

# Employer Liability?

## The Accidental and Tragic Death of a Staff Member



AKA: Why lawsuits happen even when you do everything right.





# The Event

- 30 year old staff member electrocuted while trailering a sailboat from the camp's lake.
  - Mast was up
  - Hit overhead high voltage lines crossing camp property.



# What We Will Cover?

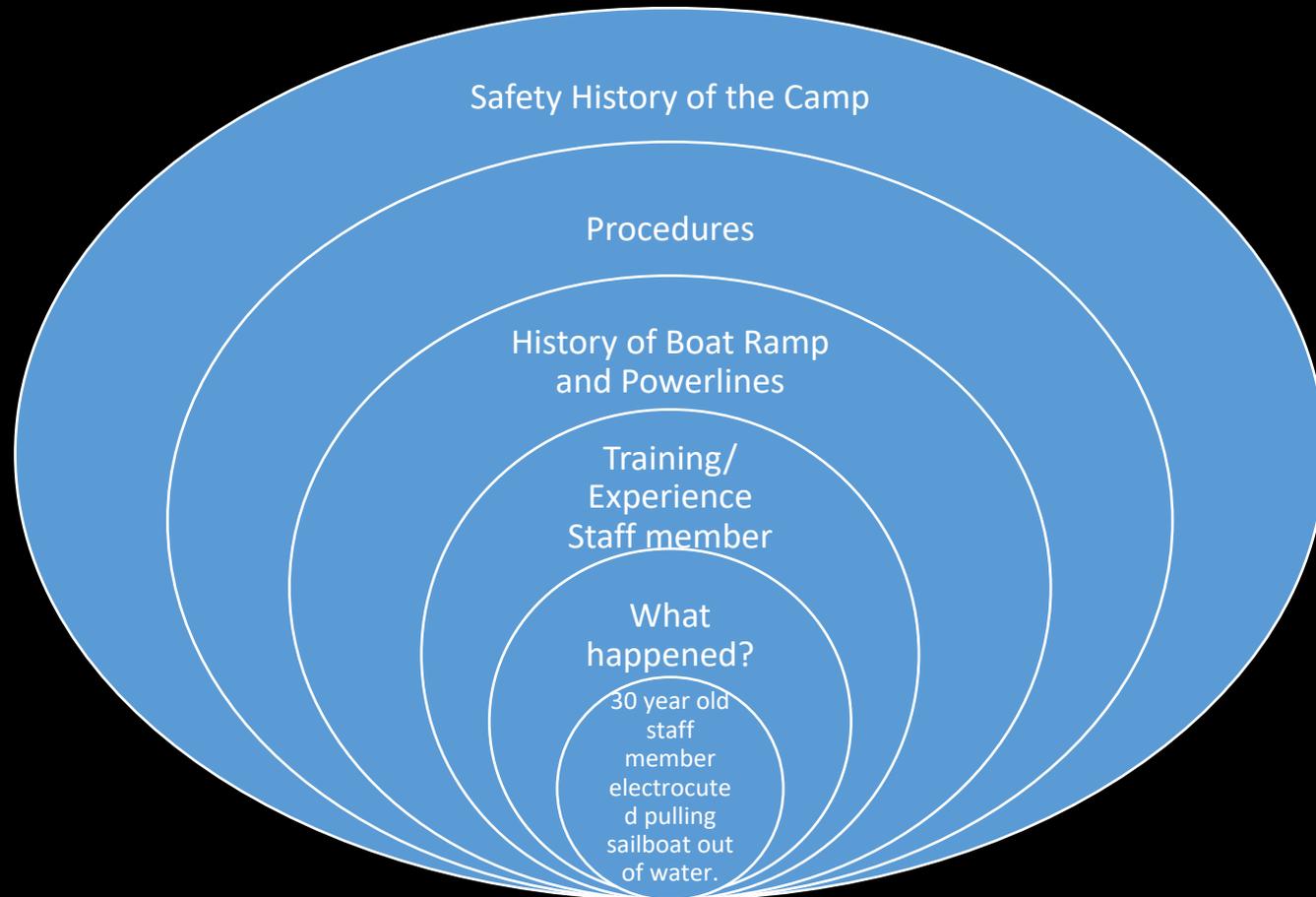
- The legal entities that own and operate your program and property and the importance of maintaining arms length relationships between them.
- The importance of clear contracts with your staff.
- Managing the post incident investigation.
- Managing OSHA and Workers Comp.

# At its core, this is what happened.



30 year old staff  
member  
electrocuted pulling  
sailboat out of  
water.

# But this core question quickly ripples to a many considerations:



# But with a twist: Who can his estate sue?

- The “Camp”?
- The Electric Utility?

So now, these become the two  
critical questions:

Who has legal  
responsibility  
for the  
property?

# And the second question:

What legal  
responsibility, if any,  
did the staff member  
have for this  
accident?

