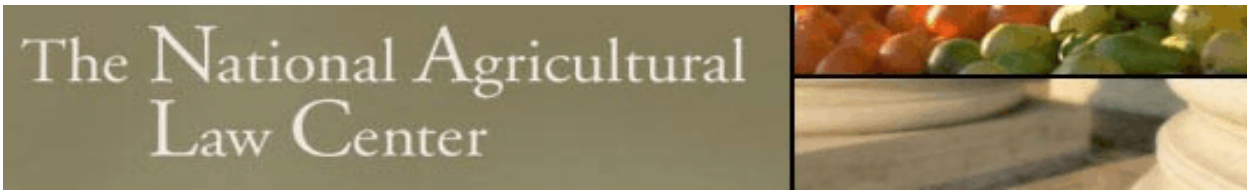

University of Arkansas

An Agricultural Law Research Project

Recreational Access To Private Lands: Liability Problems and Solutions

By:

John D. Copeland

Second Edition
August, 1998

In 1995, the First Edition of this book received the American Agricultural Law Association Award for Excellence in Professional Scholarship

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~ *John D. Copeland*

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Dedication

To my parents, Howard and Lorene

Disclaimer

This book's information is to be used as an educational tool by farmers, ranchers and other landowners and is not a substitute for individual legal advice. Any person wishing to use their land for recreational activities should consult a competent attorney and/or insurance specialist. The utilization of these materials by any person constitutes an agreement to hold harmless the author, the National Agricultural Law Center, the University of Arkansas, and the United States Department of Agriculture for any liability, claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this book.

Table of Contents

Introduction

An increasingly urbanized population is in need of wider access to lands providing wilderness or rural experiences. Recreational agricultural land can benefit landowners, the public, and state and local economies. A landowner benefits by getting additional income from his or her property while largely maintaining the property's traditional agricultural uses. The public benefits by enjoying recreational activities on land that otherwise would not be available for public use. State and local economies benefit from the dollars brought in by tourism and tax revenues.[1]

But landowners who open their properties to recreational use must be knowledgeable of the legal problems accompanying such use.[2] This publication addresses the complex liability issues that arise from permitting recreational activities on private lands. Before opening their properties to the public for recreational uses, farmers and ranchers need to be aware of: (1) the liability exposure from such activities; (2) statutory limitations on liability exposure; (3) how such statues actually work; (4) insurance coverage problems; and, (5) possible solutions to liability problems.

The majority of this publication focuses on the types of claims injured recreational land users can file against landowners. The publication briefly addresses, however, some claims which governmental goodies and citizens can file against landowners because of recreational uses which violate environmental laws or land use restrictions.

This publication does not address the economic advantages or disadvantages of recreational access to private lands, or explain how to get into the recreational business. There is, however, an abundant source of information to assist the farmer or rancher who desires to get into the recreational business. Two of the best sources of information are the published proceedings from the 1998 conference on Natural Resources Income Opportunities for Private Lands, held April 5-7, 1998 in Hagerstown, Maryland, which can be obtained from the University of Maryland Cooperative Extension Service, College Park Maryland, and the 1990 conference on Income Opportunities for the Private Landowner through Management of Natural Resources and Recreational Access, which can be obtained from the West Virginia

[1] Richard H. Krohn, *Recreational Use of Agricultural Lands,* 23 COLO. LAW 529 (1994).
[2] *Id.*

Extension Service, Morgantown, West Virginia. Also, attached as Appendix E to this publication is a list of other sources on the economics and practicalities of recreational activities.

Commentary – References to Landowners

For the sake of simplicity throughout this publication, those who have a legal interest in private property are referred to as "landowners." The term landowner is used, however, to include not only those who actually own title to the property (what is called in the law a "fee interest") but also leaseholders, tenants, and anyone who has the legal rights of possession and control over private property. If your legal interest in a piece of land gives you the right to decide whether to permit recreational uses on the property, this publication is for you

I. NEED FOR RECREATIONAL ACCESS TO PRIVATE LANDS

Along with an increasing United States population, there is a growing public desire to engage in outdoor recreational activities. Besides the traditional activities of hunting, fishing, camping, and swimming, many of today's urban baby boomers desire to get outdoors for pleasure walking, sightseeing, day hiking, wildlife observation, horseback riding, and photography.[3] Some of the more daring recreational enthusiasts have taken up such outdoor hobbies as hang gliding, snowmobiling, or driving off-the-road vehicles. However, three out of four recreational enthusiasts simply want to appreciate the outdoors by observing, photographing, and feeding wildlife.[4]

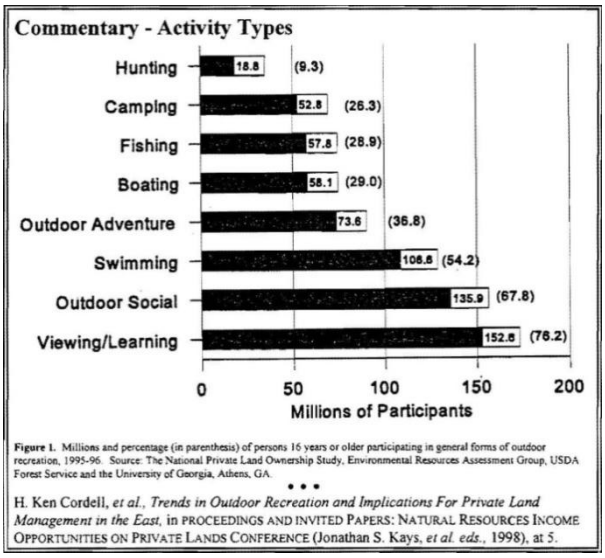

Figure 1. Millions and percentage (in parenthesis) of persons 16 years or older participating in general forms of outdoor recreation, 1995-96. Source: The National Private Land Ownership Study, Environmental Resources Assessment Group, USDA Forest Service and the University of Georgia, Athens, GA.

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H. Ken Cordell, *et al., Trends in Outdoor Recreation and Implications For Private Land Management in the East,* in PROCEEDINGS AND INVITED PAPERS: NATURAL RESOURCES INCOME OPPORTUNITIES ON PRIVATE LANDS CONFERENCE (Jonathan S. Kays, *et al. eds.*, 1998), at 5.

Regardless of the recreational activity of choice, there is no question that the public demand for outdoor recreational activities has increased. In 1962, the Outdoor Recreational Resources Review Commission projected that

[3] *See* LINDA L. LANGNER, USDA FOREST SERVICE, OUTDOOR RECREATION AND THE ROLE OF PRIVATE LAND, (undated) (available at offices of NCALRI).

[4] M. Rupert Cutler, *Appreciative Use of Wildlife-The Recreational Use of Three Out ofFour Americans, in* PROCEEDINGS FROM THE CONFERENCE ON: INCOME OPPORTUNITIES FOR THE PRIVATE LANDOWNER THROUGH MANAGEMENT OF NATURAL RESOURCES AND RECREATIONAL ACCESS (William N. Grafton *et al.* eds., R.D. No. 740, 1990).

by the year 2000 the public's recreational demand would triple. This projection was surpassed by 1983.[5]

Commentary - Trends in Outdoor Recreation Demand

"Of the land-based activities, the fastest growing have been bird watching (+155 percent increase in number of people 16 or older participating between 1982-83 and 1994-95), hiking (+94 percent increase), backpacking (+73 percent increase), primitive camping (+58 percent increase), off-road vehicle driving (+44 percent increase) and walking (+43 percent increase). Of snow/ice-based activities, downhill skiing (+59 percent increase) and snowmobiling (+34 percent increase) has been the fastest growing. Of water-based recreation activities, the fastest growing has been motorboating (+40 percent increase) and swimming in rivers, lakes or ocean waters (rather than pools) +38 percent increase." Cordell, et. al.

A. Inability of Public Lands to Meet Demand

Unfortunately for modem day outdoor enthusiasts, federal, state, and local efforts to acquire more recreational land have not kept pace with public demand. Many of our state and national parks suffer from overuse and their natural resources are being seriously degraded.[6] To protect fragile plants and wildlife, public access to national parks such as Yellowstone, Teton, and Yosemite has been curtailed.

In addition, much of the public land is concentrated in the western U.S. and is not easily accessible to many Americans. There are approximately 746 million acres of public land in the U.S., of which 691 million acres are owned by the federal government. But only 8 percent of the public land is in the eastern U.S.[7]

B. Private Lands Opened to Public (Reasons)

The obvious solution to the lack of public land for recreational use is for outdoor enthusiasts to find private landowners willing to grant recreational users access to private properties. Even though urban expansion annually consumes an estimated 1.5 million acres of

[5] Ronald A. Kaiser & Brett A. Wright, *Recreational Access to Private Land: Beyond the Liability Hurdle,* J. OF SOIL AND WATER CONSERVATION, Nov.-Dec. 1985, at 478.
[6] Kaiser & Wright, *supra,* note 5.
[7] LANGNER, *supra* note 3, at 1.

agricultural land, and the U.S. is annually losing 400,000 acres of wetlands,[8] there is still an estimated 1.28 billion acres of private rural land in the United States. Of this acreage, just less than 37 percent lies in the east.[9]

It is estimated that nearly all agricultural lands and 64 percent of rangelands are privately owned. In addition, 71 percent of the total U.S. forest land is owned by private landowners or private industry. Private rural land in the contiguous United States makes up more than 60 percent of the nation's total land area. As a result, a high percentage of the 141 million Americans who participate in outdoor recreational activities must rely on private lands and the natural resources they afford.[10]

But why would any landowner permit other persons to use his or her property for recreational purposes, especially when some of those persons are total strangers? Three reasons commonly come to mind when answering the question of why landowners permit public access to their property.

1. Hospitality

Farmers and ranchers are known for their hospitality and willingness to share with others. Most farmers and ranchers are justifiably proud of their properties and do not mind sharing some of the pleasures of rural life with those who often do not get a chance to experience them.[11]

2. State Promotional Activities

As the United States has become a more urban society, there are less and less rural areas to be enjoyed. Yet, with an increasing population and the desire of many persons to get away from the hectic pace of city and suburban life, many states have actually encouraged landowners to open up their properties to recreational uses. To encourage landowners to permit such recreational uses, state legislatures have passed recreational use statutes promising

[8] Kaiser & Wright, *supra* note 5, at 478.
[9] H. Ken Cordell et al., *Trends in Outdoor Recreation and Implications for Private Land Management in the East,* in PROCEEDINGS AND INVITED PAPERS: NATURAL RESOURCES INCOME OPPORTUNITIES ON PRIVATE LANDS CONFERENCE (Jonathan S. Kays et at. eds., 1998), at 4.
[10] *Id.* at 4.
[11] When a farmer or rancher permits the recreational use of their land, they rarely ever consider the possibility of an accident and subsequent lawsuit.

landowners immunity from lawsuits when recreational users are accidentally injured wlile on a landowner's property.

3. Monetary Gain

Farmers and ranchers often open their properties to recreational users because, as landowners, they need the additional revenues generated by those persons who pay for the privilege of camping, hunting, fishing, sightseeing, or other recreational activities on private lands.

For many farmers and ranchers, the extra revenue generated by recreational activities on farm and ranch land means the difference in economic survival. This is especially true in many Western states where the uncertainty of cattle revenues has prompted many ranchers to get into the tourism business.[12]

Commentary: Monetary Gain

U.S. citizens spend a substantial amount of money on wildlife related recreation. In 1996, 77 million Americans participated in hunting, fishing, or wildlife watching. The sum of the individuals involved in hunting, angling, or wildlife watching actually exceeds 77 million because many people participate in more than one activity. It is estimated that expenditures for trips and equipment for these activities exceeded $100 billion in 1996. David G. Waddington, *Wildlife-Associated Recreation in the US: Results from the 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation and What It Tells Private Landowners,* in PROCEEDINGS AND INVITED PAPERS: NATURAL RESOURCES INCOME OPPORTUNITIES ON PRIVATE LANDS CONFERENCE (Jonathan S. Kays et al. eds., 1998 at 53-4).

Financial margins have traditionally been tight for western ranchers and many of them have held second and even third jobs in construction, mining, or the oil business to financially survive. But, as those sources of additional revenue have been scaled back, ranchers have been forced to turn to tourism for additional dollars.[13] The additional money from tourism activities not only helps to pay bank loans, but helps to subsidize paying for repairs to ranch buildings, reservoirs, and fencing.[14]

[12] Doug McInnis, *Ranches Add Tourism to Raising Cattle,* N.Y. TIMES, Dec. II,1994, atY38.
[13] *Id.*
[14] *Id.*

The types of tourism activities conducted on ranches vary greatly. Some ranches offer hunting and fishing trips with food and lodging available. Some ranches permit guests to actually work on the ranch. These paying guests perform a number of chores, including moving livestock for 10 to 12 hours a day.[15]

What is true for the farmers and ranchers in the Western states is true for farmers and ranchers throughout the United States. Some landowners have opened bed and breakfast operations on their properties while others have gone so far as to open restaurants where old style country home cooked meals are the main offering. After a hearty meal, guests are welcome to tour the property and see a working ranch or farm in operation. Farm animals in particular fascinate children and adults alike, as do other common farming elements such as barns and farm equipment.

U-pick or direct marketing operations are also extremely common for farmers who own fruit orchards and berry farms. Consumers can purchase fruit and berries already picked by the farmer and available at the farmer's fruit stand or, at a cheaper price, consumers can enter the orchards and fields and pick their own fruit. Traditionally, farmers furnish the consumers whatever equipment is needed, such as gloves, buckets, and ladders. For farmers, U-pick or direct operations have the dual benefits of reducing labor costs while generating revenues. Consumers get to select their own fresh fruit while engaging **in** a recreational outing, although for some the outing can be very strenuous.

Having delivered a number of lectures on the liability issues associated with U-pick or direct marketing operations, I can personally attest to the growing popularity of such activities. I have also endured the pleasures of picking strawberries, blueberries, and apples at such operations.

In a few instances farmers and ranchers have opened day care centers for children. Personally, I doubt that this qualifies as a recreational activity, except for the children. But given the alleged scarcity of quality day care centers **in** the United States and the growing trend of two-income families, it is hardly surprising that rural families are encouraged to open day care centers to generate additional income to support farming operations.

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[15] *Id.*

I am sure there are many other recreational activities conducted on private farm and ranch lands which I have not mentioned. But any recreational activities conducted on private property have two things in common: (1) the possibility of generating additional income to support the farm or ranch; and, (2) the possibility of a liability action being commenced against a property owner because of bodily injury to a recreational user of the property.

Commentary -Agritourism
The use of farm and ranch lands for recreational use has become so popular that new terms, such as agritourism and agritainment, have been coined. Farmers and ranchers are limited only by their imaginations in the use of their lands for recreational activities. Some landowners have even created giant mazes in their cornfields and have charged people for the "fun" of negotiating their way through them, as well as for food and drink.

II. DUTY TO PROTECT LAND ENTRANTS

Commentary - Additional Resource on Liability
The following is a brief description of the liability issues associated with the recreational use of private land. A more detailed explanation can be found in the NATURAL RESOURCES MANAGEMENT AND INCOME OPPORTUNITY SERIES: LEGAL ISSUES, a joint publication of the NCALRI and the West Virginia University Extension Service. A copy of the publication can be obtained from the National Center for Agricultural Law Research and Information, Robert Leflar Law Center, University of Arkansas, Fayetteville, Arkansas 72701, or call (501) 575-7646.

A. Dangers to Land Entrants

Agriculture is a hazardous business, as any farmer or rancher can attest. In 1992, there were 1,200 agriculturally related deaths in the United States and an additional 140,000 serious injuries.[16]

Naturally, recreational users can be exposed to some of the same risks to which farmers and ranchers are exposed on a daily basis. Some agricultural operations are chemically intensive operations and recreational entrants may be inadvertently exposed to harmfu1levels

[16] 1994 U.S. Statistical Abstract.

of pesticides or herbicides. There is also the possibility that some recreational users may have allergic reactions to even relatively low levels of pesticides or herbicides.[17]

Animals, of course, can injure recreational entrants. A recreational user could be thrown from a horse or run over by an animal that has escaped from an enclosure. Arid there is the nightmare situation of a landowner owning a vicious animal which attacks and injures a recreational user.[18]

Modern agriculture is also highly mechanized. The use of heavy equipment can pose a risk to land entrants and even idle equipment, such as a bulldozer with a blade on it, can result in injury to the unwary land entrant.[19]

Even the land itself can pose risks to someone using the property recreationally. Holes, ditches, and waste pits that are familiar to the landowner can represent a real threat to someone who is hunting or fishing on the land or engaged in any other recreational activity.

Finally, there is also the risk of a recreational user being intentionally or negligently harmed by a landowner's employee. If the injury occurs during the course and scope of employment, the landowner can be held vicariously liable for the employee's actions.[20]

B. Causes of Action Against Landowners

Any of the foregoing exposures may result in physical injury to a recreational user of the landowner's property. When a land entrant is injured during recreational activities, there is the strong likelihood of a lawsuit being filed by the injured party against the landowner.

The landowner will be accused of having committed a tort against the land entrant. A "tort" is simply a wrongful act, injury, or damage, other than breach of contract, for which a civil action may be brought.[21]

The types of damages the injured party is likely to seek include compensation for the physical injury itself, compensation for pain and suffering, emotional distress, medical expenses, and lost wages. In cases of death, a wrongful death action may be filed. The

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[17] JOHN D. COPELAND, NATIONAL CENTER FOR AGRICULTURAL LAW RESEARCH AND INFORMATION, UNDERSTANDING THE FARMERS COMPREHENSIVE PERSONAL LIABILITY POLICY: A GUIDE FOR FARMERS, ATTORNEYS AND INSURANCE AGENTS (1992), at 12.
[18] *Id.* at 3.
[19] *Id.*
[20] *Id.* at 3-4.
[21] LEWIS E. DAVIDS, DICTIONARY OF INSURANCE, 7TH ED. (1990).

landowner may also face claims from family members for loss of companionship. These are just some of the typical claims that can be made in such cases. The types of tort actions possible against a landowner include strict liability or negligence.

1. Strict Liability

Strict liability is often referred to as liability without fault. Strict liability is based on the societal judgment that those who expose the community to a dangerous risk must bear the financial responsibility for any resulting damage, even while acting with the utmost care. Because the probability of harm is so great, the burden of loss must be shifted to the one who created the danger.[22]

A good example of the application of the doctrine of strict liability is injuries caused by an animal with vicious or dangerous propensities. If a landowner is in control of an animal with such propensities, and the landowner has knowledge of the propensities, then the landowner is strictly liable for any injuries caused by the animal.[23]

Examples of vicious animals for which land, 'ners have been held strictly liable where injury resulted include: a camel addicted to biting people,[24] a bull with a tendency to charge people,[25] and, of course, a dog with a tendency to attack people.[26] An animal need not be vicious for strict liability to apply. Injuries inflected by a dangerous animal (which is one likely to inflict serious damage) can also result in a strict liability case. In one case a landowner was held strictly liable because he owned a dog which had a habit of playfully jumping on people. The dog's size and power made the animal dangerous to others.[27]

Obviously, the doctrine of strict liability has broader application than just animals owned by a landowner. The doctrine applies to any situation or circumstance where the exposure to injury is abnormally great, such as the storage of explosives or hazardous chemicals.[28]

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[22] Charles L. LeCroy III, *Tort Liability of Agricultural Landowners To Recreational Entrants: A Critical Analysis,* 11 U.C. DAVIS LAW REV. 367, 389 (1978).
[23] *Id.* at 388.
[24] *Id.* at 389, n. 59, *citing* Gooding v. Chutes Co. 155 CaL 620, 102 P. 819 (1909).
[25] *Id., citing* Clowdis v. Fresno Flume & Irrigation Co., 118 Cal. 315, 50 P. 373 (1897).
[26] *Id.* at 389, n. 60, *citing* Hicks v. Sullivan, 122 Cal. App. 638,10 P.2d 516 (1932).
[27] *Id.* at 389, n. 62, *citing* Hillman v. Garcia-Ruby, 44 Cal.2d 625, 283 P.2d 1033 (1955).
[28] J.D. LEE & BARRY A. LINDAHL, MODERN TORT LAW: LIABILITY & LITIGATION, § 3.15 (Rev. Ed. 1988).

2. Negligence

Fortunately for landowners, most tort actions are not based on strict liability, but upon negligence. Negligence is the failure to do what a reasonably prudent person would ordinarily do under the same or similar circumstances of a particular case, or doing what a prudent person would not have done. Negligence may be caused by acts of omission, commission, or both.[29] A claim of negligence involves three elements: (1) a duty owed to another person; (2) breach of that duty; and (3) injury caused to the person as a result of that breach.

In cases involving land entrants, the critical question for the landowner is often the level of duty owed to the land entrant, because the level of duty determines whether a breach of the duty has occurred. Farmers and ranchers are not liable merely because someone is injured on their premises. Traditionally, the common law has divided property users into three categories. The duty owed by the landowner to the injured person depends to a large extent on whether the person on the premises is a trespasser, licensee, or invitee.

c. Status of Land Entrants

The three land entrant categories of trespasser, licensee, and invitee have been recognized in the United States since 1865.[30] While most states judge a landowner's duty in accordance with these three categories, some states have begun to abandon these distinctions in favor of a single reasonable care standard.

1. Trespassers

A trespasser is one who enters or remains upon the land without the landowner's consent. An example of a trespasser would be one who hunts on a landowner's property without permission or simply hikes across the property without permission.[31] A trespasser is also one who enters upon a landowner's property to commit a crime, such as theft.
The duty of care owed by the landowner to a trespasser is slight, but it is not non-existent. The duty also varies depending upon whether the trespasser is an adult or child.

[29] DAVIDS, *supra* note 21.
[30] Sweeny v. Old Colony & Newport R.R., 92 Mass (10 Allen) 368 (1865).
[31] RESTATEMENT (SECOND) OF TORTS § 329 (1965).

a. Trespassers in General

A landowner cannot intentionally injure a trespasser and cannot use more force than is reasonably necessary to eject him from the property. The landowner also cannot engage in conduct which recklessly endangers a trespasser, even if the trespasser is engaged in criminal conduct. In *Kato* v. *Briney*[32] a farmer who became frustrated with trespassing thieves who kept breaking into an uninhabited house on his premises rigged up a 20-gauge spring shotgun. A trespasser, who was injured by the discharging shotgun when he broke into the house, sued the farm owner for the injuries the trespasser received. A jury returned a verdict in favor of the trespasser for $20,000 in actual damages and $10,000 in punitive damages.[33]

Another example of reckless endangerment would be the stretching of a cable or piece of rope across a path used by trespassing dirtbikers or four wheelers. If the obstruction were difficult to see it could be viewed by a court as an act of reckless endangerment.

What a landowner must understand is that the law places a greater emphasis on the safety of human life than it does on the protection of private property. In fact, if a landowner knows that a trespasser is upon the property and that a dangerous situation exists that could injure the trespasser, such as a bull that has a tendency to attack people, then the landowner probably has a duty to warn the trespasser of the danger. In such a situation, it is even possible that the landowner's failure to act could be viewed as a matter of strict liability rather than negligence.

b. Child Trespassers

Where a child is a trespasser, a landowner may be held liable for the trespasser's injuries in a situation where the landowner would not have been liable if the trespasser had been an adult The law recognizes that children do not possess the same judgment as adults, and the younger the child the greater the landowner's obligation to safeguard a trespassing child against injury.

Several legal theories have developed to clarify a landowner's obligation to trespassing children. One is the attractive nuisance theory. Children are naturally curious. There are many objects on rural property to attract the interest of children and to encourage children to

[32] 183 N.W.2d 657 (Iowa 1971).
[33] *Id.*

explore them to satisfy their curiosity. Examples of attractive nuisances include barns, farm machinery, animals (especially young animals), and farm ponds.

As to farm ponds, however, some courts distinguish between natural and artificial bodies of water, with only man-made bodies of water constituting attractive nuisances. A natural body of water on a landowner's property can become an attractive nuisance, however, if the landowner adds some artificial improvement to it, such as a floating fishing dock, bridge, or diving board. Fortunately for landowners, a number of states refuse to apply the attractive nuisance doctrine to any bodies of water.

Instead of applying the attractive nuisance theory to trespassing children, some states apply the rule found in section 339 of the Second Restatement of Torts. Section 339 provides that a landowner is liable for physical injury to a trespassing child caused by an artificial condition upon the land if: (a) the place where the condition exists is one upon which the landowner knows or has reason to know a child is likely to trespass; (b) the condition is one which the landowner knows or has reason to know will involve an unreasonable risk of death or seriously bodily harm to the child; (c) the child's age is such that she or he cannot discover the dangerous condition or risk involved; (d) the utility to the landowner of maintaining the condition and the burden of eliminating it are slight as compared with the risk to the child involved; and (e) the landowner fails to exercise reasonable care to eliminate the danger or otherwise protect the child.[34]

Most states have adopted either the attractive nuisance doctrine or the Restatement rule. A few states apply the usual common law trespass rules to both children and adults.[35]

2. Licensees

The second category of land entrant is the licensee. The licensee is a person who enters upon the land with the landowner's permission, but for th· licensee's own purpose or business interest instead of the landowner's interest. Social guests and unsolicited sales persons are examples of licensees.

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[34] JOHN C. BECKER, ET AL., WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, LEGAL ISSUES (Anthony Ferrise & William N. Grafton eds., Natural Resources Management and Income Opportunity Series, R.D. No. 744, 1990), at 18.

[35] *Id.*

A hunter permitted to hunt on property without paying the landowner a fee is also a licensee. Property owners need to remember that in some states the failure to post land against hunting constitutes implied permission for anyone to enter the property for hunting purposes and such a person is also a licensee.[36]

Landowners owe licensees a higher duty of care than that owed to trespassers. Besides refraining from intentionally injuring a licensee or recklessly endangering a licensee, the landowner must take measures to warn the licensee of any dangerous conditions on the land.[37] This is especially true for concealed dangers about which the landowner has knowledge. As a general rule, however, the landowner is under no obligation to inspect his or her property to discover concealed dangers previously unknown to the property owner and then warn an invitee as to those discovered dangers.

Traditionally, landowners have been generous in permitting licensees to enter upon private property for recreational purposes. However, with the increasing threat of litigation from licensees injured during recreational activities, there has come a great reluctance on the part of landowners to freely permit the recreational use of private property. Recreational use statutes, which are explained in Section III of this publication, have been passed by an overwhelming majority of states to encourage landowners to open private lands to recreational use.[38]

3. Invitees

It is to the third category of land entrants, invitees, that landowners owe the greatest duty of care. An invitee is a person who comes onto the land at the express or implied invitation of the landowner for the landowner's financial benefit. A landowner who charges a fee for the recreational use of his or her property, such as hunting, fishing, or camping, or who charges entrants a fee to pick fruit, or runs a bed and breakfast operation, or conducts any other type of recreational activity for a fee, owes special legal duties to his or her invitee.[39]

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[36] John J. Rademacher, *Protective Legal Measures and Concerns of Private Landowners, in* LEGAL ISSUES, *supra* note 34, at 37.
[37] *Id.*
[38] *Id.* at 38.
[39] *Id.*

An invitee enters upon the land with the implied representation that the landowner has taken reasonable care to make the premises safe for its intended recreational use. In making the premises safe for recreational use, the landowner must take into consideration the nature of the land, the use to which it will be put, and the nature of the person who will be using the premises.[40]

The landowner must not only warn the invitee recreational user of known concealed dangers, but carefully inspect the premises for dangers currently unknown to the landowner. In response to these dangers, the landowner must eliminate the dangers, or if elimination is impossible, clearly mark the dangers or make them inaccessible to an invitee, depending on the nature of the recreational use and the invitee.[41]

For example, a landowner who charges hunters a fee for hunting on the property would need to inspect the premises for any holes or precipices on the land not likely to be readily apparent to a hunter intent on finding game. Adequate warning signs would need to be posted as to such hazards and it might even be necessary to make certain parts of the property inaccessible to recreational users.

A landowner who charges land entrants a fee to come onto the property to pick produce would need to warn the entrants of any recent use of chemicals, such as pesticides, that could be hazardous to an entrant's health, especially if there is the possibility that an entrant might be allergic to certain chemicals. Again, a landowner would probably need to post warning signs as to the type of chemical used on the property and what date it was used. Some areas would probably need to be made inaccessible to land entrants.

If the landowner furnishes equipment to recreational users, such as ladders to fruit pickers, then the landowner has a duty to make sure that the equipment is safe and adequate for its intended use. The landowner not only needs to conduct his own activities in a safe and reasonable manner, but needs to make sure his or her employees do the same.

4. Reasonable Care Standard

Some jurisdictions have now abandoned the common law distinctions between the duties of care owed to entrants by landowners. Instead of applying different standards of care

[40] *Id. at 39.*
[41] *Id.*

based on an entrant's status, courts in some jurisdictions apply a single standard of reasonable care under the circumstances.

One of the earliest jurisdictions to abandon the common law treatment of trespassers, licensees, and invitees was California. In the influential 1968 case of *Rowland* v. *Christian,*[42] the California Supreme Court articulated the single standard of reasonable care.

The single standard of care follows ordinary principles of negligence. Whether a landowner is liable for injuries suffered by an entrant depends on the foreseeability of the entrant's presence, likelihood and seriousness of the injury, and the landowner's burden of avoiding the risk of injury. In determining the landowner's liability, all relevant circumstances are taken into consideration, including the reasonableness of the landowner's actions and the injured entrant's contributory negligence.[43]

At least eight states (Alaska, California, Colorado, Hawaii, Louisiana, New Hampshire, New York, and Rhode Island) and the District of Columbia have abandoned the common law distinctions between entrants in favor of a single standard of "reasonable care under the circumstances."[44]

In some states, such as North Dakota, courts have eliminated the distinction between licensees and invitees, but have retained a lesser standard of care for trespassers.[45] Some jurisdictions, such as Illinois, have passed premises liability acts which abolish the distinctions between invitees and licensees as to a landowner's duty.[46]

III. RECREATIONAL USE STATUTES AND LAND ENTRANTS

A. In General

A large majority of states have enacted recreational use statutes. These statutes give landowners immunity from personal injury lawsuits filed by persons negligently injured on the land so long as certain statutory conditions are met. To qualify for immunity under a

[42] 69 Cal.2d 108, 70 Cal. Rptr. 97, 443 P.2d 561 (1968).
[43] 33 ARK. L REv. 194 (1979).
[44] Jim Butler, *Outdoor Sports and Torts: An Analysis of Utah's Recreational Use Act,* 47 UTAH L REV. 47, at n. 16 (1988).
[45] *Id.* at note 17.
[46] *See* Northrup v. Allister Constr. Co. 163 Ill. App.3d 221,114 Ill. Dec. 431, 516 N.E.2d 586 (1987).

recreational use statute, a landowner must have permitted the injured party free access to the land for recreational purposes.[47]

Recreational use statutes have been attacked on the constitutional grounds of denial of equal protection, denial of equal access to the courts, and denial of due process. In every instance, the courts have upheld the statutes' constitutionality.

In claims of equal protection violations, the courts have held that recreational use statutes do not affect a suspect class or fundamental right. As a result, recreational use statutes need only be rationally related to a governmental purpose. The opening up of private lands to general public recreational use by means of granting landowners limited liability is a rational means of achieving a legitimate stated objective.[48]

Also, recreational use statutes do not restrict access to state courts or deny injured persons due process of law. Although the right of redress for injury is constitutional in nature, the compensability of a specific injury is derived from state common law. Recreational use statutes merely redefine the injury or class of persons to which the constitutional right of redress attaches.[49]

B. Model Acts

Many recreational use statutes are patterned after the Council of State Governments' 1965 Model Act.[50] Other states pattern their laws after the 1979 Model Act proposed by the National Association of Conservation Districts, the International Association of Fish and Wildlife Agencies, the National Rifle Association, the National Wildlife Federation, and the Wildlife Management Institute.[51] Regardless of whether a state statute is modeled after the 1969 Act or the 1979 Act, all state legislatures have added their own variations to their recreational use

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[47] Robin Cheryl Miller, Annotation, *Effect of Statute Limiting Landowners Liability for Personal Injury to Recreational User,* 47 ALRATH 262,270 (1986 & Supp.l994).

[48] Genco v. Connecticut Light and Power Co., 7 Conn. App. 164,508 A.2d 58, 63 (1986). *See also* John C. Becker, *Landowner or Occupier Liability for Personal Injuries and Recreational Use Statutes: How Effective* is *the Protection?,* 24 IND. L REV. 1587, 1591 (1991).

