Liability and Insurance Protection in Rural Recreation Enterprises
Michigan State University
Cooperative Extension Service
Tourism and Recreation Series
Louis F. Twardzik, Associate Professor, Department of Resource Development and Recreation Specialist and Richard E. Cary, Graduate Student
April 1969
8 pages

liability and insurance protection

in rural recreation enterprises

EXTENSION BULLETIN 580
PARK AND RECREATION RESOURCES
Reprint April 1969

COOPERATIVE EXTENSION SERVICE

Michigan
State
University

liability protection and insurance in rural recreation enterprises

By Louis F. Twardzik and Richard E. Cary*

CONTENTS

FOREWORD

The Continuing High Demand for outdoor recreation opportunities by an increasingly urbanized and affluent population, along with the changing pattern of land use and public policy in agriculture, encourages the development of rural recreation enterprises by many landowners throughout the country.

This publication is designed largely for the landowner, farmer and non-farmer, who is not trained or experienced in operating a recreation business. The large scale recreation operator with all the knowledge and skills normally associated with a high investment operation generally plans for liability as a preliminary step to investment. The principles of liability and insurance protection would, nevertheless, apply to most commercial recreation enterprises regardless of size of operation. In this treatment, the intent is to identify those principles and to show how they apply to rural recreation enterprises.

It is the special hope of the authors that this work will encourage potential recreation operators to discuss this phase of business management with legal counsel and insurance representatives prior to any investment commitment.

Louis F. Twardzik,
Professor and Chairman, Department of Park and Recreation Resources, and Recreation Specialist, Cooperative Extension Service

**This information is largely based on "An Investigation of Liability Insurance Programs of Rural Recreation Enterprises in Southern Michigan," an unpublished Master's thesis by Richard E. Cary, graduate student, Department of Resource Development, Michigan State University, 1966. Mr. Cary is currently employed as a Recreation Planner for the Pennsylvania Power and Light Co.*

Issued in furtherance of cooperative extension work in agriculture and home economics, acts of May 8, and June 30, 1914, in cooperation with the U.S. Department of Agriculture. George S. McIntyre, Director, Cooperative Extension Service, Michigan State University, E. Lansing, Mich.

2P-10M-4:69-WE

THE SURGING DEMAND for outdoor recreation facilities has generated interest among farmers and other rural landowners in developing recreation facilities as a means of increasing income.

Those considering recreation as an auxillary land use should recognize that the operation of a commercial recreation enterprise is not unlike the operation and management of any private business. There is more to the establishment and operation of a rural recreation enterprise than simply "opening the gates" to make an area available for public use.

As soon as a recreation operator makes his land available for public use, he creates many new problems. One which he must immediately face is the liability that he, the landowner, will incur through the operation of such an enterprise. Although liability suits may be involved in the ownership of any property, the owner is generally in a more vulnerable position when he charges a fee to others for the use of his property and facilities.

Before engaging in a commercial recreation enterprise, the landowner must recognize that he may be held liable for accidents resulting in injury to friends and customers. An award in court in favor of the injured patron may be slight, or it may take his life savings and property.

Insurance companies report an increasing public awareness of liability, resulting in a "claims conscious public," an increase in the amount of claim settlements awarded by courts in recent years, and a tendency for court decisions to favor the plaintiff or injured patron. Therefore, the operator of a recreational facility cannot afford to risk operation without protection against liability claims or law suits. He should obtain special liability insurance which (1) will provide legal aid in the event of a law suit and (2) pay any claim or awards by the court, up to the limit of the policy.

Normally, the ordinary personal liability policy or the general farm liability policy will not provide coverage for liabilities incurred through the commercial operation of recreation facilities. Therefore, the recreation operator should obtain additional insurance protection before he invites the public upon his premises.

Many questions have arisen among recreation operators regarding legal liability and liability insurance aspects of operating a rural recreation enterprise. The purpose of this report is to provide the potential or practicing recreation operator with an understanding of the basic legal concepts of liability, principles of insurance, and types of liability insurance applicable to recreation enterprises.

Also provided is an indication of insurance costs as reported in a survey of selected enterprises in Michigan, and suggestions for reducing liability and liability insurance costs.