# Must peel back the layers to get to the core.

- The Camp
  - Overnight summer boys camp; Founded in the early 1920's
  - Continuous family ownership and operation – 4 generations
  - When G3 turned the reigns over to G4, two LLCs: Operations and land
    - 6 months before this accident.
    - **Separate management and control.**
    - **Entered into an arms length lease with market rent.**
    - **Assignment of responsibility/indemnification**
  - No history of serious injury or death

# Additional layers

- The Staff Member's Relationship with the Camp
  - 30 years old at time of accident.
  - Attended camp for at least 4 summers as a camper and as a counselor for at least 3 summers
  - Father and brother attended the camp
  - Family housed G3 during recruiting trips
  - Staff member and G3 flew airplanes together.
  - One of 4 people at the camp authorized to trailer and transport sailboats.
  - Relationship with Camp on day of the accident.

# What about the property?

- The Power Lines and Boat Ramp
  - Power lines: Three 7200 volt uninsulated lines
    - Main electrical distribution lines into the camp
    - In same location for 40+ years
    - Run adjacent with the camp road through the heart of camp property
    - On easement owned by Electrical Utility
  - Dirt /Grass Boat Ramp
    - Same location for 25+ years
    - Used for removing sailboats for camping trips

# Working our way to the core:

- The Staff Member's Background
  - 30 Years Old
  - College graduate and one credit shy of MBA
  - Successful property management business.
  - Eagle Scout
  - Volunteer Firefighter and EMS in college
  - Family Business: Underground Utility Installation
    - Operated track excavators, bulldozers, compactors
    - Obtained his CDL at 18 and operated 18 wheeler
    - Obtained specific safety training on above and below ground electrical hazards.
  - Obtained pilot's license

# What Happened

- Staff member and young staff member asked by Director of Sailing to prepare sailboat for overnight camping trip.
  - Sailboat moored off of docks
  - Bring to dock and Unrig it
- Decal on mast: **“Warning-Watch for Wires-This mast conducts Electricity – Clearance Required 32’ on Trailer; 29’ on Water”**
- Encounter while towing boat around
- Unfolding of events

# Immediate Response: Two Tracts

- Managing the Crisis for the Camp Community
  - Immediate Family
  - Staff
  - Campers and their families
  - Stay True to the values and community of the Camp
- Managing the external/legal considerations
  - Press
  - Law Enforcement
  - OSHA
  - Workers Comp.
  - Potential Future Lawsuit Liability

# Key Considerations

- Genuine grief, caring, and support:
  - Communications focused on the grief of the loss and well being of the family and community
- How to handle the question of how?
  - The benefit of other agencies' involvement.
  - Joe Friday
- Two year SOL: Gather, Protect, and Preserve Critical Evidence
  - Interview and preserve witness knowledge\*\*
  - Gather all critical documents
  - Document all conditions
  - Manage all outside inquiries and communications.

# OSHA and Workers Comp

- Why does the camp property owner care about these two entities?
  - OSHA
    - Purpose
    - Process
    - End Result
  - Workers Compensation
    - Purpose
    - Process
    - Goal

# What happened next?

- SOL: 2 years
- Lawsuit filed 1 year, 361 days after the accident
- No indication or communication from the family prior to it being filed.
- Litigation: 1 year, 110 days.

# What happened during 1 year and 110 days?

- Interrogatories and Requests for Production\*\*
- 18 Depositions
- 7 Experts
- Court ordered mediation/Settlement Conference.
  - Demand \$18,000,000

# Back to the Legal Questions: Question 1

Who had legal  
responsibility  
for the  
property?

# Premises Liability

- The Powerlines?
  - Utility's Easement
  - NESC: **Established** Boat Ramp
  - Notice/Knowledge
- The Boat Ramp
  - The Lease between Camp Operator and Property Owner:
    - Operator agreed to accept full and sole responsibility for all operations of the camp, including the maintenance and upkeep of the camp property and all its “buildings, facilities, parts and systems . . . and all utility installations, equipment, parking areas, and grounds.”

## Question 2:

What legal responsibility, if any, did the staff member have for this accident?

# Poll

- Who thinks Utility Owner has responsibility?
- Who thinks Camp/Property Owner has responsibility?
- Who thinks Staff Member has responsibility?

# NC Law

- Contributory Negligence v. Comparative Negligence

# What happened

- Case Settle?
- Court orders judgment in favor of the Property Owner before going to a jury?
- Case goes to trial jury?

# Take Aways: What makes a difference?

- Pay attention to and maintain the separateness and formality of your legal entities.
- Have written contracts with all seasonal employees.
- Good clear post event response structure in place.  
(Practice, practice, practice)
- Management, collection, preservation, and protection of critical evidence. (Serious injury = attorney should be one of first calls)
- Treating the investigation at the outset as though a lawsuit is imminent.
- Providing the care and support for those hurt while understanding the context of a potential suit.

# Overwhelmed???