[49] Genco, *supra* note 48, at 63; Abdin v. Fisher, 374 So.2d l379, 1381 (Fla. *1979) (rev'd. sub. nom.). See* Fresh Frozen Prod. v. Abdin, 411 So.2d 218 (Fla. Dist. Ct. App.1982) *petition denied,* 419 So.2d 1195 (Fla. 1982); Becker, *Landowner or Occupier Liability, supra* note 48, at 1595.

[50] C24 SUGGESTED STATE LEGISLATION 150 (Council of State Governments) (hereinafter 1965 Model Act).

[51] The 1979 Model Act resulted from a study conducted on landholder liability and trespass laws done by W. L. Church, Associate Dean of the University of Wisconsin Law School. *See* W. L. Church, REpORT ON PRIVATE LANDS AND PUBLIC RECREATION, 6 (1979) (hereinafter 1979 Model Act).

statutes. Attached as Appendix A to this publication is a summary of state recreational use statutes. Following are summaries of the 1965 and 1979 Model Acts which serve as a basis for the current state recreational use statutes.

1. 1965 Model Act

The 1965 Model Act encourages the opening of farm and ranch land to recreational use by granting landowners and others with an interest in land limited liability as to lawsuits filed by injured land users. The 1965 Model Act extends limited liability protection to landowners, tenants, lessees, occupants, and other persons in control of the premises.[52] Under the 1965 Model Act, a landowner who directly or indirectly invites or permits the recreational use of his or her property, without charge, does not owe persons using the land a duty of care to keep the property safe for entry or use, or to warn land users of any dangerous condition, use, structure, or other activity on the property.[53]

The 1965 Model Act covers roads, bodies of water, water courses, private ways, buildings, structures, and machinery or equipment attached to the realty, so long as they are used on the premises for recreational activities. The 1965 Model Act defines recreational activities as hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, and viewing or enjoying historical, archeological, scenic, or scientific sights.[54]

While the 1965 Model Act furnishes landowners with broad protection, the protection is not absolute. A landowner can be held liable for injuries to recreational users caused by the landowner's willful or malicious failure to warn or guard land users against a dangerous condition, use, structure, or activity.[55]

2. 1979 Model Act

The 1979 Model Act was proposed to give landowners even greater protection from liability claims. The 1979 Model Act was based on the premises that (1) landowners' liability and

[52] 1965 Model Act, *supra* note 50, § 1.
[53] *Id.* § 3,4; *see also* Becker, *Landowner or Occupier Liability, supra* note 48, at 1591.
[54] 1965 Model Act, *supra* note 50, § 2; Becker, *Landowner or Occupier Liability, supra* note 48, at 1590-91.
[55] 1965 Model Act, *supra* note 50, at 86; Becker, Landowner or Occupier Liability, *supra* note 48, at 1591.

trespass laws were so protective of land users that injured persons almost always received recoveries and (2) that recreational use laws were too complex and confusing.[56]

The protection afforded landowners under the 1979 Model Act is similar to the protection afforded landowners under the 1965 Model Act. There are, however, some significant improvements in the 1979 Model Act as to the immunity granted to landowners. For example, not only are individual landowners protected under the 1979 Model Act, but so also are other entities, such as government agencies, and any other legal entity that possesses any ownership, security interest, lease interest, or right of possession in the land. Also, recreational use is defined as any exercise, educational activity, relaxation, or pleasure activity conducted on another's land.[57]

The 1979 Model Act also contains provisions for prosecuting recreational trespassers. A recreational trespasser is defined by the 1979 Model Act as anyone entering upon land for recreational use without the owner's express or implied consent, or anyone who remains on the land for recreational purposes after being asked to leave.[58] Consent to be on the land cannot be inferred from the mere lack of posting the property. Instead, other factors, such as continuous and notorious acquiescence in public recreational use, must be proven. The burden of proof as to implied consent is on the recreational user.[59]

To further protect landowners, the 1979 Model Act contains civil penalties for acts of destruction and vandalism by land users which occur while they are engaged in recreational activities. The 1979 Model Act also contains penalties for littering and for failing to leave gates, doors, fences, road blocks, obstacles, or signs in the condition in which they were found.[60] Violations can result in landowners recovering damage awards from the land users, including punitive damages and attorneys fees.[61]

In addition, land users guilty of aggravated violations may be fined up to $300. Aggravated violations include (1) operating motorized vehicles in such a manner as to endanger

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[56] Becker, *Landowner or Occupier Liability, supra* note 48, at 1591, 92.
[57] 1979 Model Act, *supra* note 51, § 2; Becker, *Landowner or Occupier Liability, supra* note 48, at 1592.
[58] 1979 Model Act, *supra* note 51, § 2(5); Becker, *Owner or Occupier Liability, supra* note 48, at 1593.
[59] 1979 Model Act, *supra* note 51, § 6; Becker, *Owner or Occupier Liability, supra* note 48, at 1593.
[60] 1979 Model Act, *supra* note 60, § 7; Becker, *Owner or Occupier Liability, supra* note 48, at 1593.
[61] 1979 Model Act, *supra* note 51, §§ 8,10; Becker, *Owner or Occupier Liability, supra* note 48, at 1593-94.

others; (2) intentionally or accidentally lighting a fire or performing other acts to endanger others; or, (3) shooting firearms, bows and arrows, or setting animal traps.[62] Subsequent aggravated violations can result in the doubling of penalties and, in some cases, to multiplying the penalties by a factor of 10.[63]

As in the 1965 Model Act, under the 1979 Model Act landowners do not owe a duty of care to keep the land safe for recreational users. They also are not required to give land users any general or specific warnings as to natural or artificial conditions, structures, personal property, or other activities on the premises.[64]

Landowners are liable to land users for malicious acts and for the failure to guard or warn against ultrahazardous activities, conditions, structures, or personal property which is known by the landowner to be dangerous to others. Landowners are also liable for injuries to children under the age of 12, if such liability would be imposed under a state's attractive nuisance doctrine.[65]

Although many state recreational use statutes are patterned after the 1965 or 1979 Model Acts, the statutes vary greatly from state to state. Appendix A of this publication contains a state by state summary of recreational use statutes. While these statutes have a number of differences, there are some common elements to these statutes and some common legal issues which have been litigated.

C. Common Requirements

1. Legal Interest in Land

Recreational use statutes provide liability protection to those persons who have some legal interest in the land. If a person does not have a legal interest in the land, they cannot take advantage of the immunity protection provided under a state's recreational use statute. As to who has an interest in land, referred to herein as a "landowner," both state statutes and courts interpreting those statutes have taken a broad interpretation of what is a legal interest sufficient to give a landowner protection under a recreational use statute. Besides those with a

[62] 1979 Model Act, *supra* note 51, § 12; Becker, *Owner or Occupier Liability, supra* note 48, at 1594.
[63] 1979 Model Act, *supra* note 51, § 16, 17; Becker, *Owner or Occupier Liability, supra* note 48, at 1594.
[64] 1979 Model Act, *supra* note 51, § 3; Becker, *Owner or Occupier Liability, supra* note 48, at 1592.
[65] 1979 Model Act, *supra* note 51, § 5; Becker, *Owner or Occupier Liability, supra* note 48, at 1593.

fee interest in land, lessees, tenants, occupants, holders of security interests, or any other persons in control of the premises are said to have a sufficient interest to claim immunity under a state recreational use statute. Some courts have gone so far as to hold that an easement is sufficient interest in land to create an ownership interest for purposes of a recreational use statute.[66] The fact that the courts have held a leasehold interest in land to be a sufficient ownership interest to invoke the immunity protection of a recreational use statute is particularly significant to farmers and ranchers. The leasing of farm and ranch lands to hunting clubs has become a common practice of landowners in need of additional sources of income. At least one state court has held that a hunting club which leases private land is entitled to take advantage of the immunity provided under a state recreational use statute.[67] Such a ruling makes lease arrangements for hunting and fishing purposes much more attractive to hunting and fishing clubs, as their liability exposure is greatly reduced.

Granting leaseholders a sufficient interest in property to qualify for immunity under a recreational use statute is also important to many ranchers with federal grazing permits. In the western states in particular, many ranchers have federal grazing permits which allow the grazing of livestock on federal lands. Federal regulations state that grazing permits convey no right, title, or interest to the permit holder in United States land or resources. Even with these restrictions, however, courts have held that the holding of a grazing permit is a sufficient ownership interest to invoke the protection of a state recreational use statute.[68]

Fortunately, for most farmers and ranchers the question of ownership will not be an impediment to invoke the protection of a state recreational use statute. In fact, most ownership questions have arisen not as to private landowners, but as to whether governmental entities, such as the federal government, state agencies, and municipalities, can take advantage of recreational use statutes. Thus far, the courts have split as to whether recreational use

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[66] *See* Crawford v. Consumers Power Co., 108 Mich. App. 232, 310 N.W.2d 343 (1981) (Defendant power company with easement held to be an owner within the meaning of recreational use statute following death ofwoman who came into contact with company's downed electric line.) (Disapproved on other grounds); Burnett v. Adrian, 414 Michigan 448,326 N.W.2d 810 (1982); *See also* Collins v. Tippett, 156 Cal. App.3d 1017,203 Cal. Rptr. 366 (1984) (The owner ofbeach property subject to public easement was permitted to raise recreational use statute as defense after Gunite, concrete substance sprayed on cliffs to prevent erosion, broke off and hit sun bather).
[67] *See* Peterson v. Western World Ins. Co., 536 So.2d 639 (La.Ct.App.1988), *cert. denied* 541 So.2d 858 (1989).
[68] *See* Hubbard v. Brown, 50 Cal. 3rd 189,266 Cal. Rptr. 491, 785 P.2d 1183 (1990).

statutes apply to governmental entities. Some courts have held that there is no reason to exclude governmental entities from the category of owners covered under a state recreational use statute.[69] Other courts, however, have held that recreational use statutes apply only to privately owned lands.[70]

For most farmers and ranchers, the jurisdictional split over the applicability of state recreational use statutes is relevant only if a landowner attempts to interest a governmental entity in leasing property for recreational purposes. In such a situation, the governmental entity may be interested in the land only if it can take advantage of a state's recreational use statute to limit the entity's liability exposure.

2. Public Access

Recreational use statutes protect landowners from liability claims only if the land in question is made accessible to the public. As to public access, the question arises regarding whether the land must be open at all times to all members of the general public for a recreational use statute to apply. Most courts have not required unrestricted access to property in order for a landowner to claim the liability protection of a recreational use statute. However, the more restrictive a landowner is about the public's use of his or her property, the less likely it is that the landowner can claim protection under a recreational use statute. For example, in the Wisconsin case of *Le Poidevin* v. *Wilson,*[71] the state recreational use statute did not apply to a landowner's invited guest who was injured after driving off the landowner's lake pier. The court held that the landowner had not opened his land to the public generally, or given permission to one or more members of the public to use the land for recreational purposes. Instead, he occasionally invited family friends over for water sports. The court held that extending the recreational use statute to protect the landowner in question would not further the statute's intended legislative purpose of encouraging landowners to open their lands to the general public.[72]

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[69] *See* Robin Cheryl Miller, *Effect oJStatute Limiting Landowners Liability For Personal Injury to Recreational User,* 47 A.L.R. 4th 262, 275-279.
[70] *Id.* at 279-80.
[71] III Wis.2d 116,330 N.W.2d 555 (1983).
[72] *Jd.*

In comparison, in *Johnson* v. *Stryker Corp.,*[73] it was held that the Illinois recreational use statute did apply in a diving accident similar to the one in *Le Poidevin* v. *Wilson.* Although the landowner in question did not open his land to all members of the public, sometimes he did permit the casual use of his property for recreation. The court held that the statute applied even though signs near the pond forbid swimming on holidays and warned swimmers to swim at their own risk. The court emphasized that the farmer landowner could not be expected to keep his land open at all times to everyone. The court concluded that the immunity benefits of the recreational use statute should not be denied a landowner simply because a landowner places some reasonable restrictions on the use of his property.[74]

Unfortunately, the courts have not developed clear-cut guidelines as to what restrictions a landowner may place on public access to his property without losing the protection of the state recreational use statute. Each case must be decided on its own merits. The more restrictive, however, a landowner is as to the persons who can use the land, the less likely it is that the landowner can claim the protection of a state's recreational use statute. Conversely, a landowner who opens land to the general public or broad classes of the public, such as the Boy Scouts or Girl Scouts, and merely restricts the time of access to the property, is more likely to fall within the confines of a statute's protection.

3. Recreational Activities

Even if land is made accessible to the general public, a recreational use statute does not apply unless the use is recreational in character. Many recreational use statutes specifically list the recreational activities covered by the statute. For example, Georgia's recreational use statute defines a recreational purpose as hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, and viewing and enjoying historical, archeological, scenic, or scientific sites.[75] Most state recreational use statutes, though they do contain a list of uses such as Georgia's, also state that the list is not exhaustive. This leaves state courts free to consider other uses not described in the statute. Courts in general have been lenient in defining recreational uses or purposes. For example, in

[73] 70 Ill. App.3rd 717, 26 Ill. Dec. 931, 388 N.E.2d 932 (1979).
[74] *Id.*
[75] GA. CODE ANN. § 51-3-21 (Michie 1982).

Fisher v. *United States,*[76] a child's death during a school's field trip to a wildlife refuge was held to be covered by the Montana recreational use statute. During the field trip the children were having lunch in a maintenance barn and some of them were playing on a snow plow. One child was killed when the snow plow's blade fell on her. The child's parents argued that Montana's recreational use statute did not immunize the landowner, which was the United States government, from a lawsuit because the field trip was educational instead of recreational in purpose. The court held, however, that the trip had the dual purposes of education and recreation and that the statute applied.[77] Courts have held recreational use statutes applicable to injuries received by land users while motorcycling for pleasure,[78] four-wheeling,[79] snowmobiling,[80] during a hayride and wiener roast,[81] and diving from a railroad trestle into a shallow stream.[82]

The courts have also held recreational use statutes applicable in a number of unusual cases. In *Schneider* v. *United States,*[83] the court held drinking a cup of coffee to be an activity to which the Maine recreational use statute applied. Even injuries received from sliding down a 200-foot long dam spillway were held to be covered by a recreational use statute after the plaintiff admitted he was using the dam for recreational purposes.[84] Injuries received during acts of sitting and resting after hiking have also been held to be subject to state recreational use statutes.[85]

Although the courts have broadly defined recreational use, they have drawn some limits. For example, in *Villanova* v. *American Federation of Musicians,*[86] the court refused to allow the landowner to claim immunity under New Jersey's recreational use statute after a

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[76] 534 F. Supp. 514 (D.C. Mont. 1982).
[77] *Jd.*
[78] Johnson v. Sunshine Co., 106 Idaho 866, 684 P.2d 268 (1984).
[79] Lauber v. Narbut, 178 N.J. Super. 591,429 A.2d 1074 (1984), *cert. denied,* 89 N.J. 390,446 A.2d 127 (1981).
[80] Estate of Thomas v. Consumers Power Co., 58 Mich. App. 486, 228 N.W.2d 786 (1975), *affd in part and rev'd in part on other grounds,* 394 Mich. 459,231 N.W.2d 653 (1975).
[81] Lane v. Titchenel, 204 Ill. App.3rd 1049, 150 III. Dec. 391, 562 N.E.2d 1194 (1990).
[82] Lostritto v. Southern Pacific Transp. Co., 73 Cal. App.3rd 7373, 140 Cal. Rptr. 905 (1975) *(disagreed with on other grounds in* Potts v. Halstead Fin. Corp., 142 Cal. App.3rd 727,191 Cal. Rptr. 160 (1983).
[83] 760 F.2d 366 (1st Cir. l985).
[84] Russell v. Tennessee Valley Auth., 564 F.Supp. 1043 (N.D. Ala. 1983).
[85] Sega v. State, 60 N.Y.2d 183, 469N.Y.S.2d 51, 456 N.E.2d 1174 (1983).
[86] 123 N.J. Sup. 57,301 A.2d 467 (1973), *cert. denied,* 63 N.J. 504, 308 A.2d 669 (1973).

musician was injured in an outdoor music festival. The musician was injured when he fell over boulders and debris while approaching the bandstand to participate in the concert. The court held that the New Jersey statute does not provide landowners immunity for all outdoor activities. The court declined to bring within the statute activities that the court viewed to be forms of play, amusement, diversion, or relaxation. The court held that to qualify for immunity under the doctrine, the activity must be primarily physical and be the sort of activity typically requiring the outdoors.[87]

Similarly, Washington's recreational use statute was held to be inapplicable to injuries received by persons attending a community festival when the support canopy over the outdoor stage collapsed.[88]

4. Property Protected

Related to the issue of recreational purpose or use is the issue of whether the landowner's property is suitable for recreational purposes. As a general rule, recreational use statutes apply to rural or semi-rural lands. The activities specifically covered under a recreational use statute, or impliedly covered under such a statute, are the type of activities that are conducted on rural or semi-rural lands. The larger and more undeveloped a tract of land is, the more likely it is to be subject to a recreational use statute. Recreational use statutes are designed to protect landowners from injury claims arising out of accidents taking place on tracts of land where continuous supervision by the landowner is not expected.

The fact that the rural or semi-rural land in question may be located near a residential area, and may even itself be zoned for residential development, does not mean that a recreational use statute does not apply to the claims of persons injured on the land. In *Tallaksen* v. *ROSS,*[89] the defendant landowner owned 70.58 acres of undeveloped land located near a residential area. The plaintiff was injured when she fell on a tree stump while ice skating on a frozen pond on the defendant's land. The court held that, even though the land in question was zoned for residential development, it was undeveloped and semi-rural in character at the time of the accident. As a result, the landowner could claim immunity from suit

[87] 308 A.2d 669.
[88] Matthews v. Elk Pioneer Days, 64 Wash. App. 433, 824 P.2d 541 (1992).
[89] 167 Sup. N.J. 1,400 A.2d 485 (1979).

under New Jersey's recreational use statute.[90] The court rejected the plaintiff's comparison of the frozen pond to a private swimming pool on developed residential property, to which New Jersey's recreational use statute would not apply.[91]

Even property which normally would not qualify as rural or semi-rural land subject to a recreational use statute can qualify in appropriate circumstances. For example, an incorporated country club sought protection under New York's recreational use statute after a young girl was injured in a toboggan on the country club's golf course, the court held the statute applicable because the public used the golf course during the winter for cross country skiing, sledding, and tobogganing when the property was suitable for such purposes. The country club neither encouraged or discouraged such recreational uses, did not inspect or maintain the premises, or receive any fees for such uses during the winter months.[92]

D. Common Exceptions

Although state recreational use statutes grant landowners broad immunity from the claims of those who might be injured while using the land for recreational purposes, the immunity is not absolute. Certain conduct by a landowner can abrogate the landowner's immunity.

1. Circumstances of the Injury

Landowners are granted immunity from lawsuits grounded in negligence. Negligence is the failure to exercise such care as a reasonable prudent person would have done under the same or similar circumstances.[93] A land user injured by a landowner's negligence cannot sue the landowner for those injuries so long as the landowner complied with all the provisions of his or her state's recreational use statute.

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[90] *Id.*

[91] *Id.; see also* Boileau v. De Sec co, 125 N.J. Sup. 263, 310 A.2d 497 (1973), *affd* 65 N.J. Sup. 234, 323 A.2d. 442 (1974).

[92] Dean v. Glens Falls Country Club, Inc., 170 App. Div.2d, 798, 566 NY Supp.2d 104 (1991); *but see* Quesenberry v. Miluakee Country Club, 106 Wis.2nd 685, 317 N. W.2d 468 (1982) (husband and wife sought recovery for wife's injuries when she stepped into a hole while playing golf at country club course. The defendant pled the state's recreational use statute as a defense and sought dismissal of the case. The court denied the country club's defense in holding that recreational use statutes apply to land in undeveloped and natural state, and not to a developed golf course).

[93] BLACK'S LAW DICTIONARY 930 (5th Ed.1979).

a. Willful or Malicious Conduct

But while negligent conduct of a landowner is protected under a state recreational use statute, other forms of conduct are not. Almost all state recreational use statutes preserve a landowner's liability to an injured recreational user if the user was injured by the landowner's willful, wanton, or malicious conduct. Malicious conduct is the intentional injuring of someone without just cause or excuse.[94]

Willful and wanton conduct is conduct showing an utter indifference to or conscious disregard for the safety of others. The essential elements to raise negligent conduct to the level of willful and wanton conduct are (1) actual or constructive knowledge of a peril; (2) actual or constructive knowledge that injury to another is probable as a result of the danger; and (3) a conscious failure to act to avoid the peril.[95]

A good case example of willful and wanton conduct is *Stephens* v. *United States.*[96] In this case, a swimmer received severe head injuries when he dove into a lake and struck a submerged tree stump. The lake was located in an Illinois state park on land leased from the United States. The Illinois state recreational use statute preserved a landowner's liability as to acts of malice or willful and wanton conduct.[97]

The court held that the keys to finding willfulness of conduct is the foreseeability of danger, the gravity and probability of the harm, the defendant's knowledge of the danger, and the actions taken by the defendant in view of the danger and harm. In holding the landowner liable for the swimmer's head injuries, the court noted that agents of the United States knew of the submerged stumps presence. Also, the probability of harm was great and the harm could have been avoided by prohibiting swimming or diving in the lake. At the very least, the court held that the government should have posted warning signs at the lake to warn of the submerged stumps. Since the government did not take the necessary precautionary steps, it was guilty of willful and wanton conduct.[98]

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[94] *Id* at 863.
[95] Von Tagen v. United States, 557 F.Supp. 256 (N.D.Ca1.l983) (applying California law).
[96] 472 F.Supp 998 (C.D. Ill. 1979) (applying Illinois law).
[97] *Id*
[98] *Id*

A case involving willful and wanton conduct by a private landowner, and probably even malicious conduct, is *Krevics* v. *Ayaars.*[99] The landowner's property contained a motorbike trail which had been open to the public for several years. Apparently, without any warnng to the public, the landowner stretched a cable across the trail resulting in injury to an unsuspecting motorbike operator. The court held that, if proven, the quality of the landowner's conduct would deny him immunity under the state's recreational use statute.[100]

b. Reckless Conduct

Some state statutes, such as Oregon's, deny a landowner the right to claim immunity under a state recreational use statute if the landowner recklessly injures a land user. Reckless conduct is synonymous with willful and wanton conduct. Reckless conduct is the doing of an act, or the failure to do an act, with indifference toward, or utter disregard of, the consequences to others.[101]

c. Gross Negligence

Many state recreational use statutes also deny a landowner immunity from prosecution if the landowner is guilty of gross negligence. Gross negligence is more than the simple inadvertence of ordinary negligence, but something less than willful, wanton, or reckless conduct.[102] Gross negligence is a conscious and voluntary act or omission which is likely to result in grave injury to another.[103]

In finding a landowner guilty of gross negligence in the drowning death of a 9-year-old boy who fell from the landowner's dock, a Michigan court defined gross negligence and held that the landowner's conduct denied him immunity under the state's recreational use statute. The court stated that gross negligence occurs when a defendant: (1) knows a situation requires exercising ordinary care to avert injury to another; (2) possesses the ability to avoid the resulting harm by using the means at hand; and (3) omits to use such care although, to the ordinary mind, harm is likely to result.[104]

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[99] 141 N.J. Sup. 511,358 A.2d 844 (1976).
[100] *ld*
[101] Hogg v. Clatsop County, 46 Or. App. 129,610 P.2d 1248 (1980).
[102] BLACK'S LAW DICTIONARY, *supra* note 93, at 932.
[103] *104. ld*
[104] Magerowski v. Standard Oil Co., 274 F.Supp. 246 (W.O. Mich. 1967).

2. Payment of Valuable Consideration or Fee

To qualify for immunity under a state recreational use statute, a landowner must permit free access to the land. Some state statutes forbid the payment of any valuable consideration by land users if landowners are to avail themselves of protection of a state recreational use statute, while other state statutes forbid the charging of a fee. Regardless of the language used, a recreational use statute grants a landowner immunity only as to land users who use the property gratuitously. Extensive litigation has occurred as to what constitutes valuable consideration and whether a fee charged was for the recreational use of the land or was compensation for some other purpose.

a. Valuable Consideration

In those states that use valuable consideration language in their recreational use statutes, the courts have taken a broad view as to what constitutes valuable consideration. Certainly, the payment of money is valuable consideration and is sufficient to remove a landowner from protection of a recreational use statute, even if the amount of monetary compensation is relatively small. For example, a motorcyclist injured on federal land during a motorcycle race sought to recover under the Federal Tort Claims Act.[105] Because the accident occurred in California, the United States claimed immunity under California's recreational use statute.[106] The plaintiff successfully argued that California's recreational use statute did not afford the United States immunity because of the statute's consideration exception. California's statute stated that the recreational use statute did not apply if the land user paid valuable consideration to the landowner for the use of the property.[107]

The court noted that the race was conducted by a racing association, but had received a permit to conduct the race from the Bureau of Land Management (BLM). The BLM charged the racing association a $10.00 application service fee and a $10.00 rental charge. In turn, the association charged each motorcyclist a $6.00 entry fee.[108]

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[105] Thompson v. United States, 592 F.2d 2204 (9th Cir.l979).
[106] *ld*
[107] *ld*
[108] *ld*

An even smaller payment constituted valuable consideration in *Garfield v. United States.*[109] Two husbands and their wives were injured when a cartridge exploded while they were squirrel hunting, picnicking, and hiking on a United States military reserve in Wisconsin. The United States raised the Wisconsin recreational use statute as a defense. One husband, however, had paid 50¢ for a small game hunting permit issued by the reservation. The payment of 50¢ was sufficient payment of valuable consideration to deny the United States protection under the Wisconsin recreational use statute.[110]

Valuable consideration received by a landowner sufficient to remove the landowner's immunity under a recreational use statute need not be a direct monetary fee payment by the land user for access to the property. For example, in *Copeland v. Larson,*[111] the owner of lake resort property did not charge swimmers a fee to swim in the resort's lake. When a swimmer sought to sue the landowner following injuries received when the swimmer fell or dove from the resort's pier, the property owner raised the Wisconsin recreational use statute as a defense. The court held, however, that the recreational use statute did not apply since the landowner received valuable consideration from land entrants.[112]

The resort owned a general store, boat launch, docking facilities, rental cabins, and the pier. Although the public could swim and use the pier without charge, the landowner received valuable consideration in the expectation of the creation of prospective customers and increased sales at the general store.[113]

Not every payment of consideration to a landowner by a land user, however, has been held to be valuable consideration under a recreational use statute. In *Seminara* v. *Highland Lake Bible Conference, Inc.,*[114] the court held that a bicyclist's purchases at a landowner's snack bar were not the type of consideration contemplated under New York's recreational use statute. The court held there was no connection between bicycling and the snack bar and, as a

[109] 110. 297 F.Supp. 891 (W.O. Wis. 1979).
[110] Ill. *ld*
[111] 174 N.W.2d 745 (1970).
[112] *ld*
[113] *ld*
[114] 112 App. Div.2d 630,492 N.Y.S.2d 146 (1985).

result, the landowner was entitled to the protection of the recreational use statute following a bicyclist's injury.[115]

In a number of cases involving state or municipal owned recreational facilities, injured plaintiffs have contended that a state's recreational use statute did not afford the governmental entity liability protection because the plaintiffs had paid valuable consideration in the form of property taxes. The courts have uniformly held that the payment of taxes is not the form of valuable consideration referred to in recreational use statutes. Valuable consideration means some type of entrance fee or charge for permitting a person to use specially constructed facilities.[116]

b. Collection of Fee or Charge

In those jurisdictions where the recreational use statute preserves a landowner's liability if the landowner collects a charge or fee from land users, court decisions have closely paralleled decisions in those states where recreational use statutes use the valuable consideration language. For example, Pennsylvania's recreational use statute preserves a landowner's liability if users are charged for the use of recreational land. In *Hahn* v. *Commonwealth,*[117] the court held that the plaintiff's payment of taxes did not constitute a charge within the meaning of the state recreational use statute.

In some cases where a monetary fee was not actually paid to the landowner, other consideration received by the landowner was decreed by a court to be a "charge," again paralleling the rulings in jurisdictions where the valuable consideration language is used. In *Kesner* v. *Trenton,*[118] a father brought an action against a boat marina's operator for the drowning deaths of the father's two daughters. The girls drowned after stepping into a 10-foot deep excavation dug in the lake's bottom.[119]

Although the father had not actually paid a fee to the marina's operator, the court held that the landowner had levied a charge for the use of the facilities, thereby preserving the landowner's liability under West Virginia's recreational use statute. The court stressed that the

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[115] *Id.*
[116] *See* Syrowik v. Detroit, 119 Mich. App. 343, 326 N. W.2d 507 (1982).
[117] 18 Pa. D.& C.3d 260 (1980).
[118] 158 W.Va. 997, 216 S.E.2d 880 (1975).
[119] *Id.*

marina was a money-making business in that it sold, serviced, and rented boats. Allowing people to swim free in the lake was a means of attracting prospective marina customers who would pay for this additional service.[120]

In some other cases, however, where landowners have actually received monetary payment from land users, the courts have held that those payments did not constitute charges or fees as contemplated by the state statutes. In such cases, the courts have distinguished between charges or fees levied for the use of land and those levied for the use of other facilities. A good example of this distinction can be found in the Nebraska case of *Gareans* v. *Omaha.*[121] Two fathers sought damages for injuries received by their two sons at a city park during a weekend camping trip. The boys were injured when they dropped a fire cracker into a chemical drum and the drum exploded. The plaintiffs contended that the landowner could not claim immunity under the state's recreational use statute because the boys' grandparents had paid a $10.50 fee to the landowner to rent a camper pad for the weekend. The grandparents rented the pad for a three-day weekend and the grandsons visited them on the second day.[122] The court held, however, that the city had not collected a charge within the meaning of Nebraska's recreational use statute. Neither the boys nor their grandparents had been charged for entering the park, but rather the grandparents were charged for the camper use of a pad. Furthermore, the rental charge did not entitle the parties to any greater use of the park's facilities than members of the general public who did not rent a camper pad.[123] Similarly, in *Jones v. United States,*[124] the court refused to preserve the landowner's liability under Washington's recreational use statute after a concessionaire charged the plaintiffs daughter $1.00 to rent an inner tube. The daughter was injured while snow sliding with the inner tube.[125] The court held that the daughter had not paid a fee to use the park, but rather to use the inner

[120] *Id.*
[121] 216 Neb. 487, 345 N.W.2d 309 (1984).

[122] *Id.*
[123] *Id.*
[124] 125. 693 F.2d 1299 (9th Cir.1982).
[125] *Id.*

tube. The daughter could have gone snow sliding without paying the $1.00 if she had brought her own inner tube or she could have slid without one.[126]

Warning -Affirmative Defense

The defense of a recreational user statute is an affirmative defense. Any landowner seeking the protection of a state recreational user statute must specifically plead the statute as a defense to a cause of action filed by an injured recreational user. Failure to specifically plead the affirmative defense provided by a state's recreational use statute will result in the loss of the use of the statute as a defense to the action and the protection it affords from liability.

IV. ADDITIONAL LIABILITY PROBLEMS

Besides the danger of claims arising out of actual physical injuries to recreational entrants, landowners must also be concerned with other types of liability claims. The following material is an overview of the variety of potential liability claims which landowners face, including violations of federal legislation protecting the rights of individuals, nuisance suits, trespass claims, environmental laws, and other compliance problems.

A. Rights of Individuals

When landowners grant the public recreational access to private lands, it is incumbent upon landowners to comply with federal legislation designed to protect individual rights. Although it is beyond the scope of this publication to deal with the following complex federal statutes in great detail, landowners need to be aware of these laws in setting up their recreational operations. It is strongly recommended that a landowner seek competent legal advice about the following laws before starting a recreational business.

1. Americans with Disabilities Act

One of the most important and far reaching pieces of legislation to ever be enacted is the Americans with Disabilities Act (ADA), which was signed into law by President H.W. Bush on July 26, 1990.[127] Under the ADA, disability means:

- a physical or mental impairment that substantially limits one or more ofan individuals major life activities;
- a record of such impairment, or,

[126] *Id.*
[127] 42 *V.S.C.A.* § 12101(a)(West Supp.1995).

- being regarded as having such an impairment.[128]

The ADA protects not only those with obvious mobility impairments, but also the mentally retarded, and those with such hidden disabilities as epilepsy, cancer, heart disease, or AIDS. Even those persons with mental disturbances may be protected.