LEGAL CONCEPTS OF LIABILITY

The laws relating to liability continue to be drawn from common law, or a set of general legal principles, rather than having been firmly incorporated into statute law. Because strict interpretation of the law therefore depends primarily upon the decision of a jury, this report will present the common law doctrines upon which liability is founded. The recreation operator is encouraged to consult his lawyer for further interpretation of liability in the operation of a particular enterprise.

NEGLIGENCE, THE BASIS OF LIABILITY

"Negligence" is the essential element which must be proved before a person can be legally held liable for unintentional injury to others. The law of negligence is based upon precedent as established by previous court decisions.

Negligence is generally considered to be the omission by an individual to do something which a "reasonable man" would do under similar circumstances; conversely, negligence may be the act of doing something which a reasonable and prudent man would not do. The standard used to determine negligence then, is the behavior of "a reasonable and prudent man."

In court, it is this hypothetical "reasonable man" against whom the defendant's action is measured. It will be up to the jury to determine if the individual has acted in agreement with this standard. If the jury decides that the defendant's behavior does not measure up to that action expected of a reasonable man under similar circumstances, the individual will almost certainly be held liable.

Negligence is further gauged by one's ability to anticipate danger. Thus, the foreseeability of danger is an important factor in determining liability.

Generally, if the unintentional injury is the result of a danger which could be foreseen by a reasonable man, and thus avoided, the operator who failed to see the danger or failed to act may be held liable for damages because of negligence. When a jury decides that an injury could not have been foreseen nor prevented by reasonable precaution, usually the operator will not be held liable. Unavoidable accidents do happen, and where

there is no negligence, such accidents do not form the basis for legal action.

An operator must also consider that negligence could be found even where he has taken careful consideration and precaution in conformity with his own best judgement. In such a case, if a jury decides that the operator's judgement falls short of what a reasonably prudent person would have done under similar circumstances, the operator may still be held negligent and legally liable.

Elements of Negligent Action

The successful maintenance of a negligence suit requires consideration of more than just conduct. Most legal authorities concur that four general elements are necessary to support a negligence suit. These are:

(1) a legal duty to conform to a standard of behavior to protect others from unreasonable risks.

(2) a breach of that duty by failure to conform to the standard required under the circumstance.

(3) a sufficiently close causal connection between the conduct of the individual and the resulting injury to another.

(4) actual injury or loss to the interests of another.

DUTY

Duty is recognized in the courts as an obligation of the individual to use reasonable care to prevent exposing another to unreasonable risk of injury when the relationship between the two parties is of a nature to warrant such duty.

BREACH OF DUTY

A breach of duty is failure to conform to that standard of a reasonable man. Negligence will not be maintained unless there is a duty to use care and a breach of this duty. Therefore, not every accident resulting in injury will mean that liability exists, for injury or damage alone is not adequate support for legal action.

CAUSAL CONNECTION

In support of negligence action, the causal connection must establish that the defendant's act of omission or commission was a contributing factor in bringing about the damage to the plaintiff. In order for the defendant to be held liable, it must be proven that he has in fact caused the injury to the plaintiff. Once it has been established that the defendant's conduct was one of the causes of injury to the plaintiff, it must be further determined that there were no intervening acts or events, such as an act of God or the negligence of a third person. If such intervening acts make the causal connection between the defendant's behavior and the resulting harm seem too remote, then there will be no liability.

ACTUAL DAMAGE

In a negligence action, it must be shown that damage or injury actually happened to the plaintiff. Damages cannot be recovered from a law suit without proof of such damage or injury.

Degree of Care Owed to a Visitor

The duty of a landowner to protect a visitor from injury depends on the legal status of the person entering the owner's property. To determine liability for negligent injury, the law classifies a person going onto the premises of another as trespasser, licensee, or invitee. In a liability suit, the degree of care required by the landowner is then determined by which of these classifications the visitor comes under at the time of injury.

TRESPASSER

A trespasser is one who enters the property of another for his own purposes without permission of the landowner. In general, the only duty owed a trespasser is to refrain from willing or wanton injury to him.

