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COUNSELORS AT LAW



Torrington Walks

Trail-Related Risk and
Recreational Liability
for Connecticut Municipalities

Presented by: Beth Critton
Shipman & Goodwin, LLP
October 22, 2015

Risk – (noun) exposure to the
chance of injury or loss; a
hazard or dangerous chance



- Liability – (noun) condition of being legally liable; thing for which one is liable
- Liable – legally responsible

Risk Management – discipline of identifying, monitoring, and limiting risk and potential liability

Process

- 1) Establishment of context – who, what, when, where, **WHY?**
- 2) Identification of potential risks
- 3) Assessment as to potential severity of loss and probability of occurrence
- 4) Potential risk treatments

Identifying the risks

WARNING

**— NO —
TRESPASSING**

**VIOLATORS
WILL BE SHOT
SURVIVORS
WILL BE SHOT
AGAIN**







The biggest threat to hikers' health and safety on the A.T. is about as big as a poppy seed



By KARL FORD
"Speed" GA-ME 2013

Did you know the Centers for Disease Control estimates that over 300,000 cases of Lyme disease occur each year in the U.S. and most of these occur in states traversed by the A.T.? Do you know that Lyme disease not only causes a flu-like illness, but can cause a debilitating, chronic syndrome in 10 to 20 percent of treated cases? And that 60 percent of untreated cases can result in significant joint swelling and arthritis while a smaller percent experience neurological problems?

The deer tick is the vector of Lyme disease and the bacterial agent is called *Borrelia burgdorferi*. Deer ticks are found from northern Virginia through Maine but are most common from Pennsylvania through Massachusetts. Ticks do not fly or jump but look for hosts from vegetation. As you brush by, ticks latch a ride and look for exposed skin to bite. Most people do not feel tick bites due to anesthetic in the tick's saliva.

As I prepared for my 2013 thru-hike, I became very concerned about avoiding Lyme disease and decided to do something about it. As a retired public health scientist, I approached the National Park Service with a modest research proposal and received permits and some funding to do tick monitoring along the A.T.

On the trail, I met at least a dozen hikers who had contracted Lyme disease, mostly in the mid-Atlantic states. Recent surveys of A.T. hikers show a 5 to 9 percent incidence of Lyme disease. Assuming 3,000 thru-hikers and a 7 percent incidence rate, that's 210 cases of Lyme disease per year. It may be higher. The ATC claims 2 to 3 million visitors to the A.T. each year. While it would be misleading to apply a 7 percent incidence to all these other hikers, there may be several thousand Lyme disease cases a year from the A.T.! I base that on several assumptions about location and hike duration of the estimated 2 to 3 million visitors.

Most of the hikers I met had experienced numerous ticks on their body or clothing, some attached. The sad fact is that Lyme disease is the most serious health and safety hazard on the A.T., mostly because of the low level of hiker awareness. While many hikers have some level of knowledge about Lyme, they don't seem to know the terrible effects of long-term chronic Lyme syndrome nor do they wear treated clothing. I spoke about Lyme disease at a Trail Days workshop in May, and do you think any of the mostly young thru-hikers in town attended? Hardly any. We have a severe hiker education problem among new thru-hikers.

The fact is, Lyme disease is mostly preventable if one takes proper measures. I am convinced the single most important prevention measure is to wear permeable-treated clothing. I wore a treated long-sleeve shirt, hat with cape, and bug-net pants. I wore the

Terrible Ticks

Lyme disease, an infection that causes joint pain and inflammation, is caused by bacteria spread by the bite of the tiny deer tick (above).

96 percent of all cases come from 13 states, 10 of them on the A.T!

Treatment

■ Diagnosed with blood test; treated with antibiotics.

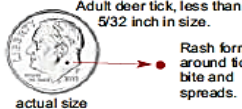
Other symptoms

- Flu-like symptoms; fever, headache, fatigue.
- Arthritic pain, including hot, swollen joints (often the knees).

Preventing disease

- Wear repellent.
- Check for ticks daily, if not at every break while hiking.
- Remove ticks with tweezers, pulling in a straight, even motion.
- Call your doctor if you get a fever or rash.