Title III of the ADA prohibits private entities providing public accommodations or services from discriminating against any individual on the basis of a disability. Specifically, the ADA states the following:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.[129]

The term "public accommodation" is broadly defined as follows:

(7) Public accommodation

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer,

[128] *Id.* § 12102(2).
[129] *Id.* § 12182(a).

pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary. undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.[130]

The foregoing definition would appear to encompass virtually any recreational activity described in this publication. The courts have already applied Title III to athletic facilities[131] and amusement parks.[132]

Under Title III of the ADA, discriminatory conduct includes imposing any eligibility requirement that screens out disabled individuals, or limits their ability to fully enjoy the facilities;[133] the failure to make reasonable modifications in policies, practices, or procedures to ensure the availability of the goods or services to individuals;[134] failure to take reasonable steps to ensure that disabled individuals are not treated any differently from any other individuals because of the absence of auxiliary aids and services;[135] or, a failure to remove architectural barriers and communication barriers that are structural in nature.[136]

F or example, a landowner who opened his or her property to the public for fishing or target shooting might be required under the ADA's Title III to provide a certain number of fishing or skeet shooting places for persons confined to wheelchairs and to arrange for their

[130] *Id.* § 12181(7).
[131] Anderson v. Little League Baseball, Inc., 794 F. Supp. 342 (D. Ariz. 1992).
[132] *See* DISABILITY COMPLIANCE BULLETIN, voL 6, issue 8 (May 11, 1995) at 6-7.
[133] 42 *V.S.C.A.* § 12182(b)(2)(A)(i) (West Supp.1995).
[134] *Id.* § (ii).
[135] *Id.* § (iii).
[136] *Id.* § (iv).

transportation to and from the sites. A landowner operating a bed and breakfast facility would have to make the premises accessible to persons in wheelchairs.

The U.S. Architectural and Transportation Barriers Compliance board is preparing guidelines for a wide variety of recreational areas, including beaches, sports facilities, campgrounds, golf courses, playgrounds, swimming pools, boat launch facilities, and trails. Following public comment, the guidelines will be the basis for final regulations promulgated by the Department of Justice.[137]

A landowner can avoid complying with the ADA only if the landowner can show that (1) modifications required under the ADA to accommodate disabled persons would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;[138] (2) compliance would result in an undue burden;[139] or, (3) permitting the disabled individual to participate in or benefit from the entity's goods, services, facilities, privileges, advantages, or accommodations would pose a "direct threat" to the health or safety of others.[140]

Thus far, public entities have not been very successful in raising the foregoing defenses to noncompliance. The defenses have not been very successful because private entities must also show there are no reasonable accommodations or modifications that can be made in their operations, including the providing of auxiliary aids or services, to make the operations available to disabled persons.

2. Discrimination -Title II of the Civil Rights Act of 1964

Title II of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, or national origin in places of exhibition or entertainment, including motion picture houses, theaters, concert halls, sports arenas, and other similar public places.[141] The courts

[137] DISABILITY COMPLIANCE BULLETIN, *supra* note 132.
[138] 42 U.S.CA. § 12182(b)(2)(A)(ii) (West Supp.1995).
[139] *Id.* § (iii).
[140] *Id.* § 12182(b)(3).
[141] 42 U.S.CA. §§ 2000a *et seq.* (West Supp.l995).

have interpreted Title II to include both spectator and participation activities.[142] Morally and legally, there is no justifiable excuse for such discrimination.

Certainly, Title II applies to any recreational activity open to the public on a landowner's property. A facility owned and operated by a youth football association for its football program was held to fall within Title II.[143]

A fishing camp, hunting facility, campground, or other recreational facility made available to the public would also fall under Title II. For example, a family-owned recreational complex with swimming and picnic areas was held to be a "place of entertainment" and subject to Title II's non-discrimination provisions.[144]

Besides the federal provisions of Title II, many states have their own civil rights legislation which is modeled after the federal statute. Although not specifically mentioned, gender discrimination should also be avoided as to recreational participants. At the very least, it is immoral to exclude recreational participants on the basis of gender.

Warning -Employee and Prospective Employee Claims

Employees, and even prospective employees, can make similar claims against employers. In hiring and promotion practices, as well as on-the-job treatment of employees, landowners must comply with the Americans with Disabilities Act, Title II of the 1964 Civil Rights Act, and Title VII of the Civil Rights Act of 1964, prohibiting sexual harassment, Title IX, prohibiting sex discrimination in employment practices, and the Age Discrimination in Employment Act. Failure to comply with these statutes in hiring, promoting, and protecting employees in general, can result in severe economic penalties for the unwary employer and can expose an employer to additional common law causes of action, such as an invasion of privacy and the infliction of emotional distress. Additional information about potential employee claims against employers can be obtained by contacting the NCALRI.

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[142] Cynthia Boyer Blakeslee, *Legal Concerns Triggered by Alternative Land Use--Subtle Issues and Potential Traps,* 24 IND. L. REV. 1543, 1551 (1991).
[143] *Id.* at 1552, n. 48, *cited in* United States v. Slidell Youth Football Ass'n, 387 F.Supp. 474, 482 (E.D. La. 1974).
[144] *Id.,* n. 47, *citing* United States v. Jackson Lake, Inc., 312 F.Supp. 1376, 1380 (S.D. Ala. 1970).

B. Nuisance

Although a precise definition of nuisance is difficult to formulate, the Kansas Supreme Court has described it as follows: "Briefly stated, the word nuisance, while perhaps incapable of precise definition, generally is held to be something which interferes with the rights of citizens, whether in person, property, or enjoyment of property, or comfort, and also has been held to mean an annoyance, and that which annoys or causes trouble or vexation, that which is offensive or noxious, or anything that works hurt, inconvenience, or damage."[145]

A nuisance can be private or public. A private nuisance involves the interference with the private property rights of another. A public nuisance is an unreasonable interference with a right common to the general public. For example, the contamination of a private drinking well would be a private nuisance, while contamination of a municipal water source would be a public nuisance.[146]

The determination of "reasonableness" is a balancing process which looks at the gravity of the harm balanced against the utility of the conduct causing the harm. The Restatement (Second) Torts section 826(a) sets out the following factors to be considered in the balancing process:

- the extent of the harm involved
- the character of the harm involved
- the social value which the law attaches to the type of use or enjoyment invaded
- the suitability of the particular use or enjoyment invaded to the character of the locality
- the burden on the person harmed of avoiding the harm.

In addition, in considering the utility of the conduct, the Restatement (Second) of Torts section 828 suggests that the following are relevant:

- the social value which the law attaches to the primary purpose of the conduct
- the suitability of the conduct to the character of the locality
- the impracticability of preventing or avoiding the invasion.

[145] Wilburn v. Boeing Airplane Co., 366 P.2d 246, 254 (Kan. 1961).
[146] L.P. SCHNAPF, ENVIRONMENTAL LIABILITY: LAW & STRATEGY FOR BUSINESSES AND CORPORATIONS § 6.05 at 6-7, 8 (1992).

Gun clubs and private shooting ranges have often been the sources of nuisance claims because of (1) the noise from such facilities, and (2) the real or imagined threat such facilities pose to the general public. The courts have refused to automatically declare gun clubs and private shooting ranges nuisances (often referred to as nuisances *per se),* but have instead applied the test of reasonableness, taking into consideration such factors as the facility's location and even when the activity was being conducted.

For example, in *Roberts* v. *Clother*[147] the noise coming from a shooting range was declared not to be a nuisance based upon the activities locality, the degree of quietness consistent with the standard of comfort prevailing in the locale, the location of the trap, the distance of the complainant's house, the degree and quality of the noise, the number of times and the hours of day when the trap was used, the character of such use, the days of the week when it was used, the effect of the noise upon persons of ordinary sensibility to sound when in or near the complainant's house, the number of persons complaining, and all other relevant circumstances disclosed by the testimony.[148]

Almost any recreational activity conducted on private land could be attacked as a nuisance if it produced an unreasonable amount of noise, threatened public safety, or even attracted large crowds, making it impossible for nearby landowners to make reasonable use and enjoyment of their own property.

C. Trespass Claims

Trespass is an action related to nuisance, but more limited in scope. Trespass is an unpermitted interference with an exclusive possessory interest in land. Unlike nUl '>ance, trespass requires a physical invasion of the land. When a trespass occurs, the defendant is liable for even unforeseen damages. Examples of environmental trespass include groundwater contamination or even air pollution that settles on another's property.[149] *Bradley* v. *American*

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[147] 37 Mont. Co. (Pa.) L.R. 165, Pa. (1920), *cited in* Blakeslee, *supra* note 142, at 1562, n. 89.

[148] *Id.; see also* Oak Haven Trailer Court, Inc. v. Western Wayne County Conservation Association 3 Mich. App. 83, 92, 141 N.W.2d. 645, 649 (1966), *affd sub nom.,* Smith v. Western Wayne County Conservation Ass'n, 380 Mich. 526, 158 N.W. 2d. 463 (1968), *cited in* Blakeslee, *supra* note 142, at 1563, n. 94

[149] SCHNAPF, *supra* note 146, § 6.03 at 6-3.

Smelting and Refining Co.[150] is a good example of a trespass case involving airborne particles. The case involved a copper smelter and a trespass suit by a group of neighboring landowners who claimed damages for their property as a result of the trespassing airborne particles. The landowners' damages were limited to the actual and substantial damages caused by the accumulation of particles on the land.

Just as the activities of a gun club or private shooting range could constitute a nuisance, those same activities could be a trespass if stray bullets crossed onto neighboring properties.[151]

Warning -Remedies for Nuisance and Trespass Claims

An injunction is the most common relief granted to successful plaintiffs in nuisance and trespass claims. The landowner is enjoined (stopped) from conducting the activity deemed to be a nuisance or an act of trespass.

In some instances monetary compensation may be awarded to the successful plaintiff. If the plaintiff suffers bodily injury or property damage as the result of a nuisance or trespass, monetary damages are appropriate. Bodily injury claims from a nuisance action can include actual physical injuries, as well as compensation for pain and suffering, emotional distress, and interference with one's enjoyment of life.

Property damage claims may also be extremely broad. Examples of potential claims include loss in property value and inverse condemnation. Punitive damages may also be awarded in particularly egregious cases. Punitive damages are used to punish an offending party and are damages beyond those given to a successful plaintiff to actually compensate for monetary losses. A landowner who recklessly or intentionally violates or disregards the rights of others may be subject to punitive damages.

D. Environmental Laws

Landowners desirous of opening their lands to the public for recreational uses must be sure that they comply with the applicable recreational statutes. The following is a brief survey of some of the more relevant federal statutes which can affect recreational businesses. It also must be kept in mind that many of the states have passed their own versions of the federal statutes and many of the state statutes are more restrictive than their federal counterparts. As

[150] 104 Wash.2d. 677, 709 P.2d 782 (1985).
[151] *See* Blakeslee, *supra* note 142, at 1562, n. 92.

a result, a landowner can be in violation of both federal and state environmental laws or the landowner could be in violation of state environmental statutes even though federal compliance has been achieved.

1. Safe Drinking Water Act (SDWA)

The Safe Drinking Water Act (SDWA) was enacted in 1974[152] and significantly amended in 1977[153] and 1986.[154] The SDWA assures high quality water supplies to all citizens served by public water systems. A public water system is defined as any system used for piping water to the public which has 15 service connections or regularly serves at least 25 persons.[155] The SDW A specifies maximum levels of contaminants affecting the health of persons which can be found in a public water system.[156] Public water systems must use lead-free pipes, solders, or fluxes with any water provided for human consumption.[157] The SDWA also contains regulations dealing with water odor and color.[158]

The SDWA could apply to a bed and breakfast business, hunting and or fishing lodge, dude ranch, or almost any recreational business, if the landowner furnishes water to at least 25 persons. The 25 person limit includes both employees and other persons.

2. Clean Water Act (CWA)

The Clean Water Act (CWA) is one of the most extensive and far reaching pieces of federal legislation with which a landowner must be concerned if she wants to go into the recreational business. The CWA divides w:,.er pollution sources into the categories of point sources and nonpoint sources. Point sources are defined as "discernible, confined, and discreet conveyances ... from which pollutants are or may be discharged."[159]

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[152] 42 U.S.C.A. § 300g *et seq.* (West 1991).
[153] 33 U.S.C.A. § 1251 *et seq.* (West 1986 & Supp.1995).
[154] 42 U.S.C.A. § 6901 *et. seq.* (West 1995).
[155] *Id.* § 300f(4) (West 1991).
[156] *Id.* § 30Of(1).
[157] *Id.* § 300g-6.
[158] *Id.* § 300g-1(C).
[159] 33 U.S.C.A. § 1362 (West 1986 & Supp.1995).

a. Point Sources

Point sources are regulated through the mandatory permit system known as the National Pollutant Discharge Elimination System (NPDES).[160] The NPDES is a national permit system controlling the discharge of pollutants from a point source into the waters of the United States. The NPDES program governs indirect discharges through municipal sewage and treatment plants and industrial waste and sewage, as well as direct discharges from both new and existing sources.

Most states administer the NPDES requirements upon approval of their state's program.[161] NPDES permits contain source specific effluent limitations and incorporate a state's water quality standards. Although the states normally issue the permits, the EPA has the power of review and may in some cases disallow the permits.

Any landowner who provides toilet facilities to recreational users must be in compliance with the CWA if there is a direct or indirect discharge of the effluence into navigable U.S. waters. The courts have taken a broad view of what constitutes a navigable body of water. Besides a body of water upon which commercial traffic is possible, a navigable body of water includes tributaries into the water, as well as groundwater systems supplying the surface waters.

b. Nonpoint Sources

Nonpoint sources of pollution are those sources diffused over a wide area and not conveyed by any discernable, confined, and discrete mechanism. Thus far, the states have been given authority to control nonpoint sources of pollution. For most landowners in the recreational business, point sources of pollution will not be a matter of concern, at least as to federal and state authorities. However, the CWA may be reauthorized to provide for more federal regulation of nonpoint sources of pollution. In addition, the Second Circuit case of *Southview Farm and Richard H Popp* v. *Concerned Area Residents for the Environment, et al.*[162] demonstrates how some courts have interpreted previously considered nonpoint sources of pollution as point sources requiring an NPDES permit. In the *Southview Farm* case, the disposal

[160] *Id.* § 1311(a).
[161] 39 states administer the NPDES program.
[162] 34 F.3d 114 (2nd Cir.1994); *cert. den.* 115 S.Ct. 1793 (1995).

of animal waste from a feeding operation, which included spreading the waste over adjacent land as fertilizer, was declared to be a point source of pollution after a rainfall washed some of the animal waste into a nearby river.[163]

The court held that the landowner violated the point source provisions of the CWA because the waste entered into a culvert which extended through a brick wall and into the river. A low lying area on the land was also declared to be a point source of pollution because waste accumulated in the depressed area and then ran into the river. And finally, even the manure spreading equipment was declared to be a point source of pollution.

c. Wetlands

Besides regulating point source discharges into navigable U.S. waters, the CWA regulates what is known as "dredge and fill" activity. Section 404 of the CWA provides protection for "wetlands" from dredge and fill activities. Wetlands are lands inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, under normal circumstances, vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas.[164]

If an area is a wetland and dredge and fill activity is proposed, a permit may be required before the activity can take place. Before a permit is issued, the Corps of Engineers will decide whether the proposed impact will adversely affect the waters of the United States or whether the impact will be minimal. Permits granted by the Corps may be vetoed by the Environmental Protection Agency (EPA).

There are two types of permits: general and individual. General permits are usually state, regional, or national in scope and involve minor impacts on wetland resources. General permits are put in place using federal rulemaking procedures. Individual permits may be granted to those activities for which there is no general permit and no practical alternative. Section 404 of the CW A does provide some exceptions to the permit requirements. Normal farming, ranching, or logging activities are exempt if they are already occurring and will be

[163] *Id.*

[164] 40 C.F.R. § 230.3 (1992) (EPA regulations defining wetlands); 33 C.F.R. § 328.3 (1986) (Corps of Engineers regulations defining wetlands).

ongoing and continuous in nature. However, if there is any alteration in the operation, permits are required. Obviously, recreational activities do not fit any of these exceptions.

In determining whether Section 404 applies, a landowner must ask the following questions: (1) Is the area a wetland? (2) Will any modifications of the land constitute a dredge and fill activity? (3) Is there a general permit available which will permit the activity? (4) If not, is an individual permit required? (5) Are there any exceptions for the activity proposed?

3. Endangered Species Act

The Endangered Species Act[165] identifies and protects endangered and threatened animal and bird species. The Act prohibits the killing of any species on the endangered list.

A matter of controversy was whether the destruction of an endangered species' critical habitat was a violation of the Act. For example, in one case dam developers were denied a permit to discharge sand and gravel into the tributary of a navigable body of water when the Corps of Engineers determined that the dam's operation and altered water flow could adversely impact whooping cranes who had a critical habitat 250 to 300 miles downstream.[166]

In *Palila* v. *Hawaii Department of Land and Natural Resources,*[167] a court ordered the removal of sheep and goats from land maintained by the state for sport hunting. The court found that the sheep and goats were destroying woodland habitat upon which the palila, an endangered species of bird, depended. The court held that it was Congressional intent to define harm in the broadest possible manner and therefore harm included habitat destruction.[168]

However, in *Babbitt* v. *Sweethome,* an appellate court held that the Endangered Species Act did not protect a species habitat.[169] The United States Supreme Court has now reversed the

[165] 16 U.S.C.A. §§ 1531 *et seq.* (West 1985 & Supp.1995), and listed under regulations found at 50 C.F.R. §§ 401-453 (1993, and 50 C.F.R. § 17 (1994).
[166] Riverside Irrigation District v. Andrews, 568 F.Supp. 583 (Colo.1983).
[167] 852 F.2d 1106, 18 Envtl. L. Rep. 2119 (9th Cir.1988).
[168] *Id.*
[169] 17 F.3d 1463 (D.C.Cir.1994).

Sweethome case and a landowner who harms or destroys the habitat of an endangered species is in violation of the Act.[170]

4. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)[171] was passed to rectify perceived inadequacies of earlier environmental legislation, especially the Resource Conservation Recovery Act (RCRA), which was deemed inadequate to address hazardous waste disposal sites. Under Section 104 the federal government is authorized to conduct cleanup operations with funds from the "Superfund." The government may then seek under Section 107 to recover costs from "Potentially Responsible Parties" (PRPs). The government is also authorized under Section 106 to issue cleanup directives or seek injunctive relief ordering PRPs to conduct responsive actions to abate immediate and substantial endangerments to public health or the environment. Also, private parties are authorized under Section 111 to seek reimbursement from the Superfund or to file a cost recovery action against PRPs under Section 107.[172] CERCLA stresses recoupment of government cleanup cost expenditures and seeks to hold as many parties as possible responsible for such costs.

For most landowners conducting recreational activities on their land, CERCLA will not be a matter of concern. However, a landowner could be in violation of CERCLA if he or she buries hazardous waste on their property or permits others to do so. Some landowners have made the mistake of permitting third parties to bury hazardous waste upon the landowner's property in exchange for a fee. The exchange is always a poor bargain for the landowner given the enormous financial risk which accompanies such an activity.

Warning -Civil and Criminal Penalties

Environmental violations expose polluters to civil and criminal penalties. Under CERCLA, civil fines start at $25,000 per day for some violations and can go up to $75,000 per day for

[170] 115 S.Ct. 2407 (1995).
[171] 42 U.S.C. §§ 9601-9675 (1994).
[172] SCHNAPF, *supra* note 146, § 5.09 at 5-10,5-11.

subsequent violations. Similar fines exist for violations of other federal environmental statutes and state versions of those acts.

Criminal penalties for environmental violations include not only fines but also the possibility of prison time. ~any environmental violations, especially those involving willful or knowing conduct by a polluter, are classified as felonies.

One factor facilitating environmental criminal prosecutions is the relaxation of the traditional requirement of "knowledge" in criminal conduct. To successfully prosecute anyone under most criminal statutes, federal or state, it must be shown that the accused possessed an element of intent, called *mens rea* ("guilty minds") or *scienter* ("criminal intent.") In prosecutions under environmental statutes the courts placed a less stringent burden of proof upon the government than that required in traditional criminal cases. For example, the courts have held the defendant need not know the criminality of his act. It is simply necessary to show he knowingly committed the act which violated the statute. Thus, the *knowingly* requirement refers to general intent to violate the law rather than specific intent. The courts have also held that the term *willfully* in criminal prosecutions under health and welfare statutes does not refer to evil purpose or intent. Instead, the term refers to intentionally disregarding the statute, or an indifference to its requirements.[173]

Warning -Corporate Structure

A favorite legal device used by business people to protect their personal assets from liability claims is the corporate structure. A corporation is an artificial person constituting a separate legal entity. Even fanners often incorporate their operations to take advantage of the liability protection offered by the corporate structure.

Unfortunately, corporate officers are being individually targeted in environmental claims. Even when acting within the scope and course of his/her corporate duties, an individual corporate officer may be personally liable for environmental damage. The courts have used a number of legal theories to pierce the corporate veil and hold individuals personally liable. For

[173] *See* L. Gordon Arbuckle, *Criminal Liabilities for Environmental Law Violations, in* ENVIRONMENTAL, HEALTH AND SAFETY MANAGERS HANDBOOK 97 (Thomas F.P. Sullivan and G. David Williams eds., 1988); *see also* U.S. v. Greer, 850 F.2d 1447 (1Ith Cir.1988), U.S. v. Hayes Corp., 786 F.2d 1499 (l lth Cir.1986), *and U.S.* v. Illinois Central Railroad Co., 303 U.S. 236 (1938).

example, an individual who participates in violating an environmental law, such as CERCLA, may be held personally liable for their conduct under the personal participation theory. Similarly, a corporate officer can be held personally liable for environmental damage if they are in control of the corporate structure. Finally, a corporate officer who has environmental compliance duties can be held personally liable for environmental damage if she fails to prevent acts of pollution.[174]

Warning -Citizen Suits

Environmental laws provide broad standing as to who can bring an environmental action against an alleged polluter. If governmental authorities fail to take remedial action against a polluter, other interested parties can file a cause of action against the polluter. These so-called citizen suits allow private parties to act as special attorney generals to enforce environmental laws. When they are successful in pursuing their litigation, the individual or group who filed the citizen suit is entitled to recover attorneys' fees and court costs from the polluter.

Warning -Right-to-Farm Laws

Right-to-farm laws are designed to protect agricultural operations from nuisance claims. As a result, they have no application to a landowner's recreational business. In addition, even with agricultural operations, right-to-farm laws are ineffectual as to environmental claims arising out of the physical migration of a pollutant.

Commentary -Changes in Environmental Laws
State and federal environmental laws change rapidly. The United States Congress is considering making changes in such key environmental legislation as the Safe Drinking Water Act, the Clean Water Act, and the Endangered Species Act, among others. It is imperative that landowners keep up with these changes.

[174] L. Oswald and C. Schipani, CERCLA and the Erosion ofTraditional Corporate Law Doctrine, 86 Nw. U. L. REv. 259, 264 (1992); *see also* New York v. Shore Realty Corp., 759 F.2d 1032 (2nd Cir.1985), United States v. Northemaire Plating Co., 670 F.Supp. 742 (W.D. Mich. 1987).

E. Other Compliance Concerns

Although the following concerns are not the primary focus of this publication, landowners who desire to get into the recreational business must also be concerned about other compliance requirements, tax issues, and regulations which can impact their operations. Failure to be aware of the following legal issues can cause financial difficulties for a landowner and can result in a recreational business being enjoined from operating by state and local governments.

1. Tax Issues

Many jurisdictions grant preferential tax assessments to farmlands or land used for agricultural purposes. The preference consists of valuing the land for agricultural use rather than for its highest and best use. Although the state statutory requirements for granting preferential tax assessments are diverse, the following criteria are commonly used:

- actual cultivation of the land
- restriction to solely agricultural use
- restriction to primarily agricultural use
- disqualification of the land from preferential treatment if it is diverted to different or additional activities.[175]

A landowner must be knowledgeable of his or her preferential tax assessment law and the impact of recreational uses on the preferential tax assessment prior to opening the land to recreational activities.

2. Labor Issues

A landowner who has employees involved in recreational activities will probably lose the agricultural employee's exemption as to minimum wage and/or overtime provided under the Fair Labor Standards Act.[176] This would certainly appear to be the case for those employees engaged primarily in the landowner's recreational business.

A landowner may decide it is more economical to hire workers as independent contractors for the recreational business. A landowner would not be required to make social

[175] Blakeslee, *supra* note 142.
[176] Krohn, *supra* note 1.

security tax payments, unemployment tax payments, tax withholdings, pension and health benefits, or minimum wage or overtime guarantees to independent contractors.[177]

A landowner should consult an attorney regarding state law on the qualifications of an independent contractor. Also, any contract between the landowner and the independent contractor should be prepared by an attorney.

Additional labor issues are addressed in Section V of this publication.

3. Permits and Licenses

Many recreational activities require special permits or licenses. Common activities requiring permits or licenses include hunting, fishing, game propagation, and the use of guides and outfitters.[178] Some states, such as Colorado, require guides and outfitters to be registered and also to receive specified first aid training. In addition, appropriate first aid kits must be available on all trips.[179]

4. Safety and Sanitation Standards

States commonly have safety and sanitation standards applicable to recreational businesses. Any recreational business providing food services would be expected to comply with state, and possibly even local or federal food handling requirements. Many states also have safety and sanitation requirements for swimming areas and waste disposal systems.

5. Zoning

Local zoning laws must be researched prior to a landowner starting a recreational business on private land. Zoning ordinances often severely restrict a landowner's property uses, especially if the land lies in an area zoned solely for agricultural purposes.[180]

6. Deed Restrictions

Although the issue of deed restrictions is beyond the scope of this publication, a landowner contemplating an alternate use of his or her property needs to do a meticulous title search. The search needs to be conducted by a professional title researcher to discover what restrictions run with the land, such as easements, restrictive covenants, and rights of way.

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[177] *Id.*
[178] Blakeslee, *supra* note 142.
[179] Krohn, *supra* note 1.
[180] Blakeslee, *supra* note 142.

These restrictions are often not apparent from the deed by which the property was conveyed to the landowner.[181]

Agricultural and open space easements have gained popularity in recent years. Land subject to such easements may be unavailable for alternate recreational uses.[182]

Commentary -Additional Resources on Other Compliance Concerns
A good overview of other compliance concerns can be found in the following articles: Cynthia Blakeslee, *Legal Concerns Triggered by Alternate Land Use - Subtle Issues and Potential Traps,* 24 IND. L. REV. 1543 (1991); Richard H. Krohn, *Recreational Use of Agricultural Lands,* 23 COLO. LAW. 529 (March 1994).

V. LIABILITY INSURANCE COVERAGE AND RECREATIONAL ACTIVITIES

Commentary -Additional Insurance Resource
Much of the following material is taken from the author's 1992 publication, UNDERSTANDING THE FARMERS COMPREHENSIVE PERSONAL LIABILITY POLICY, which is currently being updated and will be available from the National Center for Agricultural Law Research and Information, Robert Leflar Law Center, University of Arkansas, Fayetteville, Arkansas 72701, or call (501) 575-7646.

Besides seeking the protection of recreational use statutes, landowners also look to their liability insurance policies to protect them from damage claims. The farmers comprehensive personal liability policy (hereinafter FCPL policy) is the most common liability policy written for farmers. But, as will be explained, the standard FCPL policy does not always provide liability coverage to landowners for claims arising from the recreational use of farm and ranch land.

Insurance transfers or allocates to an insurance company the insured's risk of legal liability for bodily injury or property damage to others. In exchange for the payment of a premium to the insurance company the insurer promises to indemnify the insured as to bodily injury and property damage claims.[183]

[181] *Id.*
[182] *Id.*
[183] *Id.* at 8-9.

Bodily injury is commonly defined as bodily injury, sickness, or disease sustained by any person during the policy period, including death. Property damage is commonly defined as physical injury to or destruction of tangible property occurring during the policy period, including the loss of the use of the property.[184]

The insurer also promises to defend the insured as to any cause of action filed by an injured party against the insured, so long as the cause of action is within the policy's coverage.[185]

But, as previously stated, the standard FCPL policy provides only limited coverage as to liability claims arising out of recreational activities on farm and ranch lands.

Commentary -Insurance Services Office (ISO)

The Insurance Services Office, Inc. (ISO) is a national, nonprofit corporation that assists insurance companies in the preparation of insurance policies and programs. The majority of the insurance clauses contained in this publication are from ISO's 1998 Farm Liability Coverage Form, copyright, Insurance Services Office, Inc. 1985, 1993, 1998.

A. Farming Activities and the Business Pursuits Exclusion

The FCPL policy provides liability coverage for bodily injuries and property damage arising out of farming activities and excludes coverage as to claims arising out of business pursuits other than farming. To complicate matters further, claims arising out of non-farming activities are sometimes covered under an FCPL policy if the activities are ordinarily incidental to non-business pursuits. What does all this mean to insurance coverage for recreational activities on farm and ranch lands? It means that the standard FCPL policy, with some notable exceptions, does not provide liability coverage for recreational activities.

1. Defining Farming

Although the standard FCPL policy provides liability coverage for claims arising out of farming activities, farming is often not defined within the policy.[186] As a result, the courts have been left to define the term. Relying upon such sources as Webster's Dictionary, law dictionaries, agricultural tax cases, and agricultural zoning cases, the courts have generally

[184] Copeland, *supra* note 17, at 8-9.
[185] *Id.* at 13.
[186] *Id.* at 48.

defined farming to include all acts and products connected with the tillage of soil and animal husbandry.[187]

The latest ISO farm liability policy provides the following definition for farming:

"Farming" means the operation ofan agricultural or aquacultural enterprise, and includes the operation of roadside stands, on your farm premises, maintained solely for the sale of farm products produced principally by you. Unless specifically indicated in the Declarations, ''farming'' does not include: a. Retail activity other than that described above; or b. Mechanized processing operations.[188]

There is nothing in the court decisions defining farming or in the above referenced definition which would indicate liability coverage for bodily injuries or property damages arising out of recreational activities on private land.

2. The Business Pursuits Exclusion

Not only have the courts taken a traditional view of what constitutes farming, but the standard FCPL policy specifically excludes coverage as to business pursuits other than farming.

The following are examples of how FCPL policies typically treat the issue of excluding insurance coverage for business pursuits:

This coverage does not apply:

... to bodily injury or property damage arising out of(1) business pursuits of any insured except (i) activities therein which are ordinarily incident to non-business pursuits and (ii) farming, or (2) *the rendering of or failing to render professional services.*[189]

The most recent ISO business pursuits exclusion contained in its FCPL policy form reads as follows:

"Business" means a trade, profession, occupation, enterprise or activity, other than "farming" or "custom farming" which is engaged in for the purpose of monetary or other compensation.[190]

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[187] *Id.*

[188] FIRE CASUALTY AND SURETY BULLETINS (1988 The National Underwriter Co.), Mar. 1998, at Farms D. 1-17 (Hereinafter FC&S BULLETINS).

[189] Fireman's Fund Insurance Companies, § 1, Coverage L-Personal Liability, Exclusions, c (hereinafter Fireman's Fund specimen).

3. Recreational Activities

A closer examination of these clauses, along with how the courts and insurance companies have defined farming and other key insurance terms, makes it doubtful that the standard FCPL policy covers recreational activities on private lands.

In deciding whether an activity constitutes a business pursuit not covered under an FCPL policy the courts look to see if there is (1) a profit motive, and (2) evidence of continuity in the activity. If both elements are present the courts have consistently found the landowner's activities to be a business pursuit separate and apart from farming. As a result, any causes of action for bodily injuries or property damages arising out of those activities are not covered under an FCPL policy.[191]

A good example of a court applying the business pursuit test to a recreational activity conducted on a ranch is the case of *Heggen* v. *Mountain West Farm Bureau Mutual Insurance CO.*[192] The insured annually staged a steer roping contest on his ranch. The annual entry fees charged the participants totaled between $1,200 and $1,500.[193]

During one of the annual events a horse fell on a participant, seriously injuring the participant's leg. A claim was made under the insured's FCPL policy. The company refused the claim on the grounds that the contest was a business pursuit other than farming.[194] The court agreed with the insurance company and applied the business pursuits exclusion. The court found a profit motive in the steer roping events even though all of the entry fees were distributed as prize money. The court also found the steer roping events to be regular and continuous even though in some years several were held and in other years only one was held.[195]

For private landowners who want to earn additional revenues from their lands through recreational use, the *Heggen* case establishes a dangerous precedent. If the landowner regularly grants the public access to his property so that the public can use the property for

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[190] FC&S BULLETfNS, *supra* note 188, at Farms D. 1-16.
[191] Copeland, *supra* note 17, at 52. *See also* Martha L. Noble, *Recreational Access to Agricultural Land: Insurance Issues,* 24 IND. L. REV. 1615 (1991).
[192] 715 P.2d 1060 (Mont.1968).
[193] *Id* at 1062-63.
[194] *Id*
[195] *Id* at 1063.

hunting, fishing, camping, or any other recreational purpose, and charges a fee to do so, then the landowner does so without liability insurance coverage under the standard FCPL policy.

