



2006

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Recommended Citation

Terence J. Centner, *Equestrian Immunity and Sport Responsibility Statutes: Altering Obligations and Placing Them on Participants*, 13 Jeffrey S. Moorad Sports L.J. 37 (2006).

Available at: <https://digitalcommons.law.villanova.edu/mslj/vol13/iss1/1>

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EQUESTRIAN IMMUNITY AND SPORT RESPONSIBILITY
STATUTES: ALTERING OBLIGATIONS AND
PLACING THEM ON PARTICIPANTS

TERENCE J. CENTNER*

Compensation for injuries is influenced by a legal system that facilitates lawsuits based on fault.¹ Any inferior service or deviation from a norm presents an opportunity for litigation based on negligence.² An aggressive and assertive legal community encourages dissatisfied individuals to sue others for damages.³ A perusal of reported lawsuits discloses a fixation on blaming others,⁴ an expansive system for settling disputes, and litigants who do not have a good idea of how courts will respond to a case.⁵ Due to the uncertainty, unpleasantness, and expense of litigation, individuals, firms, and governments feel compelled to adopt defensive measures.⁶

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1. See, e.g., Mark Geistfeld, *Negligence, Compensation, and the Coherence of Tort Law*, 91 GEO. L.J. 585, 624 (2003) (discussing how courts apportion damages among multiple injurers based on "modern rule" of comparative fault); Ellen S. Pryor, *Rehabilitating Tort Compensation*, 91 GEO. L.J. 659, 688 (2003) ("Compensation can symbolize public recognition of the transgressor's fault by requiring something important to be given up on one side and received on the other." (citing Margaret Jane Radin, *Compensation and Commensurability*, 43 DUKE L.J. 56, 69 (1993))).

2. E.g., *Odenthal v. Minn. Conf. of Seventh-Day Adventists*, 649 N.W.2d 426, 436 n.10 (Minn. 2002) (quoting *Osborne v. McMasters*, 41 N.W. 543, 543-44 (Minn. 1889)) (observing that negligence is breach of duty set by common law or statute). Specifically, "[i]n either case [statute or common law] the failure to perform the duty constitutes negligence, and renders the party liable for injuries resulting from it." *Id.*

3. See, e.g., Paul H. Rubin & Martin J. Bailey, *The Role of Lawyers in Changing the Law*, 23 J. LEGAL STUD. 807, 815-16 (1994) (classifying Association of Trial Lawyers of America ("ALTA") as interest group in which plaintiffs' attorneys share information and strategies).

4. For a summary of cases that demonstrate fixation on blaming others, see *infra* notes 23-31, 49-56, and accompanying text.

5. See James R. Levine, *The Federal Tort Claims Act: A Proposal for Institutional Reform*, 100 COLUM. L. REV. 1538, 1558 (2000) (noting first workers' compensation statutes were adopted to avoid unpredictable tort judgments). These unpredictable and arbitrary judgments prevented litigants from reasonably estimating courts' judgments. See *id.* at 1558-59 (inferring litigants' inability to predict from inconsistent judgments).

6. See, e.g., Scott Burris, *Dental Discrimination Against the HIV-Infected: Empirical Data, Law and Public Policy*, 13 YALE J. ON REG. 1, 55-56 (1996) (discussing results of

People should be able to understand laws. American rules for tort lawsuits disclose an intimidating legal system confronting both service providers and injured persons.⁷ In protecting individuals and their rights, we sometimes neglect the rights of neighbors, service providers, and society as a whole.⁸ To offer more protection to service providers, many state legislatures have altered the rights of persons participating in recreational and sport activities.⁹ The legislative changes place greater responsibilities on participants.¹⁰ Rather than continuing with tort principles that force activity providers to insure participants against all risks,¹¹ new equestrian immunity and sport responsibility statutes place obligations on participants. Statutory provisions allow some accidents to be resolved without resorting to litigation. These legislative enactments

Harvard Malpractice study cited in PAUL C. WEILER ET AL., A MEASURE OF MALPRACTICE: MEDICAL INJURY, MALPRACTICE LITIGATION, AND PATIENT COMPENSATION 124-29 (1993)). "In response to malpractice fears, physicians' behavior tends to involve greater use of 'defensive' measures and more paperwork rather than the increased care the tort model predicts." *Id.*

7. See Michael L. Rustad & Thomas H. Koenig, *Taming the Tort Monster: The American Civil Justice System as a Battleground of Social Theory*, 68 BROOK. L. REV. 1, 38-54 (2002) (discussing initial erosion of barriers to recovery and expansion of duties under tort law and "Neo-conservative Tort Law Retrenchment").

8. See, e.g., Robert M. Ackerman, *Disputing Together: Conflict Resolution and the Search for Community*, 18 OHIO ST. J. ON DISP. RESOL. 27, 29 (2002) (postulating that our preoccupation with individual rights and economic self-maximization has caused us to neglect social nature of our existence); Eric T. Freyfogle, *Land Ownership and the Level of Regulation: The Particulars of Owning*, 25 ECOLOGY L.Q. 574, 584 (1999) (noting preoccupation with individual rights leads to detriment of environmental quality). "When anti-environmental forces unfurl the private-property banner, employing the rhetoric of individual rights in good American style, they implicitly assert that land health has become too dominant a goal." Freyfogle, *supra*, at 584; see, e.g., Neil D. Hamilton, *Right-to-Farm Laws Reconsidered: Ten Reasons Why Legislative Efforts to Resolve Agricultural Nuisances May Be Ineffective*, 3 DRAKE J. AGRIC. L. 103, 105 (1998) (acknowledging "right-to-farm laws require a reallocation of property rights (or at least of societal priorities)"). Further, "[f]or [right-to-farm] laws to work, some conduct that previously would have been actionable as a nuisance is now protected . . ." Hamilton, *supra*, at 105.

9. See *infra* Tables 1 and 2 (listing equestrian immunity statutes and sport responsibility statutes of numerous states).

10. See Terence J. Centner, *Tort Liability for Sport and Recreational Activities: Expanding Statutory Immunity for Protected Classes and Activities*, 26 J. LEGIS. 1, 2 (2000) [hereinafter Centner, *Tort Liability*] (discussing states' adoption of statutes limiting tort liability).

11. See, e.g., *Jones v. Walker*, 433 S.E.2d 726, 728-29 (Ga. Ct. App. 1993) (rejecting defendant's vicarious liability argument for horse show injuries under family purpose doctrine); *Mead v. M.S.B., Inc.*, 872 P.2d 782, 786-92 (Mont. 1994) (analyzing defendant ski operator's duties to skiers under MONT. CODE ANN. 423-2-733 (1989)); *Murphy v. N. Am. River Runners, Inc.*, 412 S.E.2d 504, 511-12 (W. Va. 1991) (discussing statutory duties imposed on whitewater outfitters regarding liability for whitewater rafting accident under W. VA. CODE §§ 20-3B-1 to 20-3B-5 (1987)).

provide ideas for additional actions that might reduce reliance on our inefficient liability system.

This Article first examines the differences in safety approaches between Americans and Europeans based on personal experiences and legal research. It next considers the impact of major changes in American tort law, particularly focusing on how these changes have responded to societal concerns and ultimately resulted in greater numbers of injured plaintiffs maintaining lawsuits. Finally, this Article acknowledges policy-driven proposals, common law principles, and statutory solutions that have been offered to curtail tort litigation. Specifically, it analyzes equestrian immunity and sports responsibility statutes' attempts to excuse providers of activities from incurring liability for some accidents. Based on these findings, this Article proposes that future changes to the American tort system should model the success of equestrian immunity and sports responsibility statutes by enacting obligations on participants to reduce litigation and accompanying expenses.

I. PERSONAL RESPONSIBILITY AND LAWSUITS

I recently had an opportunity to live and work in Europe, during which my family joined me for an opportunity to live abroad. After observing people and settings in Germany and other European countries, different approaches to safety became evident. Europeans appear to believe in personal responsibility as opposed to strict liability.¹² Europeans teach their children to take care of themselves and to avoid potentially harmful situations. Americans look to their schools, police, and government to keep people safe.¹³ When a society places responsibilities on individuals rather than others, including governments, it affects liability. Persons who accept responsibility are less likely to feel that others are at fault. A legal system involving a low level of personal responsibility facili-

12. See, e.g., Andrew C. Spacone, *Strict Liability in the European Union - Not a United States Analog*, 5 ROGER WILLIAMS U. L. REV. 341, 373 (2000) (contrasting Europeans' and Americans' generalized beliefs about manufacturers' liability); Andrei Sirabonian, Comment, *Why Tobacco Litigation Has Not Been Successful in the United Kingdom: A Comparative Analysis of Tobacco Litigation in the United States and the United Kingdom*, 25 NW. J. INT'L L. & BUS. 485, 505 (2005) (associating failure of European cases against tobacco industry to European perception of "personal responsibility").

