) Available defenses
4) Use of releases
5) Third party contractors
6) Insurance
7) Staffing
8) Safety measures
9) Post incident action or inaction
11) Standards, such as reasonable care
12) Social media issues
13) Documents to defend the Wilderness Organization.
Who gets sued and why?

Wilderness Company

Owner

Field Staff/Employees

Third Party Contractor

Sponsors
<table>
<thead>
<tr>
<th>Causes of action alleged</th>
<th>Available Defenses</th>
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<tbody>
<tr>
<td><strong>Negligence</strong></td>
<td><strong>Release/Waiver</strong></td>
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<tr>
<td>- Duty, Breach, Causation and Damages</td>
<td>- Assumption of Risk</td>
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<td><strong>Premises Liability</strong></td>
<td>- Inherent Risk</td>
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<td><strong>Product Liability</strong></td>
<td>- Defeat elements of Negligence</td>
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<tr>
<td><strong>Failure to warn</strong></td>
<td>- Comparative Fault (Potential Reduction of Damages)</td>
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<td><strong>Negligent hiring, training or supervision</strong></td>
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<tr>
<td><strong>Breach of Contract</strong></td>
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Case Summary – Sengupta v. Tough Mudder

- 2013 Mid-Atlantic Tough Mudder race in West Virginia. Sponsored by General Mills.
- Sengupta jumped from the Walk the Plank obstacle into muddy water below.
- Failed to surface.
- Teammates tried to alert rescue diver.
- Sengupta not pulled from the water until more than 8 minutes after he jumped.
- Sengupta died the following day.
- Video posted on YouTube that afternoon.
Participant Video Posted to YouTube

- 2013 Tough Mudder Video
Tough Mudder had contracted with Amphibious Medics to provide rescue divers.

The rescue diver’s response was delayed.
- Took time to put on equipment
- Other participants instructed to get out of the water
- Family claims diver didn’t comply with Red Cross, U.S. Lifeguard Association, and West Virginia law for rescue divers

Certification was not current.
Post Incident Plan

- NO Emergency Action Plan
- No training on Plan for potential drowning.
- Adequate Staffing?
  - Staff
  - Contractors
  - Volunteers
Discussion Topics

• Who are the Potential defendants in this case?

• What steps could Tough Mudder have taken prior to race to reduce likelihood of accident?

• WHAT steps COULD TOUGH MUDDER HAVE TAKEN PRIOR TO RACE to reduce liability in event of accident?

• WHAT investigation WOULD YOU CONDUCT post incident and what documents WOULD YOU COLLECT?
Social Media Issues

- Find video immediately and download
- Use social media to identify witnesses
- Should you correct misinformation?
- Keep privacy in mind.
Insurance Issues

- For a contract with Third Party Contractor:
- Have contractor name you as Additional Insured on its insurance policy
- Make sure contractor has ADEQUATE insurance; beware of exclusions
Case Summary –
Urban Pioneer Experiential Academy

- Robby and Mikhail (17 years old)
- UPEA - Charter School in San Francisco
- Academic and experiential program for students with drug and alcohol issues

- Challenge Class with Wilderness Expedition - required
- Class consisted of wilderness training & community service
- 2 months training in class

- Discussion - alcohol or drugs in wilderness forbidden
- Signed Wilderness Expedition Contract “I will not use alcohol or drugs”.

The UPEA Wilderness Trip

- Ventana Wilderness, California
- Late winter

- 3 Patrol Solo groups – 9 students each
- Base Camp 3 miles away – all teachers

- No cell phones/no SAT phones
- Moonless night
What Happened for UPEA

- Patrol Solo at Horse Bridge campsite
- Other patrols visited (against the rules)
- 2 Intruders (Age 23) entered Horse Bridge
- Intruders offered alcohol
- UPEA students drank alcohol
- Altercation between students and Intruders.
- Robby and Mikhail left to hike to Base Camp
- No flashlights
ROBBY & MIKHAIL FELL DOWN A SLOPE AND DIED IN THE DARK
Discussion Topics

- Who are the Potential defendants in this case?
- What steps could Urban Pioneer have taken prior to race to reduce likelihood of accident?
- Steps to reduce liability in event of accident?
- What Investigation WOULD YOU CONDUCT post incident and what documents WOULD YOU COLLECT?
Standard of Care

- Reasonable Care
- Industry Standards
- Occupational Standards
- Training Standards
- Etc.