B. Exemption for Activities Incidental to Farming

Even though some activities are continuous in nature and are profit motivated, they have been exempted from the business pursuits exclusion because they are ordinarily incident to a non-business pursuit, e.g., farming. Notice that the business pursuits exclusion taken from a Fireman's Fund policy specimen above makes a specific reference to this exemption while the 1998 ISO business pursuit example does not.

1. U-Pick Operations

While roadside stands are defined as farming activities in the 1998 ISO FCPL policy and most other insurance forms, agricultural operations where land entrants go into orchards and fields and pick their own produce are not mentioned. Many individuals who yearly enter fields and orchards to pick their own strawberries, blueberries, and peaches do so to save money and as a means of recreation.

Obviously, however, persons who engage in such activities are invitees, as they are on the property for the landowner's benefit. Although these operations, commonly referred to as U-Pick operations, offer monetary savings to the customers, the land entrant's activities also benefit the landowner by saving the landowner labor costs and by increasing the landowner's profits.

Because of the profit motive and continuity of such activities, landowners are not protected under state recreational use statutes from the liability claims of land entrants injured during U-Pick operations. A few states, such as Arkansas, have passed special statutes giving landowners at least some limited protection from land entrants injured during U-Pick operations. Under Arkansas law, such persons are treated as licensees, rather than invitees, and the landowner's liability is adjusted accordingly.[196]

Landowners may also find their insl1rance carriers attempting to deny coverage after a U-Pick customer falls off a ladder or suffers some other accident and accompanying injury

[196] ARK. CODE ANN. § 18-60-107 (1992).

on the basis that U-Pick activities are not defined within the FCPL policy as farming and also are not a roadside stand activity.

It seems to me, however, that a strong argument can be made that U-Pick operations, if not farming, are at least activities ordinarily incidental to farming. What is more incidental to farming than harvesting the crop, regardless of the means used?

2. Traditional Recreational Activities

The obvious question is whether such recreational use activities as camping, hunting, and fishing qualify as ordinary activities incidental to farming if a fee is not charged the recreational user. If so, then the recreational activity is a non-business pursuit, just as is farming under the standard FCPL policy, and any bodily injury or property damage claims arising out of the landowner's acts of negligence would be covered.[197]

According to at least one insurance industry service which provides commentary on insurance clauses, such recreational uses are covered under the standard FCPL policy as put out by ISO. The 1994 Fire, Casualty and Surety Bulletins published by the National Underwriter Company state the following:

> The farm liability coverage form excludes bodily injury or property damage arising out of any insured's business pursuits. Exempt from the exclusion are activities incident to non-'business' pursuits. As stated the definition of 'business' does not include farming. *Therefore, since farming is a non-'business' pursuit, activities incident to farming are covered. Such activities include: accepting payment to rescue snowbound vehicles with a farm tractor; charging for the use of the farm premises for hunting, picnicking, snowmobiling, skiing, or entertainment events; and the operation of roadside stands* (emphasis added).[198]

Unfortunately, I cannot agree with most of the foregoing commentary published in the November 1994 FC&S Bulletins. Obviously, roadside stands are covered under the FCPL policy because the policy specifically states so as set forth on page 58 of this publication.

It is also probably correct to conclude that the farmer who occasionally uses his tractor to pull someone's vehicle out of the mud or snow is also not engaging in a business pursuit,

[197] *See* Copeland, *supra* note 17, at 58-61.
[198] FC&S BULLETINS, *supra* note 188, Nov. 1994, at Farms Ap-5.

even if the farmer accepts a fee for his or her services. In fact, there is good legal precedent to support such a conclusion. In *Randolph* v. *Ackerson,*[199] a farmer insured under a standard FCPL policy tore down an old barn and sold the wood for profit. A helper was injured in the process but the insurance company refused to provide insurance coverage because the insured was engaged in a business pursuit. A Michigan court, however, used the same business pursuit test employed by the Montana court in the *Heggan* case. The court looked to see if there was (1) a profit motive and (2) continuity. Although the court found that the insured had sold the wood for a profit, it could find no evidence that he regularly razed barns for profit. As a result, the farmer's FCPL policy provided liability coverage.[200]

In a situation, however, where a farmer or rancher regularly opens his or her land to the public for such recreational purposes as snowmobiling, horseback riding, camping, fishing, or hunting, and charges a fee, it is difficult for me to conclude that such is ordinarily incident to farming activities. Even more importantly, I am confident that most courts would conclude that such activity meets the two-pronged business test of (1) a profit motive and (2) continuity, as was found in the *Heggan* case.

Most of the cases in which courts have applied the exemption for activities ordinarily incident to non-business pursuits have been somewhat unusual and have not directly addressed the issue of the recreational use of private land. For example, in one case a farmer received a monthly state allotment as a foster parent. The farmer occasionally permitted the foster children to feed the cattle. One of the foster children was injured while cutting the binding on a bale of hay. The insurance company denied coverage on the basis that the farmer was in the foster care business. The court, however, in finding for the farmer held the child's activity to be incidental to ordinary farming operations.[201]

A case that stretches to the limits what constitutes activity incidental to farming is the California case of *Windt v. Fidelity & Casualty Company of New York.*[202] The insured's operation consisted of a riding stable and pasturing other people's horses for a fee. Several of the

[199] 108 Mich. App. 746, 310 N.W.2d 865 (1981).
[200] *Id*
[201] Country Mut. Ins. Co. v. Watson, 1 Ill. App.3d 667-79,274 N.E.2d 136-38 (1971).
[202] 9 Cal.3d 257,507 P.2d 1383, 107 Cal. Rptr. 175 (1973).

pastured horses escaped onto a public highway through an open gate. One of the horses collided with a vehicle, killing the driver.[203]

One of the issues in the case was whether the landowner's liability for the driver's death was covered under the landowner's FCPL policy. Obviously, the insurance company argued that both the riding stable and pasturing horses for a fee were excluded business pursuits.

The court conceded that a "riding club" venture might be beyond a reasonable interpretation of "farming." As to the grazing of other people's horses for a fee, the court held that, even if such an activity were a non-farming business pursuit, the landowner's FCPL policy still covered the driver's death. The court held repairing fences and keeping gates closed to be ordinarily incident to normal farming operations. Since the accident arose from an unclosed gate, the FCPL policy covered the landowner's liability for the driver's death.[204]

Personally, I found nothing in the just described *Windt* case or the foster parent case to reassure me that a majority of courts would view fee recreational activities incidental to ordinary farming operations. I certainly would not want to "bet" the farm or ranch on such a possibility.

It also needs to be pointed out that the 1998 ISO farm liability policy specifically excludes the payment of medical expenses for bodily injury to any farm employee or other person engaged in work usual or incidental to the maintenance or use of the insured location as a farm. The only exception to this exclusion is for persons on the farm or ranch in a neighborly exchange of assistance for which the insured is not obligated to pay any money.[205] This particular exclusion should certainly concern those farmers and ranchers who permit paying guests to round up cattle, haul hay, harvest crops, and do other ranch and farm chores.

VI. OTHER INSURANCE POLICY EXCLUSIONS

As already explained, the primary problem with obtaining coverage under the standard FCPL policy for income generating recreational activities is the business pursuits exclusion. Insurance policies, however, are filled with exclusions limiting the insurance company's

[203] *Id.* at 260-62,507 P.2d at 1386, 107 Cal. Rptr. at 177-78.
[204] *Id* at 263, 507 P.2d at 1387, 107 Cal. Rptr. at 179.
[205] FC&S BULLETINS, *supra* note 188, at Farms D. 1-10.

coverage for certain events. Regardless of whether the landowner or some other party or entity purchases liability insurance covering injuries incurred by land entrants during recreational activities, there are a number of exclusions about which the insured needs to be aware.

A. Undescribed Premises

FCPL policies specifically describe the insured farm premises. The description is normally set out in the policy's declarations page. As a general rule, bodily injury or property damage occurring away from the described premises is not covered.

In *Dorre v. Country Mutual Insurance CO.,*[206] the insured's declarations page listed his 309-acre farm as the insured farm premises. The insured failed to list an additional adjoining 12-acre tract owned by the insured's son. When a tenant was injured on the son's 12-acre tract the insurance company successfully denied coverage even though the insured also helped his son farm the adjoining 12 acres.[207]

The same is true as to recreational coverage. The policy must specifically describe the property on which the recreational activity will take place. If a recreational user is injured on a portion of property not described in the policy, then it is likely that there will be no insurance coverage for the event even if (1) the insured owned the land on which the injury occurred and (2) the recreational user was engaged in the activity covered by the liability policy.

B. Undescribed Activities

Most liability policies covering recreational activities are specific regarding the recreational events that are covered. If an insured purchases a policy which covers recreational horseback riding activities, he should not expect liability coverage for the recreational user who is injured on the premises while riding a dirt bike, even if the accident occurs on a trail commonly used by the horseback riders.

C. Ultra-Hazardous Activities

Many insurance companies will exclude coverage for certain recreational activities because the activities are considered to be exceptionally hazardous. Although the activities excluded from liability coverage will vary between companies, coverage for snowmobiling and any activities involving all-terrain vehicles are commonly and routinely excluded. Special

[206] 48 Ill. App.3d 880, 363 N.E.2d 464 (1977).
[207] *Id* at 882, 363 N.E. 2d at 466; *See also* COPELAND, *supra* note 17, at 68, 69.

insurance coverage is required for those activities. Rock climbing is an example of a hazard for which there is rarely any coverage and it is often difficult to find coverage for skiing activities.[208]

D. Intentional Acts

Liability policies are designed to protect the insured as to claims of negligence. As such, liability policies exclude coverage for bodily injury or property damage expected or intended by the insured.[209]

Suppose for example that an insured gets into a dispute with a recreational user and the insured physically strikes the recreational user causing bodily injury. Even if the insured landowner did not intend to harm the other person, she did intend to commit the act and there would be no coverage for the resulting injury.[210]

Some liability policies will cover injuries arising out of acts of self defense. Some, but not all courts have found coverage as to acts of self defense, even when the liability policy was silent on the issue. The best rule is simply to avoid such events.

Warning -Civil Rights Violations

Violations of civil rights statutes are commonly viewed by the courts as intentional conduct to which the intentional acts exclusion applies. Some states will not permit insurance coverage for civil rights violations and, if an insurance contract contains coverage for such violations, the coverage is void under state law. Most liability policies simply exclude coverage for civil rights violations.

E. Sexual Molestation, Corporal Punishment, Physical or Mental Abuse

Modem liability policies also commonly exclude coverage for bodily injury or property damage arising out of sexual molestation or corporal punishment, as well as from other forms of physical and mental abuse. Previously, such conduct was thought to be excluded under the intentional acts of exclusion. The new exclusion was added as a result of several controversial court decisions which found coverage of such acts.[211]

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[208] FC&S BULLETINS, *supra* note 188, at Farms D. 1-2.
[209] Copeland, *supra* note 17, at 99.
[210] *Id* at 100; *see also* FC&S BULLETINS, *supra* note 188, at Farms D. 1-7.
[211] *Id* at 134; *see also* FC&S BULLETINS, *supra* note 188, at Farms D. 1-7.

F. Communicable Disease

Liability policies now routinely exclude coverage for bodily injury arising out ofthe transmission of a communicable disease by an insured. Presumably, this exclusion refers to the insured infecting another person with any communicable disease such as the HIV virus or some other sexually transmitted disease.[212]

G. Drug and Alcohol Abuse

Current liability policies also exclude coverage for bodily injury or property damage arising out of the use, sale, manufacture, delivery, transfer, or possession by any person of a controlled substance. The exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.[213]

The drug abuse exclusion makes it critically important for insureds in the recreational activities business to screen employees for drug abuse problems. A recreational user harmed by an employee under the influence of a controlled substance should likely not be covered under the insured's liability policy.

H. Pollution Clauses

1. Sudden and Accidental Exclusion

Because of the growing threat of environmental litigation and the possibility of enormous judgments, the insurance industry began to restrict its liability coverage for pollution events. In 1973, the following pollution exclusion clause became a common exclusion in liability coverages:

This insurance does not apply: *to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, waste materials or other irritants, contaminants, pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.*[214]

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[212] *Id* at 135, 136 *see also* FC&S BULLETINS, *supra* note 188, at Farms D. 1-7.
[213] *Id.* at 135; *see also* FC&S BULLETINS, *supra* note 188, at Farms D. 1-7.
[214] Burke, *Pollution Exclusion Clauses: The Agony, The Ecstasy, and the Irony For Insurance Companies,* 17 N. Ky. L. REV. 443,449 (1990).

As to how the exclusion actually works, suppose a landowner had chemicals stored on his or her property. If the chemical storage facility exploded, causing bodily injury to recreational users of the land, the landowner would be covered as to liability claims because the event was sudden and accidental. If, however, the same facility slowly leaked chemicals over a prolonged period of time and poisoned neighboring water wells causing bodily injury and property damage, the gradual event and accompanying liability claims would not be covered. Even more distressing for landowners is the newer pollution exclusion clause found in liability policies.

2. Absolute Exclusion

Since about 1986, virtually all liability policies have been written with an absolute pollution exclusion clause which broadly defines pollution. The following is typical of the exclusion:

This coverage does not apply to:

"Bodily injury" and "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

(a) At or from premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any "insured;"

(b) At or from any premises, site or location which is or was at any time used by or for any "insured" or others for the handling, storage, disposal, processing or treatment of waste.

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by o rfor any "insured" or any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any "insured" or any contractors or subcontractors working directly or indirectly on any "insured's" behalf are performing operations:

(i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such "insured," contractor or subcontractor; or

(ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which breaks out from where it was intended to be.

(2) Any loss, cost or expense arising out of any:

(a) Request, demand or order that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or

(b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.[215]

Pollution coverage can be purchased, but it is often hard to find and can be expensive. The new pollution policies also tend to be very restrictive as to what they cover. The best rule to follow is to keep recreational users away from any substance that could be defined as a pollutant.

I. Persons Excluded

1. Persons Not Named Insureds or Additional Insureds

Liability policies often designate not only a named insured, but also additional insureds by description. The additional insureds are usually classes of people who have some

[215] FC&S BULLETINS, *supra* note 188, at Farms D. 1·2·3.

relationship to the named insured, such as family members, household residents, and any other persons under the age of twenty-one in the insured's care.[216]

Many of the more recently written FCPL policies also make it clear that "insured" includes not only the named insured, but also any partnerships or joint ventures in which the insured is involved, including the spouse of any partners, but only with respect to the conducting of farming operations. Furthermore, other organizations to which the insured may belong, including corporate ventures, are also included if they are connected with the farming operations. If the corporation is covered under the policy, all executive officers and directors are insured. Stockholders are also covered, but only for their liability as stockholders.[217]

The liability policy protects all those persons who qualify as insureds against liability claims of third parties for bodily injury or property damage arising out of an insured's negligence. This means that the insurer owes the named insured and additional insureds the duties of indemnification and defense.

Conversely, a liability policy offers no protection to a person who is not a named insured in the policy or who does not qualify as an additional insured.

2. Employees

A key feature of a liability policy is coverage for the harm caused by the negligence of the insured's employees. Suppose, for example, that a private landowner has opened his or her land to the public for hunting purposes and an employee of the landowner serves as a guide. Suppose also that during a hunting trip the employee negligently discharges a firearm and injures one of the hunters. In such a case the liability policy would provide coverage for the employee's negligent conduct.

Suppose, however, that the insured is also with the hunting party and it is the insured who negligently discharges a firearm and the person injured is the accompanying employee. Since many liability policies exclude coverage for bodily harm suffered by an employee as a result of an insured employer's negligence, there would be no insurance coverage for the

[216] R. JERRY, II, UNDERSTANDING INSURANCE LAW 456-57 (1987).
[217] FC&S BULLETINS, *supra* note 188, at Farms D. 1-17.

insured as to any cause of action likely to be filed by the injured employee.[218] This is true at least as to farm employees and is also probably the same as to recreational employees.

In fact, most companies issuing recreational insurance and providing coverage for injuries to employees would probably require the insured to specifically name the recreational employees in the policy. Also, the injuries of these persons would be covered only if they were hurt while engaged in the recreational activity covered by the policy.

It should also probably be true that other employees, such as farm employees not normally involved in the recreational business of the landowner, would not be covered under the recreational policy even if they were injured while temporarily assisting with the recreational business.

3. Family or Household Members

Besides excluding coverage for employees injured by the negligent conduct of an insured, liability policies also routinely exclude coverage for family members or members of the insured's household who are injured by the insured's negligence. This particular exclusion is commonly found in automobile policies. Unfortunately, the exclusion is also commonly found in the FCPL policy, which is particularly disturbing given the tendency of family members to work together on a farm.

I suspect that most recreational policies contain a similar exclusion, especially where the policies are simply modifications of the standard FCPL policy.

J. Equipment

The standard farmers comprehensive personal liability insurance (FCPL) policy also excludes liability coverage for bodily injury or property damage arising *out* of the ownership, maintenance, use, or entrustment to others of certain equipment. Equipment commonly excluded includes motor vehicles, motorized bicycles, snowmobiles, aircraft, and watercraft.[219] The exclusion extends not only to the operation of such equipment, but loading and unloading activities.

[218] *Id* at D. 1-10.
[219] Copeland, *supra* note 17, at 107-24.

K. Livestock

In the same section of the standard FCPL policy addressing the transportation of "mobile equipment" exclusion, there also appear two exclusions concerning the use of livestock. While the placing of these two livestock exclusions in the same policy section as the transportation of "mobile equipment" may seem odd, it probably results from the fact that part of the mobile equipment exclusion relates to contested activities, as do the livestock use exclusions.

The livestock exclusions deny coverage for bodily injury and property damage arising *out* of the use of livestock or other animals in racing or strength events, as well as show events, such as fairs or charitable functions. The applicable language is as follows:

This insurance does not apply to:

> *(3) The use of any livestock or other animal in, or while in practice or preparation for, a prearranged racing speed or strength contest, or prearranged stunting activity. But this exclusion g.* (3) *applies only to "occurrences" arising out of such contests or activities, that take place at the site designated for the contest or activity; or*
>
> *(4) The use of any livestock or other animal, with or without an accessory vehicle, for providing rides to any person for a fee or in connection with or during a fair, charitable function or similar type of event.*[220]

VII. OTHER POLICY LIMITATIONS ON THE DUTIES TO DEFEND AND INDEMNIFY

While the standard personal liability insurance policy contains very broad language as to the insurer's duties to indemnify and defend the insured, such broad language is naturally limited by provisions within the policy. These limitations are established by a number of requirements and exclusions.

A. Accident or Occurrence Requirement

The insurer's obligation to pay for bodily injuries or property damage is conditioned upon the injuries arising out of an occurrence. Virtually all modern liability insurance policies are written on an occurrence basis. Occurrence is a term of art generally defined as an accident,

[220] FC&S BULLETINS, *supra* note 188, at Farms D. 1-4-5.

including continuous or repeated exposure to conditions, resulting in bodily injury or property damage neither expected nor intended from the standpoint of the insured. Unless there is an occurrence, there is no coverage under the liability policy.[221]

As a general rule, an accident is not defined within the terms of the policy. The courts, however, have defined "accident" as a fortuitous event which is neither expected nor intended from the standpoint of the insured. As such, intentional acts, such as assaults, are outside policy coverage, even if the policy has no specific exclusion as to such an event.[222] More information on the intentional acts exclusion can be found in Section VI of this publication.

Occurrences include spontaneous events, such as automobile collision: as well as injuries or damages sustained over an extended period of time. Bodily injury or property damage triggers the happening of the occurrence and the loss must occur within the effective dates of the policy.[223]

B. Duties Imposed on the Insured

1. Payment of Premiums

An insurer may be relieved from its obligations if the insured fails to fulfill her obligations. The failure of the insured to follow the terms of the insurance contract is called a breach. The duty to timely pay premiums is most commonly breached. Obviously, the failure to pay premiums can result in the cancellation of a liability policy and the subsequent loss of liability coverage.

2. Cooperation

There are other obligations and duties which, if breached, can result in a loss of coverage. Insureds are obligated to promptly notify insurers of any accidents or occurrences which could result in a claim being made. Insureds must also cooperate with the insurer in the investigation of any claim or the defense of a case, including the giving of statements and depositions, appearing at trial, and participating in settlement negotiations. If the insured fails to do any of these things and the insurer's defense of the insured is prejudiced in any manner, then coverage can be lost.

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[221] Copeland, *supra* note 17, at 14
[222] FC&S BULLETINS, *supra* note 188, at Farms D. 1·2.
[223] *Id* at 10·10.

Whether a defense has been prejudiced is always a factual determination. Prejudice depends on whether the insured's lack of cooperation has affected the availability of witnesses, physical changes in the location of the accident, the ability of expert witnesses to reconstruct the accident scene, and the gathering, preparation, and preservation of important evidence. As a general rule, the insurer has the burden of proving prejudice. Courts, however, do not always require a showing of prejudice by insurers. A minority of courts have denied coverage to insureds who failed to fully cooperate with insurers, regardless of whether the insurer was prejudiced. This is especially true with claims made policies and the failure of insureds to promptly notify their insurers of accidents.[224] Claims made policies are subsequently explained.

Many policies contain clauses which specifically describe the insured's duties in the event of an occurrence, claim or suit. Appendix B is typical of cooperation clauses.

C. "Occurrence Basis" vs. "Claims Made" Policies

It comes as no surprise that liability policies have definite beginning and ending dates. If an event occurs before coverage begins, or after coverage ends, there is no insurance coverage for the event. What surprises insureds is that liability policies are issued as either "occurrence basis" or "claims made" policies. The distinction between the two is critical.

An "occurrence basis" policy provides that the policy in effect at the time the damage occurs is the policy that is obligated to respond. The following language identifies an occurrence basis policy: "This insurance applies only to "bodily injury" and "property damage" which occurs during the policy period."

In contrast, a "claims made" policy states that for policy coverage to be applicable: "the claim must be made during the policy period."

The following example should help clarify the difference between the two policy types. Suppose a farmer purchases an FCPL policy from insurance company A that begins January 1, 1994, and ends December 31, 1994. He then purchases an insurance policy from company B that begins January 1, 1995, and ends December 31, 1995. While the policy with company A was in effect for 1994, the farmer's livestock escaped onto a highway and caused an

[224] *See* Campbell & Co. v. Utica Mut. Ins. Co., 36 Ark. App. 143 (1991); 820 S.W.2d 284.

automobile accident because the farmer negligently failed to keep his fences repaired. Although the accident took place in 1994, the lawsuit against the farmer was not filed until 1995 when the policy with company B was in effect. Which company, if any, is responsible for paying the injured party's damages?

If the policy issued by company A was an "occurrence basis" policy, company A would be responsible for the damages since the accident "occurred" while the policy was in effect. The fact that the claim was not filed until a year later, or ten years later, would not change company A's responsibility.

However, if insurance company A had issued the farmer a "claims made" policy, company A could deny coverage because the claim was made outside the coverage period. Company A would be liable only as to claims actually made during the policy period, which of course was only from January 1 to December 31 of 1994. Even if the claim were made only one day after the effective dates of the policy, company A could still deny coverage.

Would company B have any duty to indemnify or defend the farmer as to the claim? Unfortunately, the answer is no and it would be no regardless of whether company B issued the farmer an "occurrence basis" or "claims made" policy. An occurrence policy issued by B would not be applicable because the accident occurred in 1994 and B's policy is for 1995. A "claims made" policy issued by B would not help the farmer because not only must the claim be made during the effective date of the policy, but the claim must arise out of an occurrence that also took place during the policy period.

Obviously, an "occurrence basis" policy offers an insured much greater protection than a "claims made" policy, but many insureds are purchasing claims made policies without a full appreciation of their coverage restrictions.

Commentary -Improving Claims Made Coverage

Claims made policies can be improved by purchasing what is commonly called "tail coverage." "Tail back" is retroactive coverage. It covers occurrences which took place before the policy was taken out, if notice of the claim is given during the policy period or extended reporting period.

"Tail forward" coverage extends the reporting period. It covers claims made after the policy period ends, if the occurrence took place during the policy period or the retroactive period. Appendix C is an example of how tail coverages work.

D. Financial Limits of Liability

Liability policies contain a maximum financial limit that an insurer will pay for an accident or accidents. For example, if you purchase $100,000 in liability coverage, and you injure someone to the extent of $150,000, you, and not the insurer, are financially liable for the additional $50,000.

Split financial limits are also common in liability policies. The policy will commonly provide limits of $1 00,000 per person and $300,000 per occurrence. Since split limits are common in automobile liability policies, a simple example involving an automobile accident is helpful. Suppose an accident takes place in which four persons riding in an automobile are negligently injured by the insured. Each of the four persons receives $150,000 in injuries. Because the insurance policy pays only $100,000 per person, no injured party would receive more than $100,000. Additionally, because the policy also has a $300,000 cap per occurrence, the insurer would not pay each injured party $100,000, because that would total a payment of $400,000. Instead, the insurer would pay each party $75,000 (4 x $75,000 = $300,000) with the remaining $100,000 in damages to be paid by the insured.

Liability policies also commonly contain aggregate financial limits. The insurer caps the amount of money that will be paid during any policy period. The usual policy period is for one year, although longer or shorter policy periods are possible. Returning to our automobile example, suppose the policy not only contained a per person limit of $1 00,000 and an occurrence limit of $300,000, but also stated that its aggregate limit for any policy period was $300,000. If the insured had one accident which paid out $300,000, and then had a second accident during that same policy period, there would be no insurance coverage for the second accident.

Once the financial limits of the insurance policy have been reached, both the insurer's duties of indemnification and defense are affected. Liability policies commonly provide that the duty to defend ends when the applicable limits of insurance have been used up in the payment of judgments, settlements, or medical expenses.[225]

[225] Copeland, *supra* note 17, at 19, 20.

E. Decreasing Value Policies

Many of the liability policies being issued today are also decreasing value policies. This means that every dollar spent by the insurance company in defending you is deducted from the value of your policy.

Assume that you purchased $300,000 in liability insurance coverage. Also assume that your insurance company spent $100,000 in defending you in the form of attorneys fees, investigation costs, depositions, and expert witness fees. The $100,000 spent by the insurance company would be deducted from your policy leaving you with $200,000 in coverage. If the insurance company spent $300,000 in your defense, your policy would have no value. In fact, once the insurance company spent $300,000 in your defense, your policy would be exhausted and the company would probably seek to withdraw from the case, even if the case was still in progress.

F. Excluded Damages

Liability policies routinely exclude coverage for punitive damages, civil fines, and criminal fines. As to punitive damages, even if a liability policy provides coverage for punitive awards, in some jurisdictions such clauses are unenforceable as a matter of public policy. Insurance companies are forbidden from providing indemnification for punitive damages because to do so would dilute the punitive effect of such awards.

VIII. INSURANCE SOLUTIONS TO THE COVERAGE PROBLEM FOR RECREATIONAL ACTIVITIES

Although the standard FCPL policy provides little or no liability coverage for recreational activities on farm and ranch lands for which fees are charged, there are a number of solutions to this problem. These solutions involve upgrading the standard FCPL policy, purchasing specialized insurance policies, requiring insurance to be carried by recreational users, insurance carried by recreational brokers, and cooperative insurance. All of these will be explained to some extent in the following pages.

A. Endorsements to the Standard FCPL Policy

Insurance policies are amended by endorsements in order to expand or restrict insurance coverage. Fortunately for private landowners there are a number of amendments which can be made to the standard FCPL policy to provide some liability protection for the

recreational use of private property. Whether an endorsement to the standard FCPL policy for recreational activities is available will depend on the type of activity and the size of the operation as determined by gross receipts and the number of persons likely to come on the premises yearly. The following list is by no means exclusive but instead relates directly to recreational issues. The final three endorsements are possible under the 1998 ISO farm liability policy.

1. Hunting and/or Fishing

It is possible to obtain an endorsement to the standard FCPL policy to provide liability coverage for hunting and fishing activities on private land. Typically, the endorsement is added to the farmer's liability policy as an "incidental business pursuit." Typical limits include $500,000 to $1,000,000 for bodily injury liability and $5,000 to $25,000 for medical payments. Depending on the amount of liability coverage, yearly premiums may be less than $200.

The "incidental business pursuit" endorsement for hunting and fishing, however, is for relatively small operations as defined by gross receipts. For example, in the past, Country Companies Insurance and Investment Group of Bloomington, Illinois has issued an "incidental business pursuits" endorsement for hunting and fishing activities so long as yearly gross receipts are less than $5,000.[226]

In comparison, Rural Insurance Companies in the past has offered an endorsement for fee hunting on private land as long as annual receipts are under $2,500. The policy excludes the rental of tree stands.[227]

2. Camping

Traditionally, landowners who permit fee hunting or fishing on their property have also purchased camping endorsements for their FCPL policies. It is only natural that some hunters or fishermen would want to camp on the premises. In the past, camping coverage has been readily available and its cost has been based on gross receipts. The cost for camping coverage has usually been moderate.

[226] Letter from Country Companies Insurance and Investment Group to NCALRI (March 28,1990) (on file with NCALRI).
[227] Letter from Rural Insurance Companies, to NCALRI (April 12, 1990) (on file with NCALRI).

Unfortunately, this particular endorsement is becoming scarce in some states. Some states require that campgrounds be licensed and that water and sanitation facilities be provided.[228]

3. U-Pick Operations

An endorsement to the standard FCPL policy permitting land entrants to pick their own fruits and vegetables can be obtained. As explained previously in this publication, U-Pick operations are becoming more and more popular. The cost of the endorsement depends on whether land entrants are furnished equipment such as ladders which could expose them to injuries.

4. Animals in Contests or Stunting Activities

Amendment FL-04-40 to the standard ISO farm liability policy provides liability coverage and medical events for such activities.[229] I assume that this amendment covers such activities when they are conducted for profit as well as fun. What is not clear is whether the coverage is simply for the named insured who might engage in such events or recreational guests engaged in such activities. Also, it is not clear whether these activities must be conducted on the insured's property for there to be coverage, or if they are covered when conducted off the insured's property. Answers to these questions should come from your insurance agent, and, if need be, from the insurance company's home office.

5. Animal Rides

Endorsement FL-04-41 to the ISO policy provides medical payments and liability coverage for animal rides conducted for profit or charity. The endorsement includes giving rides at fairs, charitable functions, or similar events.[230] The nature of this endorsement is such that it appears to cover recreational activities both on and off the insured's property.

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[228] Letter from Country Companies Insurance and Investment Group, *supra* note 227.
[229] FC&S Bulletins, *supra* note 188, at Farms E.l·2.
[230] *231. Id*

6. Home Day Care Coverage

As I previously stated in this publication, I do not consider home day care centers recreational activities. Endorsement FL-0442, however, does provide liability and medical payments coverage for insureds who operate day care services in the home. The endorsement, however, excludes coverage for the following:

1. *Injuries arising out of molestation, corporal punishment, and mental or physical abuse by any person involved in the day care operation.*
2. *Injuries arising out o the maintenance, use, etc., of any of the following: draft or saddle animals, aircraft, motor vehicles, motorized cycling vehicles, or watercraft.*

7. Employees

Endorsements or separate policies can be obtained to cover injuries to employees. Coverage can be limited to cover an employee's medical expenses, or be broad enough to cover bodily injury claims as well. These policies, however, often have strict requirements as to when an injured employee must file a claim in order for there to be coverage and exclude coverage for any consequential damages sought by the employee's spouse or children.

Warning -Workers' Compensation

Many states grant agricultural employers a workers' compensation exemption as to agricultural employees. Unlike other employers, agricultural employers are not required to purchase workers' compensation coverage for agricultural employees. Recreational employees, however, are not agricultural employees. As a result, in most jurisdictions the landowner will be required to obtain workers' compensation coverage for such employees. Even as to those employees who work both in the employer's recreational and agricultural enterprises, workers' compensation must be purchased to cover employees when they are working as part of the landowner's recreational business.