The landowner is under no obligation to keep his premises in a safe condition or to warn an unknowing trespasser of unsafe conditions. However, court cases in Michigan have held that once a landowner is aware of the presence of trespassers, or if in the exercise of ordinary care he should know of their presence, he is required to exercise reasonable care to prevent injury to them, the same as he would do for a licensee.

Another exception to the general rule of non-liability to the trespasser is found in the "attractive nuisance" doctrine which, when applied by the court, extends the duty to include reasonable care in the case of trespassing children.

This doctrine is invoked to protect children who are lured on to property as a result of something there which is unusually attractive to children. When applied, the rule imposes upon the owner the duty or standard of reasonable care usually awarded to invitees.

The attractive nuisance doctrine has been most often applied in cases involving dangerous machinery; as a general rule it does not apply to natural conditions. The question of what is an attractive nuisance is for a jury to decide.

Though recognized in Michigan, the attractive nuisance doctrine has been conservatively applied and has not severely impaired the rule that property owners owe no duty to protect trespassers, adult or children, from other than willful injury. However, since recent court decisions have ruled that a landowner owes a duty to a trespassing child, it appears that one might now be more easily held liable in circumstances involving trespassing children.

LICENSEE

A licensee is one who enters the property of another with the owner's consent. The licensee is distinguished from the invitee by the fact that he is on the premises by permission only and is there primarily for his own benefit and not for any business which would be of benefit to the landowner.

Social guests are usually considered licensees, as are hunters or other recreationists using private property with the landowner's consent when no fee is charged.

The duty of the property owner to the licensee is to refrain from intentional injury, and to warn of any known dangers which the licensee could not reasonably be expected to know about or discover himself. The landowner is not obligated to inspect his premises to discover unknown dangers, nor is he obligated to make the premises safe for the reception of the licensee. However, once a danger is known to the landowner, he is obligated to exercise reasonable care to warn the licensee of the danger. If the danger is obvious or has been made known to the licensee, he must assume the risk and the landowner has no further obligation.

INVITEE

An invitee is a business visitor invited or permitted to enter the property of another for purposes which benefit the landowner, or for the mutual advantages of the landowner and the licensee. Guests who pay a fee for the use of recreational facilities would therefore be classified as invitees. To them, the landowner owes the greatest degree of care to prevent injury.

The visit of an invitee returns a definite benefit to the landowner. Therefore, the invitee is legally entitled to expect that the premises have been made reasonably safe for his reception. The landowner is obligated to ascertain the existing conditions of his property and facilities so that he may warn the visitor of any danger.

Although the landowner may be liable for injuries resulting from a breach of this duty, he may not be held liable if he warns the invitee of known dangers. If the nature of the dangerous condition causing injury is such that a reasonable inspection of the premises by the landowner would not have discovered it, then he probably will not be held liable.

The implication of this common law duty toward an invitee by a recreation operator is evident. The safety of patrons depends upon the condition of the premises and the facilities provided for public use. The prudent operator must not only warn or instruct the patron about existing dangers, but he also must make periodic and thorough inspections of the premises and facilities and promptly make any necessary repairs or safety provisions. The operator who fails to exercise such ordinary care could not expect to have a good defense against any legal action which may arise from the operations of a recreation area.

Releases Are Not Binding

Some recreation operators believe they relieve themselves of this obligation to an invitee by obtaining releases from paying guests, or by displaying signs that imply that the invitee uses the facilities at his own risk and the operator will not be responsible for accidents. Operators should be aware that they cannot contract away their legal responsibility. While this practice may tend to discourage the filing of suits, it will not usually provide a defense to legal action.

It should be noted that this duty is limited to the area of invitation — that part of the premises which is open for use by the invitee. This area extends to the entrance and safe exit from the property and to all parts of the property which are open to the invitee, or so arranged that the invitee could reasonably think they are open to him.

- If a patron is free to use the premises, he will be considered an invitee unless the proprietor specifically warns the patron that the area intended for use is more narrowly restricted.
- If the patron then goes outside the area specified in his business invitation, he may be considered a licensee or a trespasser depending on whether he goes with or without of the proprietor's permission.
- If a visitor is led to believe that a particular area is part of the business area intended for his use, he is entitled to the protection owed an invitee.