- Expert Witness Opinions
Documents to Defend

- Incident Report
- Witness Statements
- Photographs
- Release
- Letters
- Contract with third party
- Police Report

- Brochures
- Website
- Policies
- Training documents
- Employment records
- List of names, address and telephone numbers
Case Study - Expedition to Mt. Kilimanjaro

- Jason Jimenez (37 years old) & his mother, Sandra Jimenez
- Expedition to Mt. Kilimanjaro with travel outfitter
- Required to sign a Release (in English)
- Neither participant spoke English as their first language

- Letter from the travel company’s president stated that “Our lawyers, insurance carriers and medical consultants give us no discretion. A signed, unmodified release form is required before any traveler may join one of our trips. Ultimately, we believe that you should choose your travel company based on its track record, not what you are asked to sign.”

- BOTH PARTICIPANTS SIGNED THE RELEASE
- Jason died of altitude-related illness on the trip
Mt. Kilmanjaro Release Language Included:

- Release of all claims “to maximum extent of the law.”
- Waiver of right to a jury trial. Disputes must be resolved in an arbitration.
- Damages to an injured party would be limited to the cost of the expedition.
- Participant agreed to indemnify the travel company for the cost of defending any released claims; and
- Release bars “all negligence and gross negligence” of the travel outfitter.
Discussion Topics

• WHAT ARE THE POTENTIAL ISSUES THAT MAY IMPACT THE EFFECTIVENESS OF THE RELEASE?
RELEASE

USE AS FIRST LINE OF DEFENSE
RELEASE

Acknowledge risks
Release negligence
(NOT gross negligence & NOT willful misconduct)
Waiver of right to sue
Choice of state law
Signature of adult

- Activities may include, but are not limited to: camping, outdoor cooking; hiking, backpacking, rock climbing (including belaying and rappelling), bouldering and peak ascents (all of which may include use of ropes, harnesses and/or other technical gear); solo experiences and independent student travel; wading and stream crossings; service learning projects; compass/map navigating and route finding; first aid skills instruction; use of any equipment, facilities or premises; travel in vans, buses or other vehicles to and from activities or otherwise (collectively referred to in this Document as “activities”).
For myself and for and on behalf of my participating minor child) agree to release and agree not to sue with respect to any and all claims, liabilities, suits or expenses (including attorneys’ fees and costs) for any injury, damage, death or other loss in any way connected with my/my child’s enrollment or participation in these activities.
I further agree to **defend and indemnify the company** with respect to any and all claims, for any injury, damage, death or other loss in any way connected with my or my child’s enrollment or participation in these activities;
Insurance Issues

- Make sure your insurance coverage is ADEQUATE
- Verify Insurance Policy
- Additional Insured Certificates
- Exclusions
- Coverage for International trip?
RELEASE

Acknowledge risks
Release negligence
(NOT gross negligence & NOT willful misconduct)
Waiver of right to sue
Choice of state law
Signature of adult

- I understand that if legal action is brought, the appropriate state or federal trial court for the state in which the event is held has the sole and exclusive jurisdiction and that only the substantive laws of the State in which the event is held shall apply.
QUESTIONS about the 3 “L”s?

ACTION ITEMS:
1. Learned issues central to lawsuits against wilderness programs.
2. Program leaders/Owners use information for preparation of plans and documents.
3. Take away lessons specific to wilderness programs.
THANK YOU

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