Commentary -Family Members

It may be difficult for landowners in the recreational business to get an insurance company to forego the family exclusion. Family members, however, who work for the business can be covered under any liability policy purchased for the employees. The family members, however, must clearly be identified on any endorsement or separate employee coverage policy as employees of the recreational business. Naturally, where workers' compensation coverage is mandated, family members would be entitled to the same coverage as other employees.

In addition, in a few jurisdictions, the family exclusion clause is unenforceable as a matter of public policy. Some courts have held that the family exclusion is unconscionable because it excludes from coverage those persons most likely to be injured by the insured's negligence. A landowner must investigate the status of the family exclusion in his or her own state. Also, in some states, the exclusion has been declared to be unenforceable as to only automobile liability policies but not as to all other liability policies.

B. Environmental Coverage

Although it can be difficult to find, environmental coverage can be obtained by means of an endorsement or an individual environmental impairment liability policy. Environmental endorsements and policies must be strictly scrutinized prior to purchase. Environmental policies and endorsements frequently limit the types of bodily injuries covered and expenditures for cleanup costs. Environmental coverage is also almost universally subject to claims made and decreasing value limitations.

C. Specialty Insurance and Commercial General Liability Policies

Often it is impossible to obtain a simple endorsement to the standard FCPL policy to cover fee generating recreational activities. The nature of the activity, the extent of the risk involved, the size of the operation, and insurance underwriting rules may dictate that a separate specialty policy covering the particular recreational activity be Issued. Many insurance companies require the insured to purchase the company's standard commercial general liability policy which is normally issued to cover business activities. The policy is then modified by endorsements to 'cover the proposed recreational business. Liability coverage for fee-generating recreational activities is often written in amounts of $1 00,000, $300,000, $500,000, or $1,000,000. The cost of a specialty or commercial general liability policy depends on a variety

of factors such as the risk associated with a particular recreational activity, the acreage involved, the number of persons involved, and the managerial expertise of the landowner. Often the cost of a policy is tied to the gross receipts generated by the activity.[231]

In some states, recreational enterprises are required by state law to carry a certain amount of liability insurance. Oregon law requires hunting and fishing outfitters to carry general liability insurance in the amount of $300,000 per occurrence, or bodily injury coverage of at least $100,000 per person and an aggregate limit of $300,000.[232]

Specialty and commercial general liability insurers often take a personal interest in the insured activity. It is not uncommon for insurers to impose certain conditions on landowners to reduce risk in exchange for the issuance of a policy. For example, a landowner who permits fee hunting on his land may be required to furnish professional guides to the hunters.[233]

Examples of recreational activities that may require specialty insurance or a commercial general liability policy, besides larger hunting and fishing operations, include:

(1) dude ranches;

(2) riding stables;

(3) bed and breakfast operations;

(4) picnic grounds;

(5) campgrounds;

(6) U-Pick operations which contain retail outlets selling the landowner's own products and the products of others;

(7) guided jeep tours;

(8) rented snowmobile operations.[234]

[231] Noble, *supra* note 191, at 1635.
[232] *Id* at 1636 & n. 96.
[233] *Id.* at 1636 & n. 97.
[234] Letter from Rural Insurance Companies, *supra* note 227.

Commentary -Associations

Often, landowners can obtain special insurance through landowner associations to which they may belong. For example, the Forest Landowners Association, Inc., offers its members a hunting lease liability insurance policy. For more information, contact the Forest Landowners Association, P. O. Box 95384, Atlanta, GA 30347 (1-800-325-2954).

To provide some additional protection from persons injured on a landowner's property while engaged in recreational activities, a landowner can purchase excess insurance. Excess insurance simply supplements the amount of coverage of an underlying policy. It does not provide coverage until the policy limits of the underlying primary policy are exhausted. As a general rule, excess insurers only promise to indemnify the insured as to claims which exceed the underlying coverage. There is no duty to defend the insured.[235]

An umbrella policy can also be used to provide a landowner with additional insurance coverage. Some umbrella policies function in the same manner as excess policies. They are supplemental policies which pay only after an underlying policy has been exhausted. Such umbrella policies differ from excess policies only in the sense that an umbrella insurer may also provide a defense to the insured and pay associated defense costs.[236] Another type of umbrella coverage is sometimes referred to as "drop down" coverage. Instead of merely paying on top of the limits of the underlying insurance, the policy drops down to cover the insured's entire loss, including some claims not covered by the underlying policy.[237]

Excess and umbrella policies vary greatly, and a landowner considering purchasing such policies must diligently shop around for the best policy. This is especially true since excess and umbrella policies contain many of the same exclusions found in the standard FCPL policy, including the business pursuits exclusion. In fact, excess and umbrella policies routinely exclude all business pursuits, including farm-related activities. Obviously, policies containing such exclusions offer no additional coverage benefits to a landowner,[238] but such policies can be

[235] Noble, *supra* note 191, at 1634 & n. 91.
[236] FC&S BULLETINS, *supra* note 198, Jan. 1991, at Packages Personal 2-1, 2.
[237] *Id.* at 2-1.
[238] *Id.* at 2-6.

modified to cover recreational activities and to fit an FCLP policy with recreational endorsements, a specialty policy, or commercial general liability policy.

E. Insurance Carried by the Recreational User

One solution to the landowner's liability and insurance coverage problem is to require recreational users to furnish their own liability insurance coverage. This is certainly a feasible arrangement for hunting and fishing clubs that want access to a farmer or rancher's land and are willing to pay for that access. They can even purchase liability policies for the limited time they will be using the landowner's property, such as for the duration of a hunting or fishing season.[239]

There are, however, some common sense measures a landowner should take if such an arrangement is to be made.

1. Make sure you have a copy of he insurance policy and that the policy is current.
2. Be sure you understand the policy before any recreational activities commence on your property. Consult with your insurance agent or attorney regarding the contract's terms.
3. Check to see that the policy is issued by a reputable and financially solvent insurance company. Your liability coverage is only as good as the company which issues the policy. Insurance services such as A.M. Best, Standard & Poors, and Duffy & Phelps annually rate insurance companies. Any reputable insurance agent should be able to tell you the rating of the company with which you are asked to do business.
4. Make sure that you are a named insured on the insurance policy. This will give you added protection as an actual owner of the policy and should keep the policy from being canceled without your knowledge.
5. Be certain that the recreational users explicitly follow the terms, conditions, and provisions of the policy. If the policy forbids the use of alcohol during recreational activities, then that rule should be strictly enforced. The same is true for any other provisions, such as limiting the number of recreational users who can be on the property at any one time or the type of vehicles to be used on the property. For example, the use of snowmobiles often requires a special endorsement or separate policy. The failure to follow the conditions set out in an

[239] Noble, *supra* note 191, at 1636-37.

insurance contract is a breach of the contract and can provide the insurance company with grounds to void the policy.

6. Be sure that the insurance policy not only indemnifies you in case a judgment is obtained against you, but also provides for the payment of all of your legal fees and associated expenses.
7. Be sure that the policy specifically identifies the land on which the recreational use is to take place and that recreational users confine their activities to the location or locations described in the policy.

F. Insurance Carried by Recreational Brokers

In recent years recreational "brokers" have developed to satisfy the demand for recreational access to private land, especially for hunting purposes.[240] A recreational broker enters into an agreement with a landowner under which the landowner grants the broker hunting rights to the landowner's property. The broker, acting as the landowner's agent, enters into separate agreements with hunters permitting them to hunt on the landowner's property. In addition, the broker also obtains liability insurance coverage as to the hunting activities to take place on the contracted for private property.[241]

One of the most successful of these brokers has been Pheasants Galore, Inc. of Iowa. Pheasants Galore is a corporation which furnishes hunters with leased hunting rights, as well as such amenities as guide and dog service, and even bed and breakfast accommodations. Pheasants Galore leases land from farmers and ranchers for hunting purposes. The landowner receives a daily fee for each hunter that hunts on the property. The lease imposes a limited duty upon the landowner to save, protect, and preserve the land for hunting purposes. As part of the contract, Pheasants Galore maintains liability insurance with the landowner on the policy as the named insured. The landowner is not charged a premium for the policy.

The landowner then receives additional protection from liability suits by means of a contract between Pheasants Galore and individual hunters. Individual hunters covenant with Pheasants Galore to obey all of the laws of the state of Iowa, including, but not limited to, possession of legally issued Iowa hunting licenses and appropriate stamps, and to recognize all

[240] Noble, *supra* note 191, at 1637-38.
[241] *Id.*

laws in regards to game limits and trespass. Even more importantly, the hunter agrees to indemnify Pheasants Galore and the landowner against any and all claims, actions, suits, proceedings, costs, expenses, damages, and liability, including attorney's fees, which might arise out of any connection with the hunter's activities on the land. The indemnification includes not only negligent conduct of the hunter, but also any strict liability claims and covers both acts of omission and commission by the hunter.

If a landowner chooses to deal with a broker, the same common sense measures set forth in this publication in dealing directly with recreational users should be applied.

Commentary -Wildlife Management Services

Some recreational brokers are specialists in managing private lands for recreational purposes. A good example is Larry E. Yowell, who owns L&M Wildlife Management Services, 715 N. Mulanix, Kirksville, Missouri 63501, (660) 665-6021. Management specialists, such as Mr. Yowell, make all of the hunting and/or fishing arrangements with those who want recreational access to a landowner's property. Brokers who are management specialists relieve landowners of the burdens of dealing with recreational users and can significantly reduce the landowner's liability exposure. Appendix E is a sample of a contract hunting lease sometimes used by L&M Wildlife Management Services, along with a release example. The materials were furnished by L&M Wildlife Management Services for use in this book as a courtesy to the author. The documents are examples only and are not intended to be appropriate for every circumstance. Mr. Yowell frequently modifies the documents to match the needs of both landowners and recreational users. The author is grateful to Mr. Yowell for allowing the documents to be reprinted in this publication.

G. Insurance Carried by Cooperatives

Occasionally a landowner may want to get into the recreational use business, but he or she may feel that the insurance costs are too prohibitive. In such a situation it is possible for a landowner to pool his or her resources with other landowners with a similar interest in order to share insurance costs, as well as other costs of preparing their properties for recreational use.[242] This pooling of resources may permit the landowners to obtain a group policy which can be considerably cheaper than a single policy.

[242] Noble, *supra* note 191, at 1638

In 1989, the Six Shooter Hunting District was formed by a dozen landowners near Rapelje, Montana. Together the landowners made 130,000 acres of antelope habitat available to hunters for a charge of $25 for each hunter. The money from the hunters paid for maintenance costs and established a community development fund. Based on the revenues generated by the pooling operation the landowners were able to obtain a liability insurance policy in 1989 for a premium of$500.[243]

If landowners decide to enter into a cooperative venture to establish a viable recreational enterprise, it is extremely important that they first seek competent legal counsel. It is very important that the duties and responsibilities of all the members be articulated in a written contract. Such key issues as who will manage the land for recreational uses, what uses will be permitted, and whether certain lands will be withheld from recreational use must be addressed before a cooperative venture commences. Other critical issues such as cost sharing, who determines what expenditures are necessary, and the inclusion or expulsion of cooperative members must be considered.

State law regarding how individual liability is assessed against members of an association must also be addressed. For example, in the California case of *Davert* v. *Larson,*[244] one individual held only a 1/2500 undivided interest in a ranch and recreation community managed by an owners association. Even though the landowner held only a small fractional interest in the recreational venture and had delegated all property management responsibilities to the association, he was not relieved of individual liability for the negligent maintenance of the property.[245]

H. Self-Insurance

Many states permit what is known as self-insurance. Under a self-insurance program, a business sets aside sufficient assets to cover potential liability claims. Self-insurance is regulated by state law and varies as to what requirements must be met for self-insurance programs. Also, self-insurance is not practical for most businesses because of the amount of assets that must be set aside to take care of potential claims.

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[243] *Id.* n. 104 citing Sands, *Wildlife Payoff,* AGWEEK, Mar. 12, 1990, at 26, col. 3 and 27, col. 1.
[244] 163 Cal. App.3d 407, 209 Cal. Rptr. 445 (1985).
[245] *Id.* at 412,209 Cal. Rptr. at 448; *see also* Noble, *supra* note 191, at 1639.

Commentary -Aids in Assessing Insurance Companies

As previously mentioned, several services rate insurance companies as to their financial solvency and general reliability. Copies of the ratings by A.M. Best, Standard & Poors, and Duffy & Phelps can be found in most public and college libraries.

IX. NON-INSURANCE PROTECTIVE MEASURES

Regardless of whether a landowner obtains liability coverage for recreational activities on her land, the landowner should at least take other protective measures to limit her liability.

A. Contractual Arrangements

Landowners should avoid the practice of informal arrangements with recreational users of their property. If a landowner charges any land entrant a fee for using the landowner's property, then the landowner should have available a written contract for the entrant to sign. The contract should specify the duties and obligations of the entrant, such as closing all gates, staying away from areas where livestock are kept, as well as staying away from any other prohibited areas. If the landowner has rules against the use of alcoholic beverages or drugs while the recreational user is on the property, then those items should also be listed.

1. Indemnification Agreements

The contract should also contain an indemnification agreement. Under an indemnification agreement the recreational user agrees to indemnify the landowner for any bodily injuries or property damage the recreational user may cause while using the landowner's property. The indemnification agreement should also cover any attorney's fees and other expenses incurred by the landowner as a result of the recreational user's conduct.

Warning -Solvency

An indemnification agreement is only as good as the source of the indemnification. If the party indemnifying the landowner is insolvent, the indemnification is of no real value to the landowner. The injured recreational participant and other injured persons are not bound by the indemnification agreement. A landowner should always require a verified financial statement from any recreational user offering to indemnify a landowner as part of the recreational access

agreement. The landowner must also remember that indemnifications from partnerships and corporations are generally limited to the entity's assets and not the personal assets of the individual partners or corporate shareholders.[246]

2. Releases

A release is another means of reducing a landowner's liability exposure. By signing a release, the recreational user of the land contracts to release the landowner from the legal liability of any bodily injuries the user may receive while on the landowner's property.

This release should expressly and unequivocally state that it releases the landowner from all liability claims the recreational user might have against the landowner for the negligent providing of goods and services. Like any contract, the release must be supported by valid consideration and there must be a meeting of the minds between the parties.[247]

Appendix D of this publication contains a joint release and indemnity agreement.

Warning -Court Interpretations

Releases are exculpatory agreements which insulate parties from the legal effects of their negligence. As a result, courts strictly construe such provisions and require release terms to be clear and unambiguous. Also, in some states, releases are not recognized as to certain torts and/or releases executed by or on behalf of minors.

B. Risk Management

Some simple risk management measures can also do a lot to lessen a landowner's liability exposure. Because landowners are so familiar with their own properties, they often forget that what is an obvious danger to them is not necessarily an obvious danger to a visitor to the property. Farmers and ranchers also often overestimate land entrants and assume they will exercise more common sense than they actually do.

The following are some risk management suggestions. I am sure that experienced farmers and ranchers can add many more measures to this list.

1. Conduct routine safety audits of your property. Whenever possible remove potentially dangerous objects, such as a rusty but sharp piece of old equipment.
2. Fill in abandoned wells or other dangerous holes.

[246] Krohn, *supra* note 1.
[247] *Id.*

3. When corrective measures are impossible, be sure to fence off dangerous areas and, if that is not possible, at least post obvious warning signs.
4. If you have made your property available to multiple hunters at one time, make sure they are all aware of each other's presence, where they will each be hunting, and that they are wearing highly visible safety clothing.
5. As much as possible, keep domestic livestock and recreational users apart. Get rid of, or at least completely secure, any ill-tempered or vicious animals, including watch dogs.
6. Secure all attractive nuisances, such as barns and working machinery. Many recreational users bring their children with them and you can be held liable if the children are injured, even if their parents were negligent in supervising them.
7. Establish and post guidelines of behavior for land entrants. For example, if you require children to be constantly supervised by parents you should say so in writing. The same is true if you forbid access to certain parts of your property or the use of alcoholic beverages. Just as importantly, require anyone who violates your rules to immediately leave the premises.
8. Carefully screen all of your potential employees and train them as to their duties and responsibilities in dealing with recreational users of the property.
9. Make sure you have emergency equipment handy in case anyone is injured.
10. Make sure that some of your employees, or you, are trained in life saving and other emergency response measures.

Commentary -Assistance in Risk Management

Landowners can obtain help in formulating risk management programs. Many insurance companies provide guidance as to means of reducing potential injuries to employees.

Regarding liability exposure from pollution events, the National Farm-A-Syst program has been very effective in assisting landowners in identifying and correcting potential hazards. For more information contact:

The National Farm-A-Syst Staff
B142 Steenbock Library
550 Babcock Drive
Univ. of Wisconsin-Madison
Madison, WI 53706
(608) 262-0024

X. TORT REFORM

As previously explained, there exists a real shortage of private land available for recreational use. But the shortage is not in the lack of private land, but in the unwillingness of private landowners to open up their property to others for recreational use.

For example, why would any fanner or rancher with acreage worth up to $1 million risk losing the property in a multi-million dollar liability suit filed by an injured recreational user, when the property owner made possibly only $100 a day in recreational fees?[248] Such is especially true given the ineffectiveness of recreational use statutes to protect landowners if they charge fees for the use of their properties and the problems inherent in obtaining liability insurance to protect private landowners from liability claims filed by injured recreational users. Many fanners and ranchers are not willing to undertake the risks associated with permitting, for a fee, the recreational use of their properties. Basically, only four groups of private landowners are probably currently engaged in the recreational business: (I) private landowners who are wealthy enough to undertake the liability risks associated with the recreational business; (2) private landowners who are desperate for additional revenues of any source in order to keep their farms and ranches financially afloat; (3) private landowners who are simply unaware 0 the liability risks associated with the recreational use business; and, (4) private landowners who have been fortunate enough to obtain adequate liability insurance.

In some states it is becoming more and more difficult to obtain liability coverage for fee generating activities in the standard insurance markets. Often, coverage is only available from the substandard or surcharge markets, such as Lloyds of London. This is largely due to liberal state tort laws and the potential of a serious or catastrophic type of loss associated with recreational activities.[249]

The solution to the problem is the reform of state tort liability laws, an often discussed but little acted upon concept. The following are a few relatively simple reforms which would reduce the liability exposure of private landowners who want to get into the recreational

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[248] *Mike Leggett, Biologist, Offers Ideas to Solve Recreational Land Shortage,* AUSTIN AMERICAN-STATESMAN, July 15, 1990, at DI5, col. 3-4.

[249] Letter from California Farm Bureau Federation, to NCALRI (March 27, 1990) (on file with NCALRI).

business and which would also encourage insurance companies to issue more liability coverage for recreational activities.

1. Amend state recreational use statutes permitting landowners to charge land users fees for the recreational use of the land without the landowner losing his or her limited immunity. Landowners would still be liable for intentional or reckless acts.

At the very least, amend the statutes to permit the landowners to yearly earn a certain level of gross receipts, such as $25,000 before the limited immunity is lost. Some states, such as Arkansas, already permit landowners to charge hunters a small fee for the cost of replenishing game on the property.

2. Pass state laws which define farming and activities ordinarily incidental to farming. Include in those definitions at least a limited number of common fee generating activities, such as hunting, fishing, and camping.

States have taken measures in the past to define farming to ensure that farming activities important to a state's economy are not excluded from the standard FCPL policy. For example, a number of states have passed statutes defining Christmas tree raising as farming.[250]

3. Place caps on the amount of money a recreational user can receive for injuries received during recreational activities. A cap of $250,000 to $500,000 would be fair to all parties and would encourage insurance companies to write more liability coverage for fee generating recreational activities on private lands. In fairness to recreational users, the cap on damages would not apply in cases of intentional injury by the landowner or where the landowner recklessly endangered the land user.

4. Provide landowners with affirmative defenses to actions filed by injured recreational users, such as assumption of risk, comparative negligence, or contributory negligence. These defenses are available in many, if not most jurisdictions, but it should be made clear by statute that they specifically apply to lawsuits filed by recreational users.

[250] Wis. Stat. § 70.111 (1994).

The statutes should also make it clear when such defenses apply to children or those who bring children onto private property for recreational purposes, such as parents, school officials sponsoring outings and others.

5. Eliminate the contingency fee for lawyers in recreational use lawsuits. At the very least, pass winner take all provisions where the losing party to the lawsuit must pay the attorneys fees and ancillary costs incurred by the winning party. Such reform measures would discourage frivolous but costly lawsuits.

CONCLUSION

As stated at the outset, there exists a growing public demand for recreational access to private lands. Landowners can financially benefit by responding to this demand. Careful planning and preparation, however, must be undertaken before a landowner gets into a recreational business. The failure to understand and prepare for the liability consequences accompanying recreational businesses can turn a potentially lucrative activity into a financial disaster. Any business venture is something of a gamble, as farmers and ranchers know better than anyone.

APPENDIX A: Summary of Recreational User Statutes in the United States

(As of July 1, 1996)

Alabama

The Alabama statute can be invoked either by an owner/lessee or occupant of premises. An owner is deemed to be any public or private organization, partnership, corporation, association, individual, or political subdivision that has the legal right of possession to outdoor recreational land. Even an employee or an agent of an owner satisfies the definition. [251]

The statute defines recreational use as participation in the following activities: hunting, fishing, water sports, aerial sports, hiking, camping, picnicking, winter sports, animal riding, vehicular riding, or visiting, viewing or enjoying historical, archaeological, scenic, or scientific sites. The definition also extends to any related purpose.[252] Although extensive, this list is clearly not exhaustive.[253] The recreational use statute covers land, water, buildings, structures, machinery, and other such appurtenances.[254]

An owner of outdoor environmental land who permits noncommercial public recreational use of such land owes no duty of care to inspect or keep the land safe for entry or use by any person for a recreational purpose. Nor does the owner have a duty to give warning of a dangerous condition, use, structure, or activity on such land to persons entering for noncommercial environmental purposes.[255]

If the owner of the outdoor recreational land invites or permits noncommercial public recreational use of such land, it does not confer to the entrant the status of an invitee or licensee.[256] Additionally, this permission does not create any legal liability for one injured on the land when present for recreational purposes.[257]

Legal liability can exist when the owner has actual knowledge that the land is being used for noncommercial recreational purposes and that a condition, use, structure, or activity exists which involves an unreasonable risk of death or serious bodily harm. To invoke liability, the aforementioned must not be apparent to the person or persons using the land, and the owner who has knowledge must choose not to guard or warn persons of the danger.[258] It should be noted that constructive knowledge by the owner will not serve as a basis of liability and no duty to inspect outdoor recreational land is created.[259]

These liability limitations do not apply in any cause of action arising from acts or omissions occurring on land where any commercial enterprise is conducted.[260]

A rebuttable presumption of noncommercial use can be established by: (1) posting signs around the boundaries and entrance of land; (2) publishing notice in a newspaper of general

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[251] ALA. CODE § 35-15-21 (1991).
[252] *Id.*
[253] *Cooke v. City of Guntersville*, 583 So.2d 1340, 1342 (Ala.1991).
[254] ALA. CODE § 35-15-21 (1991).
[255] *Id* § 35-15-22.
[256] *Id* § 35-15-23.
[257] *Id*
[258] *Id.* § 35-15-23.
[259] *Id See also, Grice v. City of Dothan*, 670 F.Supp. 318, 321 (M.D. Ala. 1987), where the court held the recreational statute is not subject to an exemption for minors.
[260] ALA. CODE § 35-15-26 (1991).

circulation in the locality in which the outdoor recreational land is situated; (3) recording a notice in the public records of the county in which the land is located; or (4) any act of similar public notice that informs users that the land is open for noncommercial public recreational use.[261]

Alaska

Presently, there is no legislation in this jurisdiction with regard to the recreational use of lands. Alaska, however, does have a statute which grants immunity from tort liability to an owner of unimproved land for injuries or death resulting from "a natural condition of the unimproved portion of the property." Additionally, the injured or deceased person must have had no responsibility to compensate the owner for using the land.[262]

Arizona

A public or private owner, lessee, occupant, or easement holder of "premises" used for recreational or educational purposes can invoke the statute which provides that such persons are not liable to a recreational or educational user except upon a showing that the owner, easement holder, lessee, or occupant was guilty of willful, malicious, or grossly negligent conduct which was a direct cause of the injury to the recreational or educational user.[263]

Premises include "agricultural, range, open space, park, flood control, mining, forest or railroad lands, and any other similar lands, wherever located, which are available to a recreational or educational user, including, but not limited to, paved or unpaved multi-use trails and special purpose roads or trails not open to automotive use by the public and any building, improvement, fixture, water conveyance system, body of water, channel, canal or lateral road, trail or structure on such lands."[264]

The statute defines a recreational user as a person to whom permission has been granted or implied, without payment of an admission fee or other consideration, to enter upon a premises to hunt, fish, trap, camp, hike, ride, swim, or engage in similar recreational pursuits.[265] It should be noted that the mere purchase of a state hunting, trapping, or fishing license is not considered an admission fee.

The statute defines an educational user as "a person to whom permission has been granted or implied without the payment of an admission fee or other consideration to enter upon such premises to participate in an educational program, including but not limited to, viewing of historical, natural, archeological or scientific sights."[266]

The owner of recreational premises does not owe a duty to a user to keep the premises safe. Nor does the owner incur any liability for any injury to persons or property caused by the act of any recreational user.[267] This statute does not limit liability which may exist for

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[261] *Id* §35-15-28.
[262] ALASKA STAT. § 09.65.200 (1994).
[263] ARIZ. REV. STAT. ANN. § 33-1551 (1990 & Supp.l995).
[264] *!d.*
[265] *!d.*
[266] *!d.*
[267] *!d.*

maintaining an attractive nuisance, or for a willful or malicious failure to guard or warn against a dangerous condition, use, or activity, except with respect to dams, channels, canals and lateral ditches used for flood control, agricultural, industrial, metallurgical, or municipal purposes.[268]

Arkansas

Arkansas' recreational user statute may be used by any owner possessing a fee interest in recreational property, as well as tenants, lessees, occupants, or persons in control of a premises.[269] The statute applies to any lands, roads, waters, watercourses, private ways, structures, machinery, or equipment attached to realty.[270]

Recreational purposes include, but are not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, spelunking, viewing or enjoying historical, archaeological, scenic, or scientific sites, and any other activity undertaken for exercise, education, relaxation, or pleasure on land owned by another.[271]

An owner of land who either directly or indirectly invites or permits any person to use his or her land for recreational purposes does not extend any assurance that the lands or premises are safe for any purpose.[272] Nor does the permission confer to one the legal status of invitee or licensee to whom a duty of care is owed.[273] Additionally, an owner does not assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of a user.[274] Finally, liability is not incurred by the owner for any natural or artificial condition, structure, or personal property on the land.[275]

An owner's liability is not limited in any way for malicious failure to guard or warn against ultrahazardous conditions, structures, personal property, or activities actually known to the owner to be dangerous.[276] In addition, if the owner charges a fee to anyone who is subsequently injured on the premises, liability is not limited under the statute.[277] "Charge" refers to an admission fee for permission to go upon or use the land, but does not include the sharing of game, fish, or other products of recreational use or cash paid to reduce and/or offset costs or to eliminate losses from the recreational use.[278]

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[268] *!d.*
[269] ARK. CODE ANN. § 18-11-302 (Michie 1987 & Supp.1993).
[270] *Id*
[271] *Id* § 18-11-302.1
[272] *Id* § 18-11-305.
[273] *Id.*
[274] *!d.*
[275] *Id*
[276] *Id* § 18-11-307
[277] *Id*
[278] *Jd.* § 18-11-302.

California

The California statute applies to the owner of any estate or any other interest in real property, whether possessory or nonpossessory.[279] Although not specifically set out, land (premises), structures, or any activities on such premises are covered by the statute.

A "recreational purpose" as used in California includes activities such as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, animal riding, snowmobiling, vehicle riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, winter sports, hang gliding, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.[280]

In *Valladares v. Stone,* 218 Cal. App. 3d 362, 369, 267 Cal. Rptr. 57, 60-61, (1990), the court held that tree climbing was a recreational purpose which fell within the statute's nonexclusive, illustrative list of activities which are considered recreational.

One with an interest in real property who gives permission to another to use property for a recreational purpose does not thereby extend any assurance that the premises are safe for such purpose or give the person the legal status of an invitee or licensee to whom a duty of care is owed. Nor does the owner assume liability for any injury to persons or property caused by any act engaged in by the person given permission.[281]

Liability is not limited within this section for the following: (1) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; (2) for injury suffered in any case where permission to enter was granted for consideration, unless the consideration was paid by the state; or (3) where persons are expressly invited rather than merely permitted to come upon the premises by the landowner.

Although generally no duty is owed to recreational users in California, an exception exists where operators of resorts (and presumably others) are obligated to locate and warn swimmers of sunken logs, rocks, and obstructions in the water.[282]

California's recreational user statute gives limited protection to owners from frivolous claims. An owner of any estate or interest in real property who gives permission to the public for entry on or use of the real property for recreational trail use, and is later named as a defendant in a civil action brought by or on behalf of a person allegedly injured as a result of the use of the property, can recover reasonable attorney's fees incurred in the civil action if: (1) the court dismissed the civil action upon a demurrer or a defendant's motion for summary judgment, or; (2) the action was dismissed by the plaintiff without any payment from the owner, or; (3) the owner prevailed in the civil action.[283] The claim for attorney's fees must be submitted to the State Board of Control. Reasonable attorney's fees may not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and may not exceed an aggregate amount of twenty-five thousand dollars ($25,000.00).[284] The total

[279] CAL. CIV. CODE § 846 (West 1982 & Supp.1998).
[280] *Id*
[281] *Id*
[282] *See Donaldson v. United States*, 653 F.2d 414 (9th Cir.198l).
[283] *Id* § 846.1 (West Supp. 1998).
[284] *Id* § 846.1(c).

claims allowed by the State Board of Control may not exceed one hundred thousand dollars ($100,000.00) per fiscal year.[285]

Colorado

Colorado's recreational user statute can be invoked by a plethora of individuals and entities. An "owner" within the statute includes, but is not limited to, the possessor of a fee interest, a tenant, lessee, occupant, possessor of any other interest in the land, any person having a right to grant permission to use the land, or any public entity as defined in the "Colorado Governmental Immunity Act."[286] A "person" includes any individual, regardless ofage, maturity, or experience, and any corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.[287]

The statute covers land, roads, water, watercourses, private ways, buildings, structures, and machinery and equipment attached thereto.[288]

Recreational activities protected by the statute include, but are not limited to, any sports or other recreational activities of whatever nature undertaken by a person while using the land, including ponds, lakes, reservoirs, streams paths, and trails. More specifically, any hobby, sport, or other recreational activity is included, such as: hunting, fishing, camping, picnicking, hiking, horseback riding, snowshoeing, cross-country skiing, bicycling, riding or driving motorized recreational vehicles, swimming, tubing, diving, spelunking, sightseeing, exploring, hang gliding, rock climbing, kite flying, roller skating, bird watching, gold panning, target shooting, ice skating, ice fishing, photography, or engaging in any other sport or recreational activity.[289]

An owner of land who either directly or indirectly invites or permits, without charge, any person engaged in the aforementioned activities does not extend any assurance that the premises are safe. Nor does permission create in a user the legal status of an invitee or licensee to whom a duty of care is owed. Any act or omission of the user does not create liability in the owner if injury or death of another is thereby caused.[290]

The owner does remain liable under this section for a willful or malicious failure to guard against a known dangerous condition or for any injury if the user has been charged to use the premises for a recreational use.[291] However, the leasing of land to a public entity or the granting of an easement or other rights to use the land for a recreational purpose in exchange for consideration is not deemed to be a charge within the meaning of the statute.[292] The owner also remains liable for maintaining an attractive nuisance on the premises, except that, if the property used for public recreational purposes was constructed or is used for or in connection with the diversion, storage, conveyance, or use of water, the property and the water within

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[285] *Id* § 846.1 (d).
[286] COLO. REV. STAT. ANN. § 33-41-102 (West 1990 & Supp. 1998).
[287] *Id*
[288] *Id*
[289] *Id*
[290] *Id* § 33-41-103.
[291] *Id* § 33-41-104(l)(a) & (b).
[292] *Id*

such property shall not constitute an attractive nuisance.[293] Finally, liability is not limited for any injury received on land incidental to the use of land on which a commercial or business enterprise is conducted.[294]

Connecticut

"Owner" within the Connecticut statute means a possessor of a fee interest, tenant, lessee, occupant, or person in control of the premises.[295] The territory covered under the recreational user statute includes land, roads, water, watercourses, private ways, buildings, structures, and machinery and equipment attached to the realty.