In view of these considerations the recreation operator should be aware that he may reduce the chance of accident as well as his legal liability by specifically delineating the recreation area and restricting guests from barns, pasture, storage sheds, or other hazardous areas not integral to the recreation enterprise.

Some operators may wish to consider limiting the use of their facilities to members only. Such a practice, if strictly controlled to exclude guests or new visitors, can reduce liabilities. If a member frequently uses the facilities and has become familiar with the hazards, there is less likelihood of a suit in event of injury. In fact, his familiarity might reduce the chance of recovery for an injury or even completely void his right to recovery.

Operators adopting this practice have found that insurance costs are considerably less than when the facilities are open to public use. From a management viewpoint the operator is relieved of many problems encountered in dealing with the public and less time is required for administration.

ACCIDENT PREVENTION and LOSS REDUCTION

One means of dealing with the risk of liability is through reducing or eliminating factors that may cause injury or loss. Not only will accident prevention reduce the chance of injury, but as already indicated, legal liability may be reduced through reasonable care in making the premises safe and providing safety facilities. Indeed, insurance companies are particularly interested in the accident prevention program of recreation enterprises. Before agreeing to write liability insurance, many companies will carefully consider the degree of safety built into an enterprise, as well as the awareness and desire of the operator to prevent injury. Some companies provide for premium reductions after a period of demonstrated safe operation.

A safety program should begin with a study of the entire area to identify existing hazards and determine methods of eliminating them through design and layout of the facilities. Professional assistance should be ob-

tained to assist in the planning and development of an enterprise. The grounds and facilities should be frequently inspected and any necessary repair or improvements promptly made. A thorough maintenance program is an important part of the safety program.

The recreation enterprise should be equipped with appropriate safety precautions, particularly at swimming areas, shooting ranges, and similar places of increased danger. An operator may have a difficult time defending a claim or law suit if there is a lack of proper safety precautions, even though the absence of safety precautions may not be the actual cause of the accident.

Overall supervision of the enterprise should be provided to assure maximum safety. A plan for emergency medical treatment should be prepared, including emergency communication between the recreation area and medical facilities. Insurance companies warn that the legal consequences of not doing this kind of planning can be severe.

Regulations pertaining to the use of recreation areas should be posted to provide reasonable safeguards for those who may use the area.

Certain activities and facilities create a greater risk of injury than others. Horseback riding, diving boards, and slides frequently cause accidents. The high incidence of accidents from such facilities will be reflected in higher insurance costs. The operator should consider avoiding liability by not providing, or taking special and extra care of, facilities associated with high risk. Not only will insurance costs be less, but there will be less chance of an accident or law suit.

LIABILITY INSURANCE

Economics of Insurance

Insurance companies warn that liability claims are becoming more prevalent, verdicts tend to favor the injured person, and settlements awarded by the courts are spiraling upward.

Insurance cannot eliminate this risk nor prevent loss, but it can transfer the risk to a professional risk bearer, who is able to shoulder a potential economic loss. In essence, insurance substitutes a known loss for an unknown loss. Budgeting a recreation enterprise is important because the insurance premium is a fixed cost which can be planned for.

To avoid the risk of staggering losses, liability insurance is indispensable. The shock of a large judgement may completely destroy the financial foundation of the recreation business. Even small damage claims can seriously affect the financial stability of an enterprise. A survey of recreation enterprises in Michigan indicates that lawsuits have not been common in connection with injuries, but damage claims resulting in payment of lesser sums for medical treatment or property damage are not infrequent.

Although lawsuits have not frequently occurred in recreation enterprises, an operator cannot afford to assume the risk of liability without insurance protection. Even the most prudent and careful operator should not assume that he will not be sued. A court decides whether the case is justified. Even though the defendant may not be proved negligent and liable, he may be faced with high defense and legal fees. Liability insurance can provide protection against such legal costs. The insurance company can also represent the defendant in a law-suit, so it is possible that the defendant would not even have to appear in court.

An operator may wish to consider incorporation of his enterprise. His liability would then be limited to the value of the property and all other assets which are part of the corporation. Liability insurance costs may also be less, but a lawyer should be consulted about other considerations and limitations before deciding to incorporate.