U.S. cases



Source: CDC

pants over shorts and they were almost as cool as wearing shorts alone. The Sea-to-Summit bug-net pants also had shock cord closures around the ankle to ensure a tight fit. Due to my preparation, I never had a tick on me or my clothing. Daily (or more frequent) tick checks are also critical. Nymphal (juvenile) deer ticks are so small (size of a poppy seed) they are often unnoticed except by careful tick checks.

I have spoken to A.T. outfitters who know about permethrin-treated clothing but won't stock it because it's too expensive and doesn't sell. It's a chicken and egg problem; once hikers are educated, they'll buy it.

As noted before, deer ticks and Lyme disease are most prevalent from Pennsylvania to Massachusetts. The A.T. through this stretch is mostly under 2,000 feet in elevation, and ticks love that. Although Vermont, New Hampshire and Maine also report many cases of Lyme disease, I failed to collect any ticks in these states despite multiple attempts. This is likely due to the higher elevations and different forest types on the A.T. Most cases in those states are from the lowlands. June and July are the worst months because the

nymphs (juvenile stage) are prevalent and cause most cases of Lyme disease. My work also found that shelters and tenting areas are much safer than the trail in terms of exposure, probably due to trimming and trampling of vegetation. (Sincere thanks to those volunteers who do trail and shelter trimming, they substantially reduce tick habitat.)

I've suggested to NPS and ATC that they offer on-line training about Lyme disease. It should also be available at ATC headquarters and on the websites of ATC and NPS so hikers can access it at hostels or even by smartphone. Meanwhile, I would like to hear your story if you contracted Lyme disease on the A.T. Send me your story about when and where you contracted it and whether you have chronic Lyme at earthford@aol.com. Maybe with enough evidence, we can get the needed training out there and future generations of hikers can more safely experience the epic adventure of hiking the A.T. ☐

"Speed" joined ALDHA at Trail Days and right away offered to write this article for our newsletter.