The activities covered under the statute consist of hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, snow skiing, ice skating, sledding, hang gliding, sport parachuting, hot air ballooning, and viewing or studying historical, archaeological, scenic, or scientific sites.[296]

The Supreme Court of Connecticut has ruled that "the list of activities is not exclusive and 'is not limited to' those activities listed."[297] The Court held that a baseball league game was within the statute's definition of recreational usage and said that "team sports are certainly recreational."[298] In *Manning* v. *Barez,*[299] the Supreme Court of Connecticut held that children's play at a park, while not one of the enumerated 'recreational purposes' listed in the statute, did fall within the definition of recreational purposes.

An owner of land who invites or permits another to use land for any of the above purposes without charging a fee or renting the premises does not thereby: (1) make any representation that the premises are safe for any purpose; (2) confer upon the person who enters or uses the land for recreational purposes the legal status of either an invitee or licensee to whom a duty of care is owed; or (3) assume any responsibility for or incur any liability for any injury to person or property caused by an act or omission of the owner.[300]

The owner still remains liable for willful or malicious failure to guard against dangerous conditions, uses, activities, and structures or when the user is charged to enter the premises. However, if the owner has leased the land to the state, no charge has occurred.[301]

Connecticut case law holds that this section also immunizes an owner from nuisance suits.[302]

The recreational user statute absolves a landowner from any liability for any injury sustained by a person operating a snowmobile, all-terrain vehicle, motorcycle, or minibike while on the landowner's premises, and this liability limitation extends to passengers.[303]

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[293] *Id* § 33-41-104(l)(c).
[294] *Id* 33-41-104(l)(d).
[295] CONN. GEN. STAT. ANN. § 52-557f(West 1991).
[296] *Id*
[297] *Scrapchansky v. Town of Plainfield*, 627 A.2d 1329, 1334 (Conn.1993).
[298] *Id.*
[299] 603 A.2d 399, 403 (Conn. 1992).
[300] CONN. GEN. STAT. ANN. § 52-577g (West 1991).
[301] *Id.* § 52-557h.
[302] *Genco v. Connecticut Light and Power Co*., 7 Conn. App. 164,508 A.2d 58 (1986). *See also Cimino v. Yale University*, 638 F.Supp. 952, 955 (D.Conn.1986).
[303] CONN. GEN. STAT. ANN. § 52-557j (West 1991).

Connecticut also has a statutory provision which limits the liability of owners who allow the general public to harvest firewood.[304] The statute defines an owner as "the possessor of a fee interest, a tenant, occupant or person in control of the premises.[305]

According to the statute, "[a]ny owner of land who invites or permits any person to enter the land or a part thereof to harvest firewood, with or without charge, shall not be liable for damages as a result of injury to such person when such injury arises out of the use of the land or out of the act of harvesting firewood, unless such injury is caused by such owner's failure to warn of a dangerous hidden hazard actually known to such owner.[306]

Delaware

In Delaware a possessor of a fee interest, tenant, lessee, occupant, or person in control of the premises is afforded the protection of the recreational user statute.[307] The protection extends to land, roads, water, water courses, private ways, buildings, structures, and machinery and equipment attached to the realty.[308]

The activities covered within the statute include, but are not limited to the following: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[309]

The owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the premises.[310]

One who is invited or permitted to be on the premises either directly or indirectly does not have an assurance that the premises are safe and does not have the status of a licensee or invitee to which a duty of care is owed. Additionally, the owner does not assume liability for any injury caused by a recreational user while on the premises.[311]

Nothing in the statute limits the owner's liability for willful or malicious failure to guard or warn against dangerous conditions, uses, structures, or activities or where the owner has charged a user to be on the premises.[312] However, land leased by the state or a subdivision does not constitute a charge.[313]

District of Columbia

Presently, there is no legislation in this jurisdiction with regard to recreational use of lands.

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[304] *Id.* § 52-557k.
[305] *Id.*
[306] *Id.*
[307] DEL. CODE. ANN. tit. 7, § 5902 (1991).
[308] *Id.*
[309] *Id.* § 5902.
[310] *Id.* § 5903.
[311] *Id.* § 5904.
[312] *Id.* § 5906.
[313] *Id.*

Florida

The Florida statute limits the liability of owners and lessees who allow land, water areas, and park areas to be available to the public for outdoor recreational purposes.[314] Outdoor recreational purposes include hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites.[315]

No duty of care is owed by an owner or lessee to keep the area safe for entry or use by any person. In addition, an owner or lessee is not required to warn persons of any hazardous conditions, structures, or activities. By providing recreational land to the public, an owner or lessee will not: (1) be presumed to extend any assurance that the land is safe for any purpose; (2) incur any duty of care toward a person on that land; (3) become liable for any injury caused by an act or omission of a person who goes on the park area or land.[316] Any lands or water leased to the state for outdoor recreational purposes receive the same protections.[317]

However, the statute does not apply if persons are charged or usually charged a fee for entering or using the land, or if a commercial for profit activity is conducted on any part of the land. Finally, the statute does not relieve any person of liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property.[318]

Georgia

Anyone who is a possessor of a fee interest, a tenant, a lessee, an occupant, or a person in control of the premises can utilize the Georgia statute.[319] The property covered includes land, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to the realty.[320] A Georgia case, *Erickson* v. *Century Mgt. Co.*[321] has held that the statute only applies to relatively large tracts of land and water.[322]

The activities covered include, but are not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[323]

An owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to warn those using the land of dangerous conditions which may exist.[324]

The owner of the land who has either directly or indirectly invited a user, without charge, to use property for recreational purposes does not: (l) extend any assurance that the premises are safe; (2) confer upon such person the legal status of an invitee or

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[314] FLA. STAT. ANI'. § 375.251 (West 1988).
[315] *Id.*
[316] *Id.*
[317] *Id.*
[318] *Id.*
[319] GA. CODE. ANN. § 51-3-21 (Michie 1982).
[320] *Id*
[321] 154 Ga. App. 508, 268 S.W.2d 779 (1980).
[322] *Id*
[323] GA. CODE. ANN. § 51-3-21 (Michie 1982).
[324] *Id* § 51-3-22.

licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury caused by acts or omissions of such persons.[325]

An owner's liability is not limited for willful or malicious failure to guard or warn against a dangerous condition. Nor is liability limited where a user has been charged a fee.[326] Willful failure requires actual knowledge by the owner that the property is being used for recreational purposes.[327]

Hawaii

An owner who is afforded protection by the Hawaii statute is a possessor of a fee interest, a tenant, lessee, occupant, or other person in control of the premises.[328] The protection extends to land, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment attached to the realty, but excludes lands owned by the government.[329]

The activities covered in Hawaii include, but are not limited to, the following: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[330]

An owner of land owes no duty of care to keep the premises safe for entry or use or to give any warning of dangerous conditions on the premises.[331] However, an owner of land who invites or permits one to be on his land without charge for recreational uses does not extend any assurance that the premises are safe, nor does the user receive the legal status of an invitee or licensee to whom a duty of care is owed. Injuries caused by the user do not result in owner liability.[332]

Liability is not limited if a malicious or willful failure to warn or guard against dangerous conditions has occurred, or if the user has been charged a fee. Consideration resulting from a lease agreement with the state or local government is not considered a charge.[333] Finally, liability will also not be limited for injuries suffered by a house guest engaged in a recreational use.[334]

The Hawaii statute defines a house guest as "any person specifically invited by the owner or a member of the owner's household to visit at the owner's home whether for dinner, or to a party, for conversation or any other similar purposes including for recreation, and includes playmates of the owner's minor children."[335]

The Hawaii statute also protects land owners who are required or compelled to provide access or parking for access through or across the owner's property because of state

[325] *Id.* § 51-3-23.
[326] *Id* § 51-3-25.
[327] *See McGruder v. Georgia Power Co*., 126 Ga. App. 562,191 S.E.2d 305 (1972).
[328] HAW. REV. STAT. § 520-4 (1985).
[329] *Id*
[330] *Id*
[331] *Id* § 520-3.
[332] *Id* § 520-4.
[333] *Id* § 520-5.
[334] *Id.*
[335] *Id* § 520-2.

or county land use, zoning, or planning law, ordinance, rule, ruling, or order, to reach property used for recreational purposes. These owners are provided the same protection as an owner of land who invites or permits any person to use that owner's property for recreational purposes.[336]

Idaho

In Idaho, an "owner" of land means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.[337] The areas entitled to protection are: private or public land, roads, trails, water, watercourses, irrigation dams, water control structures, headgates, private or public ways, and buildings, structures, and machinery or equipment attached to or used on the realty.[338]

Activities covered by the Idaho law include, but are not limited to, the following: hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, nature study, water skiing, animal riding, motorcycling, snowmobiling, recreational vehicles, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites, when done without charge to the owner.[339]

In addition, the Supreme Court of Idaho held that playing by children is within the recreational purposes contemplated by the statute.[340]

The owner of land owes no duty of care to keep the premises safe for recreational purposes, nor is there a duty to warn. Likewise, an attempt to warn or to eradicate a dangerous condition does not create liability under this statute.[341] An owner assumes no liability when directly inviting or permitting a person without charge to use property for recreational purposes, and the owner does not: (1) extend any assurance that the premises are safe for any purpose; (2) confer the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of users.[342]

Although the Idaho statute does not create an exception to the limitation of liability for willful or malicious failure to repair or warn of known dangers, the *Jacobsen* decision held "that the recreational use statute does not preclude liability of an owner for willful or wanton conduct that causes the injury of a person using the owner's land for recreational purposes.[343]

Finally, this statute creates liability for damage to property, livestock, or crops caused by any person using the property of another for recreational purposes.[344]

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[336] *fn[§520-4*
[337] IDAHO CODE § 36-1604 (1994).
[338] *Id*
[339] In *Jacobsen v. City of Rathdrum*, 115 Idaho 266, 273; 766 P.2d 736, 743 (1988), the Supreme Court of Idaho held that playing by children is within the recreational purposes contemplated by the statute.
[340] *Id.*
[341] *Id.*
[342] *Id.*
[343] *Id.* at 734 *and* IDAHO CODE § 36-1604 (1994).
[344] *Id.*

Illinois

An owner in Illinois is a possessor of any interest in land, including a tenant, lessee, occupant, or person in control of the premises or the state of Illinois and its political subdivisions.[345] Property covered by the statute includes roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment when attached to realty.[346]

The activities covered include, but are not limited to, the following: hunting, fishing, swimming, boating, snowmobiling, motorcycling, camping, picnicking, hiking, cave exploring, nature study, water skiing, water sports, bicycling, horseback riding, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[347]

An owner of land owes no duty of care to keep the premises safe for entry or use by any person for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.[348]

An owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby: (1) extend any assurance that the premises are safe for any purpose; (2) confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such person or any other person who enters upon the land.[349]

An owner's liability is not limited in any way for liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous use, structure, or activity. It is also not limited where the owner charges those who enter for recreational use. If the consideration received is from the state or a subdivision thereof, it is not considered a charge.[350]

Indiana

The Indiana provision can be invoked by landowners or possessor of premises.[351] The statute covers lands, waters, private ways, and structures thereon.[352] Activities within the recreational user statute are hunting, fishing, swimming, trapping, camping, hiking, and sightseeing.[353]

Any person who goes upon or through such premises with or without the permission of the owner who has not paid monetary consideration, or with the payment of monetary consideration on behalf of an agency of the state or federal government, is not entitled to any assurance that the premises are safe. The owner of such premises also does not assume responsibility for nor incur liability for any injury caused by the user.[354]

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[345] ILL. ANN. STAT. ch. 745 para. *65/2* (Smith-Hurd 1993).
[346] *Id.*
[347] *Id.*
[348] *Id.* para. 65/3.
[349] *Id.* para. 65/4.
[350] *Id.* para. 65/6.
[351] IND. CODE ANN. § 14-22-10-2 (West 1983 & Supp.1998).
[352] *Id.* § 14-16-3-1.
[353] *Id.* § 14-2-6-3.
[354] *Id.*

The provisions of this statute do not affect existing case law of Indiana of liability of owners or possessors of premises with respect to business invitees in commercial establishments nor to invited guests.[355] Additionally, it should be noted that the attractive nuisance doctrine is not affected.[356] Also, malicious and illegal acts of the owner still invoke liability.[357]

Iowa

The state of Iowa has an expanded definition of those entitled to utilize its recreational users statute. This statute speaks in terms of a holder. A holder means the possessor ofa fee interest, a tenant, a lessee, occupant, or person in control of the premises.[358]

However, a holder does not mean the State of Iowa, its political subdivisions, or any public body or agencies, departments, boards, or commissions.[359] The areas entitled to protection in Iowa are also broad. All of the following areas are covered: abandoned or inactive surface mines, caves, agricultural land, marshlands, timber, grasslands, privately owned roads, water, watercourses, private ways, buildings, structures, and machinery or equipment appurtenant thereto.

The activities an owner is entitled to protection from are hunting, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, nature study, water skiing, snowmobiling, summer and winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites while going to or from or actually engaged therein.[360]

An owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity.[361]

A holder of land in Iowa who either directly or indirectly invites or permits a user to come onto his or her property for recreational purposes without charge does not extend any assurance that the premises are safe for any purpose. Nor does the holder confer the legal status of invitee or licensee to whom a duty is owed.[362]

The holder's liability is not limited if the user is charged for entering or if there is a willful or malicious failure to warn against a dangerous use, structure, or activity.[363]

It should also be noted that the enactment of this statute did not amend, repeal, or modify the common law doctrine of attractive nuisance.[364]

Kansas

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[355] *Id.*
[356] *Id.*
[357] *Id.*
[358] IOWA CODE ANN. § 46\ C.2 (West Supp.1996).
[359] *Id.*
[360] *Id.*
[361] *Id.* § 461C.3.
[362] *Id.* § 461CA.
[363] *Id.* § 461C.6.
[364] *Id.* § 461C.7.

Those coming within the definition of owner in Kansas are possessors of a fee interest, a tenant, lessee, occupant, or person in control of the premises.[365] The relevant areas covered are land, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty, whether agricultural or nonagricultural[366]

The activities listed under what is considered an agricultural use include, but are not limited to, the following: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites.

Kansas' statute provides that an owner of land or nonagricultural land who either directly or indirectly invites or permits without charge any person to use his or her property for recreational purposes does not thereby extend assurance that the premises are safe for any purpose. Nor does this confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed. The owner also is not held responsible for injuries brought about by such user.[367]

The owner's liability is also not limited in Kansas for willful or malicious failure to guard or warn against a dangerous use, condition, structure, or activity.[368] The limitation does not apply where the user has been charged a fee to enter.

Kentucky

The possessor of a fee interest, a tenant, lessee, occupant, or person in control ofthe premises can utilize the Kentucky statute.[369] All lands, roads, water, watercourses, private ways, and buildings, structures, and machinery and equipment attached to the realty are included.[370]

Recreational uses are hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites.[371]

In Kentucky, as encouragement to owners of and to make their premises available to the public for recreational purposes, an owner owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purpose. An owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreation purposes does not thereby: (1) extend any assurance that the premises are safe for any purpose; (2) confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.[372]

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[365] KAN. STAT. ANN. § 58-3202 (1994).
[366] *Id.*
[367] *Id.* § 58·3204.
[368] *Id.*
[369] KY. REV. STAT. ANN. § 41 1. 190(1)(b) (Michie/Bobbs-Merrill l992 Supp. 1998).
[370] *Id.* § 411.190(l)(a).
[371] *Id.* § 411.190(1)(c).
[372] *Id.* §41l.190(3)&(4).

The statute, however, does not limit liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, nor is liability limited for injury suffered in cases where the owner charges the person or persons who enter or go on land for recreational use.[373] No duty of care or ground for liability for injury to persons is created, and any person using land of another for recreational purposes is relieved from any obligation to exercise care in the use and activities on land, or from the legal consequences for a failure to employ care.[374]

Louisiana

In Louisiana those who may utilize the recreational users statute are possessors of a fee interest, a tenant, lessee, occupant, or person in control of the premises.[375] The areas covered by the statute include land, roads, water, watercourses, private ways, and buildings, structures, and machinery and equipment attached to the realty.[376] Recreational purposes include, but are not limited to, hunting, fishing, trapping, swimming, boating, camping, picnicking, hiking, horseback riding, bicycle riding, motorized vehicle operation for recreational purposes, nature study, water skiing, ice skating, sledding, snowmobiling, snow skiing, summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[377]

The limitation of liability applies to lands or water bottoms owned, leased, or managed by the Louisiana Department of Wildlife and Fisheries, regardless of whether they are used for recreational or nonrecreational purposes. it also applies to any lands owned, leased, or managed as a public park by the state or it's subdivisions if it is used for recreational purposes. However, these lands do not include buildings, structures, machinery, or equipment regardless of whether attached to the realty, and the limitation of liability does not apply to defective playground equipment, nor intentional or grossly negligent acts by public employees.[378]

A landowner is granted immunity from tort liability for injuries sustained during recreational use of property when property where the injury occurred is rural or semi-rural and injury-causing instrumentality is of type generally found in the "true outdoors." *(Buras v. United Gas Pipeline Co.)*[379]

In order to utilize this statute, the property must be used primarily for recreational purposes.[380]

The Louisiana statute states that an owner, lessee, or occupant of premises owes no duty of care to keep the premises safe for entry or use by others for hunting, fishing, camping, hiking, sightseeing, or boating, or to give warning of any hazardous conditions, use of, structure, or activities to persons entering for those purposes. Permission to enter for recreational purposes does not create any assurance that the premises are safe, creates no

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[373] *Id.* § 841l.190(6)(a) & (b).
[374] *Id.§* 411.190(7)(a)&(b).
[375] LA. REV. STAT. ANN. § 9:2795 A (2) (West 1991 & Supp. 1998).
[376] *Id.* § 9:2795 A (2).
[377] *Id.* § 9:2795 A (3).
[378] § 9:2795 E (1) & (2)(a)-(d).
[379] 598 So.2d 397 (1992).
[380] LA. REV. STAT. ANN. § 9:2791 (West 1991).

duty of care, and does not create an assumption of responsibility or liability.[381] No liability is excluded for deliberate, willful, or malicious injures to persons or property.[382]

Maine

The Maine statute applies to an owner, lessee, manager, holder of an easement, or occupant of premises.[383] The areas covered under this section are both improved and unimproved lands, private ways, buildings, structures, and waters standing on, flowing through, or adjacent to those lands.[384]

The owner is protected when recreational or harvesting activities are conducted on the land. Recreational or harvesting activities are recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, environmental education and research, hiking, sightseeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming, or activities that involve harvesting or gathering forest, field, or marine products. The terms include entry of, volunteer, maintenance and improvement of, use of, and passage over premises in order to pursue these activities. Recreational or harvesting activities does not include commercial agricultural or timber harvesting.[385]

An owner, lessee, manager, holder of an easement, or occupant of the premises has no duty to keep the premises safe for entry or use by other~ for recreational or harvesting activities, or to give warning of any hazardous condition, use, structure, or activity on the premises. This applies whether or not permission has been granted to pursue recreational or harvesting activities on the premises.[386]

An owner, lessee, or occupant who gives permission to another to pursue recreational or harvesting activities on the premises does not: (1) extend any assurance that the premises are safe for those purposes; (2) make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; nor (3) assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.[387] An owner's liability is not limited for any of the following: (1) a willful or malicious failure to guard or to warn against a dangerous condition, use, structure, or activity; (2) an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid tv the landowner by the state;[388] or (3) for an injury caused by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.[389]

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[381] *Id.* § 9:2791 A.
[382] § 9:2791 B.
[383] ME. REV. STAT. ANN. tit. 14, § 159-A.2. (West 1980 & Supp.l998).
[384] *Id.*
[385] *Id.* § 159-A.1.B.
[386] *Id.* § 159-A.2.
[387] *Id.* § 159-A.3 A.-C..
[388] *Id.* § 159-A.4.A & B.
[389] *Id.* § 159-A.4.C.

The Maine statute requires a court to award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee, manager, or occupant who is found not to be liable for injury to a person or property pursuant to the recreational use statute.[390]

Maryland

The Mary land statute protects all owners of land. The term owner includes the possessor of a fee interest, tenant, lessee, or person who possesses the premises.[391] Areas protected include land, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to the realty.[392]

An owner of land owes no duty of care to keep the premises safe for entry or use by others for any recreational or educational purpose, or to give any warning of a dangerous condition, use, structure, or activity on the premises to any person who enters on the land for recreational or educational purposes.[393] Recreational purposes include hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, horseback riding or horse driving, operating motorized recreational vehicles, jogging, marathon racing, hang-gliding, hot air ballooning, operating light airplanes and other forms of recreational aircraft, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[394] Educational purposes include nature study; farm visitations for learning about the farming operation, practice judging of livestock, dairy cattle, poultry, other animals, agronomy crops, horticultural crops, or other farm products; organized visits to farms by school children, 4-H clubs, FFA clubs, and others as part of their educational programs; organized visits for purposes of participating in or observing historical enactments as part of an educational or cultural program; and viewing historical, archeological, or scientific sites.[395]

An owner of land who either directly or indirectly invites or permits, without charge, persons to use the property for a recreational or educational purpose or to cut firewood for personal use does not by this action: (1) extend any assurance that the premises are safe for any purpose; (2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability as a result of any injury to the person or property caused by an act or omission of the person.[396]

The provisions of this subtitle do not limit in any way any liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or for injury suffered where the owner of the land charges the person who enters or goes on the land for recreational or educational use.[397]

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[390] *Id.* § 159-A.6.
[391] MD. NAT. REs. CODE ANN. Ch. 215, § 5-1101 (1989 & Supp. 1998).
[392] *Id.*
[393] *Id.* § 5-1103.
[394] *Id.*
[395] *Id.* § 5-1101 (c)(I)-(b).
[396] *Id.* § 5-1104.
[397] *Id.* § 5-1106.

Massachusetts

In Massachusetts, an owner of land who permits the public to use the land for recreational purposes without any charge or fee, will not be liable to any member of the public who uses the land for injuries to persons or property sustained while on the land in the absence of willful, wanton, or reckless conduct by the owner. Permission to use the land is not deemed to confer upon any person using the land the status of an invitee or licensee to whom any duty would be owed by the owner.[398]

Michigan

A cause of action will not arise against an owner, tenant, or lessee of property for an injury to a person who is on that property with oral or written consent, so long as the user has not paid valuable consideration for the recreational or trapping use of the property, unless the injury was caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.[399]

In addition, a cause of action will not arise against the owner, tenant, or lessee of property for an injury to a person who is on that property with oral or written consent, and has paid valuable consideration for fishing, trapping, or hunting on that property, unless the injuries were caused by a condition that involved an unreasonable risk of harm and all of the following apply: (a) the owner, tenant, or lessee knew or had reason to know of the condition or risk; (b) the owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk; and, (c) the person injured did not know or did not have reason to know of the condition or risk.[400]

Minnesota

An owner of land in Minnesota is a possessor of a fee interest or a life estate, a tenant, lessee, occupant, or person in control of the land.[401] Land is defined as privately owned or leased land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the land.[402]

Recreational purposes include, but are not limited to hunting, trapping, fishing, swimming, boating, camping, picnicking, hiking, bicycling, horseback riding, firewood gathering, pleasure driving, which includes snowmobiling and the operation of any motorized vehicle or conveyance upon a road or upon or across land in any manner, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites. Recreational trail use is also covered by the statute, and it means any use on or about a trail, including hunting, trapping, fishing, hiking, bicycling, skiing, horseback riding, snowmobile riding, and motorized trail riding.[403]

An owner: (1) owes no duty of care to render or maintain the land safe for entry or use by other persons for recreational purposes; (2) owes no duty to warn those persons of any

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[398] MASS. GEN. LAWS ANN. ch. 21, § 17C (West 1994).
[399] MICH. COMP. LAWS ANN. § 324.73107 (West 1996).
[400] *Id.*
[401] MINN. STAT. ANN. § 604A.21 (West Supp.1995).
[402] *Id.*
[403] *Id.*

dangerous condition on the land; (3) owes no duty of care toward those persons except to refrain from willfully taking action to cause injury; and, (4) owes no duty to curtail use of the land when it is being utilized for recreational purposes.[404] An owner who either directly or indirectly invites or permits without charge any person to use the land for recreational purposes does not thereby: (1) extend any assurance that the land is safe for any purpose; (2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or, (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of the person.[405]

An owner's liability is not limited for conduct which, at law, entitles a trespasser to maintain an action and obtain relief for the conduct complained of, or for injury suffered in any case where the owner charges the persons who enter or go on the land for the recreational purposes. However, if entry upon the land is incidental to or arises from access granted for the recreational trail use of land dedicated, leased, or permitted by the owners for recreational trail use, a trespasser may not maintain an action.[406]

Mississippi

A landowner is any legal titleholder or owner of land or premises. The term also includes any lessee, occupant, or any other person in control of the land or premises.[407]

Land or premises includes all real property, waters, and private ways, and all trees, buildings, and structures on the real property, waters, and private ways.[408] A landowner: (1) owes no duty of care to keep land or premises safe for entry or use by others for hunting, fishing, trapping, camping, water sports, hiking, or sightseeing; and (2) is not required to give any warning to any person entering on land or premises for those purposes as to any hazardous conditions or uses of, or hazardous structures or activities, on such land or premises.[409]

Any landowner who gives permission to another person to hunt, fish, trap, camp, hike, or sightsee upon land or premises does not, by the sole act of giving such permission, extend any assurance that the premises are safe for those purposes; cause the person to whom permission has been granted to be constituted the legal status of an invitee to whom a duty of care is owed; or assume responsibility or liability for any injury to that person or his property caused by any act of a person to whom permission has been granted. [410]

An owner's liability is not limited for: (1) willful or malicious failure to guard or warn against a hazardous condition, use, structure, or activity; (2) injuries suffered in any case where permission to hunt, fish, trap, camp, hike, sightsee, or engage in any other lawful activity was granted for a consideration, other than the consideration, if any, paid to the landowner by the State of Mississippi, the federal government, or any other governmental agency; or (3) injuries to third persons or to persons to whom the landowner owed a duty to

[404] *Id* § 604A.22.
[405] *Id* § 604A.23.
[406] *Id* § 604A.25.
[407] MISS. CODE ANN. § 89-2-21 (1991).
[408] *Id*
[409] *Id* § 89-2-23.
[410] *Id* § 89-2-25.

keep the land or premises safe or to warn of danger, and the injuries were caused by acts of persons to whom permission to hunt, fish, camp, hike, sightsee, or engage in any other lawful activity was granted.[411]

Missouri

An owner in Missouri is any individual, legal entity, or governmental agency that has any ownership or security interest or lease or right of possession in land.[412] Land includes all real property, land and water, and all structures, fixtures, and equipment and machinery attached.[413]

Recreational uses include hunting, fishing, camping, picnicking, biking, nature study, winter sports, viewing or enjoying archaeological or scenic sites, or other similar activities undertaken for recreation, exercise, education, relaxation, or pleasure on land owned by another.[414]

An owner of land owes no duty of care to any person that enters on the land, without charge, to keep his land safe for recreational purposes or to give any general or specific warning with respect to any natural or artificial condition, structure, or personal property.[415] The landowner does not give assurances, confer any status, or assume responsibility for a user's acts.[416]

However, an owner's liability is not limited if any of the following occur:

- a malicious or grossly negligent failure to guard or warn against a dangerous condition, structure, or personal property which the owner knew or should have known to be dangerous, or negligent failure to guard or warn against an ultrahazardous condition which the owner knew or should have known to be dangerous
- injury suffered by a person who has paid a charge for entry to the land
- Injuries occurring on or In:
    - any land within the corporate boundaries of any city, municipality, town, or village in this state
    - any swimming pool, which includes any pool or tank, especially an artificial pool or tank, intended and adapted for swimming and held out as a swimming pool
    - any residential area, which is a tract of land of one acre or less predominantly used for residential purposes, or a tract of land of any size used for multifamily residential services
    - any noncovered land, which means any portion of any land, the surface of which portion is actually used primarily for commercial, industrial, mining, or manufacturing purposes; provided, however, that use of any portion of any land primarily for agricultural, grazing, forestry, conservation, natural area, owner recreation, or similar or related uses or purposes will not under any

[411] *Id.* § 89-2-27.
[412] Mo. ANN. STAT. § 537.345 (Vernon 1988).
[413] *Id*
[414] *Id*
[415] *Id* § 537.346.
[416] *Id* § 537.347.

circumstances be deemed to be use for commercial, industrial, mining, or manufacturing purposes.[417]

Montana

A person who makes recreational use of any property in the possession or control of another receives no assurance from the landowner, his agent, or his tenant that the property is safe for any purpose, whether or not the person received permission, so long as valuable consideration was not given in exchange for use of the property. A landowner, tenant, or his agent owes no duty of care to a recreational user with respect to the condition of the property. However, liability does exist for any injury to persons or property for an act or omission unless it constitutes willful or wanton misconduct. The term landowner means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property. Property means land, roads, water, watercourses, and private ways, and includes any improvements, buildings, structures, machinery, and equipment on property.[418] Recreational purposes are hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions.[419]

Montana has another statute which protects landowners, agents, and tenants who allow persons to make recreational use of surface waters flowing over or through their land, or land while portaging around or over barriers or while portaging or using portage routes from liability. The landowner, his agent, or tenant will be liable only for an act or omission that constitutes willful or wanton misconduct.[420] The recreational use of surface waters includes fishing, hunting, swimming, floating in small craft or other floatation devices, boating in motorized craft, unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.[421]

Nebraska

In Nebraska, an owner includes tenants, lessees, occupants, and persons in control of the premises.[422] The land covered by the statute includes roads, water, watercourses, private ways and buildings, structures, and machinery or equipment attached to the realty.[423] Recreational purposes are hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and visiting, viewing, or enjoying

[417] *Id* § 537.348.
[418] MONT. CODE Al'.'N. § 70-16-302 (1993).
[419] *Id* § 70-16-301.
[420] *Id* § 23-2-*321.*
[421] *Id § 23-2-301.*
[422] NEB. REV. STAT. § 37-1008 (1993).
[423] *Id*

historical, archaeological, scenic, or scientific sites, or otherwise using land for purposes of the user.[424]

An owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes.[425] An owner of land who either directly or indirectly invites or permits, without charge, any person to use property for recreational purposes does not: (1) extend any assurance that the premises are safe for any purpose; (2) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or, (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.[426] Additionally, an owner of land leased to the state for recreational purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon such land of any hazardous conditions, uses, structures, or activities. An owner who leases land to the state for recreational purposes does not (1) extend any assurance to any person using the land that the premises are safe for any purpose; (2) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or, (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser, or otherwise.[427]

An owner's liability is in no way limited for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, or for injury suffered in any case where the owner of land, charges the person or persons who enter or go on the land. Rental paid by a group, organization, corporation, or the state or federal government is not deemed a charge made by the owner of the land.[428]

Nevada

An owner, lessee, or occupant owes no duty to keep the premises safe or to give warning of a hazardous condition, activity, or use, of any structure.[429] Recreational purposes include hunting, fishing, trapping, camping, hiking, picnicking, sightseeing, viewing, or enjoying archeological, scenic, natural, or scientific sites, hang gliding, para-gliding, spelunking, collecting rocks, participation in winter sports, including riding a snowmobile, or water sports, riding animals or in vehicles, studying nature, gleaning, recreational gardening, and crossing over to public land or land dedicated for public use.[430]

If an owner, lessee, or occupant gives permission for recreational purposes, no assurance is made that tile premise is safe for the purpose, nor does the permission grant the legal status of invitee, and no assumption of responsibility or incurrence of liability for injuries to persons or property caused by the recreational user. However, liability is not limited for

[424] *Id*
[425] *Id.* § 37-1002.
[426] *Id* § 37-1003.
[427] *Id* § 37-1004.
[428] *Id* § 37-1005.
[429] NEV. REV. STAT. ANN. § 41.510 (1991).
[430] *Id*

willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, for injury suffered where permission was granted for a consideration, nor for injury caused by acts of persons to others who were granted permission.[431]

New Hampshire

In New Hampshire, owners, lessees, or occupants of premises owe no duty of care to keep the premises safe for entry or use by others for hunting, fishing, trapping, camping, water sports, winter sports, hiking, sightseeing, the use of off highway recreational vehicles,[432] or the removal of fuel wood, or to give any warning of hazardous conditions, uses, structures, or activities on the premises to persons entering for recreational purposes.[433]

The liability limitation does not give assurances, create an invitee status, or cover injuries caused by users. However, the liability limitations do not apply to malicious acts, where consideration has been received, or if the owner owed a duty of care.[434]

New Jersey

The New Jersey recreational use statute applies to an owner, lessee, or occupant of premises.[435] However, immunity does not extend to owners or occupiers of land situated in residential and populated neighborhoods. Instead, the limitation of liability is intended for undeveloped, open, and expansive rural and semirural properties.[436] Owners of agricultural and horticultural lands are included in the state.[437]

Sport and recreational activities include hunting, fishing, trapping, horseback riding, training of dogs, hiking, camping, picnicking, swimming, skating, skiing, sledding, tobogganing, operating or riding snowmobiles, all-terrain vehicles, or dirt bikes, and any other outdoor sport, game, and recreational activity, including practice and instruction.[438]

An owner, lessee, or occupant of premises owes no duty to keep the premises safe for entry or use by others for sport or recreational activities or to give warning of any hazardous condition of the land. In addition, no responsibility or liability is incurred for any injuries caused by recreational users.[439] No assurances are given that the premises are safe, nor does permission create the legal status of an invitee.[440] The statute should be liberally construed by the courts.[441]

Liability is not limited when it would otherwise exist for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; for injury suffered when permission to use the premises was granted for consideration; or for injury caused by

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[431] *Id*
[432] N.H. REV. STAT. ANN. § 215-A:l (Supp.1994).
[433] *Id* § 212:34.
[434] *Id*
[435] N.J. STAT. ANN. § 2A:42A-3 (West 1987 & Supp.1995).
[436] *Labree v. Millville Mfg., Inc*., 195 N.J. Super. 575, 481 A2d 286 (A.D. 1984).
[437] N.J. STAT. ANN. § 2A:42A-6 (West 1987 & Supp.l995).
[438] *Id* § 2A:42A-2.
[439] *Id* § 2A:42A-3.
[440] *Id*
[441] *Id §* 2A:42A-5.1.

acts of persons who have received permission from other persons which the owner, lessee, or occupant owes a duty.[442]

New Mexico

In New Mexico, any owner, lessee, or person in control of lands who, without charge or other consideration, grants permission to any person or group to use lands for hunting, fishing, trapping, camping, hiking, sightseeing, or any other recreational use, does not:

- extend any assurance that the premises are safe for each purpose
- assume any duty of care to keep the lands safe for entry or use
- assume responsibility or liability for any injury or damage to, or caused by, any person or group
- assume any greater responsibility, duty of care, or liability to any person or group, than if the permission had not been granted and the person or group was a trespasser.

