

The Recreational Safety Act

by John D. Whitaker

Well it's summertime and I have writers block. I asked my wife what I should write about and she said, somewhat sarcastically, "Why don't you write about golf?" I really don't play golf much but it occurred to me that I could write about what happens to you when you get beaned on the head at the golf course, or when you go on a horseback ride and fall off the perfectly insane horse they gave you.

The fact is that you cannot take all the risk out of the things we do for fun. Our beautiful state is full of outdoor activities, but we must all remember that these activities can be risky. In Wyoming, we have a law called the "Recreational Safety Act," which recognizes that any person who takes part in a sport or recreational opportunity assumes the inherent risk associated with the sport. What this means is that the people who provide these sporting activities are not legally required to eliminate, alter or control the inherent risks of the activity. If you get beaned on the golf course or fall off a horse because golfers and horses do what they do, i.e. hit golf balls or buck, run off, etc., you may be on your own if you get hurt participating in these activities.

Like all other things legal, there are complicated exceptions to most rules, and the Recreational Safety Act is full of exceptions. First, you must figure out whether the risk that causes the injury is an "inherent risk" of the sport. Inherent risks are risks that are inherent in the sport itself. When the injury is caused by an inherent risk, your injury is your problem. If the injury is caused by a risk that is not inherent, then the provider may be responsible. Falling off a horse because of a slipping saddle caused by a loose cinch has been found to be an inherent risk of horseback riding, but bumping your head on another passenger's head in a raft may not be an inherent risk of whitewater rafting. Also, even if the sport is included



in the act, it is important to consider the facts of each individual case. In one case a skier got lost in a ski area and wound up in a snowboard half pipe. She asked a ski area employee how to get out of the area. As she followed his instructions on exiting the snowboard park, she was injured. The Recreational Safety Act does apply to skiing, but where the injury is caused by following the directions of an area employee, a court concluded that the injury was not caused by an inherent risk of skiing because the injured person was not voluntarily subjecting herself to the risk of skiing in the half pipe. She was just lost and following instructions of an area employee.

Whether the activity is a sporting or recreational activity is also subject to some level of dispute. The usual sporting activities of baseball, softball, football, soccer, basketball, swimming, hockey, dude ranching activities, skiing, mountain climbing, river floating, hunting, fishing, back country trips, horseback riding, snowmobiling and similar recreational activities are specifically included in the statute. Those that are not specifically included may be found in the "similar recreational activities" section of the statute. I had one case where we were fighting about whether water-skiing was included. You must also determine whether the person you blame is a "provider" of a recreational opportunity. If you and a buddy are out playing golf and he beans you, the act may not apply because he was not providing the recreational opportunity.

These concepts are all based upon the legal notion of "volenti non fit injuria" — "he who consents cannot receive an injury." For all you providers out there who are breathing a sigh of relief, just remember a good lawyer can find a hole in any statute which is big enough to drive a truck through. Be careful, be safe, be smart and enjoy Wyoming's great outdoors.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.