binscorner.com



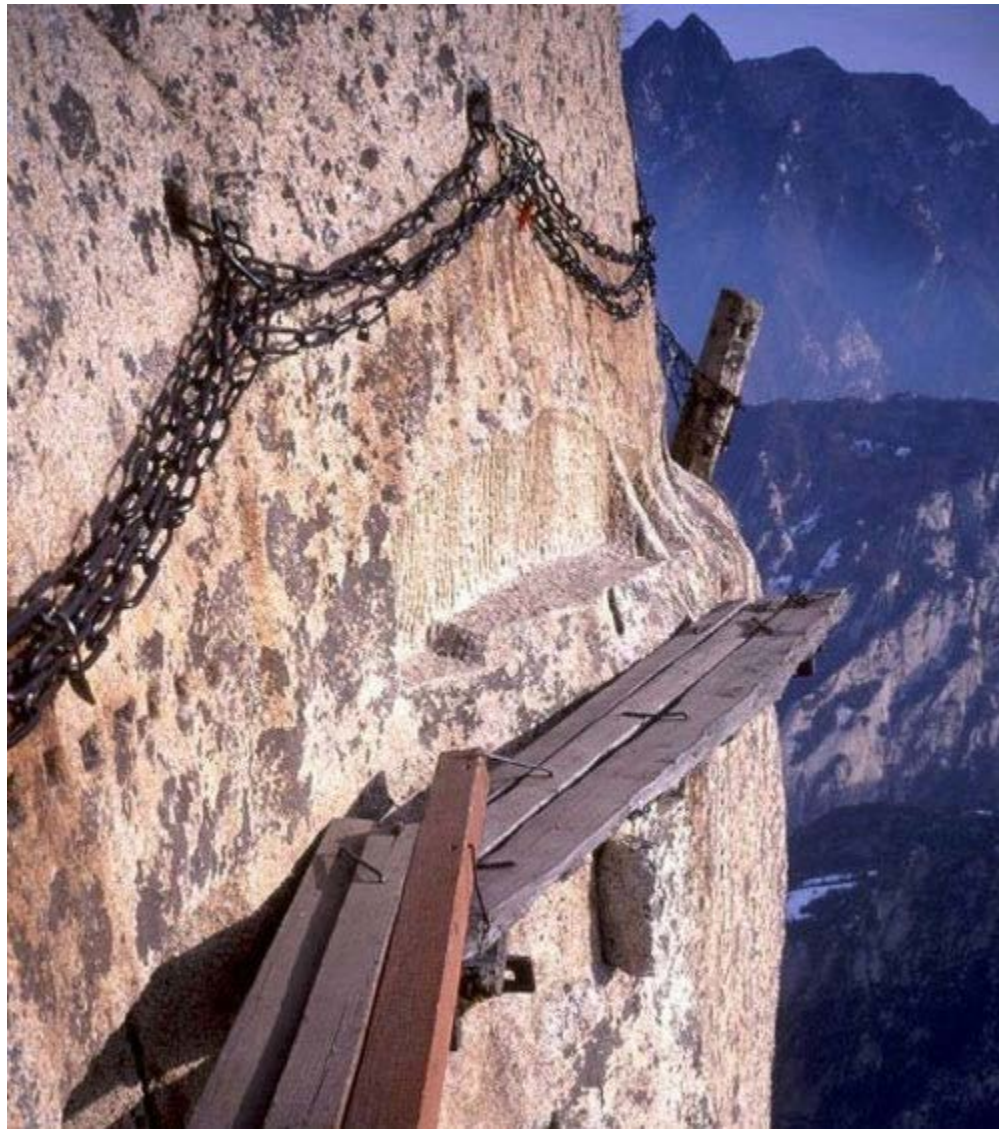






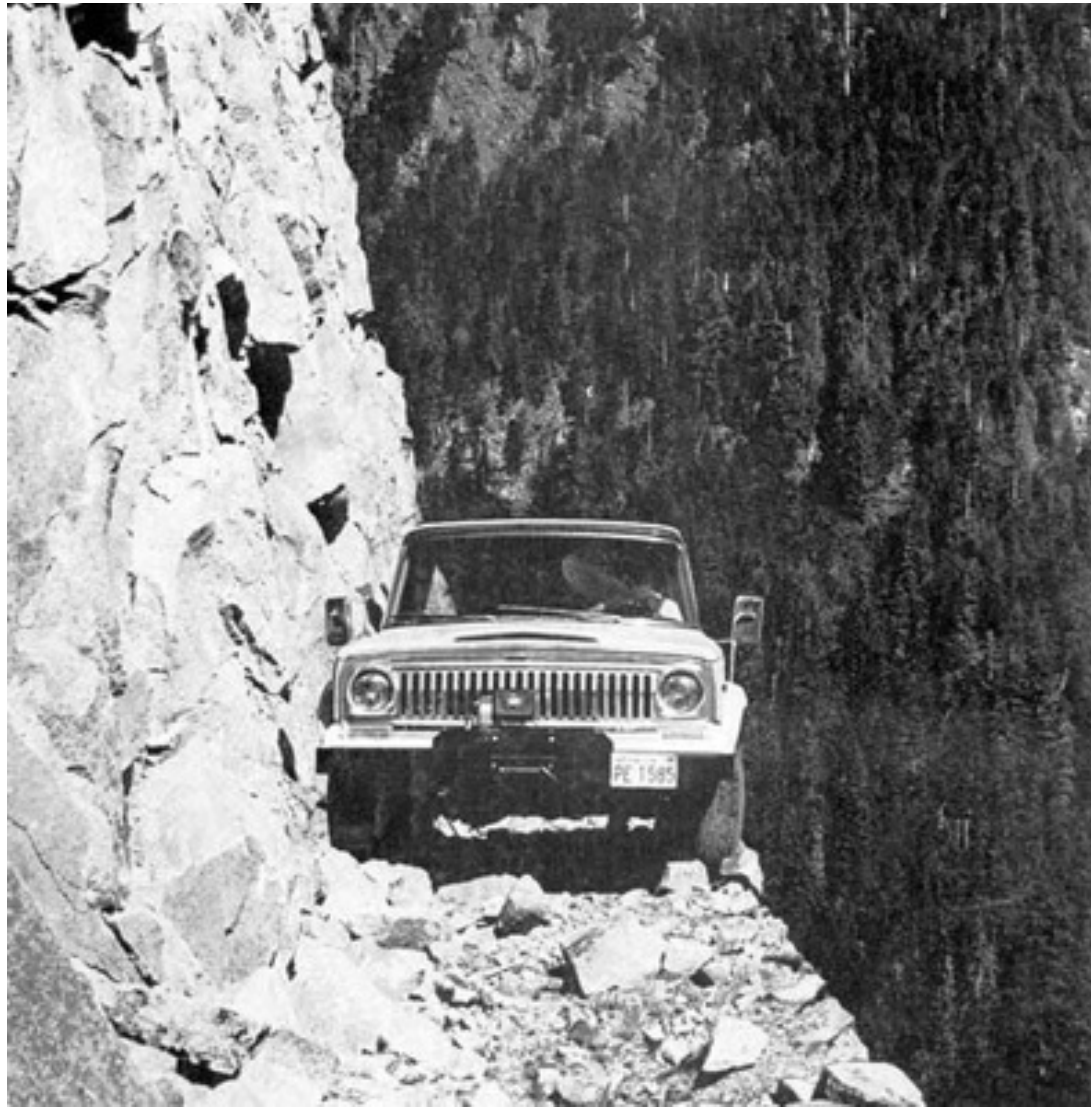












WHAT OSHA
RECOMMENDATION?







Participant Variables







Most common factors in search and rescue missions:

- **Errors in judgment (22.3%);**
- **Fatigue and physical conditioning (16.8%);**
- **Insufficient equipment, clothing or experience (15.6%);**
- **Falls (8.9%); and**
- **Weather (7.4%)**

Potential risk treatments

- Avoidance (eliminate)
- Reduction (mitigate)
- Transfer (outsource or insure)
- Retention (accept and budget)
- LEGISLATION PLAYS A KEY ROLE

Avoidance (eliminate)



Hiking Trail
Closed

Reduction (mitigate)





Trail Crew Leader Safety Talk

- Introduce project for the day and explain its importance to the overall trail system.
- Introduce crew leaders.
- Identify who has first aid training among the leaders and volunteers.
- Identify who has first aid kits.
- Identify exit points, areas of cell phone coverage, and evacuation routes.
- Name tools and identify proper use: do not swing overhead, pause, breathe, and be aware.
- Demonstrate and explain the "Circle of Death", importance of clear working area, and communication (ask when passing).
- Identify potential hazards: ask volunteers to identify hazards (overhead, loose footings, bee stings, etc.).
- Demonstrate work to be done (corridor and tread width, dimensions, remove snowbrush to the roots!).
- Set expectation for duration.

Work event check list:

First Aid Kit(s)

Tools

PPE

Waivers

RTP Timesheet (if working in Wanoga Complex)

Important Phone Numbers

911





HAGAR THE HORRIBLE