However, the liability of any landowner, lessee, or person in control of lands will not be limited, when it may otherwise exist by law, for injuries to any person granted permission for recreational uses in exchange for consideration.[443]

New York

The New York statute applies to owners, lessees, and occupants of premises.[444]Recreational activities include hunting, fishing, organized gleaning, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, speleological activities, horseback riding, bicycle riding, hang gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for noncommercial purposes, or training of dogs. The owner, lessee, or occupant owes no duty to keep the premises safe, nor to give warning of any hazardous condition on the premises. However, liability is not limited if it would otherwise exist for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure, or activity; for injury suffered in any case where permission to pursue any of the recreational activities was granted for a consideration; for injury caused, by acts of persons to whom permission to pursue any of the recreational activities was granted, to other persons as to whom the person granting permission, or the owner, lessee, or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.[445]

North Carolina

In North Carolina, owners, lessees, occupants, or persons otherwise in control of land, owe the same duty of care owed to a trespasser if, without compensation, they allow another person to use the land for trail purposes.[446]

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[442] *Id* § 2A:42A-4.
[443] N.M. STAT. ANN. § 17-4-7 (Michie 1995).
[444] N.Y. GEN. OSLIG. LAW § 9-103 (McKinney 1989).
[445] *Id.*
[446] N.C. GEN. STAT. § I13A-95 (1994).

North Dakota

The North Dakota recreational use statute defines owner as tenant, lessee, occupant, or person in control of the premises.[447] Land includes roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.[448] Recreational purposes includes any activity engaged in for the purpose of exercise, relaxation, pleasure, or education.[449]

An owner has no duty to keep the premises safe or to warn of dangerous conditions.[450] The owner gives no assurances that the premises are safe; does not confer the legal status of invitee; nor does the owner assume responsibility for a user's acts or omissions.[451] Liability is not limited if there is a willful or malicious failure to warn of a dangerous condition, use, structure, or activity, or if the owner charges the user for permission to enter the premises.[452]

Ohio

An owner, lessee, or occupant can invoke the use of the Ohio statute.[453] Premises are privately owned lands, ways, waters, and any buildings and structures thereon, and all state owned lands, ways, and waters leased to a private person, firm, organization, or corporation, including all buildings and structures.[454] Recreational uses include hunting, fishing, trapping, camping, hiking, swimming, or engaging in other recreational pursuits.[455]

Owners, lessees, or occupants of premises owe no duty to recreational users to keep the premises safe for entry or use; extend no assurances to recreational users through the act of giving permission that the premises are safe for entry or use; nor do they assume responsibility for or incur liability for any injury to person or property caused by any act of a recreational user.[456]

Oklahoma

The Oklahoma recreational use statute states that owners of land used primarily for agricultural or ranching activities do not owe a duty of care to keep the premises safe for entry or use of recreational purposes. In addition, the owners owe no duty to warn of dangerous conditions, uses, structures, or activities on the land.[457]

An owner is defined to include possessors of a fee interest, tenants, lessees, occupants, or persons in control of the premises.[458] The premises encompassed by the statute include land used primarily for farming or ranching activities, roads, water, watercourses, private ways and

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[447] N.D. CENT. CODE § 53-08-01 (1989 & Supp.1995).
[448] *Id.*
[449] *Id.*
[450] *Id* § 53-08-02.
[451] *Id* § 53-08-03.
[452] *Id.* § 53-08-05.
[453] OHIO REV. CODE ANN. § 1533.181 (Anderson 1995).
[454] *Id.* § 1533.18.
[455] *Id*
[456] *Id* § 1533.181.
[457] OKLA. STAT. ANN. tit. 76, § 11 (West 1995).
[458] *Id* § 10(b).

buildings, structures, and machinery or equipment when attached to realty which is used primarily for farming or ranching activities.[459]

Recreational purposes are hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites.[460]

Owners of land used primarily for farming and ranching activities who directly or indirectly invite or permit without charge any person to use the property for recreational purposes do not:

- extend any assurance that the premises are safe for any purpose
- confer upon the user the legal status of invitee or licensee
- assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a user.[461]

However, liability is not limited if it otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, or for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for recreational purposes.[462]

Finally, in Oklahoma, an owner, lessee, or occupant of agricultural land does not owe a duty of care to a trespasser and is not liable for any injury suffered to a trespasser, except for willful or wanton acts of negligence or grossly negligent acts by the owner, lessee, or occupant.[463] Agricultural land is any real property that is used in the production of plants, fruits, wood, or farm or ranch animals to be sold off the premises.[464]

Oregon

The Oregon recreational use statute states that an owner of land is not liable in contract or tort for any personal injury, death, or property damage that arises out of the use of the land for recreational purposes, woodcutting, or the harvest of special forest products when the owner either directly or indirectly permits any person to use the land for those purposes. The liability limitation applies to all activities associated with those uses so long as the principal purpose for entry is for recreational purposes, woodcutting, or the harvest of special forest products. However, liability is not limited for intentional injuries or damages.[465]

An owner is defined as the possessor of any interest in any land and includes a tenant, lessee, occupant, or other person in possession of the land. Land includes all real property, whether publicly or privately owned. Recreational purposes include, but are not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, water skiing, winter sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, or volunteering for any public purpose project.[466]

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[459] *Id.* § 10(a).
[460] *Id* § 10(e).
[461] *Id* § 12.
[462] *Id* § 14.
[463] *Id* 15.l(a.)(l)(2).
[464] *Id* § 15.1(B).
[465] § 105.682
[466] § 105.672

The limitation on liability applies to all public and private lands including, but not limited to, lands adjacent or contiguous to any bodies of water, watercourses, or the ocean shore; all roads, bodies of water, watercourses, rights of way, buildings, fixtures, and structures on those lands; and all machinery or equipment on the lands. However, the liability limitation only applies when the owner does not charge for permission to use the land, or if the owner charges no more than $20 per cord for permission to use the land for woodcutting.[467]

Permission to use land for recreational purposes does not create a right for continued use of the land without consent of the owner. Neither does it allow the public to use the land without posting, fencing, or other restrictions which raise a presumption that the landowner intended to dedicate or otherwise give over to the public the right to continued use of the land.[468]

Finally, no duty of care or basis of liability for personal injury, death, or property damage is created by the statute. In addition, the statute does not relieve the person using another's land for recreational purposes, woodcutting, or the harvest of special forest products, of any obligation that the person has to exercise care in use of the land or from resulting legal consequences.[469]

Pennsylvania

In Pennsylvania, an owner of land owes no duty of care to keep the premises safe for entry or recreational use by others, nor to give any warning of a dangerous condition, use, structure, or activity on the premises.[470]

An owner means the possessor of a fee interest, a tenant, a lessee, an occupant, or a person in control of the premises.[471] Land includes all land, roads, water, watercourses, private ways and buildings, structures and machinery or equipment when attached to the realty.[472] Recreational purposes include hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, cave exploration, and viewing or enjoying historical, archeological, scenic, or scientific sites.[473]

An owner of land in Pennsylvania, who either directly or indirectly invites or permits any person to use the property for recreational purposes without charge, does not give any assurances that the premises are safe for any purpose, confer the legal status of invitee or licensee on the user, or assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of the user. [474]However, liability is not limited for a willful or malicious failure to guard or warn against a dangerous condition, use, structure, or

[467] § 105.688
[468] § 105.692
[469] § 105.696
[470] PA. STAT. ANN. tit 68, § 477-3 (1994).
[471] *Id.* § 477-2.
[472] *Id.*
[473] *Id.*
[474] *Id.* § 477-4.

activity; nor is it limited for an injury suffered in any case where the owner charges the person for the recreational use of the land.[475]

Rhode Island

In Rhode Island, when an owner of land directly or indirectly invites or permits a person to use his land without charge for recreational purposes, then the landowner is protected from any assumption of responsibility or incurrence of liability for the user's injuries.[476] By allowing recreational use, the owner does not extend any assurance that the premises are safe for any purpose, nor does he confer the legal status of invitee or licensee or assume liability or responsibility for injury to any person or property caused by a user's act or omission.[477]

An owner is defined as the possessor of a fee interest, tenant, lessee, occupant, or person in control of the premises.[478] The term "premises" includes land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.[479] Recreational uses include hunting, fishing, swimming, boating, camping, picnicking, hiking, horseback riding, bicycling, pleasure driving, nature study, water skiing, water sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[480]

In Rhode Island, an owner who wants to make his property available for recreational purposes must first offer permission to the public to use the land for specified recreational purposes through a letter sent by certified or registered mail to the Director of the Department of Environmental Management.[481] The letter must contain the following:

- a statement of the owner's interest in the land
- a description of the land subject to the recreational use
- a statement of the specific recreational purposes for which the permission is granted
- the owner's signature.

The offer will be accepted or rejected within 60 days, during which time the Department will inspect the property for dangerous or perilous conditions.[482]

South Carolina

In South Carolina, an owner of land owes no duty of care to keep the premises safe or to give any warning of any dangerous condition, use, structures, or activity for persons who have sought and obtained his permission to use it for recreational purposes.[483]

The statute defines an owner as the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.[484] Land is defined as land, water,

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[475] *Id.* § 477-6.
[476] R.I. GEN. LAWS § 32-6-3 (1994).
[477] *Id.*
[478] *Id.*
[479] *Id.* § 32-6-2.
[480] *Id.*
[481] *Id.* at § 32-6-7.
[482] *Id.*
[483] S.C. CODE ANN. § 27-3-30 (Law. Co-op. 1991).
[484] *Id.* § 27-3-20.

watercourses, private ways and buildings, structures, and machinery or equipment when attached to realty.[485] Recreational activities include hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[486]

An owner of land who permits, without charge, any person to use property for recreational purposes does not:

- extend any assurance that the premises are safe for any purpose
- confer the legal status of an invitee or licensee
- assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a recreational user.[487]

However, South Carolina does not provide immunity for grossly negligent, willful, or malicious failures to warn or guard against a dangerous condition, use, structure, or activity. In addition, liability is not limited for injury suffered where the owner of land charges persons for the recreational use of the land.[488]

South Dakota

In South Dakota, owners of land owe no duty of care to keep the land safe for entry or use by others for outdoor recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the land to persons entering for outdoor recreational purposes.[489]

An owner is any possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.[490] The term land is defined as land, trails, water, watercourses, private ways and agricultural structures, and machinery or equipment if attached to the realty. [491]

Outdoor recreational purposes include hunting, fishing, swimming other than in a swimming pool, boating, canoeing, camping, picnicking, hiking, biking, off road driving, nature study, water skiing, winter sports, snowmobiling, and viewing or enjoying historical, archaeological, scenic or scientific sites.[492]

As a result of directly or indirectly inviting or permitting a person to use property for recreational purposes without a charge, an owner does not extend any assurance that the land is safe for any purpose, confer the legal status of invitee or licensee on any person, or assume responsibility or incur liability for injury to persons or property caused by an act or omission of the owner as to maintenance of the land.[493]

The recreational use statute does not, however, limit any liability which otherwise exists for gross negligence or willful or wanton misconduct of the owner; for injury suffered where the owner charges for the outdoor recreational use of the land; and for injury suffered in any

[485] *Id.*
[486] *Id.*
[487] *Id.* § 27-3-40.
[488] *Id.* § 27-3-60(a).
[489] S.D. CODIFIED LAWS ANN. § 20-9-13 (1995).
[490] *Id.* § 20-9-12.
[491] *Id.*
[492] *Id.*
[493] *Id.* § 20-9-14

case where the owner has violated a county or municipal ordinance or state law which proximately causes the injury.[494] Finally, South Dakota's recreational use statute does not in any way affect the attractive nuisance doctrine or any other legal doctrine related to liability arising from artificial conditions which are highly dangerous to children.[495]

Tennessee

Tennessee's recreational use statute provides that the landowner, lessee, occupant, or person in control of the premises owes no duty to keep the land safe for entry or recreational use, nor is the owner required to warn of hazardous conditions, uses, structures, or activities on the premises.[496]

The term landowner means the legal title holder or owner of the premises, the person entitled to immediate possession, and any lessee, occupant, or other person in control of the land as well as any governmental entity.[497]

Land or premises is defined as all real property, waters, private ways, trees, any building or structure which might be located on real property, waters, and private ways, and those owned by any governmental entity.[498]

The Tennessee statute specifically excludes the landowner's principal place of residence and any improvements erected for recreational purposes that immediately surround the residence, including swimming pools, tennis or badminton courts, barbecue or horse shoe pits, Jacuzzis, hot tubs, or saunas from the definition of land or premises.[499]

Recreational activities include hunting, fishing, trapping, camping, water sports, white water rafting, canoeing, hiking, sightseeing, animal riding, bird watching, dog training, boating, caving, fruit and vegetable picking for the participant's own use, nature and historical studies and research, rock climbing, skeet and trap shooting, skiing, off-road vehicle riding, and cutting or removing wood for the participant's own use.[500]

By giving permission to anyone for recreational use of the land, the landowner, lessee, occupant, person in control, or agent does not extend any assurance that the premises are safe for the purpose, constitute the user to the legal status of an invitee, or assume responsibility or incur liability for injuries to the user or caused by the user. [501]

However, liability will not be limited in the following instances:

- for gross negligence, willful, or wanton conduct which results in a failure to guard or warn against a dangerous condition, use, structure, or activity
- for injuries suffered where permission for recreational use was granted for a consideration

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[494] *Id.*§20-9-16.
[495] *Id.* § 20-9-18.
[496] TENN. CODE ANN. § 70-7-102 (1987 & Supp.1994).
[497] *Id.* § 70-7-101.
[498] *Id.*
[499] *Id.*
[500] *Id.* § 70-7-102.
[501] *Id.* § 70-7-103.

- for injury caused by acts of persons to whom permission for recreational use was granted to third persons or those which are owed a duty to keep the land or premises safe or to warn of danger by the person granting permission for recreational use.[502]

A written waiver of liability is available for any landowner who receives consideration for the use of land for camping, hunting, fishing, hiking, dog training, or cutting or removing firewood. Any person 18 years or older may waive in writing the landowner's duty of care for injuries resulting from these activities, provided that the waiver does not limit liability for gross negligence, willful or wanton conduct, or for a failure to warn against a dangerous condition, use, structure, or activity.[503]

Texas

The Texas statute provides that an owner, lessee, or occupant of agricultural land does not owe a duty of care to a trespasser on the land, and is not liable for any injury to the trespasser, except for willful or wanton acts of gross negligence.[504]

If an owner of agricultural land gives permission to another to enter the premises for recreation, the giving of permission does not assure that the premises are safe for that purpose, nor does the owner then owe to the user a greater degree of care than is owed a trespasser, or assume responsibility or incur liability for any injury to any individual or property caused by a user.[505] The same limitations apply to owners of real property which are not defined as agricultural land.[506] However, liability is not limited if an owner, lessee, or occupant has been grossly negligent or has acted with malicious intent or in bad faith.[507]

The Texas statute does not relieve an owner, lessee, or occupant of any liability that would otherwise exist for deliberate, willful, or malicious injury to a person or property.[508] The doctrine of attractive nuisance is not affected by the recreational use statute except that it may not be the basis of liability of an owner, lessee, or occupant of agricultural land for an injury to a trespasser over the age of 16 years.[509] In addition, the statute only applies to owners, except for governmental units, who do not charge for entry to the premises, or to those who charge for entry to the premises, but whose total charges collected in the previous calendar year for all recreational use of the entire premises are not more than twice the total amount of ad valorem taxes imposed on the premises for the previous calendar year, or four times the total amount of ad valorem taxes imposed on the premises for the previous calendar year in the case of agricultural land.[510] In addition, the statute applies to those who have sufficient liability insurance coverage.[511]

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[502] *Id.* § 70-7-104.
[503] *Id.* § 70-7-105.
[504] TEX. CIV. PRAC. & REM. CODE ANN. § *7S.002* (a)(1)&(2) (West 1986 & Supp.1998).
[505] *Id.* § 7S.002(b)(1)-(3).
[506] *Id.* § 7S.002(c)(1)-(3).
[507] *Id.* § 7S.002(d).
[508] *Id.* § 7S.003(a).
[509] *Id.* § 7S.003(b).
[510] *Id.* § *7S.003(2)(A)* & (B).
[511] *Id.* § *7S.003(3).*

Agricultural land is that which is suitable for use in production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed; forestry and the growing of trees for the purpose of lumber, fiber, or other items used for industrial, commercial, or personal consumption; or domestic or native farm or ranch animals kept for use or profit. [512]

Premises include land, roads, water, watercourse, private ways and buildings, structures, machinery, and equipment attached to or located on the land, road, water, watercourse, or private way.[513] Recreational activities are hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study (including bird watching), cave exploration, water skiing and other water sports, or any other activity associated with enjoying nature or the outdoors.[514]

The liability of an owner, lessee, or occupant of land for an act or omission by the owner, lessee, or occupant of land relating to the premises that results in damages to a person who has entered the premises is limited to a maximum amount of $500,000 for each person and $1 million for each single occurrence of bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property. However, this only applies to the landowner who has liability insurance coverage in effect for those acts or omissions with amounts equal to or greater than those amounts listed above.[515]

Utah

In Utah, an owner of land owes no duty of care to keep the premises safe for entry or use for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the premises.[516] An owner is defined as the possessor of any interest in public or private land, a tenant, a lessee, and an occupant or person in control of the premises.[517] The term land means any land within the state of Utah, and includes roads, water, water courses, private ways and buildings, structures, and machinery or equipment attached to the realty.[518]

Recreational purpose includes, but is not limited to, hunting, fishing, swimming, skiing, snowshoeing, camping, picnicking, hiking, studying nature, waterskiing, engaging in water sports, using boats, using off-highway vehicles or recreational vehicles, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[519]

An owner who, either directly or indirectly, invites or permits without charge, or for a nominal fee of not more than $1 per year any person to use the land for any recreational purpose does not:

- make any representation or extend any assurance that the premises are safe for any purpose

[512] *Id.* § *7S.001(1)(A)-(C).*
[513] *Id.* § *7S.001(2).*
[514] *Id.* § 75.001(3)(A)-(L).
[515] § 75.004(a)&(b).
[516] UTAH CODE ANN. § 57-14-3 (1994 & Supp 1998).
[517] *Id.* § 57-14-2(2).
[518] *Id.* § 57-14-2(1).
[519] *Id.* § 57-14-2(3).

- confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed
- assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of the person or any other person who enters upon the land
- owe any duty to curtail his use of his land during its use for recreational purposes.[520]

However, the limitation of liability does not extend to willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; deliberate, willful, or malicious injury to persons or property; nor an injury suffered where the owner of land charges a person to enter or go on the land or use the land for any recreational purpose.[521]

Finally, the scope of the Utah recreational use statute has been limited by case law. At least two decisions note that landowners cannot avail themselves of the protection of the statute if they have not made the property available to at least some members of the general public for recreational uses.[522]

Vermont

An owner in Vermont who gratuitously gives actual or implied permission to another to enter land for recreational purposes owes the invitee no greater duty than that owed a trespasser, except with acts of active negligence.[523] An owner is defined as the possessor of a fee in land, or an occupant or person in control of land.[524] Land is defined as "areas which are: (A) unposted, and (B) more than 500 feet from any residential or commercial building, and (C) outside of city limits."[525] Machinery and equipment attached to the land are included in the definition of land.[526]

A unique aspect of the Vermont statute is found in the definition of recreational activities. Recreational purposes are an individual's noncommercial activities on another person's land, and include hunting, fishing, trapping, hiking, gathering wildflowers or berries, birdwatching, horseback riding, picnicking, swimming, skiing, snowshoeing, and similar activities.[527]

Virginia

The Virginia statute provides that a landowner does not owe a duty of care to keep the land or premises safe for another's entry for recreational uses, nor is the landowner required to warn of hazardous conditions or uses of, structures on, or activities on the land or premises.[528] Land or premises is real property, whether rural or urban, waters, boats, private ways, natural growth, trees, and any building or structure located on the realty.[529]

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[520] *Id.* § 57-14-4(1)-(4).
[521] *Id.* § 57-14-6(l)(a)-(c).
[522] *See generally, Crawford v. Tilley*, 780 P.2d 1248 (Utah 1989) *and Golding v Ashley Cent. Irrigation Co.*, 793 P.2d 897 (Utah 1990).
[523] VT. STAT. ANN. tit. 10, § 5212 (1993).
[524] *Id.*
[525] *Id.*
[526] *Id.*
[527] *Id.*
[528] VA. CODE ANN. § 29.1-509 B. (Michie Supp.1995).
[529] *Id.* § 29.1-509 A.

The term landowner includes legal title holders, lessees, occupants, or any other person in control of the land or premises.[530] Recreational activities are hunting, fishing, trapping, camping, participation in water sports, boating, hiking, rock climbing, sightseeing, hang gliding, skydiving, horseback riding, foxhunting, racing, bicycle riding, collecting, gathering, cutting, or removing firewood, or any other recreational use, or for use of an easement granted to Virginia to permit public access to a public park, historic site, or other public recreational area.[531] A landowner who gives permission to another person to use property for recreational uses does not represent that the premises are safe for the use, constitute the status of invitee on the user, or assume responsibility for or incur liability for any intentional or negligent acts of the user.[532] However, liability which would otherwise exist is not limited in the case of gross negligence, willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, or when the landowner receives a fee for recreational use of the premises.[533] An owner may make incidental sales of forest products to an individual for their personal use without this payment constituting a charge or fee and thus depriving the landowner of the statute's provision of immunity.[534]

Finally, if a landowner allows any recreational use in cooperation with Virginia or any political subdivision of the commonwealth, the government shall hold the landowner harmless and pay all legal fees should a user file a legal claim against the landowner.[535]

Washington

The Washington statute grants landowners immunity from liability for unintentional injuries suffered by those using their land for outdoor recreation, if the use has been permitted without a charge of any kind.[536] This immunity is granted to all public or private landowners and others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and adjacent lands.[537]

Outdoor recreation includes, but is not limited to: the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner; hunting; fishing; camping; picnicking; swimming; hiking; bicycling; skateboarding or other nonmotorized wheel-based activities; hang-gliding; paragliding; the riding of horses or other animals; clam digging; pleasure driving of off-road vehicles; snowmobiles; and other vehicles; boating; nature study; winter or water sports; and viewing or enjoying historical, archaeological, scenic, or scientific sites.[538] In addition, the statute gives liability protection for unintentional injuries to landowners who allow the land to be used for purposes of a fish or wildlife cooperative project, or allow access to the land for cleanup of

[530] *Id.*
[531] *Id.* § 29.1-509 B.
[532] *Id.* § 29.1-509 C.l. & 2.
[533] *Id.* § 29.1-509C.
[534] *Id.* § 29.1-509 A.
[535] *Id.* § 29.1-509 E.
[536] WASH. REV. CODE ANN. § 4.24.210(1) (West 1988 & Supp.1998).
[537] *Id.* § 4.24.210(2).
[538] *Id.* § 4.24.210(1).

litter or other solid waste by volunteer groups or other users.[539] Finally, a landowner may charge a $25.00 administrative fee for wood harvesting without losing immunity.[540]

West Virginia

In West Virginia, an owner of land has no duty to keep the premises safe for entry or use by others for recreational or wildlife propagation purposes.[541] The owner is also not required to give any warning of a dangerous or hazardous condition, use, structure, or activity on those premises.[542]

Recreational purposes include hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites, or otherwise using the land for purposes of the user.[543]

An owner of land who indirectly or directly invites or permits, without charge, any person to use the property for recreational or wildlife propagation purposes, does not extend any assurance that the premises are safe for any purpose, confer the legal status of an invitee or licensee to whom a duty ofa care is owed, or assume responsibility for or incur liability for any injury to person or property caused by an act or omission of the user.[544]

However, liability that otherwise exists is not limited for deliberate willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure, or activity, or for injury suffered in any case where the owner of land charges those who enter the land.[545]

Wisconsin

The Wisconsin statute provides that no owner and no officer, employee, or agent of an owner is liable for any death or injury caused by a person engaging in a recreational activity on the owner's property or for any death or injury resulting from an attack by a wild animal.[546] An owner also has no duty to inspect the property, keep it safe for recreational purposes, nor to give warning of any unsafe conditions, uses, or activities on the property.[547]

An owner is defined as a person, including a governmental body or nonprofit organization, that owns, leases, or occupies property, and includes a governmental body or nonprofit organization that has a recreational agreement with another owner.[548] Property means all real property and buildings, structures, and attached improvements, and also includes waters of the state.[549]

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[539] *Id.* § 4.24.210(2).
[540] *Id.* § 4.24.210(3).
[541] W.VA. CODE § 19-25-2 (1993 & Supp.1998).
[542] *Id.*
[543] *Id.* § 19-25-5.
[544] *Id.* § 19-25-2.
[545] *Id.* § 19-25-4(a)&(b).
[546] WIS. STAT. ANN. § 895.52(2) (West Supp.1998).
[547] *Id.*
[548] *Id.* § 895.52(1)(d).
[549] *Id.* § 895.52(1*)(f).*

Recreational activity is any outdoor activity undertaken for the purpose of exercise, relaxation or pleasure, including practice or instruction in any such activity.[550] The term includes hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, bird-watching, motorcycling, operating an all-terrain vehicle, ballooning, hang gliding, hiking, tobogganing, sledding, sleigh riding, snowmobiling, skiing, skating, water sports, sight-seeing, rock-climbing, cutting or removing wood, climbing observation towers, animal training, harvesting the products of nature and any other outdoor sport, game, or educational activity.[551] However, recreational activity does not include any organized team sport activity sponsored by the owner of the property where activity takes place.[552]

Liability is not limited for an injury that occurs on private property which is used for a recreational activity if any of the following conditions exist:

- the owner collects money, goods, or services as payment for the recreational use of the property during which the injury occurs and the aggregate value of all profits received during the year exceeds $2,000; except that the following do not constitute a payment:
- a gift of wild animals or any other product resulting from the recreational activity
- an indirect nonpecuniary benefit to the owner or property that resu;ts from the recreational activity
- a donation of money, goods, or services made for the management and conservation of the resources on the property
- a payment of not more than $5 per person per day for permission to gather any product of nature on an owner's property
- a payment received from a governmental body
- a payment received from a nonprofit organization for a recreational agreement
- the injury is caused by the malicious failure of the owner to warn against a known unsafe condition on the property
- an injury caused by a malicious act of the owner
- the injury occurs to a social guest who has been expressly and individually invited by the owner for the specific occasion during which the injury occurs, if the injury occurs on any of the following:
- platted land
- residential property
- property within 300 feet of a building or structure on land that is classified as commercial or manufacturing
- the injury is sustained by an employee acting within the scope of his or her duties.[553]

Wyoming

In Wyoming, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition,

[550] *Id.* § 895.52(1)(g).
[551] *Id.*
[552] *Id.*
[553] *Id.* § 895.52(6)(a)-(e).

use, structure, or activity on the premises to recreational users.[554] An owner is defined as a possessor of a fee interest, a tenant, lessee, including a lessee of state lands, occupant or person in control of the premises.[555] Land is state land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.[556] Recreational purposes include hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.[557]

An owner of land does not, by directly or indirectly inviting or permitting a person to use land without charge for recreational purposes, extend any assurance that the premises are safe for any purpose, confer the legal status of invitee or licensee, or assume responsibility or incur liability for any injury to person or property caused by an act or omission of the recreational user.[558] However, liability is not limited for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, or for injury suffered where the owner charges for the recreational use of the land.[559]

[554] WYO. STAT. § 34-19-102 (1990).
[555] *Id.* § 34-19-101.
[556] *Id.*
[557] *Id.*
[558] *Id.* § 34-19-103.
[559] *Id.* § 34-19-105.

APPENDIX B: Insured's Duties in the Event of Occurrence, Claim or Suit

2. DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any "insured," you must:

(I) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable. You must see to it that we receive written notice of the claim or "suit" as soon as practicable. Notify the police if a law may have been broken;

(3) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit;"

(4) Authorize us to obtain records and other information;

(5) Cooperate with us in the investigation, settlement, or defense of the claim or "suit;" and

(6) At our request, assist us in the enforcement of any right against any person or organization that may be liable to the "insured" because of injury or damage to which this insurance may also apply.

d. No "insured" will, except at his or her own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for first aid, without our consent.

e. Any injured person who makes a claim for payment of medical expenses ... must:

(1) Give us written proof of claim, under oath if required, as soon as practicable;

(2) Execute authorization to allow us to obtain copies of medical reports and records; and

(3) Submit to physical examination by a physician selected by us when and as often as we reasonably require.