The Insurance Contract

The standard liability insurance contract is usually an agreement to pay on behalf of the insured, up to the limits of the policy, all sums that the insurer is obligated to pay as a result of accidents resulting in bodily injury or property damage to others. This includes payment of expenses incurred by the insured for immediate medical treatment at the scene of the accident, whether or not the insured is negligent. In the event of a law-suit, the insurer agrees to pay all expenses of investigation, defense, and settlement of the accident even if the suit should be groundless or fraudulent.

Some contracts are written on the basis of recovery being made per "occurrence" rather than per accident. Some courts have ruled that deliberate acts which have unintentional and unexpected results are not accidents, but are "occurrences." The substitution of the word *occurrence* for *accident*, may extend the coverage of the policy in some cases.

Types of Liability Insurance Policies

Special liability coverage must be obtained for the operation of most commercial recreation enterprises. Comprehensive personal liability and general farm liability policies do not usually cover liabilities where a fee is charged for the use of recreation facilities. The two types of insurance policies which are used for the protection of recreation enterprises are the *owner's, landlord's, and tenant's policy (OL&T)* and the *comprehensive general liability policy.*

OWNER'S, LANDLORD'S, AND TENANT'S

The OL & T policy will provide coverage for liability hazards arising from the ownership, maintenance, and use of property. This is a "schedule type" policy commonly issued to provide protection for such operations as theaters, hotels, and stores, and may likewise be applied to recreation enterprises.

For an additional premium, the recreation operator may obtain additional coverage for *products liability* or for *structural alterations.*

Operators of refreshment stands, snack bars, or stores should consider this liability for damages resulting from goods sold to guests. Products liability coverage protects against accidents occurring away from the premises as a result of purchasing the product.

Structural alteration coverage may be needed to provide adequate coverage for recreation enterprises undergoing further development or improvement of facilities. Without adding this coverage, the OL&T policy will not cover liability for injuries related to new construction or the demolition of existing structures.

COMPREHENSIVE GENERAL LIABILITY

The comprehensive general liability policy is designed to provide a business with protection for all exposures, including products liability unless specifically excluded. Generally the comprehensive general liability policy is regarded as providing more complete protection than the OL&T policy because there is less chance that an unknown hazard will not be covered.

A major advantage of the comprehensive policy is that it automatically covers any hazards, such as facilities added during the year, without notifying the insurance company. At inception of the insurance contract, a survey of all existing hazards is made by the insurance company. At this time an estimated premium will be determined, frequently on the basis of estimated income. At the close of the policy period, an audit is made which reveals the addition of any other sources of liability that were not present at the inception of the contract. At this time the insured will be required to pay an additional premium for facilities that were added during the policy term.

Insurance Costs

Adequate liability insurance for most recreation enterprises is available from a number of companies. Campground operators particularly have had relatively little difficulty in obtaining insurance. However, some insurance companies have been reluctant to provide this kind of insurance because rural recreation as a business is relatively new and unfamiliar.

In seeking insurance, the operator should first consult his regular agent. Even hesitant insurance representatives will often agree to write the necessary insurance if the operator has obtained his personal and other insurance through the same company.

Because commercial recreation includes such a wide variety and numerous types of businesses, including farm and rural recreation, insurance rates for specific types of recreation enterprises are not always comparable between companies. Considerable savings can often be realized by shopping for the desired insurance through several agencies.

The operator should be certain that the insurance agent understands the nature of his operation and all of the activities and hazards. When a policy is written, the operator should be sure he thoroughly understands any limitations or exclusions of the policy. Sometimes operators have obtained insurance at low cost, but later discovered that certain hazards or facilities were not covered by the policy.

Insurance premiums are rated according to the policy coverage. A policy with 5/10/5 coverage will not cost as much as one with 100/300/5*. However, the cost difference is not in direct proportion to the amount of coverage, and may be only slight for some types of coverage. The amount of coverage obtained will depend on personal preference and what the operator can afford. A survey of recreation enterprises revealed that the majority of operators choose a coverage of $25,000 or more per person and $50,000 or more per accident. Some have coverage providing for $100,000 per person and $300,000 per accident. Insurance companies often recommend a policy with 25/50/5 as a minimum for all recreation enterprises.