13. See, e.g., *Breaux v. Miami Beach*, 899 So. 2d 1059, 1066 (Fla. 2005) (concluding city had duty to warn of dangers known and those that "should have been known").

tates liability disputes.¹⁴ Injured persons may claim responsibility rests with someone else. Absent clearly assigned obligations, additional disagreements over responsibility arise.¹⁵ Moreover, people blame others and sue.¹⁶

My experiences with public swimming pools show differences between European and American liability rules. The German suburb where we lived contained an indoor recreational facility with two pools. A shallow pool about two and one-half feet deep was available for those who could not swim. Young children playing all types of water games used this pool. A second larger pool was for swimming. We searched for the lifeguards, but could not see anyone. There were two men in an office with glass windows overlooking the shallow pool; they were managers of the facility. There were no lifeguards despite the presence of more than fifty swimmers, including young children. Europeans tend to care for themselves and watch out for others.¹⁷ Parents looked after their children and knew that other parents would assist if needed. If a swimmer experienced a difficulty, whoever was nearby would help out. Because Europeans expect people to care for themselves, they may forgo supervision at public pools. Under American negligence law, however, swimmers and other sport participants expect sport providers to guarantee their safety.¹⁸ American sports participants experiencing a mishap are more likely to blame the sport provider for not implementing greater safety precautions. Thus, American swim-

14. See Douglas H. Cook, *Personal Responsibility and the Law of Torts*, 45 AM. U. L. REV. 1245, 1268 (1996) (suggesting utilization of insurance availability could reduce tort litigation).

15. See, e.g., Walker v. Eleby, 842 A.2d 389, 390-91 (Pa. 2004) (analyzing state statute unclearly outlining Pennsylvania liability for injuries occurring on sidewalk next to state highway).

16. See Stephen D. Sugarman, *A Century of Change in Personal Injury Law*, 88 CAL. L. REV. 2403, 2409-10 (2000) (noting people attempt to transfer blame to others).

17. See Christopher H. White, Comment, *No Good Deed Goes Unpunished: The Case for Reform of the Rescue Doctrine*, 97 NW. U. L. REV. 507, 510 n.16 (2002) (noting duty to rescue in number of European countries); Morton J. Horwitz, *Conceptualizing the Right of Access to Technology*, 79 WASH. L. REV. 105, 106 (2004) (contrasting duty established by European countries to United States). Furthermore, "[o]ne may be surprised to learn that in the United States there is no duty to rescue the baby [lying face down in a puddle], while in most European countries such a duty does exist, sometimes extending even to criminal liability." Horwitz, *supra*, at 106 (citing Edward A. Tomlinson, *The French Experience with Duty To Rescue*, 20 N.Y.L. SCH. J. INT'L & COMP. L. 451, 451-52 (2000)).

18. This is part of common law negligence and may be augmented through a statute or regulation. See, e.g., OHIO ADMIN. CODE 3701-31-04(K)(3) (2004) (injecting requirement to "prominently" place sign to warn potential pool users that there is no lifeguard).

ming pools and public beaches need lifeguards.¹⁹ Americans do not expect swimmers to take care of themselves or their neighbors.²⁰ Even with lifeguards present, swimmers in trouble are not always helped and drown.²¹ American tort law encourages families of persons who are injured to blame the facility and property owners.²²

Skiing accidents also exemplify sport providers' presumed duty to participants for injuries despite the participants' carelessness. Skiers have sued ski operators for injuries resulting from their failure to stay on ski trails,²³ collisions into signposts,²⁴ or falling from a chairlift.²⁵ *De Lacy v. Catamount Dev. Corp.*, involves a seven-year-old child who fell from a chairlift and illustrates the expectation that someone other than the injured party should be liable.²⁶ The child had been skiing for two seasons and had an accident while using a chairlift.²⁷ The defendant argued that the child had raised

19. Compare *Andrews v. Dep't of Natural Res.*, 557 So. 2d 85, 89 (Fla. Dist. Ct. App. 1990) (reversing summary judgment for defendant because possibility existed that state's failure to post "no swimming" signs breached duty), with *Pelz v. Clearwater*, 568 So. 2d 949, 951 (Fla. Dist. Ct. App. 1990) (granting summary judgment for defendant in drowning case because city had no notice of danger). Despite different outcomes, *Andrews* and *Pelz* demonstrate some of the necessary precautions public beaches must implement to defend against lawsuits. See, e.g., *Andrews*, 557 So. 2d at 88 (discussing defendant's use of lifeguards at Dog Beach and significance of designating beach as swimming area). But see, e.g., *Pelz*, 568 So. 2d at 951 (distinguishing from *Andrews* because state was on notice of dangerous swimming area while in *Pelz*, state "cannot be held liable as a private owner for unknown dangerous conditions in a body of water under its control after its surveys of the area revealed no such conditions").

20. See, e.g., *Andrews*, 557 So. 2d at 88 (obligating state with common law duty to operate beach safely if state designated beach as swimming area).

21. See, e.g., *Frazier v. Metro. Dade County*, 701 So. 2d 418, 419-21 (Fla. Dist. Ct. App. 1997) (applying damage apportionment among Metropolitan Dade County and deceased's mother and aunt, who along with lifeguards, were supervising deceased before drowning).

22. See, e.g., *Univ. Preparatory Sch. v. Huitt*, 941 S.W.2d 177, 179 (Tex. App. 1996) (affirming school's negligent pool area supervision led to student falling from balcony and sustaining severe injuries).

23. See, e.g., *Mead v. M.S.B., Inc.*, 872 P.2d 782, 784-85 (Mont. 1994) (discussing facts leading to plaintiff's lawsuit).

24. See, e.g., *Northcutt v. Sun Valley Co.*, 787 P.2d 1159, 1160-64 (Idaho 1990) (detailing facts and finding no cause of action against provider for accident). Plaintiff Christopher Northcutt "struck a signpost at the confluence of several ski runs . . ." *Id.* at 1160.

25. See, e.g., *De Lacy v. Catamount Dev. Corp.*, 755 N.Y.S.2d 484, 485 (App. Div. 2003) (affirming denial of defendant's motion for summary judgment because question of fact regarding existence of plaintiff's full appreciation of risk).

26. See *id.* at 485 (concluding that seven-year-old child cannot fully appreciate risks of chair lift as matter of law).

27. See *id.*

the safety bar prematurely.²⁸ Rather than accepting responsibility, the child and her mother sued the ski operator. They argued that the operator had not given sufficient instructions on how to use the chairlift.²⁹ On appeal, the court questioned whether a seven-year-old novice skier could have “fully appreciated the risks associated with the use of the chairlift”³⁰ Because the skier may not have appreciated the risks, the court decided that the seven-year-old plaintiff could not have assumed liability for the risks as a matter of law.³¹ Thus, the court heard the plaintiffs’ case.

Where should the responsibility line be drawn? Until a certain age, every child is too young to appreciate the risks of an activity.³² Does this mean that owners of facilities providing activities have to insure children for their resulting injuries?³³ People should be expected to use care in keeping themselves safe. For some accidents, people must accept responsibility for their injuries. Although it is difficult to sort out who caused a sport injury, it may be possible to allocate responsibility for some types of injuries to participants rather than placing liability on providers.³⁴

II. EXPECTATION THAT INJURED PERSONS SHOULD SUE AND FEAR OF BEING SUED

American tort law has changed considerably in the past one hundred years.³⁵ Motorized transport, dangerous equipment, chemicals, the “impersonal nature of medical service,” the mass

28. *See id.*

29. *See id.* The plaintiffs also presented expert evidence “faulting the safety of the chairlift design for use by children.” *Id.* at 485-86.

30. *De Lacy*, 755 N.Y.S.2d at 486.

31. *See id.* (indicating reasoning for denial of summary judgment motion).

32. Indeed, many states feel minors should be able to bring suits for torts despite releases signed by their parental guardians. Under decided cases, states have found that releases for minors are against public policy. *Compare* *Scott v. Pac. W. Mountain Resort*, 834 P.2d 6, 11 (Wash. 1992) (“absent judicial or statutory authority, parents have no authority to release a cause of action belonging to their child”), with *Joseph H. King, Jr., Exculpatory Agreements for Volunteers in Youth Activities - The Alternative to “Nerf®” Tiddlywinks*, 53 OHIO ST. L.J. 683, 685-86 (1992) (arguing for state legislation allowing exculpatory agreements made on behalf of minors to bar claims against volunteers and nonprofit organizations).

33. *See* Robert S. Nelson, Comment, *The Theory of the Waiver Scale: An Argument Why Parents Should Be Able to Waive Their Children’s Tort Liability Claims*, 36 U.S.F. L. REV. 535, 555 (2002) (observing that nonenforcement of parental waivers results in higher insurance premiums for activity providers).

34. *See, e.g.,* Noreen L. Slank, *Leveling the Playing Field*, 38 WASHBURN L.J. 847, 860 (1999) (observing that ski and equine statutes, for example, allocate responsibility on both participant and operator).

