WHEN YOUR OUTDOOR ADVENTURE BECOMES MORE THAN YOU SEEK-2.pdf

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*21 In every walk with nature one receives far more than he seeks.

~ John Muir

After a long winter, and with a beautiful Wyoming summer underway, we are all in a hurry to get in as many outdoor recreational activities as we can before the cold air returns. Whatever your recreational activity of choice this summer, be it hiking, biking, canoeing, horseback riding, etc., it's good to be aware of what risks you are accepting by participating in that activity. Under Wyoming's Recreation Safety Act and Landowner Liability Act your risks might be greater than you assume and your outdoor adventure could very well become 'far more than you seek.'

When you engage in an outdoor recreational activity, in the back of your mind you understand that there is a possibility that you might be injured, but generally decide to participate anyway. From a legal standpoint, your assumption of the risk of being injured while engaging in a recreational activity is sometimes documented through a detailed listing of risks, accompanied by a signed release, but it can also be implied through your participation in the activity. Implied assumption of risk means the participant assumes the inherent risks of injury associated with his chosen recreational activity. Those risks are considered part of the sport.

Traditionally, under the doctrine of volenti non fit injuria (he who consents cannot receive an injury), a recreational provider (such as a rafting company) had no duty to protect a participant from inherent injuries of a sport. However, as the law evolved, courts gradually began to expand the scope of a recreational provider's legal duty, resulting in large settlements and rising insurance costs. The ski industry in particular was very concerned.

In order to address these concerns and encourage the expansion of recreational opportunities state legislatures began enacting recreational use statutes. At this point all states have some form of recreational use legislation. Legislation intended to protect recreational providers generally falls into one of two camps: landowner liability statutes (that reduce the duty of care a property owner owes a non-paying recreational user); and recreational safety statutes (that provide immunity to recreational providers from the inherent risks of the activity).

*22 In Wyoming we have both. The Wyoming Landowner Liability Act reduces the duty of care landowners owe non-paying recreational users on their private property, and the Wyoming Recreation Safety Act provides recreational providers with immunity from liability for injuries caused by the inherent risks associated with the recreational activity they are providing.
The Wyoming legislature passed the Wyoming Landowner Liability Act in order to encourage landowners to allow for recreational opportunities on their private land. Under the Act, a landowner (or lessee of state land) owes no duty to a non-paying recreational user to keep the premises safe for their entry or use, nor to warn of dangerous conditions on the property.

Probably most relevant to your summer recreational plans is the Wyoming Recreation Safety Act, passed by the Wyoming legislature in 1989 in order to boost the state's recreation industry, which had become an increasingly important sector of the economy during an energy bust. Under the Wyoming Recreation Safety Act, “any person who takes part in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown.” Additionally, the Act states that a recreational provider is “not required to eliminate, alter or control the inherent risks within the particular sport or recreational opportunity.”

Some state's recreational use statutes are activity specific, such as Colorado's Ski Safety Act and Equine Activity Act. However, Wyoming's Recreation Safety Act is a general safety statute and protects providers of “sport and recreational opportunities” from liability associated with the inherent risks in outdoor recreational activities. Under the Act, “sport or recreational opportunities” are defined as “commonly understood sporting activities,” including:

[B]aseball, Softball, football, soccer, basketball, swimming, hockey, wrestling, cheerleading, rodeo, dude ranching, Nordic or alpine skiing and other alpine sports, snowboarding, mountain climbing, outdoor education programs, river floating, hunting, fishing, backcountry trips, horseback riding and any other equine activity, snowmobiling and similar recreational opportunities and includes the use of private lands for vehicle parking and land access related to the sport or recreational opportunity.

A cause of action for injuries and death that are not the result of an inherent risk of the sport or recreational opportunity, but are instead based upon the negligence of the provider, can still be brought against the recreational provider. As stated by Judge Brimmer in Madsen v. Wyoming River Trips, “[t]he intent of the Recreation Safety Act was not to preclude parties from suing for a provider's negligence, it was merely to stop people from suing providers for those risks that were inherent to a sport.”

To assist in determining what is an inherent risk of a recreational opportunity, the legislature included the following definition: ““inherent risk” with regard to any sport or recreational opportunity means those dangers or conditions which are characteristic of, intrinsic to, or an integral part of any sport or recreational opportunity.”

Not all risks are inherent risks. Some risks occur as a result of the choices a recreation provider makes on behalf of the participant, other risks are the result of the conditions in which the recreational opportunity is provided. “[A]typical or uncharacteristic risks can arise even in those specific sports the Wyoming legislature clearly intended to be exempt from liability for inherent risks” and “where genuine issues of material fact exist, the determination of whether something is or not an inherent risk is a factual question that must be sent to the jury for determination. A jury determination of whether a risk is inherent or not will consider the factual setting in which the injury took place and consider the specific circumstances and the actions of the participant and the provider.
Keeping in mind that a determination of an inherent risk is a site-specific inquiry, below are a few Wyoming Recreation Safety Act case law highlights that you might want to keep in mind before hitting the trail this summer.

- The risk of a saddle breaking as a result of a horse's sudden rearing and jumping is an inherent risk of horseback riding and an operator of guided horseback trail has no duty to protect a rider from injuries associated with falling from a bucking horse.  

- A golf course and golf tournament operator has no obligation under the Wyoming Recreation Safety Act to provide a safe viewing area for spectators to prevent them from being hit by a golf ball, as being hit by a golf ball is an inherent risk for participating in a golf event (either as a player or a spectator).

- The Wyoming Recreation Safety Act can still apply to injuries that occur on federal land.

* The Federal Government's release of a grizzly bear recovering from anesthetic, which resulted in a fatal mauling, was not found to be a ‘willful or malicious failure to guard or warn’ exception to the Wyoming Recreation Safety Act because it was highly unlikely that a hiker would enter the site during the brief time the bear was recovering.

- The Wyoming Recreation Safety Act does not preclude the use of a contractual release for negligent conduct through a participation waiver; in fact the limited reach of the statute suggests a contractual release in addition to the statute would be prudent.

Have a safe summer everyone!

Footnotes

1 Temple Stoellinger ... is an Assistant Professor at the Haub School of Environment and Natural Resources and Co-Director of the Center of Law and Energy Resources in the Rockies at the University of Wyoming.


2 Id.

3 Id.

4 Id. at 152.


WYO. STAT. ANN. § 1-1-123(3) (2015).

WYO. STAT. ANN. § 1-1-123(b) (2015).

WYO. STAT. ANN. § 1-1-123(a)-(d) (2015).


WYO. STAT. ANN. § 1-1-123(d) (2015).


*Dunbar v. Jackson Hole Mountain Resort Corp.*, 392 F.3d 1145, 1149 (10th Cir. 2004).

Id.

Id.

Id. quoting *Sapone v. Grand Targhee Inc.*, 308 F.3d 1096, 1102 (10th Cir. 2002).

Id.


*Evert v. United States*, 535 F. App'x 703, 712-713 (10th Cir. 2013).