The following table shows the range of insurance costs some operators in Michigan are currently paying for liability protection for one year:

Type of Enterprise	Premium Cost	Average Cost
Campgrounds	$ 25-554	$164
Campgrounds with horseback riding	148-850	487
Picnic grounds	208-250	236
Fee fishing ponds	50-75	63
Skeet and target range	500	500
Hunting areas	75	75

This summary is only an indication of what an operator could expect to pay for coverage in certain types of enterprise. Different individual circumstances may effect insurance costs. Liability insurance costs will vary between enterprises according to the kinds of facilities offered and the conditions under which they operate. Before insuring an enterprise, most insurance companies will survey the enterprise and its facilities. Each risk will be judged on its own merits and the premium established on the condition of the particular enterprise.

A policy premium is subject to adjustment at the end of the policy term. The final premium actually paid for some policies will reflect the volume of business, or income, during the policy period. For many activities, such as camping, for which a fee is charged, the premium will represent a percent of the receipts. Other methods of premium rating may be a charge for each one hundred persons admitted, a flat charge made per acre

**5/10/5 means that the coverage limits are $5,000 for bodily injury to one person, $10,000 per accident for injuries to two or more persons, and $5,000 for property damage. 100/300/5 is $100,000 per person, $300,000 per accident, $5,000 for property damage.*

or square foot area, or as a unit charge for objects such as boats, docks, floats, or saddle animals.

SUMMARY

As a property owner, you must exercise reasonable care for all persons entering your property. Legally, you owe the greatest degree of care to the patron who has paid a fee for the use of your facilities. For this patron, legally classified as an invitee, you must exercise reasonable care to prevent injury and to maintain the premises in a safe condition for his use.

MINIMIZE NEGLIGENCE

An injury to an invitee as a result of negligence in exercising reasonable care could result in a lawsuit or damage claim. Liability insurance should be obtained by all operators, regardless of the volume of business expected, for protection against shock losses and all costs connected with an accident claim. A policy with a minimum of $25,000/$50,000 bodily injury coverage is recommended, although greater coverage is preferable.

The comprehensive general liability insurance policy and the owner's, landlord's, and tenant's policy provide liability protection for recreation enterprises. Be sure that your insurance agent understands the nature of your operation and that all hazards are covered.

SHOP AROUND

The availability and cost of insurance will depend upon the type of enterprise and individual circumstances. Suitable liability insurance is available from numerous insurance companies. Since rates vary among insurance companies, considerble savings can be realized by comparing insurance rates and policies offered by several agents or companies. You may then choose the insurance policy which provides the best coverage at least cost.

Consider all factors that will affect the success of your enterprise. Liability insurance is a fixed cost that should be carefully considered in any feasibility study. Obtain estimates of insurance costs before developing a recreation area, or before adding any facilities so as to avoid excessive insurance costs for the type of activities planned. Consult a lawyer about liabilities that might be incurred through operation of an enterprise or addition of new facilities.

CONTROL YOUR RISK EXPOSURE

Liability risks and insurance costs can be reduced by avoiding certain activities associated with high risk and/or high insurance costs. You should carefully consider the increased insurance cost and risk of injury created by the addition of high risk activities.

The potential liability of an enterprise may be reduced by specifically limiting the area intended for use by the paying guest. Boundaries of recreation areas should be well marked and guests should be warned that they are to stay within these boundaries.

KEEP PREMISES SAFE

The premises must be maintained in a reasonably safe condition. The addition of safety precautions and elimination of hazards can reduce liabilities and the chance of an accident. Not only are insurance companies more willing to insure an enterprise which has certain built in safety precautions, but some companies may grant a premium discount after a period of demonstrated safe operation.

Liability can be reduced if reasonable care is exercised to warn visitors of any existing manmade or natural hazards or unsafe conditions. Rules and regulations pertaining to the use of a recreation area should be posted to inform the invitee of the conduct expected of him.

KNOW YOUR OBLIGATIONS

Be sure to understand and comply with all laws and regulations applicable to the operation of your enterprise.

You may wish to consider limiting the use of your facilities to members only. If a membership organization is properly administered, legal liability and premium rates may be reduced considerably. This type of arrangement has an additional advantage of reducing administrative and maintenance costs.