35. *See* William L. Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465, 475-84 (1953) (discussing apportionment of damages that would occur under compara-

production and distribution of goods, and participation in sport activities have justified the development of new laws for accidents.³⁶ Rule modifications concerning the burden of proof, strict liability, products liability, and assignment of damages have altered the legal system to allow more recoveries.³⁷ Major changes in tort law have responded to a belief that compensation should be paid to additional categories of injured victims.³⁸

One major change has been the near universal rejection of contributory negligence.³⁹ Fifty years ago, victims who failed to use due care were generally precluded from maintaining a negligence lawsuit. Consequently, many injuries went uncompensated.⁴⁰ Despite evidence showing the defendant's offensive conduct caused the injuries, the plaintiff's contributory negligence prevented recovery.⁴¹ Harsh results under a contributory negligence standard have caused states to revise their negligence rules and adopt comparative negligence.⁴² Today, victims who were partially at fault for an acci-

tive negligence); Sugarman, *supra* note 16, at 2406 (describing forces driving tort law changes).

36. See, e.g., Robert J. Cottrol, *Creative Uncertainty*, 81 TEX. L. REV. 627, 641 (2002) (reviewing LAWRENCE M. FRIEDMAN, *AMERICAN LAW IN THE TWENTIETH CENTURY* (2002)) (observing "automobile, the increasingly impersonal nature of medical service, and the mass manufacture and distribution of goods" have contributed to development of modern law of torts).

37. *But see* George L. Priest, *Modern Tort Law and Its Reform*, 22 VAL. U. L. REV. 1, 7 (1987) [hereinafter Priest, *Modern*] (attributing expansion of liability for accidents to product and service providers' superior position to prevent accidents).

38. See, e.g., George L. Priest, *The Invention of Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law*, 14 J. LEGAL STUD. 461, 462 (1985) (noting obsolescence of contract law and rise of product liability law to respond to product-related injuries).

39. See, e.g., Stuart Low & Janet Kiholm Smith, *Decisions to Retain Attorneys and File Lawsuits: An Examination of the Comparative Negligence Rule in Accident Law*, 24 J. LEGAL STUD. 535, 535-36 (1995) (stating most states have replaced contributory negligence with comparative negligence).

40. See Wes Parsons, *The Inefficient Common Law*, 92 YALE L.J. 862, 884 (1983) (explaining how contributory negligence encouraged injurers to minimize accident prevention costs); Daniel Voelker, Note, *The Application of Comparative Negligence to Strict Products Liability: Coney v. J.L.G. Industries, Inc.*, 59 CHI.-KENT. L. REV. 1043, 1046 (1983) (observing contributory negligence left many injured plaintiffs uncompensated).

41. See, e.g., *Diederich v. Walters*, 357 N.E.2d 1128, 1132 (Ill. 1976) (finding defendant operating motor vehicle in excess of posted speed limit and failing to maintain proper lookout for pedestrians lawfully upon highway could not incur liability because of decedent's contributory negligence).

42. See, e.g., John C. Moorhouse et al., *Law & Economics and Tort Law: A Survey of Scholarly Opinion*, 62 ALB. L. REV. 667, 673-74 (1998) (describing change from contributory to comparative negligence as "sweeping"); Christopher J. Robinette & Paul G. Sherland, *Contributory or Comparative: Which is the Optimal Negligence Rule?*, 24 N. ILL. U. L. REV. 41, 50-51 (2003) (asserting advantage of comparative negligence over contributory negligence regarding compensation).

dent may sue. The relative fault of the plaintiff and defendant are compared. Plaintiffs can be awarded damages whenever the trier of fact concludes that a defendant's action (or inaction) contributed to the injuries. Moreover, the assumption of risk defense has been relaxed to permit more lawsuits.⁴³ These changes have resulted in greater numbers of injured plaintiffs initiating lawsuits.⁴⁴

Another change involves people being less likely to accept misfortune.⁴⁵ Instead, they seek to blame another person for their injuries. Advertisements tout the need to call a doctor or a lawyer if a person was in an automobile accident, even if they were not injured.⁴⁶ The ads' purpose is to have someone else pay for the medical expenses. Friends and neighbors sue each other.⁴⁷ Others seek revenge through lawsuits.⁴⁸ American culture seems to equate the failure to bring a lawsuit with forgoing justice and money.

Kim v. Mirisis, a case involving a three-year-old child who ran out into a street, illustrates this attitude.⁴⁹ According to two non-party eyewitnesses, the child was injured after running between two parked cars and colliding with the passenger side of a truck.⁵⁰ The eyewitnesses' deposition testimony stated the "truck had stopped before the child collided with it."⁵¹ This evidence seems to indicate

43. See, e.g., *Mead v. M.S.B., Inc.*, 872 P.2d 782, 790 (Mont. 1994) (noting assumption of risk was no longer separate affirmative defense in negligence claims); see also Sugarman, *supra* note 16, at 2409 (recognizing assumption of risk doctrine is not as rigorously applied as in 1900).

44. Indeed, some say that the U.S. legal system's set of structures, rules, and practices encourages adversarial litigation. See Robert A. Kagan, *On Surveying the Whole Legal Forest*, 28 LAW & SOC. INQUIRY 833, 839 (2003) (describing results of comparative policy-specific studies indicating litigiousness in United States).

45. See Sugarman, *supra* note 16, at 2409 (noting misfortune used to be "more accepted part of life," but now "people are more likely to blame others for their injuries and go to court to obtain redress").

46. For further discussion on advertising in the legal profession, see Matthew Garner Mercer, *Lawyer Advertising on the Internet: Why the ABA's Proposed Revisions to the Advertising Rules Replace the Flat Tire with a Square Wheel*, 39 BRANDEIS L.J. 713, 714 (2001) (discussing how free speech rules contributed to changes in lawyer advertising).

47. See Paula A. Franzese, *Does It Take a Village? Privatization, Patterns of Restrictiveness and the Demise of Community*, 47 VILL. L. REV. 553, 573-75 (2002) (stating how "neighbors are turning on each other").

48. See Emily Sherwin, *Compensation and Revenge*, 40 SAN DIEGO L. REV. 1387, 1403-04 (2003) (suggesting revenge may be aspect of compensation).

49. See *Kim v. Mirisis*, 730 N.Y.S.2d 353, 354 (App. Div. 2001) (holding plaintiffs did not raise triable issue of fact).

50. See *id.* (restating facts of case).

51. *Id.* (noting defendants established their prima facie entitlement to judgment as matter of law by relying on eyewitness testimony).

the child was at fault; he should not have run into the street.⁵² Yet the severity of the child's injury made his parents feel that the truck driver was at fault.⁵³ Although the parents had not seen the accident, they alleged that the driver must have been operating the truck in a negligent manner.⁵⁴ They alleged that the driver failed to see their child in time to avoid the accident due to the driver's negligence.⁵⁵ The parents' grief and their insistence that someone else be blamed for the accident forced the innocent truck driver to defend himself before a trial and appellate court before the case was over.⁵⁶

A fear of being sued permeates Americans' daily lives.⁵⁷ The endorsement of a tort system that emphasizes individual rights has eroded the freedom to make choices based on common sense.⁵⁸ Manufacturers do not dare sell products that might be misused or that careless people might utilize incorrectly.⁵⁹ Businesses select locations for facilities based on liability law.⁶⁰ Schools forgo new activities or even cancel longstanding practices due to liability

52. See *id.* (noting defendant stopped truck "in response to a warning from a pedestrian who ran into the street in front of the truck").

53. See *id.* (stating plaintiff's allegation that severity of child's injury establishes truck's failure to stop at time of accident).

54. See *Kim*, 730 N.Y.S.2d at 354 (basing argument on severity of child's injury).

55. See *id.* (arguing infant's severe injuries were proof of negligence).

56. See *id.* (affirming previous court's decision to grant defendant summary judgment because there was no triable issue of fact).

57. See *Knapp v. Hill*, 657 N.E.2d 1068, 1073 (Ill. App. Ct. 1995) (discussing public policy of granting tort immunity to teachers); see also Kagan, *supra* note 44, at 839 (noting that fear of litigation is greater in United States than in other countries); Robert Heidt, *The Avid Sportsman and the Scope for Self-Protection: When Exculpatory Clauses Should Be Enforced*, 38 U. RICH. L. REV. 381, 430-34 (2004) (summarizing choices recreational users have in providing activities where persons may be injured, securing insurance, or forgoing activity due to liability concerns). For further discussion on how fear of being sued affects Americans' lives, see *infra* notes 58-63 and accompanying text.

58. See, e.g., Stuart Taylor Jr. & Evan Thomas, *Civil Wars*, NEWSWEEK, Dec. 15, 2003, at 42-51 (discussing how volunteers are forgoing activities due to concerns about being sued); King, *supra* note 32, at 685-86 (advocating protection of volunteers and non-profit organization through state legislation enforcing exculpatory agreements made on behalf of minors).

59. See, e.g., Donald P. Judges, *Of Rocks and Hard Places: The Value of Risk Choice*, 42 EMORY L.J. 1, 30 n.90 (1993) (describing incidents of equipment misuse resulted in lawsuits leading well-respected equipment manufacturer to file Chapter 11 bankruptcy).

