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HIGH RISK ACTIVITIES IN HOSPITALITY OPERATIONS AND SUGGESTIONS FOR LIMITING LIABILITY



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HIGH RISK ACTIVITIES IN RESORTS

- 1. Definition of a high-risk activity:
 - **“Any activity out of the norm of mainstream hotel amenities that has the potential for highly-elevated risk and major liability exposure”**

HIGH RISK ACTIVITIES IN RESORTS

■ Examples of High Risk Activities

■ 2. Examples of High Risk Activities and Discussion:

- A. Jet skis / Sailing and other Boating Activities
- B. Parasailing
- C. Rock climbing walls
- D. Fireworks displays
- E. Building walking
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HIGH RISK ACTIVITIES IN RESORTS

■ Examples of High Risk Activities

- 2. **Examples of High Risk Activities and Discussion:**
 - F. Fire walking
 - G. Sumo wrestling (football)
 - H. Beach Activities
 - I. Pools / Water Slides / Water Park Recreational Activities
 - J. Amusement Park Style Rides

HIGH RISK ACTIVITIES IN RESORTS

■ Examples of High Risk Activities

■ 2. Examples of High Risk Activities and Discussion:

K. Buggy / Sleigh / Horse Ridding Activities

L. Skiing / Snow Boarding / Ski Jumping

M. Hiking / Sponsored Walks / Expeditions

N. Spas / Exercise Classes or Training

O. Making Recommendations for Expeditions / Training / Equipment / Locations

HIGH RISK ACTIVITIES IN RESORTS

■ Discussions Regarding High Risk Activities

- 3. What are the reasons hotels are beginning to offer more high-risk activities for guests?
 - A. To provide an “all inclusive” experiential hotel stay
 - B. To remain competitive in their market
 - C. To provide new streams of revenue in difficult economic times

HIGH RISK ACTIVITIES IN RESORTS

■ Discussions Regarding High Risk Activities

■ 4. Potential Mitigation Measures:

- A. Deny the highest risk activities altogether
- B. Transfer the liability to a reputable 3rd-party vendor with proper indemnification and insurance
- C. Set guidelines/parameters on medium-risk activities

HIGH RISK ACTIVITIES IN RESORTS

- Legal Issues Regarding Resort and leisure Activities
 - 1. Not an Insurer of the guest or patrons safety
 - A. Special Relationship however does exist under the law
 - 2. The Creation of a Legal Duty of Care
 - A. Building / Safety / Health / Civil Rights Codes and Regulations
 - B. Contractual Obligations—rental and use agreements, etc
 - C. Industry Standards

HIGH RISK ACTIVITIES IN RESORTS

- Legal Issues Regarding Resort and leisure Activities
- 3. Potential Causes of Action / Legal Theories of Liability
 - A. General Negligence-Always the Fall Back Cause of Action
 - B. Premises Liability
 1. What is the Dangerous Condition
 2. On vs. Off Premises Claims
 - C. Negligent Entrustment
 1. Was the Guest or Patron injured by a piece of Recreational Equipment / No Confirmation on how to use / Failure to Properly equip or Supervise

HIGH RISK ACTIVITIES IN RESORTS

- **Legal Issues Regarding Resort and Leisure Activities**

- **3. Potential Causes of Action / Legal Theories of Liability**

- D. Negligent Maintenance—Maintenance of recreational Equipment and Locations**

- E. Negligent Hiring / Training and Supervision of Employees / Agents / Franchisees**

- F. Breach of Warranty of Safety**

- G. Violations of States and Federal Disability Laws in Resort Activities**

- H. Violations of the Food Drug & Cosmetics Act—Food Modernization Act**

- I. Violations of the Maritime Security Act**

HIGH RISK ACTIVITIES IN RESORTS

- Legal Issues Regarding Resort and leisure Activities
- 3. Potential Causes of Action / Legal Theories of Liability
 - J. Common Carrier Liability
- 4. Third Party Liability Issues
 - A. Vendors / Independent Contractors / Service Providers
 - B. Franchisees / Licensees

HIGH RISK ACTIVITIES IN RESORTS

■ Specific Discussions on High Risk Activities and Solutions

■ 1. Industry Standards/Trade Associations

- Are there any specific industry standards that exist?
 - Some trade associations, like the World Water Park Association, have “Considerations for Operating Safety, for Recreational Water Rides”
 - The Roller Skating Association, Bowling Proprietor’s of America, and the National Laser Tag Association have their own Risk Management Guidelines as well.
 - American College of Sports Medicine Standards for health and fitness industry

■ 2. ASTM Standards

- Are there any standards promulgated by the American Society of Testing and Materials that apply?
 - They are “voluntary” standards, however, plaintiffs’ attorneys and their experts hold operators to those standards as “best practices”, and argue that failure to comply with the same, is “negligence”.

HIGH RISK ACTIVITIES IN RESORTS

- Specific Discussions on High Risk Activities and Solutions (Cont.)
- 3. Regulatory Requirements
 - Are there any regulations (federal or state) that apply?
 - Traveling or mobile rides fall under the oversight of the Federal Government, as part of the Consumer Products Safety Act.
 - “Fixed” or “permanent” rides are not governed by the federal government; however, many states have regulatory agencies that oversee the operation of amusement rides.
 - Some states, like New Jersey and California require “certification” of rides before they can be opened to the public.
 - There may also be specific statutes that govern your attraction (e.g. – Virginia Grame-Baker Pool and Spa Safety Act (for pool and spa drains), The Americans With Disabilities Act (and the 2010 Amendment, which governs pool lifts and accessible entrances.

HIGH RISK ACTIVITIES IN RESORTS

Specific Discussions on High Risk Activities and Solutions (Cont.)

- 4. **Waivers and Releases**
 - Does your state case law or statutes recognize the use of waivers and release agreements?
 - The majority of states do recognize the use of pre-activity waivers and release agreements
 - Some states have statutes that make such waiver and release agreements void as against public policy (e.g. Louisiana, Montana, Virginia – except auto racing; New York (health and fitness))
 - Most states, however, do not allow a parent to waive or release a claim on behalf of a minor
 - Generally, to be enforceable, the document, read as a whole, much be clear, explicit and express an objective intent that legal rights are being given up, and the specific injury producing event is “covered” by the language in the document
 - Make sure to use the headings “waiver and release”, and words such as “negligence”, “hold harmless”, “release” and “waive”
 - Include “personal injury”, “death”, “binding on heirs”, as well as “medical treatment rendered, or failed to be rendered

HIGH RISK ACTIVITIES IN RESORTS

- **Specific Discussions on High Risk Activities and Solutions (Cont.)**

- **Transfer of Risk**
 - **At the time of purchase or contract from manufacturer or supplier**
 - **Include indemnity language in contract**
 - **Get Additional Insurance Protection from Manufacturer or Seller**

HIGH RISK ACTIVITIES IN RESORTS

- Questions & Answers

- Thank You