BY DIK BROWNE



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OKAY, HAGAR..

ALL SET!



CAUTION

THIS SIGN HAS

SHARP EDGES

DO NOT TOUCH THE EDGES OF THIS SIGN



ALSO, THE BRIDGE IS OUT AHEAD



Visitor Risk Management
On the
Appalachian Trail

*****What Trail Clubs Need to Know*****

Notice to All Trail Users[†]

The Appalachian Trail is a dangerous place. There are poisonous snakes, bees, bears, unpredictable weather, hazard trees, rocks, roots, bumps and humps in the Trail, thieves, murderers, drunks, vagabonds, areas that are slippery when wet, areas that will make you wet, areas that are always wet, bridges, rivers and streams without bridges, hunters with guns, hikers with guns, drop-offs, jump-ups unmarked road crossings, unoccupied structures, untested and possibly contaminated water supplies, lightning, and many, many other situations that may cause death or permanent disability. You may become hypothermic, or hyperthermic, or contract any number of diseases; you may suffer a heart attack, heat stroke, or heat exhaustion, carpal tunnel syndrome and sore knees; or you may die of thirst.

However, the Trail is, according to available statistics, safer than virtually every community in America.

**Sojourn at your own risk,
and by your own, unaided efforts.**

[†] This humorous notice was prepared to dramatize visitor or hiker risks and the roles ATC and Clubs play to manage, mitigate or control and respond to risks, accidents, incidents, and illnesses on the Appalachian Trail. While "tongue-in-cheek," all this has happened and will happen again on the A.T.