60. See Deborah L. Rhode, *Too Much Law, Too Little Justice: Too Much Rhetoric, Too Little Reform*, 11 GEO. J. LEGAL ETHICS 989, 1000 (1998) (reporting "California's corporate leaders repeatedly single out liability law as the factor most likely to hurt the state's business climate").

concerns.⁶¹ Governments decline to provide services because of the costs associated with potential liability.⁶² Sport and activity providers discontinue offering activities.⁶³ Due to litigation concerns, equipment, facilities, and activities that are common in Europe are not in the United States.

Societies have systems of rules to establish guidelines for personal conduct.⁶⁴ Rules also address injustices,⁶⁵ compensate victims of wrongful action,⁶⁶ and provide for the systematic resolution of disputes.⁶⁷ While the United States and European countries recognize these guiding principles, they approach them differently. Dissimilar cultural distinctions or political decisions may explain this difference. Yet the question remains: Can Americans learn anything from their European cousins? Do Europeans have approaches to tort law that are superior for handling conflicts? European parents teach their children how to be careful to avoid injury. Both children and adults recognize their limitations and learn to be responsible for avoiding injury while living their lives. Americans factor in an idea of guaranteed safety despite the existence of adequate safety warnings.⁶⁸ They believe that unnecessarily risky situations should be deterred by placing liability on manufacturers and providers who fail to use sufficient care.⁶⁹

61. See W. Kent Davis, *The International View of Attorney Fees in Civil Suits: Why Is the United States the "Odd Man Out" in How It Pays Its Lawyers?*, 16 ARIZ. J. INT'L. & COMP. L. 361, 365 (1999) (citing JAMES R. FORCIER, JUDICIAL EXCESS: THE POLITICAL ECONOMY OF THE AMERICAN LEGAL SYSTEM 86-87 (1994)) (discussing school cancellation of extracurricular activities due to liability concerns).

62. See, e.g., *Breaux v. Miami Beach*, 899 So. 2d 1059, 1074 (Fla. 2005) (Wells, J., dissenting) (noting increasing of municipality's liability will "predictably result" in reduction of public services).

63. See, e.g., Heidt, *supra* note 57, at 412-36 (discussing liability concerns can lead to certain activities' elimination).

64. See *Daniels v. Williams*, 474 U.S. 327, 332 (1986) (rejecting Fourteenth Amendment as "font of tort law to be superimposed upon whatever systems may already be administered . . .").

65. See Celia Wells et al., *Disasters: A Challenge for the Law*, 39 WASHBURN L.J. 496, 522 (2000) (indicating utilitarian theory premised on idea that "tort law exists to correct injustices").

66. See Geistfeld, *supra* note 1, at 590 (positing that one justification for tort law is to compensate wrongful injuries).

67. See Richard A. Nagareda, *In the Aftermath of the Mass Tort Class Action*, 85 GEO. L.J. 295, 298 (1996) (discussing how mass tort litigation may foster both resolution of private disputes and public concern).

68. See *Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328, 331 (Tex. 1998) (concluding "the mere fact that a product bears an adequate warning does not conclusively establish that the product is not defective").

69. See, e.g., *Proctor v. Davis*, 682 N.E.2d 1203, 1214-16 (Ill. App. Ct. 1997) (finding drug manufacturer liable for not adequately warning medical community members about drug's dangers and risks).

Americans place duties on manufacturers and providers so that users and participants do not need to use care.⁷⁰

Drawing upon my experiences abroad, I see advantages to European approaches to activities. Activity providers can use more original designs because they have less concern about being sued. Compared to their American counterparts, European kids enjoy greater challenges on their playgrounds. European public transportation systems can incorporate design features that make them more user-friendly. Accompanying these features is a requirement that people use care to keep themselves safe and a liability system that places responsibilities on the users. American attitudes toward personal responsibility and expectations concerning safety are precluding the adoption of technology and design features common in other parts of the world.⁷¹

III. CURTAILING LITIGATION

Many policy-driven proposals have been offered to curtail litigation. Some would like to make the American legal system more uniform, predictable, and fair.⁷² Others want to lower transaction costs and aid the competitiveness of American law firms.⁷³ Simultaneously, the need to encourage research, market new products, and deter accidents are important.⁷⁴ The need for tort liability exceptions has been recognized for hundreds of years. One of the obvious exceptions arose from the principle that people should not be able to sue the king. Under common law, a sovereign immunity doctrine developed precluding government tort liability.⁷⁵ Tort immunity for states, agencies, public officials, local governments,

70. See Geistfeld, *supra* note 1, at 631 n.159 (observing tort law, specifically under strict liability regimes, seeks to provide people with physical security, but potentially at expense of others' personal liberty).

71. See Mathias Reimann, *Liability for Defective Products at the Beginning of the Twenty-First Century: Emergence of a Worldwide Standard?*, 51 AM. J. COMP. L. 751, 837-38 (2003) (distinguishing United States from other countries regarding approach to products liability). "[The United States] is the only nation where victims sue in product liability by the tens of thousands every year, where million-dollar awards are becoming routine, and where punitive damages are a real threat to defendants." *Id.* at 838.

72. See Deborah J. La Fetra, *Freedom, Responsibility, and Risk: Fundamental Principles Supporting Tort Reform*, 36 IND. L. REV. 645, 683 (2003) (observing tort reform measures are designed to make legal systems more uniform and predictable).

73. See, e.g., RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* (2003).

74. See Priest, *Modern*, *supra* note 37, at 7 (acknowledging providers of products and services are in best position to prevent some accidents).

75. See R. Perry Sentell, Jr., *Tort Claims Against the State: Georgia's Compensation System*, 32 GA. L. REV. 1103, 1135-36 (1998) (discussing language and policy behind Georgia's sovereign immunity waiver).

school districts, and other governmental entities has developed into a confusing set of rules created by legislative action and judicial precedents.⁷⁶

Other historic immunity principles are part of common law and have been expanded by state statutes. Good Samaritan laws allow persons to assist others without incurring liability for mistakes that may injure the victim being helped.⁷⁷ Gleaning laws protect food donors and other items from liability.⁷⁸ Furthermore, during the past twenty years, citizens and interest groups have petitioned state legislatures for new legislation regarding equestrian and sport activities.⁷⁹ They sought immunity from accidents involving inherent risks. Some laws responded to an insurance crisis when businesses were unable to secure liability insurance at reasonable prices.⁸⁰ Other laws were presented as providing economic assistance to a deserving state industry through the reduction of costly tort lawsuits.⁸¹

In the late 1980s, individual state legislatures started considering new sets of liability rules for equestrian activities.⁸² The negligence immunity provided by the Good Samaritan, gleaning, and recreational use statutes fostered a special exception for equestrian activities.⁸³ Ski operators and purveyors of other sport activities also

76. See, e.g., Thomas A. Bustin & William N. Drake, Jr., *Judicial Tort Reform: Transforming Florida's Waiver of Sovereign Immunity Statute*, 32 STETSON L. REV. 469, 469-70 (2003) (stating how confusing Florida's sovereign immunity has become due to statutory and judicial developments).

77. See generally Danny R. Veilleux, *Construction and Application of "Good Samaritan" Statutes*, 68 A.L.R. 4TH 294 (1989) (analyzing "Good Samaritan" statutes in different jurisdictions).

78. See, e.g., OHIO REV. CODE ANN. §§ 2305.35-38 (West 2004) (outlining civil immunity for gleaning, perishable food donation, and volunteering at non-profit organizations).

79. See Centner, *Tort Liability*, *supra* note 10, at 2 (discussing state sport immunity statutes immunizing sport providers from liability for participants' injuries).

80. See Kathy Bagley, Senior Underwriter, NAHA Ins. Programs, Safety Programs: The Financial Impact on Insurance, Keynote Address at the American Horse Council Convention (1992), in N. AM. HORSEMEN'S ASS'N 1993 Y.B. NEWS, 1993, at 8-9 (discussing safety programs and financial impact on insurance); George L. Priest, *The Current Insurance Crisis and Modern Tort Law*, 96 YALE L.J. 1521, 1522 (1987) (noting some commentators interpret decline in complaints demonstrates "insurance crisis has subsided").

81. See, e.g., TENN. CODE ANN. § 44-20-101 (2000) (limiting liabilities for equestrian activities in order to encourage personal and economic benefits from such activities).

82. See Terence J. Centner, *The New Equine Liability Statutes*, 62 TENN. L. REV. 997, 999-1000 (1995) (classifying numerous state equestrian liability statutes and recognizing Washington as "first state to enact statutory provisions in 1989").

83. See *id.* at 1000-01 (explaining purpose of expanding qualified immunity in equine activities).

petitioned legislatures for immunity exceptions.⁸⁴ Subsequently, other sport activities that are accompanied by participant accidents have sought legislative exemptions. Many state legislatures enacted the following two groups of diverse statutes: (1) equestrian immunity statutes⁸⁵ and (2) sport responsibility statutes.⁸⁶ The statutes describe circumstances which excuse activities providers from incurring certain types of accident liability.

