

Liability considerations for recreational groundsmen

by Dr. Arthur H. Mittelstaedt, Jr.

■ We often hear that the public has an "assumption of risk." This term, like many legal terms, carries different definitions from state to state. Interpretations should be addressed in accordance with the laws in your state.

However, practically speaking, when a person acknowledges formal risks which have been correctly communicated to them, that person assumes the risk. If signed statements of the risks along with verbal cautions are standard procedure, the owner/operator has less liability or has reduced his or her vulnerability.

"Contributory negligence"—another legal term that varies by state—usually means that the plaintiff, by omission or commission, has been negligent to the point of injuring or in any way helping cause an injury. In cases involving "comparative negligences," any negligent action of the plaintiff or injured is weighted and the fault is shared proportionally in the judgment.

"Proximate cause"—another variable legal term—generally means that an injury was caused or aggravated by a specific act of negligence.

"Foreseeability" is a less legal term. It is often used with "reasonable." Foreseeability is when the defendant should have predicted, foreseen or anticipated the plaintiff's action that caused or resulted in the injury. Today, we must consider what could happen, recognize it and prevent it from happening. When we don't, we are negligent.

"Reasonable" is when the defendant did try to think and do all things within possibility to recognize a hazard or danger and prevent it. However, he or she just didn't plan for that one-in-a-thousand situation or condition and someone was injured.

This is why a complete safety program is necessary. That one-in-a-thousand contingency may occur. If it does, at least it can be said that all reasonable precautions were taken. Thus, the risk had been reduced, but obviously not eliminated.

Standards are a broad term that are used as the means of measurement. Standards may be formalized, such as laws, government regulations, ordinances and policies. They may be set forth by voluntary standards groups such as ASTM or

Last month, we discussed safety as it relates to maintenance of public recreational areas. This month, liability takes the focus.

ANSI. They may be set forth by trade or professional organizations. They are also established by law.

Standards, when informally established, are often called "criterion" or "guidelines;" often referred to as "accepted practice" or "learned treatise" (books, professional articles, consumer articles, speeches), and as the state of the art.

"Theories of negligence" is a broad informal term used to describe the theories which a complaint or petition stipulates as having been violated when a suit is filed. It is used throughout the litigation process. The expert and attorney often focus on such theories, whereas the law is so variable by state that it is only the attorney's domain.

Theories of negligence often specify evidence that the defendant was aware of a defect or deficiency in practice. If the defendant received prior notice, such as through an inspection or an actual notice, does nothing to correct or prevent the incident, negligence becomes obvious.

Theories of negligence include entail established principles or practices governing the activity or facility:

- Improper planning
- Improper design (surveying, architecture, landscape architecture or engineering)
- Improper construction (electrical, mechanical, structural, general contracting or building, and the manufacturing and installing of materials)
- Improper maintenance and operation
- Improper protection (securing and protecting—including containing, prohibiting and warning of hazards and dangers)
- Improper surveillance (superintending and overseeing)
- Improper instruction: (leading, teaching and counseling)
- Improper user selection (in sports): (separating age, skill level, developmental

levels, interests and needs; and assigning such individuals appropriately)

- Improper safeguards (providing guards, signs and labels, footwear, goggles, clothing, mouthwear, fences and insuring their fit and ability to withstand use and even abuse)

- Improper supervision/coaching: (providing, controlling, officiating, instructing and coaching)

- Improper or lack of warnings: (alerting and notifying through verbal and visual techniques)

- Improper administrative procedures: (conducting and administering through various recognized records like injury reports, incident reports, minutes, logs and other forms of communication)

- Improper medical attention: (notifying, replying, responding, treating, attending, removing and subsequent treatment)

An understanding of the landscape professional's role in relation to public liability and its many aspects can correct or prevent the chance of an injury or death, and control the risk and loss to the agency.

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