

LIABILITY WAIVERS: VITAL PROTECTION FOR YOUR BUSINESS

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Having the right waiver that is explicit and adequately describes the risks and that is fairly entered into, and clearly reflect the parties' intent to waive liability is an essential element to be able to defend your business against claims and possible litigation.

As we all know, there are a variety of inherent risks that may result in injury and/or death with various challenge courses activities. ACCT members who offer various recreational activities to the public such as ropes courses, zip-lines, and other challenge course activities routinely request that their customers sign liability waivers to advise customers of such risks.

Having a signed well-written waiver is essential in being able to defend your business against claims and litigation that may follow after an accident involving injuries or death.

Here are four recent examples where courts have decided cases in favor of companies that provided recreational activities because the firms had a well-written liability waiver that their customers signed and that was retained.

1. In *Brigance v. Vail Summit Resorts*, 2018 U.S. App. LEXIS 397 (10th Cir. Jan 8, 2018), the court enforced a liability waiver for the ski resort. Plaintiff was injured while skiing in ski school, but the lift ticket's exculpatory language on the back of the ticket and the waiver signed for ski school barred her claim.

2. In *Raup v. Vail Summit Resorts*, U.S. App. LEXIS 11989 (10th Cir. May 8, 2018), the court upheld a waiver of liability of a lift ticket for similar reasons and held that a parent could waive a child's prospective claim for negligence via a waiver.

3. In *Lenze v. Blazing Adventures LLC*, (Pitkin County, Colorado January 23, 2018) the court enforced a liability waiver and granted summary judgment on behalf of a rafting outfitter that was defended by Hall & Evans at the trial court level.

4. In *Dullmaier v. Xanterra Parks & Resorts*, 2018 U.S. App. LEXIS 4792 (10th Cir. Feb. 27, 2018), a person who was killed during a guided horseback ride sued the horseback outfitter. The court held that plaintiff's death stemmed from risks inherent in the activity, and that "any person who takes part in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity."

ACCT's Risk Management & Insurance Committee recommends that:

- 1) Each ACCT member has their liability waivers reviewed by legal counsel periodically.**
- 2) Each participant or the parent/guardian sign the liability waiver for all high-risk activities.**
- 3) Each signed liability waiver is retained and stored securely.**