A. Equestrian Immunity Statutes

The immunity provided by the Good Samaritan statutes was the model for the new legislation. In over two decades, more than forty states enacted immunity provisions for qualifying persons associated with equestrian activities.⁸⁷ The most significant distinction between the equestrian statutes and previous immunity provisions is that the equestrian statutes are clearly available for commercial businesses.⁸⁸ Persons who qualify for immunity from injuries involving horses are quite unlike physicians, volunteer firemen, policemen, veterinarians, or donors of recreational property.⁸⁹ The equestrian immunity statutes do not adopt qualifications that there be a donation of services benefiting members of the public. Instead, they incorporate limitations whereby the immunity is restricted to a narrow set of accidents involving inherent risks.⁹⁰

Jones v. Walker, a case involving a horse show accident, illustrates frustrations about lawsuits against individuals who were not at fault.⁹¹ A horse, owned by Mrs. Walker, but ridden by a business associate, collided with another horse and rider in a crowded warm-

84. See Centner, *Tort Liability*, *supra* note 10, at 25-27 (noting statutory immunity precluded courts from imposing liability on ski operators in certain cases).

85. See *infra* Table 1 (listing equestrian immunity statutes of 44 states).

86. See *infra* Table 2 (listing sport responsibility statutes of 35 states).

87. See *infra* Table 1 (listing equestrian immunity statutes). Moreover, in other states, precedence may mean that participants in equestrian activities cannot maintain a negligence lawsuit regarding activities involving inherent risks. See, e.g., *Guido v. Koopman*, 2 Cal. Rptr. 2d 437, 440 (Ct. App. 1991) (following California case law establishing certain injuries from horseback riding as inherent risks of activity).

88. See, e.g., GA. CODE ANN. § 4-12-2(5)-(6) (West 1995) (including activities conducted for both profit and non-profit and further defining "equine professional").

89. Most statutes involve either an act of volunteerism without pay or employment for a public entity.

90. See, e.g., *Chadwick v. Colt Ross Outfitters, Inc.*, 100 P.3d 465, 468 (Colo. 2004) (noting Colorado statute exempted equine professionals from participants' injuries resulting from activity's inherent risks).

91. See *Jones v. Walker*, 433 S.E.2d 726, 727 (Ga. Ct. App. 1993) (outlining facts of case).

up ring.⁹² At the time of the mishap, Warmington, Mrs. Walker's business associate and an experienced horsewoman, exercised complete control over the horse.⁹³ Nevertheless, the parents of the injured plaintiff felt that the Walkers should incur liability.⁹⁴ They felt Mrs. Walker, as owner of the horse, should have realized the conditions of the warmup ring were dangerous and removed her horse from the ring.⁹⁵ Despite Mrs. Walker's lack of control over her horse and the resulting accident, the Georgia Court of Appeals decided there was a question of fact regarding Mrs. Walker's negligence in "allowing her horse to continue participating in the horse show."⁹⁶ While Mrs. Walker did not control the horse's actions in the warmup ring, the court decided she could have removed the horse and rider to avoid the accident.⁹⁷

The equestrian immunity statutes show a variety of options for defining persons that may qualify for immunity from liability.⁹⁸ A majority of the statutes set forth a rule whereby qualifying persons are not liable for an injury of a participant resulting from the inherent risks of equestrian activities.⁹⁹ "Inherent risks" are dangers or conditions that are an integral part of equestrian activities including animal behavior, unpredictability of reactions, hazards such as surface and subsurface conditions, and collisions with other horses and objects.¹⁰⁰ The altered standard of conduct set forth in the statutes is similar to the directives of Good Samaritan statutes.¹⁰¹

92. *See id.* (acknowledging Mrs. Walker allowed her business associate to ride horse).

93. *See id.*

94. *See id.* ("The amended complaint further alleged that Mr. Walker was vicariously liable for the direct negligence of Mrs. Walker.").

95. *See id.* ("Appellants amended their complaint to allege direct negligence on the part of Mrs. Walker in allowing her horse to participate in the horse show under dangerous conditions.").

96. *Jones*, 433 S.E.2d at 729 (observing Mrs. Walker knew about horses, horse shows, and this particular warmup ring).

97. *See id.* (holding "summary judgment was not appropriate").

98. *See* Krystyna M. Carmel, Comment, *The Equine Activity Liability Acts: A Discussion of Those in Existence and Suggestions for a Model Act*, 83 Ky. L.J. 157, 171-79 (1995) (analyzing then-newly adopted legislation enacted to protect equine professionals).

99. *See, e.g.*, TENN. CODE ANN. § 44-20-103 (2000) (stating qualifying persons "shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities").

100. *See, e.g.*, MICH. COMP. LAWS §§ 691.1661-1667 (2000) (limiting equine professional's liability for activity's inherent risks and including examples of inherent risks).

101. *See, e.g.*, WIS. STAT. ANN. § 146.37(b)(1g) (West 2004) (protecting qualifying persons acting in good faith for damages resulting from act or omission).

The immunity is limited by the requirement that the injury result from an inherent risk.

1. *A General Standard of Care*

Most statutes establish a general standard of care for providers. Persons who commit an act or omission that constitutes a “willful or wanton disregard for the safety of the [participant]” remain liable for their actions.¹⁰² Under this general standard, qualifying sponsors, employees, and other participants have immunity for conduct involving negligent and grossly negligent acts when they involve an inherent risk.¹⁰³ Furthermore, negligence and gross negligence are something less than willfulness and should not be punished as willfulness.¹⁰⁴

The Georgia Court of Appeals considered the meaning of Georgia’s equestrian immunity in *Muller v. English*.¹⁰⁵ Mr. Muller’s horse injured an experienced rider when it “suddenly and without warning, kicked [the rider’s] leg.”¹⁰⁶ The plaintiff claimed the horse was a habitual kicker and should have been marked with a red ribbon on its tail to denote an “irritable horse.”¹⁰⁷ Additional allegations described Mr. Muller’s horse as “vicious . . . with a known propensity to kick in a fox hunt.”¹⁰⁸ The plaintiff contended these arguments established a willful disregard of her safety.¹⁰⁹

102. WIS. STAT. ANN. § 895.481(3)(d) (West 2005). This Wisconsin statute provides common civil liability exemption language. *See id.*

103. *See* Terence J. Centner, *Modifying Negligence Law for Equine Activities: A New Good Samaritan Paradigm for Equine Activity Sponsors*, 50 ARK. L. REV. 637, 659-60 (1998) (describing Arkansas statute as “a creative approach” that offers protection for gross negligence in “qualifying situations”).

104. *See* Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan, 740 S.W.2d 127, 132 (Ark. 1987) (examining negligence, gross negligence, and willfulness in context of punitive damages). “Negligence alone, however gross, is not enough to sustain punitive damages.” *Id.*

105. 472 S.E.2d 448, 450 (Ga. Ct. App. 1996).

106. *Id.*

107. *See id.* at 454 (rejecting argument that failure to mark horse with red ribbon demonstrated willful and wanton conduct). There was no agreement, however, as to the precise meaning of a red ribbon. *See id.* English noted that a red ribbon did not necessarily identify a horse as a kicker. *See id.* Instead, it could mean the horse was inexperienced or that the horse may “buck or strike out.” *Id.*

108. *Id.* at 452 (describing plaintiff’s argument that owners of land were negligent). Plaintiff argued Muller’s horse was a “dangerous latent condition” because it was a “vicious animal ‘permitted . . . by careless management.’” *Id.* The court dispensed with this argument through an analysis of the pertinent statutory definitions. *See id.* (excluding injuries resulting from animal’s unpredictable behavior and labeling injuries as inherent risks).

109. *See id.*

The defendants moved for summary judgment based on the provisions of the Georgia Equestrian Immunity Statute.¹¹⁰ They argued the statutory immunity precluded liability.¹¹¹ In agreeing with the defendants, the appellate court considered the issue of whether the plaintiff's allegations could establish liability under the general standard of care.¹¹² This question concerned whether Mr. Muller committed an act or omission that constituted a willful disregard for the plaintiff's safety.¹¹³ Case law interpretations of other statutes and common law revealed that willful conduct requires actual intent to do harm or inflict injury.¹¹⁴ Willful conduct must be so reckless or so indifferent to the consequences to be equivalent to actual intent.¹¹⁵ Given the plaintiff's experience with horses and the nature of the equestrian activity, the conduct of Mr. Muller's horse was ordinary animal behavior.¹¹⁶

The general standard of conduct provided by an equestrian immunity statute is significant because profitable equestrian businesses are afforded greater protection against liability than Good Samaritans. The divergent results are due to policy considerations and distinctions between the activities. A sponsor engaged in a profit-making business activity can escape liability for gross negligence involving the inherent risks of equestrian activities, but a Good Samaritan physician, who is grossly negligent in attempting to rescue an unfortunate accident victim, does not qualify for immu-

110. See *Muller*, 472 S.E.2d at 450 (noting defendants moved for summary judgment after asserting GA. CODE ANN. § 4-12-3(b)(3) (1995) as their affirmative defense).

111. See *id.* (focusing dispute on whether defendants satisfied certain conditions precedent to statute or were liable under statutory exception).