Evolution of the Law relating to CT Municipal Liability

Manning v. Barenz

221 Conn. 256 (1992)

Two-year old child injured in a municipal park when a metal box containing toys fell on his hand.

1. Recreational land use statute applied to a municipality that owned land.
2. Municipal employees in control of park were within definition of owners.
3. Statute applied to claims of negligent supervision.
4. Metal box was a structure on the land.
5. It was not necessary that child's injury was listed in "recreational purposes" of statute.

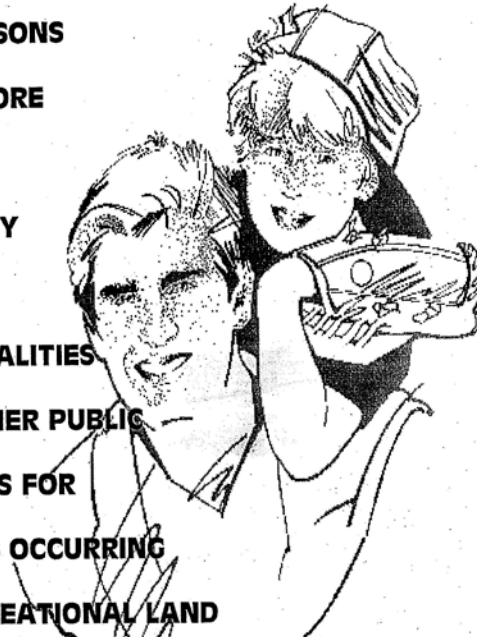
Conway v. Wilton
238 Conn. 653 (1996)

- Serious ankle and knee injuries sustained during state high school tennis tournament at Wilton High School
- Held: Municipalities are not owners under General Statutes § 52-557f (3). *Manning v. Barenz* overruled.



CONNECTICUT CONFERENCE OF MUNICIPALITIES
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**TEN REASONS
TO RESTORE
PARTIAL
IMMUNITY
TO
MUNICIPALITIES
AND OTHER PUBLIC
AGENCIES FOR
INJURIES OCCURRING
ON RECREATIONAL LAND**



February 1997



CONNECTICUT CONFERENCE OF MUNICIPALITIES

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GROUPS INVITED TO CCM COALITION MEETING CONCERNING RECREATIONAL LAND USE, 9/4/96 (listed alphabetically, others to be invited)

Connecticut Association of Boards and Education (CABE)
Connecticut Association of Conservation and Inland Wetlands Commissions
Connecticut Association of Municipal Attorneys
Connecticut Audubon Society
Connecticut Department of Environmental Protection
Connecticut Department of Transportation
Connecticut Forest and Park Association
Connecticut Recreation and Parks Association
Connecticut School Attorneys' Council
Connecticut Water Works Association, Inc.
Insurance Association of Connecticut
Land Conservation Coalition for Connecticut
Metropolitan District Commission
Nature Conservancy
Rivers Alliance
Sierra Club, Connecticut Chapter
South Central Regional Water Authority

SAVE THE DATE



RISKS, REWARDS, AND RECREATIONAL LIABILITY



Rivers Alliance of Connecticut, in partnership with the American Canoe Association, Connecticut Forest and Park Association, The Appalachian Mountain Club, and The Sierra Club-Connecticut Chapter is presenting a conference on liability issues relating to hiking, paddling, and other forms of outdoor recreation or outdoor volunteer work. The conference was inspired by many questions as to whether individuals, their groups, companies, or towns could be sued and held financially liable for outdoor recreation or volunteer work that they organize, support, publicize, or permit on their properties.

The mission of the conference is to encourage outdoor recreation and volunteer work, by helping to understand and minimize the risks of accidents and exposure to litigation. The organizers of this conference believe that important individual and social benefits arise from enjoying and restoring the great natural resources of Connecticut and New England.

This conference is for:

- Organizations, clubs, and educational institutions that support, organize, or lead outdoor events.
- Municipalities and land trusts that support outdoor events or permit land or waters to be used for recreation.
- Individuals who participate as leaders or sponsors of outdoor events.
- Individuals, private corporations, and land-holding utilities that permit their land or other property to be used for recreation.
- Insurers and lawyers who would like to promote better understanding of recreational liability.

