

# Legal Issues Pre-Conference

This presentation contains general information and is not intended to provide specific legal advice. Adventure and recreation providers should consult with legal counsel, experienced in recreational law, regarding matters specific to their business or operation, and aware of the laws in their jurisdiction.

# Virtual Kids – Real Risks

Charles R. Gregg and Catherine Hansen-Stamp  
Tuesday, September 30, 2008

# The Virtual Kid

- Over Managed
- Out of Shape
- Risk and Accountability Averse
- Elevated expectation of care

\*Can this person be trusted in the woods?

# Managing the Risks

- Protecting the kid
- Protecting the program

# Where Are the Risks?

- Information Exchange
- Screening
- Staff Selection and Training
- Sequencing
- Participant Supervision

# The Duty Owed - General

“To exercise reasonable care to protect the child from unreasonable harm”

“Reasonable” will vary: Consider participants, activities and relationships

# The Duty Owed - Specific

- A heightened duty, because they are children?
- Maybe not: Active sports and recreation (The Primary Assumption of Risks Doctrine – sword and shield)

# The Duty (continued)

- Exploring the tension
- Cases on point – a cultural war?
- Conclusion

# Practical

## Defenses to negligence claims - minors:

- Running a Quality Program!
- Good 'Information Exchange' with parent and child

# Legal Defenses

## Defenses to negligence claims - minors:

- The loss was caused by an inherent risk
- Classic versus enhanced

(A provider has **no duty** (states vary) to protect participants, including minors, from inherent risks)

# Legal Defenses

## Defenses to negligence claims - minors:

- The child expressly assumed the risk  
(written or oral)

(This can also eliminate a program's duty  
(though less likely with minors))

# Legal Defenses

## Defenses to negligence claims - minors:

- The child's contributory fault was the cause of all or part of the harm.

(reduce or eliminate ultimate liability - comparative fault (negligence, including 'secondary' assumption of risks))

# Legal Defenses

## Defenses to negligence claims - minors:

- Releases (waivers) \*Covered in later session

(Shift liability already allocated under the law)

# Legal Defenses

## Releases - Issues with minors:

- Minor competency and ratification
- Parent releasing rights of child?
- Parent releasing own rights
- Ethics of the release?

# Legal Defenses

## Issues with minors:

- Larger agreement – evidence of minor's understanding of and assumption of risks?
- Parent's agreement of indemnity
  - For claims brought on behalf of child?
  - For claims brought by non-signing parent or others?

# Take Aways

- Dealing with minors is just one part of your risk management/legal picture.
- Thoughtfully dealing with this issue is part of running a quality program!

# Contact Information

Charles R. “Reb” Gregg

[rgregg@gregglaw.net](mailto:rgregg@gregglaw.net)

telephone: 713-982-8415

Catherine Hansen-Stamp

[reclaw@hansenstampattorney.com](mailto:reclaw@hansenstampattorney.com)

telephone: 303-232-7049