112. See *id.* at 452 (analyzing GA. CODE ANN. § 4-12-3(b)(3) (1995)).

113. See *id.* ("We disagree, because English has failed to present evidence that the horse's conduct was anything other than ordinary equine behavior, at least in the context of fox hunting.").

114. See *McNeal Loftis, Inc. v. Helmey*, 462 S.E.2d 789, 790 (Ga. Ct. App. 1995) ("[D]emonstration of mere negligence is not sufficient to show willful or wanton behavior."). The court required demonstration of "willful intention to inflict the injury." *Id.*

115. See *Muller*, 472 S.E.2d at 452-53 (citing *Chrysler Corp. v. Batten*, 450 S.E.2d 208, 212 (Ga. 1994)). The court differentiates "willful" and "wanton" conduct: "[w]ilful [sic] conduct is based on an actual intention to do harm or inflict injury; wanton conduct is that which is so reckless or so charged with indifference to the consequences as to be the equivalent in spirit to actual intent." *Id.* (quoting *Chrysler Corp. v. Batten*, 450 S.E.2d 208, 212 (Ga. 1994)).

116. See *id.* at 452-54 (analyzing facts to determine if horse's kick was ordinary). The court recognized there could be "an inference of wilful [sic] and wanton disregard in a less openly hazardous equine activity, e.g., a horse used by or near small children or novice riders." *Id.* at 452 n.6.

nity.¹¹⁷ Moreover, a physician on call remains liable for ordinary negligence.¹¹⁸

2. *A Suitability Exception*

The enumerated general standard of conduct of the equestrian immunity statutes does not always excuse negligence. Where an injured plaintiff has rented a horse for a trail ride or other activity, the general standard evaluated in the *Muller* case is usually superseded by a suitability exception.¹¹⁹ Under the suitability exception, persons providing horses to others must exercise “reasonable and prudent efforts” to avoid liability.¹²⁰ The suitability exception enables a plaintiff-participant to maintain an action against a defendant-provider of an animal if the defendant (1) failed to assess the participant’s ability, (2) negligently evaluated equipment and activity, or (3) intentionally injured plaintiff.¹²¹

To avoid liability for failing to assess a participant’s ability, the horse provider must make an inquiry of the participant’s readiness to engage in the activity.¹²² An allegation that the defendant-provider failed to employ reasonable efforts to inquire into the participant’s ability to engage safely in equestrian activities raises a triable

117. See *Rodriguez v. New York City Health & Hosp. Corp.*, 505 N.Y.S.2d 345, 347 (Sup. Ct. 1986) (protecting physician from liability under Good Samaritan Law unless physician was grossly negligent).

118. See GA. CODE ANN. § 51-1-29 (2005) (applying Good Samaritan statute to physicians providing “emergency care at the scene of an accident or emergency . . .”).

119. See *id.* §§ 4-12-3(b)(1) – (b)(4) (1995) (enumerating exceptions to equine activity immunity).

120. See *id.* §§ 4-12-3(b)(1)(A) – (b)(1)(B) (describing necessary conduct by equine professional). The equine professional or sponsor employee must have:

(1)(A) Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury.

(B) Provided the animal and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or llama activity and to safely manage the particular animal based on the participant’s representations of his or her ability.

Id. Persons remain subject to liability if they “[p]rovided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and determine the ability of the participant to manage safely the particular equine based on the participant’s representations of his or her ability.” 745 ILL. COMP. STAT. ANN. 47/20(b)(2) (2002).

121. See GA. CODE ANN. §§ 4-12-3(b)(1) – (b)(4) (1995) (eliminating defendant-provider’s immunity under enumerated circumstances).

122. See *id.* § 4-12-3(b)(1)(B) (lifting immunity when activity provider fails to make “reasonable and prudent efforts to determine the ability of the participant to engage safely in the [activity] . . .”).

issue.¹²³ This suggests that a tactfully drafted argument can establish a case leading to a jury.

Mercer v. Fritts illustrates the assessment of the participant's ability and the meaning of this suitability exception.¹²⁴ Elden and Betty Fritts owned horses and invited a friend, Renee Mercer, to their farm to ride their stallion.¹²⁵ While Mercer was riding the stallion, she suddenly encountered the defendants' mare.¹²⁶ The stallion bucked and fell backwards injuring Mercer.¹²⁷ Mercer sued the Fritts arguing they had not inquired about her ability to ride a stallion in proximity of a mare nor advised her that one of them would be riding the mare while she rode the stallion.¹²⁸ The court found that this evidence presented an issue under Kansas injury-by-animal law.¹²⁹ Beneath Mercer's allegations, an issue existed as to whether the Fritts had made sufficient efforts to inquire about Mercer's ability to handle the stallion.¹³⁰ Given this evidence, the Kansas Court of Appeals reversed and remanded to the lower court to resolve the liability issue.¹³¹ If these facts were considered under an equestrian immunity statute, the court would reach the same re-

123. See, e.g., *Fielder v. Academy Riding Stables*, 49 P.3d 349, 352 (Colo. Ct. App. 2002) (finding defendant had matched plaintiff with suitable horse but may have failed to ascertain ability of plaintiff to ride horse).

124. See *Mercer v. Fritts*, 676 P.2d 150 (Kan. Ct. App. 1984). *Mercer* did not involve an equestrian liability statute.

125. See *id.* at 151 (stating Mercer accepted Elden Fritts's invitation to ride his horse). Mercer also told him that she was an experienced rider. See *id.*

126. See *id.* (stating Mercer encountered mare when she was returning to barn after riding stallion). Fritts did not tell Mercer that he planned to ride the mare. See *id.*

127. See *id.* (recalling Mercer's injuries as ruptured diaphragm, collapsed lung, and pelvis and lumbar vertebrae fractures).

128. See *id.* (summarizing facts of case).

129. See *Mercer*, 676 P.2d at 154 (comparing current case with previous cases applying injury-by-animal law). The court opined:

[I]f both animal and premises defects are involved in a case, the law to be applied depends upon which of the two causal factors is more significant. In our present case, the only alleged fault relates to acts and omissions on [the defendant's] part pertaining to the horses, not to the premises.

Id.

130. See *id.* at 153 (citing RESTATEMENT (SECOND) OF TORTS § 509(1) (1976) (concerning possessor's knowledge of domestic animal)). The court noted that under injury-by-animal law, the defendant horse keeper may be held liable for injury caused by a horse if the defendant knew the horse was unsafe and "the plaintiff did not possess sufficient experience to be permitted to ride the horse." *Id.* (citations omitted).

131. See *id.* at 154 (reversing lower court's grant of summary judgment). The court held that the facts "presented a factfinder's question as to defendants' negligence in their control of the stallion and showed no connection between the injury and any condition of the premises, it was error to grant summary judgment for the defendants." *Id.*

sult.¹³² The trier of fact would need to determine whether the provider of the horse had adequately assessed the suitability of the animal for the rider.

Furthermore, the suitability exception examines whether the provider negligently failed to use the information gained through an inquiry to determine the participant's ability to engage safely in the equestrian activity. The facts from *Tan v. Goddard*¹³³ show how the suitability exception rationale might defeat the equestrian immunity statute.¹³⁴ The plaintiff was enrolled in a training school to learn how to be a jockey.¹³⁵ One day he was given a mount, saddle horse, that had an injured foot. The plaintiff reported to the trainer that the mount was not walking or behaving normally.¹³⁶ Despite these facts, the trainer instructed the plaintiff to ride the mount and the mount fell, injuring the plaintiff.¹³⁷ This testimony supported an allegation that the defendants had breached a duty.¹³⁸ By instructing the plaintiff to ride an injured horse, the defendants had not selected a safe activity.¹³⁹ An equestrian immunity statute also would not preclude this liability.

A third suitability exception involves the provider's failure to determine the participant's ability to safely manage the selected horse.¹⁴⁰ In *Shandy v. Sombrero Ranches, Inc.*, Shandy told a defendant's wrangler (or agent) that he was a beginner rider.¹⁴¹ During preparations for a horseback ride, Shandy experienced difficulty in controlling the horse.¹⁴² The defendant's agent did not come to Shandy's assistance and the horse bolted, throwing the plaintiff to

132. See, e.g., KAN. STAT. ANN. § 60-4003(a)(1)(B) (2005).

133. 17 Cal. Rptr. 2d 89 (Ct. App. 1993).

134. See *id.* at 93 (noting defendants' liability was based on respondeat superior theory). *Tan* did not involve an equestrian liability statute.

135. See *id.* at 90 (noting plaintiff had "no-experience or knowledge about riding horses").

136. See *id.* (restating facts).

137. See *id.* (noting plaintiff was instructed to ride horse easily "to see how it was").

138. See *Tan*, 17 Cal. Rptr. 2d at 93 (applying precedents holding that instructors owe "duty of due care to persons in their charge").

139. See *id.* (noting defendants' responsibility for plaintiff's injury).

140. See, e.g., TEX. CIV. PRAC. & REM. CODE ANN. § 87.004(2) (Vernon 2005) (lifting immunity if equine provider failed to determine participant's "ability to safely manage the equine").