April 16, 2010

Blonski v. MDC

2010

Headlines:

- “MDC ordered to Pay \$2.9 M”
- “Lawsuit Jeopardizes Access to Land”
- “MDC May Soon Close Off Reservoir to Cyclists”



Substitute House Bill No. 6557

Public Act No. 11-211

- **AN ACT CONCERNING LIABILITY FOR THE RECREATIONAL USE OF LANDS.**
- Be it enacted by the Senate and House of Representatives in General Assembly convened:
- Section 1. Section 52-557f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):
- As used in sections 52-557f to 52-557i, inclusive:
 - (1) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land;
 - (2) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty, except that if the owner is a municipality, political subdivision of the state, municipal corporation, special district or water or sewer district: (A) "Land" does not include a swimming pool, playing field or court, playground, building with electrical service, or machinery when attached to the realty, that is also within the possession and control of the municipality, political subdivision of the state, municipal corporation, special district or water or sewer district; and (B) "road" does not include a paved public through road that is open to the public for the operation of four-wheeled private passenger motor vehicles;
 - (3) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises. "Owner" includes, but is not limited to, a municipality, political subdivision of the state, municipal corporation, special district or water or sewer district;
 - (4) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, snow skiing, ice skating, sledding, hang gliding, sport parachuting, hot air ballooning, bicycling and viewing or enjoying historical, archaeological, scenic or scientific sites.
- Approved July 13, 2011

Current Legislation

§ 52-557f. Landowner liability for recreational use of land. Definitions

- As used in sections 52-557f to 52-557i, inclusive:
- (1) “Charge” means the admission price or fee asked in return for invitation or permission to enter or go upon the land;
- (2) “Land” means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty, except that if the owner is a municipality, political subdivision of the state, municipal corporation, special district or water or sewer district: (A) “Land” does not include a swimming pool, playing field or court, playground, building with electrical service, or machinery when attached to the realty, that is also within the possession and control of the municipality, political subdivision of the state, municipal corporation, special district or water or sewer district; and (B) “road” does not include a paved public through road that is open to the public for the operation of four-wheeled private passenger motor vehicles;
- (3) “Owner” means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises. “Owner” includes, but is not limited to, a municipality, political subdivision of the state, municipal corporation, special district or water or sewer district;
- (4) “Recreational purpose” includes, but is not limited to, any of the following, or any combination thereof: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, snow skiing, ice skating, sledding, hang gliding, sport parachuting, hot air ballooning, bicycling and viewing or enjoying historical, archaeological, scenic or scientific sites.
- (1971, P.A. 249, § 1, eff. May 24, 1971; 1971, P.A. 440, § 2; 1977, P.A. 77-393; 1979, Oct. Sp.Sess., P.A. 79-12, § 2; 1982, P.A. 82-160, § 227; 1988, P.A. 88-204; 1990, P.A. 90-310, § 3; 2011, P.A. 11-61, § 139; 2011, P.A. 11-141, § 19; 2011, P.A. 11-211, § 1.)

§ 52-557g. Liability of owner of land available to public for recreation; exceptions

- (a) Except as provided in section 52-557h, an owner of land who makes all or any part of the land available to the public without charge, rent, fee or other commercial service for recreational purposes owes no duty of care to keep the land, or the part thereof so made available, safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on the land to persons entering for recreational purposes.
- (b) Except as provided in section 52-557h, an owner of land who, either directly or indirectly, invites or permits without charge, rent, fee or other commercial service any person to use the land, or part thereof, for recreational purposes does not thereby: (1) Make any representation that the premises are safe for any purpose; (2) confer upon the person who enters or uses the land for recreational purposes the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of the owner.
- (c) Unless otherwise agreed in writing, the provisions of subsections (a) and (b) of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.
- (1971, P.A. 249, §§ 2 to 4, eff. May 24, 1971; 1973, P.A. 73-70, § 1, eff. April 17, 1973; 1982, P.A. 82-160, § 228.)