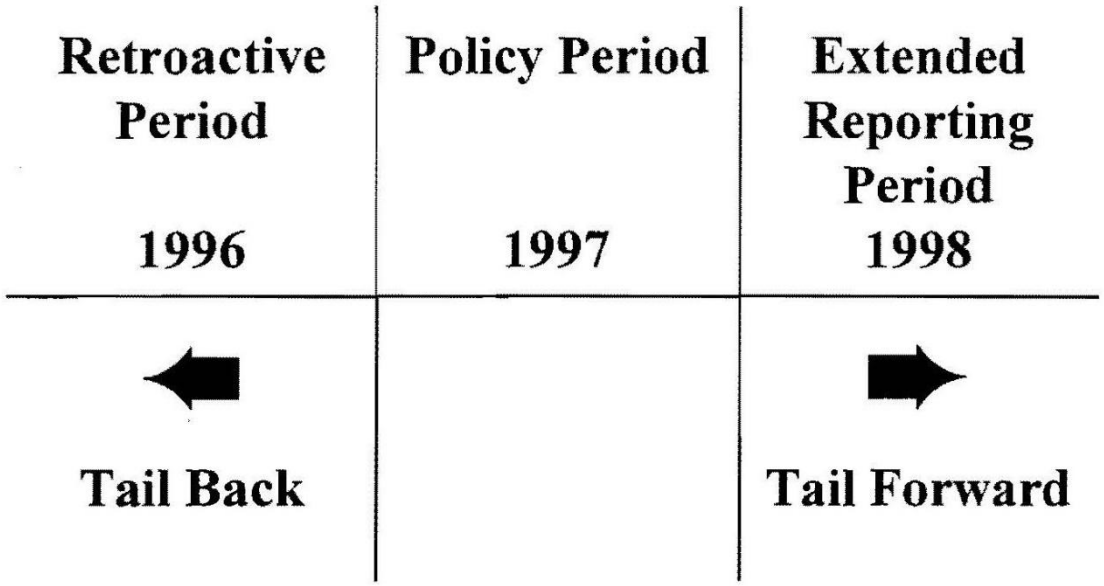
Requirements (1) and (2) above may be carried out by a person acting on behalf of the injured person.

f. If loss occurs under ADDITIONAL COVERAGE 2. DAMAGE TO PROPERTY OF OTHERS, you must submit to us within 60 days after the loss, a signed, sworn statement of loss, and exhibit the damaged property, if within your control.[560]

[560] ISO, FL-00-20-06-90, *supra* note 13, § III, Farm Liability Conditions, 2. Duties in the Event of Occurrence, Claim or Suit

APPENDIX C

Tail Coverage-Claims Made Policy



Retroactive Period **(Tail Back) covers occurrences which occurred before policy was taken out *IF* Notice of claim is given during Policy Period or Extended Reporting Period.**

Extended Reporting Period **(Tail Forward) covers claims made after the Policy Period ends, *IF* the occurrence took place during the Policy Period or the Retroactive Period.**

APPENDIX D: Release and Indemnity Agreement (Draft)

Release and Indemnity Agreement (Draft)

I, _____, (participant's name) understand and acknowledge that participating in _____ (activity) a recreational activity, results in certain physical risks to me, and to my property, regardless of all feasible safety precautions which may be taken by me, the landowner/possessor, or the agents and employees of the landowner.

Therefore, in consideration for being permitted to enter onto the property of the landowner, said property being more specifically described as _____(common name of property), to participate in the activities described herein, I do hereby assume the risk of any and all legal responsibility for any injury, loss or damage to my person or property resulting from my participation in the activities described herein. I do expressly, fully, and forever release and discharge the said landowner and his/her heirs, administrators, executors, agents, or employees, successors or assigns from any or all injuries, losses, and damages to my person and property sustained as a result of my participation in upon the landowners property described herein.

In further consideration, I, _____ (participant's name), hereby agree to save harmless and indemnify the landowner from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, arising out of, or connected with, or resulting from my participation in the recreational activities described herein.

_____
Participant's signature

_____
Notary's acknowledgment

Note: The foregoing release and indemnification is illustrative only. Each document needs to be tailored to the particular recreational activity and prepared in accordance with state law. It is highly recommended that the landowner obtain the services of a private attorney in preparing a release and indemnification agreement.

APPENDIX E: Owner Hunting/Wildlife Management Agreement

This agreement made on this day of , 199_, by and between Larry Yowell, doing business as L&M Wildlife Management Services, whose mailing address is _____ hereinafter referred to as "L&M" and _____ hereinafter referred to as "Owner," whose mailing address is: _____

WHEREAS, Owner desires to grant an exclusive right to L&M to manage hunting privileges on the lands subject to this agreement, and WHEREAS, L&M is in the business of managed hunts to the benefit of the Owners, hunters and wildlife. NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Owner hereby grants the exclusive right to L&M to place hunters upon the real property described in Exhibit "A" attached hereto and incorporated here as if fully set forth herein.
2. Owner further hereby grants permission to enter, remain, hunt, and do all things consistent with hunting upon the real estate described in Exhibit "A" to any person or persons authorized by L&M to hunt or access said lands.
3. Owner further agrees that L&M shall have the sole discretion in who to place upon said grounds, the number of hunters to place upon said grounds and the location where each hunter is placed upon said grounds to best benefit the owner, hunter and wildlife consistent with the goals and objectives established by Owner and L&M.
4. Except as agreed upon between the parties, Owner further agrees not to allow any persons not authorized by L&M to hunt upon the lands the subject of this agreement during the hunting seasons indicated below:

   __All hunting seasons Deer Firearms __Deer/Turkey Archery __Deer Muzzle Loading __Spring Turkey __Fall Turkey __Quail/Pheasant Other _____

   Further, the parties agree that within the term of this contract and any extensions thereof, unless changed and agreed upon in writing, the hunting seasons that this agreement pertains to are those indicated in this paragraph.
5. Owner further agrees not to contact any hunter placed upon the lands the subject ofthis contract, for the purpose of leasing said lands to said hunter for a term of two years after the last season to which this contract applies. Further, owner agrees not to place any hunter upon the grounds the subject of this contract for the purpose of hunting for a fee for a period of one year after the last season to which this contract applies.
6. Owner further agrees to allow any employee or agent of L&M access to the property at such times as L&M deems necessary to survey the property and perform any tasks L&M may deem necessary to prepare the grounds for the hunters to be placed there. Further, Owner grants permission to L&M to perform whatever acts are necessary to prepare the grounds for the hunters and shall not hold L&M liable for any damage to the grounds from these acts.
7. For the services rendered by L&M the parties agree that L&M shall receive the sums as indicated below by an "X" marked in the associated blank:

   _____ $ ___ upon the signing of this contract and thereafter

___ percent of all sums paid by hunters to L&M for the privilege of hunting upon the lands the subject of this contract.

____ ___ percent of all sums paid by hunters to L&M for the privilege of hunting upon the lands the subject of this contract.

8. L&M shall provide an accounting of all sums paid to it by hunters placed upon said grounds within 10 days after the end of each season indicated above and pay to Owner such sums as are due Owner at that time.
9. L&M has and agrees to maintain liability insurance for all of its activities upon the lands the subject of this agreement. It is understood by Owner that this liability insurance is not a replacement for any farm liability insurance of landowner. Further it is understood and agreed that said insurance does not provide coverage for the intentional or negligent acts of owner or any person upon the lands not placed there by L&M.
10. L&M agrees to properly inform all hunters of the boundaries of the lands included in this agreement and any restrictions placed upon the use of said grounds.
11. L&M agrees to make all attempts to screen and monitor hunters placed upon the grounds the subject of this agreement, but Owner understands and agrees that L&M does not assume total responsibility for the acts of any hunter placed upon the grounds.
12. The initial term of this agreement shall be from the date of the execution herein until midnight of the last day of the calendar year in which this agreement is executed.
13. This agreement shall continue in full force and effect for succeeding terms of one year at a time, beginning on January 1 of the next succeeding calendar year and ending at midnight on the next following December 31 unless and until terminated by either party pursuant to the terms hereinafter stated.
14. This agreement may be terminated by either party, after the initial term by giving the other party written notice of the desire to terminate this agreement at their mailing address as disclosed in this agreement, or at their last known address if the same be different. Said notice to terminate shall be given to the other party within 31 days after the new term begins. Said notice will be deemed to have been delivered to the other party within the termination period if it is addressed to the other party at the address disclosed in this agreement or last known address of said party if known and post marked by the United States Mail service before midnight of the last day on which this agreement may be terminated.

IN WITNESS whereof the parties hereto have executed this agreement on the day and year first stated above.

OWNER(S) L&M

_____ By:_____

_____

_____

_____

RELEASE OF LIABILITY. HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

I the undersigned, in consideration for allowing me to be a guest of L&M Security Services hereinafter referred to as "L&M," and also for allowing me to engage in hunting and shooting

activities upon land owned by other parties that have made their land available to L&M, agree to release L&M, and all said landowners from all liability for any injury to me, regardless ofthe severity or manner in which the injury is sustained, and also I agree to waive all rights to make any claim against L&M or the landowners they refer me to, for any property damage or loss which I sustain.

I am aware that there are many ways in which I can be injured or suffer property damage while on the landowners property, and I assume full responsibility for my actions which may result in injury, death or property loss or damage.

I am aware of injuries, death and property damage which can result from tripping, stumbling, falling, slipping, and climbing, resulting from my own negligence. All L&M land has ticks, and I am fully aware these ticks can infect me with lyme disease. I understand the seriousness of lyme disease. I will not hold L&M or the landowners responsible for any injury or damage I sustain from anything mentioned above since I fully agree that I am aware of the potential hazards, and my own negligence will be the only reason I could sustain injury or loss. I assume full responsibility for staying away from obvious hazards, and all objects that could harm me, whether natural or manmade, which are incidental to operation of a farm or unattended rural property. I am fully aware of the danger to my person and property, resulting from my presence in an area where the above hazardous conditions exist, and I am willing to assume all of these risks, and hold only myself responsible in the event I sustain injury, death or property loss, or I cause the injury, death or property loss of someone else.

I understand I am giving up important rights by contractually agreeing to not sue or make claim against L&M and their affiliated landowners upon whose land I may be injured, killed or suffer property damage resulting from numerous hazards which may or may not involve guns or bows. I also agree that I have been given the right to seek an attorney's opinion before signing this agreement, and if I have not done so, it is because I have chosen not to do so, and nothing has been said to me verbally or implied in any way, that an attorney's counsel is not necessary. I know attorneys should be consulted before contracts are signed, and this is a contract

As a hunter of the state of Missouri I hereby declare that I have attended and passed Hunter Safety Classes that are required by the Missouri Department of Conservation.

I further agree to abide by all rules and regulations given to me by L&M and Missouri Department of Conservation. I further agree to conduct myself in a sportsman-like manner and not do or perform any acts that will endanger other persons. I understand and acknowledge that there may be other persons using the same lands as I will use. I will indemnify L&M and the landowners for any of my intentional or negligent acts and all damages, including attorney fees, resulting from said acts. lor we will hunt only in areas designated by L&M.

Finally, I understand the right to engage in hunting or other activities is being provided to me exclusively by L&M. I will not bargain or negotiate for hunting rights, either paid for or offered

freely, with any landowner whose lands have been shown to or leased to me by L&M except by written agreement from L&M.

I have completely read this agreement, I understand it thoroughly, I fully agree with its content, and warning to me of potential hazards which may result from my hunting activity or physical presence upon land owned by parties to whim I have been referred by L&M, for the purpose of hunting and shooting. I agree to release from liability L&M and all said landowners, and to assume full responsibility for any injury, death or property damage which I may sustain or cause during my visit to their property.

Hunter's Name (Print) Birthdate Hunter's signature Date Signed

Hunter's Street Address City/State/Zip

(Telephone Numbers) Home -Business -Emergency

NOTE: If hunter under 18 years of age, parent or guardian must sign the following Indemnification Agreement:

I, the undersigned, am the parent or legal guardian of the hunter signed above. agree to fully indemnify L&M and their affiliated landowners from all claims and costs of defense resulting from injury, death or property damage, sustained by or caused by the hunter. I understand that in the event of a claim, I will assume full legal and financial responsibility and protect L&M and their affiliated landowners from all claims resulting from the invalidity of the above release of liability and hold harmless agreement.

Hunter's Name (Print) Birthdate Hunter's signature Date Signed

Hunter's Street Address City/State/Zip

(Telephone Numbers) Home -Business -Emergency

APPENDIX F: Other Sources

Books and Pamphlets

THOMAS J. ALLEN ET AL., WEST VIRGINIA UNIVERSITY COOPERATIVE EXTENSION SERVICE, REAL PROPERTY: LEASING LAND FOR HUNTING AND OTHER RECREATIONAL USES (RD. No. 726, 1985).

DANIEL D. BADGERET AL., OKLAHOMA STATE UNIVERSITY AGRICULTURAL EXPERIMENT STATION, LEGAL AND ECONOMIC ASPECTS OF LIMITING LIABILITY WHEN PRIVATE PROPERTY IS USED FOR OUTDOOR RECREATION IN OKLAHOMA (undated).

JOHN C. BECKER, ET AL., WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, LEGAL ISSUES (Anthony Ferrise & William N. Grafton eds., Natural Resources Management and Income Opportunity Series, RD. No. 744, 1990).

JOHN C. BECKER. LEGAL LIABILITY ASSOCIATED WITH PROFITABLE REsOURCE BASED RECREATION ON PRIVATE LAND (undated)

DELWIN E. BENSON, COLORADO STATE UNIVERSITY COOPERATIVE EXTENSION, WILDLIFE AND RECREATION WORKBOOK (XCM-117, 1988).

DELWIN E. BENSON, COLORADO STATE UNIVERSITY COOPERATIVE EXTENSION, WILDLIFE AS A FARM AND RANCH BUSINESS (Service in Action No. 6.514, 1988).

LAWRENCE BERGER ET AL., UNIVERSITY OF NEBRASKA AGRICULTURAL EXPERIMENT STATION, LIMITING LIABILITY WHEN PROPERTY IS USED FOR OUTDOOR RECREATION-VOLUME I LEGAL ASPECTS (Agric. Council Publication No. 46, 1970).

RONNIE E. BRENNEMAN ET AL., WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, PRODUCERS' EXPERIENCES: DEER HUNTING, TREE FARMING, OPERATING A HUNTING LODGE, BACK ROADS ADVENTURES (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, RD. No. 769, 1990).

PETER T. BROMLEY & LARRY D. BUTLER. WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, ALTERNA TIVE ENTERPRISES: FOR FARM AND WILDLIFE A~RANGE POTENTIALS (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, RD. No. 754, 1990).

PETER T. BROMLEY ET AL., WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, BUSINESS MANAGEMENT AND MARKETING: RECREATIONAL CLUBS (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, R.D. No. 755, 1990).

TOMMY L. BROWN & DANIEL J. DECKER, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, COMMUNITY IMPACT: ECONOMIC & SOCIAL IMPACT OF RECREATIONAL ACCESS (William N. Grafton & Anthony Ferrise oos., Natural Resources Management and Income Opportunity Series, R.' '\To. 759, 1990).

JAMES L. BYFORD, WI: . IRGINIA UNIVERSITY EXTENSION SERVICE, FISH AND WILDLIFE

MANAGEMENT: EVALUATING HABITAT (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, RD. No. 750, 1990).

DALE COL YER ET AL., WEST VIRGNIA UNIVERSITY EXTENSION SERVICE, EXECUTIVE SUMMARY FOR THE FIRST EASTERN UNITED STATES CONFERENCE ON INCOME OPPORTUNITIES FOR THE PRIVATE LANDOWNER THROUGH MANAGEMENT OF NATURAL RESOURCES AND RECREATIONAL ACCESS (R.D. No, 739, 1989).

DALE COLYER & DENNIS K. SMITH, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, RESEARCH ISSUES RELATED TO RECREATION ENTERPRISES FOR THE PRIVATE LANDOWNER (RM. Publications No. *90/01, 1990).*

JOHN D. COPELAND, UNDERSTANDING THE FARMERS COMPREHENSIVE PERSONAL LIABILITY POLICY: A GUIDE FOR FARMERS, ATTORNEYS AND INSURANCE AGENTS (1992).

M. RUPERT CUTLER, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, PHILOSOPHY AND POLICY OF RECREATIONAL ACCESS: USE OF NATURE WITHOUT HARVESTING (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, R.D. No. 762, 1990).

EARLE DILLARD, INSURANCE: QUESTIONS AND ANSWERS RELATED TO FEE ACCESS (1989?)

DAVID W. GROSS, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, ALTERNATIVE ENTERPRISES: REGIONAL PERSPECTIVE (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, RD. No. 748,1990),

NEIL D. HAMILTON, PHEASANTS GALORE -AN INNOVATIVE lOWA PROGRAM OF PRIVATE FEE HUNTING (undated).

THOMAS A. HEBERLEIN, LEASING AND FEE HUNTING IN THE UNITED STATES (Congress of International Union of Game Biologists, 1987).

REINEE HILDEBRANDT, KANSAS STATE UNIVERSITY, MANHATTAN AGRICULTURAL EXPERIMENT STATION, PUBLIC ACCESS TO PRIVATE KANSAS LANDS FOR RECREATION (Report of Progress 582, 1990).

STEVEN 1. HOLLENHORST, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, ALTERNATIVE ENTERPRISES FOR FARM & FOREST: RISK RECREATION (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, R.D. No. 765, 1990).

LAURENCE R. JAHN & J. SCOTT FEIERABEND, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, PHILOSOPHY AND POLICY OF RECREATIONAL ACCESS: FREE OR FEE (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, RD. No. 760, 1990).

PATRICIA LA CAILLE JOHN, UNITED STATES DEPARTMENT OF AGRICULTURE, TOURISM AND OUTDOOR RECREATION: JANUARY 1979-SEPTEMBER 1991 (Quick Bibliography Series: QB 92-14,1991).

EDWARD L. KOZICKY, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, FISH AND WILDLIFE MANAGEMENT: HUNTING PRESERVES (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, R.D. No. 753, 1990).

BRUCE M. KRAMER, GREAT PLAINS AGRICULTURAL COUNCIL, LEGAL ASPECTS OF USE AND DEVELOPMENT OF WILDLIFE RESOURCES ON PRIVATE LANDS: COLORADO, KANSAS, NEW MEXICO, OKLAHOMA, TEXAS (Great Plains Agric. Council Publication No. 103, 1982).

LINDA L. LANGNER, USDA FOREST SERVICE, OUTDOOR RECREATION AND THE ROLE OF PRIVATE LAND (undated).

LAWRENCE W. LIBBY, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, RESEARCH ISSUES: RELATED TO RECREATIONAL ACCESS (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, RD. No. 747, 1990).

STEPHEN F . MATTHEWS, HUNTERS, HIKERS, ATV BIKERS: IS THE LANDOW1\'ER LIABLE FOR ACCIDENTS? (Missouri Cattlemen's Association Annual Meeting, 1988).

EDWARD F. MORGAN & R. LEE CHAMBLISS, VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, THE POTENTIAL OF FARM-BASED RECREATION ENTERPRISES ON THE EASTERN SHORE OF VIRGINIA (A.E. 14, 1974).

MARTHA L. NOBLE, NATIONAL CENTER FOR AGRICULTURAL LAW RESEARCH AND INFORMATION, LIMITING LANDOWNER LIABILITY: THE ROLE OF INSURANCE (undated).

RECREATION ON RANGELANDS: PROMISE, PROBLEMS, PROJECTIONS (Dale Rollins ed., Symposia Proceedings, Society for Range Management, 1988).

R NEIL SAMPSON ET AL., WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, PHILOSOPHY AND POLICY OF RECREATIONAL ACCESS: FEDERAL AND STATE PROGRAMS (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, RD. No. 761, 1990).

THOMAS P. SHILTS, UNITED STATES DEPARTMENT OF AGRICULTURE, FEE HUNTING AND FISHING ON PRIVATE LAND (Dorothy A. Heise ed., Rural Information Center Publication Series, No. 15, 1992).

EDWARD C. SOUTIERE ET AL., WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, FISH AND WILDLIFE MANAGEMENT: WATERFOWL (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, R.D. No. 752, 1990).

TASK FORCE ON RECREATION ON PRIVATE LANDS, RECREATION ON PRIVATE LANDS: ISSUES AND OPPORTUNITIES (1986).

JANICE THOMPSON, SUMMARY REPORT AND FINAL RECOMMENDATIONS: FARM BASED GUEST BUSINESSES AND BUILDING MINNESOTA'S AGRICULTURAL TOURISM (Governor's Council on Rural Development, undated).

ROBERT L. TJADEN & ANTHONY G. HANKINS, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, ALTERNATIVE ENTERPRISES: RURAL AND URBAN PERSPECTIVE (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, R.D. No. 749, 1990).

URBAN LAND INSTITUTE, RECREATIONAL DEVELOPMENT HANDBOOK (1981).

BETTY VAN DER SMİSSEN, AMERICAN MOTORCYCLIST ASSOCIATION, RECREATIONAL USER STATUTES: A REVIEW OF LANDOWNER HOLD-HARMLESS LAWS IN THE UNITED STATES (undated).

WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, PROCEEDINGS FROM THE CONFERENCE ON: INCOME OPPORTUNITIES FOR THE PRIVATE LANDOWNER THROUGH MANAGEMENT OF NATURAL RESOURCES AND RECREATIONAL ACCESS (William N. Grafton et al. eds., R. D. No. 740, 1990).

BRETT R. WRIGHT, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, SUPPLYFOR RECREATION (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, R.D. No. 758. 1990).

GREG K. YARROW & JAMES J. GRIPPO, WEST VIRGINIA UNIVERSITY EXTENSION SERVICE, BUSINESS MANAGEMENT AND MARKETING: ORGANIZATIONS & RECORDS (William N. Grafton & Anthony Ferrise eds., Natural Resources Management and Income Opportunity Series, R.D. No. 763, 1990).

Annotations

Vitauts M. Gulbis, Annotation, *Modern Status of Rules Conditioning Landowner's Liability Upon Status of Injured Party as Invitee, Licensee, or Trespasser,* 22 A.L.R. 294 (1983 & Supp. 1994).
Robin Cheryl Miller, Annotation, *Effect of Statute Limiting Landowner's Liability for Personal Injury to Recreational User,* 47 A.L.R. 262 (1986 & Supp.1994).

Legal Periodicals

John C. Becker, *Landowner or Occupier Liability for Personal Injuries and Recreational Use Statutes: How Effective is the Protection?,* 24 IND. L. REV. 1587 (1991).

Jim Butler, *Outdoor Sports and Torts: An Analysis of Utah's Recreational Use Act, 47* UTAH L. REV. 47 (1988).

Richard H. Krohn, *Recreational Use of Agricultural Lands,* 23 COLO. LAW. 529 (1994).

Charles L. LeCroy III, *Tort Liability of Agricultural Landowners to Recreational Entrants: A Critical Analysis,* 11 U .C. DAVIS L. REV. 367 (1978).

Martha L. Noble, *Recreational Access to Agricultural Land: Insurance Issues,* 24 IND. L. REV. 1615 (1991).

Winston 1. Smart, *Economic and Financial Analysis of Alternative Uses of Agricultural Land,* 24 IND. L. REV. 1567 (1991).

Edward A. Strenkowski, *Tort Liability and Possessors ofLand--A Single Standard of Reasonable Care Under the Circumstances Towards Invitees and Licensees,* 33 ARK. L. REv. 194 (1979).

Helge Wulff, *Recreational Access to Agricultural Land: The European Experience, 24* IND. L. REv. 1641 (1991).

Periodicals

Steve Bauer, *Stalking a Profit,* FARM FUTURES, Oct. 1987, at 22. *Considerations in Developing a Recreation Enterprise,* CONSERVATION CIRCULAR (Cornell University), Spring 1994, at l.

Ronald A. Kaiser & Brett A. Wright, *Recreational Access to Private Land: Beyond the Liability Hurdle,* 1. OF SOIL AND WATER CONSERVATION, Nov.-Dec. 1985, at 478.

James C. Kroll, *Wildlife; More Than Just Public Relations,* 68 TFNEWS 18 (1989).

Mike Leggett, *Biologist Offirs Ideas to Solve Recreational Land Shortage,* AUSTIN AMERICAN-STATESMAN, July 15,1990, at Dl5.

Eric J. Lundquist, *Landowners Grapple With Liability Questions,* AMERICAN FORESTS, Jan.-Feb. 1989, at 17.

Doug McInnis, *Ranches Add Tourism to Raising Cattle,* N.Y. TIMES, Dec. 11, 1994, at Y38.

Rich Patterson & Marion Patterson, *Land Lease: Sporting Rights for "Rent,* " AMERICAN FORESTS, Sept.-Oct. 1989, at 54.

Laura Sands, *Wildlife Payoff: Cashing In on the Great Outdoors,* AGWEEK, March 12, 1990, at 24.

Lonnie Williamson, *What Price, Hunting?,* OUTDOOR LIFE, Aug. 1987, at 38. Unpublished

Larry M. Hammer, The Economic Potential for Private Outdoor Recreation on Farms and Ranches in Nebraska (1972) (unpublished Ph.D. dissertation, University of Nebraska (Lincoln).

APPENDIX G: Associations, Brokers, General Agents, and Underwriters with Information on Recreational Use Policies

Admiral Insurance Company
P.O. Box 5725 1255
Caldwell Road
Cherry Hill, New Jersey 08034-3220
A W.R. Berkeley Corporation Group company.

American National General Agencies, Inc.
3800 Barham Boulevard, Suite
530 Los Angeles, California 90068-1007
(213) 850-5880
(Not connected with American National General Insurance Company, Missouri.) General Agent for Scottsdale Insurance Company, Nautilus Insurance Company.

Anderson & Anderson Insurance
2495 Campus Drive
Irvine, California 92715
(714) 476-4300
Has developed an individual policy with help from California Wildlife Unlimited. Can give quotes over the telephone based on the number of clients and type of operation.

A.R Phillips & Company
10107 Camarillo Street
North Hollywood, California 91602
(213) 877-0275
Interested only in pheasant and waterfowl clubs.

B & B Insurance Company
P.O. Box 3144
Palm Desert, California 92261-3144
(619) 346-5590

Buttes Insurance Agency
P.O. Box 967
Gridley, California 95948
(916) 846-3642

California Farm Bureau Federation
1601 Exposition Boulevard
Sacramento, California 95815
(916) 924-4000
Members of the California Farm Bureau Federation are eligible to purchase insurance through CalFarm Insurance Company. Fee hunting, fishing, and camping are insured if they are only incidental to farming operations. The risk is assessed, and if issued, the

policy is an endorsement to the farmowner's insurance policy. Coverage for fishing and/or camping requires the issuance of a separate commercial policy.

Chubb Group of Insurance Companies
15 Mountain View Road
P.O. Box 1615
Warren, New Jersey 07061-1615

Mailing addresses of subsidiaries are the same, except for Northwestern Pacific Indemnity Company.

Subsidiaries:
Alliance Assurance Company, Ltd., London, England.
Chubb Custom Insurance Company, Dover, Delaware.
Federal Insurance Company.
The London Assurance, London, England.
Northwestern Pacific Indemnity Company.
Crown Plaza, Suite 1000
1500 Southwest First Avenue
Portland, Oregon 97201-5852
Pacific Indemnity Company, Los Angeles
The Sea Insurance Company, Ltd., London, England.

Country Companies
Insurance and Investment Group
1701 Towanda Avenue
Bloomington, Illinois 61701-2040
(309) 557-3000

No special recreational policy is available. Incidental Business Pursuits endorsement is available to the farmowners policy for hunting and fishing with gross receipts of less than $5,000. If gross receipts exceed $5,000, the risk is no longer incidental to the farming operation and a commercial General Liability Policy is necessary, with premiums based on gross receipts. Fee camping requires state licensure, so a commercial General Liability policy is necessary. Other non-farm business pursuits are considered for insurance so long as the activity is not the main occupation of the insured. Less hazardous exposures may allow up to $20,000 in gross receipts before requiring a commercial policy.

Davis-Garvin Agency
P.O. Box 21627
Columbia, South Carolina 29221
(800) 845-3163/(803) 732-0060

Has rates on a per acre basis for ownerships of 100,000 or more, $1 million coverage - leased to clubs. Also has policies for "commercial" operations and is developing nationwide policy for guides and outfitters.

Fireman's Fund Insurance Companies
55 East Monroe Street
Chicago, Illinois 60603

Subsidiaries having the same address as the parent company and involved in hunting insurance are:

Chicago Insurance Company
Interstate Fire and Casualty Company
Subsidiaries having different addresses:
Fireman's Fund Insurance Company
777 San Marin Drive
Novato, California 94998

General Star National Insurance Company
695 East Main Street
Stamford, Connecticut 06904-2360
Subsidiary of General Reinsurance Corporation.

Golden Eagle Insurance Company
7175 Navajo Road
San Diego, California 92119-1642

Homestead Insurance Company (Philadelphia, Pennsylvania)
52 Duane Street
New York, New York 10007

Insurance Company of North America (Chicago, Illinois)
1600 Arch Street
Philadelphia, Pennsylvania 19103

Lloyds of London

London-American General Insurance Company
P.O. Box 3188
Anaheim, California 92803-3188
(714) 991-1000
Wholesale insurance only. Covers equestrian uses, but no hunting clubs.

Monarch E & S Insurance Services
7447 North Figueroa Street
Los Angeles, California 90041
(213) 256·7600
General Agent for Scottsdale Insurance Company, Nautilus Insurance Company.

National Field Archery Association Insurance
31407 Outer Highway, 1-10
Redlands, California 92373
(714) 794·2133
Insurance is issued by the Insurance Company of North America. Insures only ranges and pro·shops.

National Rifle Association Hunt Club Insurance
Kirke-Van Orsdel, Inc.
400 Locust Street

Des Moines, Iowa 50398

Insurance issued by Lloyds of London. Liability Iimit is $1,000,000. A broad form is available for members and nonmembers which includes medical and property damage coverage. A limited form for nonmembers only, without medical and property damage, is less. Policies are written for "clubs" and an owner can be named beneficiary or additional insured. Half of the members must be NRA members.

Nautilus Insurance Company
Lindo, Hanny & Abbott
P.O. Box 1010
3120 Cohasset Road
Chico, California 95927
(916) 895·1010

Nautilus Insurance Company
14455 North Hayden Road
Scottsdale, Arizona 85260

Nodak Mutual Farm Bureau
Nodak Mutual Insurance Company
1101 First Avenue North
P.O. Box 2502
Fargo, North Dakota 58108-2502
(701) 237·9466

Farm and Ranchmaster policy allows an insured to purchase on premise liability and medical coverage for fee hunting, fishing, and camping activities. Usually based on total income from the activity and the number of persons coming to the property during the course of a year.

North American Gamebird Association
Woodward, Long & Reiger Insurance Company
P.O. Box 37
Niagara Falls, New York 14302
(716)285-8441

Insurance issued by Victoria Insurance Co., Ltd.

North Carolina Farm Bureau Mutual Insurance Company
P.O. Box 27427
Raleigh, North Carolina 27611-7427
(919) 782-I 705

No specific recreational policy, and the Farmers Comprehensive Liability Policy excludes most non-farming business pursuits. However, the Insurance Service Offices Commercial General Liability Policy covers some recreational uses, with fee hunting and fishing being the most prevalent activities.

Oklahoma Farm Bureau Mutual Insurance Company
Box 53332
2501 N. Stiles

Oklahoma City, Oklahoma 73152-3332
(405) 523-2300
(405) 523-2362 fax

Farm and Ranch Policy excludes fee hunting, fishing, camping, etc. Commercial Department will issue separate Standard Commercial General Liability Policy based on risk, excluding medical coverages. Classifications for camping, hunting, and fishing are all based on receipts.

Arthur J. O'Leary & Associates
P.O. Box 800312
Dallas, Texas 85380-0312
or call
St. Louis, Missouri
(314) 576-3893

Palamountain Insurance Company
P.O. Box 876
San Leandro, California 94577
(415) 483-6306

Uses only the NRA policy, and can put umbrellas over it.

Ramsgate Managing Insurance of Wyoming, Inc.
Suite 221
701 Antler Drive
Casper, Wyoming 82601
(307) 235-4147
1-800-433-6412

Liability insurance is available for outfitters and guides.

Rollins, Burdick & Hunter Insurance Company
7700 College Town Drive,
Suite 105
Sacramento, California 95826
(916) 929·1234

No hunting coverage, but does insure equestrian uses on a group basis when real property is involved.

Rule Insurance Company
115 North El Molino Avenue
Pasadena, California 91101
(818) 795-9000

Rural Insurance Companies
7010 Mineral Point Road
P.O. Box 5555
Madison, Wisconsin 53705-0555
(608) 833·8080

Two policies are available. Fee hunting can be covered by the standard farm owners contract for an additional charge. Annual gross receipts are limited to under $2,500, and rental of tree

stands is excluded. A commercial general liability policy for coverage of other types of activities is available, including fishing, game farms, hunting preserves, campgrounds, and picnic grounds. Policies are not available for risks charging fees for on-premises operation of snowmobiles or all terrain vehicles.

Scottsdale Insurance Company Scottsdale, Arizona
Subsidiary of Nationwide Mutual Insurance Company.
Woodward, Long & Reiger Insurance Company
P.O. Box 37
Niagara Falls, New York 14302
(716) 285-8441

Prepared a group policy for the North American Game Bird Association and can write group policies to an association for hunting clubs and/or applicants belonging to an association.

Worldwide Outfitters & Guides Association Underwriting Office:
Outfitters & Guides Underwriters
P.O. Box 6357
Salt Lake City, Utah 84106
(800) 321-1493

Insurance issued by Homestead Insurance Company. Insures any outdoor recreation including shooting, guides, and clubs. Policies written individually for association members.

Wyoming Farm Bureau Federation
P.O. Box 1348
Laramie, Wyoming 82070
(307) 745-4835
1-800-442-8325 WY