141. See *Shandy v. Sombrero Ranches, Inc.*, 525 P.2d 487, 487 (Colo. Ct. App. 1974). *Shandy* did not involve an equestrian liability statute.

142. See *id.* at 487-88 (relying on witness's testimony that plaintiff might have needed some measures in controlling horse).

the ground.¹⁴³ The expert testimony suggested that defendant's agent might have known that the horse provided to Shandy was not suitable.¹⁴⁴ The agent was negligent in failing to take timely action to assist the plaintiff in achieving control of the horse. If this case was to be decided under the subsequently adopted Colorado Immunity Statute,¹⁴⁵ sufficient evidence showed negligence in defendant's failure to determine Shandy's ability to manage the selected horse.¹⁴⁶ Therefore, an equestrian immunity statute would not shield the defendant from liability.

These cases show that recreational horseback riding activities involving horse rentals present injured riders with the opportunity of alleging facts that establish a liability issue. If plaintiffs allege facts within one of these categories of exceptions, they frustrate the immunity provided by the equestrian immunity statutes. The defendant provider may argue different facts, but the plaintiff's allegations that the provider of the horse did not reasonably choose an animal suited for the rider presents a triable issue of fact. The trier of fact will need to determine which version of facts is most credible.

B. Sport Responsibility Statutes

More than fifty specialized "sport responsibility statutes" regarding skiing, roller skating, snowmobiling, sport shooting, outfitters and guides, and other risky sport activities have been enacted.¹⁴⁷ Providers of risky sport activities have garnered legislative dispensation that changes tort rules for accidents involving the inherent risks of the sport.¹⁴⁸ Participants assume responsibility for obvious and necessary dangers. This is similar to the doctrine of primary assumption of risk that exists in some states, including Cali-

143. See *id.* at 488 (stating plaintiff suffered serious injuries when horse threw him).

144. See *id.* (analyzing plaintiff's expert witness testimony).

145. See generally COLO. REV. STAT. ANN. § 13-21-119 (West 2005) (exempting equine professionals from liability).

146. Compare *Shandy*, 525 P.2d at 488 (deciding defendant was negligent by not assisting plaintiff in achieving adequate control of horse), with COLO. REV. STAT. ANN. § 13-21-119(4)(b)(1)(B) (requiring provider to determine ability of participant "to engage safely in the activity").

147. See *infra* Table 2 (noting state statutory provisions on sport responsibility).

148. See generally Terence J. Centner, *Simplifying Sports Liability Law Through a Shared Responsibility Chapter*, 1 VA. SPORTS & ENT. L.J. 54 (2001) (discussing statutes providing that participants are responsible for accidents involving inherent risks).

ifornia¹⁴⁹ and New York.¹⁵⁰ Operators retain liability for negligence outside the scope of the statutory protection.¹⁵¹ These provisions potentially reduce the number of accidents that will lead to successful lawsuits.¹⁵² In this manner, the statutes help facilitate participation in risky sport activities.

Sport responsibility statutes employ different directives to reduce the liability of sport providers for participants' injuries. Most statutes delineate a directive preventing participants from recovering damages for injuries resulting from the sport's inherent risks.¹⁵³ An alternative directive follows the Good Samaritan model and grants immunity to qualifying sport providers except those who fail to comply with duties.¹⁵⁴ Whenever a defendant sport provider breaches an enumerated duty and a plaintiff's injury is related to that breached duty, the statutory immunity defense does not apply.¹⁵⁵ Another alternative statutory provision involves the assignment of duties to participants.¹⁵⁶ Participants who fail to subscribe

149. See *Knight v. Jewett*, 834 P.2d 696, 703-04 (Cal. 1992) (distinguishing between primary assumption of risk and secondary assumption of risk and barring plaintiffs' negligence case when defendant has not breached duty); *Mastro v. Petrick*, 112 Cal. Rptr. 2d 185, 187 (Ct. App. 2001) (applying primary assumption of risk to collision between skier and snowboarder and deciding skier assumed risk); *Allen v. Snow Summit, Inc.*, 59 Cal. Rptr. 2d 813, 818 (Ct. App. 1996) (noting primary assumption of risk is complete defense against negligence claim for injuries resulting from activity's inherent risk).

150. See *Turcotte v. Fell*, 502 N.E.2d 964, 968 (N.Y. 1986) (categorizing state's law pertaining to sporting events as "primary assumption of risk"); *Jordan v. Maple Ski Ridge, Inc.*, 645 N.Y.S.2d 598, 599-600 (App. Div. 1996) (affirming plaintiff had assumed inherent risks of skiing).

151. See, e.g., *Brett v. Great Am. Recreation, Inc.*, 677 A.2d 705, 717 (N.J. 1996) (finding ski statute did not apply to tobogganers).

152. See *Skene v. Fileccia*, 539 N.W.2d 531, 534-35 (Mich. Ct. App. 1995) (applying Michigan Roller Skating Safety Act ("RSSA") and holding plaintiff accepted dangers of colliding with other participants in roller rink, thus defendant entitled to summary disposition), *overruled by Dale v. Beta-C, Inc.*, 574 N.W.2d 697, 701 (Mich. Ct. App. 1997) (finding holding overbroad but upholding principle "that collisions among roller skaters are obvious and necessary dangers assumed by a roller skater pursuant to § 5 of the RSSA").

153. See, e.g., OHIO REV. CODE ANN. § 4171.10 (West 2004) (enacting assumption of risk as complete defense against roller skating rink operators). For further examples of such statutes, see *infra* Table 2.

154. See, e.g., TEX. HEALTH & SAFETY CODE ANN. § 759.005(a) (Vernon 2003) (noting operator liability is limited to breach of duty). The relevant provision reads: "[t]he liability of an operator is limited to those injuries or damages caused by a breach of the operator's duties prescribed by Section 757.002." *Id.*

155. See, e.g., *Dale*, 574 N.W.2d at 702-03 (finding absence of toe stopper on roller skate might violate duty set forth in Michigan's Roller Skating Safety Act). For exact statutory language of Michigan's Roller Skating Safety Act, see MICH. COMP. LAWS § 445.1726 (2005).

156. See, e.g., IND. CODE ANN. § 34-31-6-2 (West 1999) (listing duties of roller skaters).

to the cited duties incur liability for injuries to themselves or to others.¹⁵⁷ This directive generally codifies the common law assumption of the risk by confirming that participants have a duty to use care with respect to obvious and necessary risks.¹⁵⁸

1. *Duties for Sport Providers*

Most sport responsibility statutes prescribe duties for sport providers.¹⁵⁹ The overall objectives are to clarify obligations and to encourage efforts to provide safer activities.¹⁶⁰ The statutes list duties for persons providing property or equipment for sport activities or contain general language concerning provider obligations.¹⁶¹ By

157. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 143, § 71O (West 2002). The relevant provision reads:

A skier skiing down hill shall have the duty to avoid any collision with any other skier, person or object on the hill below him, and, except as otherwise provided in this chapter, the responsibility for collisions by any skier with any other skier or person shall be solely that of the skier or person involved and not that of the operator. . . .

Id.

158. *See id.* (delineating responsibilities under ski statute). Specifically, “[a]ny person skiing on other than an open slope or trail within the ski area shall be responsible for any injuries resulting from his action.” *Id.*

159. *See, e.g.*, TEX. HEALTH & SAFETY CODE ANN. § 759.002 (Vernon 2003) (listing duties of roller-skating centers’ operators). The statute reads:

An operator shall:

- (1) provide at least one individual to act as a floor guard for approximately every 200 skaters;
- (2) require each floor guard to:
 - (A) wear attire that identifies the individual as a floor guard;
 - (B) be on duty at all times while skating is allowed;
 - (C) direct and supervise skaters and spectators; and
 - (D) watch for foreign objects that may have fallen on the floor;
- (3) inspect and maintain in good condition the roller-skating surface and the railings, kickboards, and walls surrounding the roller-skating surface;
- (4) inspect and maintain in good mechanical condition roller-skating equipment that the operator leases or rents to roller skaters;
- (5) comply with the Roller-Skating Rink Safety Standards, 1980 edition, published by the Roller Skating Rink Operators Association of America;
- (6) post the duties of roller skaters and spectators prescribed by this chapter in conspicuous places in the roller-skating center; and
- (7) maintain the stability and legibility of all required signs, symbols, and posted notices.

Id.