§ 52-557h. Owner liable, when

- Nothing in sections 52-557f to 52-557i, inclusive, limits in any way the liability of any owner of land which otherwise exists: (1) For willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; (2) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that, in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this section.
- (1971, P.A. 249, § 5, eff. May 24, 1971; 1982, P.A. 82-160, § 229.)

§ 52-557i. Obligation of user of land

- Nothing in sections 52-557f to 52-557i, inclusive, shall be construed to relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of said sections to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.
- (1971, P.A. 249, § 6, eff. May 24, 1971.)

Other Connecticut Statutes:

General Statutes §:

52-557n – Liability of political subdivision and its employees, officers and agents. Liability of local boards and commissions

52-557m – Immunity from liability of directors, officers and trustees of non-profit tax exempt organizations

52-557j – Liability of landowner, snowmobiles, ATVs, motorcycles, mini-bikes, mini-cycles

52-557k – Harvest firewood, fruits or vegetables; maple - sugaring

Federal Statutes:

- Federal Volunteer Protection Act 42 USCA § 14503, et. Seq.
- 1972 Volunteers in National Parks Act

Other Claims:

- Nuisance
- *Picco v. Voluntown*, 295 Conn. 141 (2010) – positive act required to impose governmental liability under General Statutes § 52-557(n)(1)(c)

Don't underestimate the role of relationships and caring.

Perception of fault or cause – a person who blames another person or firm for an injury, no matter what type, is 4.5 times more likely to sue than one who does not blame anyone for the injury.

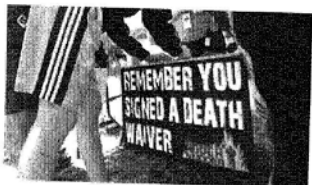


Transfer (outsource or insure)

1. Insurance
2. Indemnification agreements and waivers
3. VIF, VIP and other agreements
4. Co-sponsoring

Playing With Fire, Barbed Wire and Beer

**Tough Mudder
put together a
7-mile obstacle
course for a
grueling, but
sociable,
action-sports
competition.**



A dry run of the course at the Bear Creek Mountain Resort was recently held. On race day, participants have to promise to help others and not whine.

By JOHN BRANCH

A year ago, Tough Mudder was a semifinalist in the Harvard Business School's annual Business Plan Contest. A British student named Will Dean thought he could attract 500 people to run a grueling race through mud and man-made obstacles. Professors generally considered the plan too optimistic.

"That was a big discussion," said David Godes, a Harvard marketing professor last year who now teaches at the University of Maryland. "What was the target for this? Who's going to do this?"

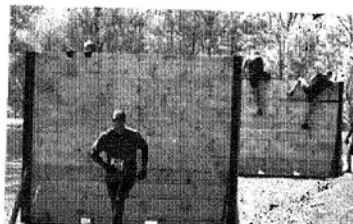
But on Sunday, the Brooklyn-based Tough Mudder will conduct a race for 4,500 people. Each has paid up to \$100 for the privilege of negotiating a seven-mile obstacle course of muddy hills, cold water and flaming bales of straw at a ski resort near Allentown, Pa.

Tough Mudder has six employees and two interns, all in their 20s. It has plans for three more races around the country this year and about 10 in 2011, some projected to have as many as 20,000 participants. It announced itself with little more than \$8,000 worth of Facebook advertising and a Web site (toughmudder.com), relying on the extrapolative power of social networking to generate an enthusiastic following. Tough Mudder has about 11,000 fans on Facebook and has attracted potential buyers.

Barring a calamitous first event, Tough Mudder appears to have found an opening in the burgeoning action-sports realm, tapping into the growing appetite for accessible-yet-demanding competitions.

The idea, imported largely from similar events in Britain (like the Grim Challenge) and Germany (the Strongman Run), is to stage events more convivial than marathons and triathlons, but more grueling than shorter runs or novelty events, some of which also have a mud-covered theme.

Sunday's race will feature long slogs up ski slopes, wades through mud bogs, crawls through cor-



Getting around the obstacle course will not be easy. There are rope bridges to cross, underwater tunnels to navigate and walls to scale.



Once racers cross the finish line, a ring of fire, they can let their wounds heal while listening to a live band with a

**Retention (accept the risk
and budget)**



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