160. *See, e.g.*, 745 ILL. COMP. STAT. ANN. 72/5 (West 2002) (intending Roller Skating Rink Safety Act to make liability “more predictable by limiting the liability that may be incurred by the owners and encouraging the development and implementation of risk reduction techniques”). Another motivating factor is roller skating rinks’ “great difficulty in obtaining liability insurance coverage at an affordable cost.” *Id.*

161. *See, e.g.*, N.J. STAT. ANN. § 5:14-4 (West 2005) (listing responsibilities of roller skating rink operators). The statute reads:

It shall be the responsibility of the operator to the extent practicable to:

enumerating duties for providers, the sport responsibility statute may impose a duty that increases liability.¹⁶²

Perhaps the most significant feature of listed duties in sport responsibility statutes is that the duty may override the provider's ability to obtain a liability waiver.¹⁶³ Statutes defining the provider's continuing duty to ensure participants' safety may preclude releases of negligence.¹⁶⁴ Both enumerated and implied duties restrict commercial recreation providers' available options to reduce liability.¹⁶⁵

Murphy v. N. American River Runners, Inc.,¹⁶⁶ exemplifies this restriction. Plaintiff, Kathleen Murphy, sued for injuries occurring on

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- a. Post the duties of roller skaters and spectators and the duties, obligations and liabilities of the operator as prescribed in this act, in conspicuous places in at least three locations in the roller skating rink;
 - b. Maintain the stability and legibility of all signs, symbols and posted notices required by this act;
 - c. When the rink is open for sessions, have at least one floor guard on duty for every approximately 200 skaters;
 - d. Maintain the skating surface in reasonably safe condition and clean and inspect the skating surface before each session;
 - e. Maintain the railings, kickboards and wall surrounding the skating surface in good condition;
 - f. In rinks with step-up or step-down skating surfaces, insure that the covering on the riser is securely fastened;
 - g. Install fire extinguishers and inspect fire extinguishers at recommended intervals;
 - h. Provide reasonable security in parking areas during operational hours;
 - i. Inspect emergency lighting units periodically to insure the lights are in proper order;
 - j. Keep exit lights and lights in service areas on when skating surface lights are turned off during special numbers;
 - k. Check rental skates on a regular basis to insure the skates are in good mechanical condition;
 - l. Prohibit the sale or use of alcoholic beverages on the premises; and
 - m. Comply with all applicable State and local safety codes.

Id.

162. See *Sytner v. New York*, 645 N.Y.S.2d 654, 656-57 (App. Div. 1996) (finding failure to warn skiers of bare spots was breach of statutory duty).

163. See *Murphy v. N. Am. River Runners, Inc.*, 412 S.E.2d 504, 512 (W. Va. 1991) (finding statutory duty overrode provisions of waiver); *Yauger v. Skiing Enters., Inc.*, 557 N.W.2d 60, 65 (Wis. 1996) (finding waiver void as against public policy).

164. See *Murphy*, 412 S.E.2d at 512 ("[W]hen a statute imposes a standard of care, a clause in an agreement purporting to exempt a party from tort liability to a member of the protected class for failure to conform to that statutory standard is unenforceable.").

165. See, e.g., *Yauger*, 557 N.W.2d at 61-62 (continuing plaintiffs' lawsuit because public policy voided exculpatory contract).

166. 412 S.E.2d 504, 512 (W. Va. 1991) (upholding statutory safety obligation over private individual's waiver).

a rafting trip.¹⁶⁷ Because Murphy signed a release, the defendant, a “licensed commercial whitewater outfitter,” moved to dismiss the lawsuit.¹⁶⁸ The outfitter argued the plaintiff had assumed liability for her injuries.¹⁶⁹ Rafting, however, was an activity governed by the West Virginia Whitewater Responsibility Act.¹⁷⁰ The West Virginia Supreme Court of Appeals found that the Whitewater Responsibility Act established a standard of care.¹⁷¹ Commercial whitewater guides needed to “conform to the standard of care expected by members of their profession.”¹⁷² Any release to exempt an outfitter from liability for breach of this duty was unenforceable.¹⁷³ Thus, Murphy’s release was irrelevant. By arguing that the defendant’s guide failed to conform with the statutory duty of care, the plaintiff established an issue of material fact.¹⁷⁴ The trier of fact needed to weigh the conflicting evidence.

2. Duties for Sport Participants

Many sport responsibility statutes contain language whereby sport participants also have duties.¹⁷⁵ These directives encourage participants to employ appropriate efforts to keep themselves

167. See *id.* at 507-08 (alleging that defendant’s guide “negligently, carelessly and recklessly” caused her injuries).

168. See *id.* at 508 n.3 (relying on release language: “I understand and do hereby agree to assume all of the above risks and other related risks which may be encountered on said raft trip, including activities preliminary and subsequent thereto.”).

169. See *id.* at 508 (arguing plaintiff assumed all risks via anticipatory release).

170. See W. VA. CODE §§ 20-3B-1 – 3B-5 (2002) (defining legislative purpose, commercial whitewater outfitter, participants’ duties and liability of commercial whitewater guides).

171. See *Murphy*, 412 S.E.2d at 512 (describing standard of care existing despite certain contractual agreements).

172. W. VA. CODE § 20-3B-3(b).

173. See *Murphy*, 412 S.E.2d at 512 (“[W]hen a statute imposes a standard of care, a clause in an agreement purporting to exempt a party from tort liability to a member of the protected class for failure to conform to that statutory standard is unenforceable.”).

174. See *id.* (concluding trial court “should not have granted the defendant’s motion for summary judgment”). Plaintiff’s affidavit averred defendant’s failure to “conform to the standard of care expected of members of his occupation” and that there were “reasonable alternatives” that “would have posed no risk of harm to the [plaintiff].” *Id.*

175. See, e.g., TEX. HEALTH & SAFETY CODE ANN. § 759.003 (Vernon 2003) (enumerating roller skaters’ duties). In Texas, roller skaters:

- (1) shall comply with each posted sign or warning that relates to the behavior and responsibility of the roller skater in the roller-skating center;
- (2) shall obey instructions given by the operator, floor guard, or other roller-skating center personnel;
- (3) shall maintain reasonable control over the speed and direction of the roller skater’s skating at all times;

safe.¹⁷⁶ Generally, these statutes require participants to engage in the sport within the limits of their ability.¹⁷⁷ Participants also may have obligations to obey signs and directions.¹⁷⁸ Courts have interpreted this statutory duty to mean that participants are liable for injuries from obvious and necessary dangers.¹⁷⁹ By engaging in an activity, persons accept obvious and necessary dangers.¹⁸⁰ This interpretation determines the presence or absence of a legal duty by employing an inherent risk analysis.¹⁸¹ When participants have an opportunity to avoid injury from obvious dangers, they retain total responsibility for injuries arising from such dangers.¹⁸²

An additional feature of sport responsibility statutes is often a provision precluding injured participants, and sometimes spectators, from recovering damages. In general, participants cannot recover damages from sport providers for injuries resulting from the sport's inherent dangers and risks.¹⁸³ In a few instances, sport re-

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- (4) shall be reasonably aware of other roller skaters or objects in the roller-skating center to avoid colliding with other roller skaters or objects;
(5) shall know the roller skater's ability to control the intended direction of skating and shall skate within the limits of that ability; and
(6) may not act in a manner that may cause injury to others.
(b) The conduct of a child shall be evaluated based on the child's experience, intelligence, capacity, and age to determine if the child violated this section or Section 757.004.

Id.

176. *See, e.g.,* *Ansani v. Cascade Mountain, Inc.*, 588 N.W.2d 321, 325 (Wis. Ct. App. 1998) (observing that under Wis. STAT. ANN. §§ 895.525 (3) – (4) (1998) plaintiff had duty to use ordinary care for his own safety and protection).

177. *See, e.g.,* *Davis v. Sun Valley Ski Educ. Found., Inc.*, 941 P.2d 1301, 1305 (Idaho 1997) (citing Idaho Ski Statute expecting skiers to ski within limits of their ability).

178. *See* MICH. COMP. LAWS ANN. § 408.342(1)(c) (West 1999) (specifying conduct rules skiers must follow); *Anderson v. Pine Knob Ski Resort, Inc.*, 664 N.W.2d 756, 759 (Mich. 2003) (applying statute and requiring skiers to heed signs and warnings).

179. *See, e.g.,* *Anderson*, 664 N.W.2d at 759-61 (rejecting negligence lawsuit when skier ran into visible timing shack resulting in injury); *Schmitz v. Cannonburg Skiing Corp.*, 428 N.W.2d 742, 743-44 (Mich. Ct. App. 1988) (denying cause of action where skier fatally collided with lone tree).

180. *See, e.g.,* *Schmitz*, 428 N.W.2d at 744 (stating that under Michigan Ski Statute "obvious and necessary" risk involve natural phenomena, natural obstacles, and types of equipments inherent to ski area).

181. *See* Catherine Hansen-Stamp, *Recreational Injuries and Inherent Risks: Wyoming's Recreational Safety Act—An Update*, 33 LAND & WATER L. REV. 249, 276-77 (1998) (noting statute may be written so court can decide whether accident involved inherent risk and not breach of defendant's duty as matter of law).

182. *See* *Ansani v. Cascade Mountain, Inc.*, 588 N.W.2d 321, 324-25 (Wis. Ct. App. 1998) (upholding district court jury instruction to note immediate surroundings and dangers which should have been open and obvious to plaintiff).

183. *See, e.g.,* COLO. REV. STAT. ANN. § 33-44-109(1) (West 2005) ("Each skier expressly accepts and assumes the risk of and all legal responsibility for any injury

sponsibility statutes provide that spectators also assume inherent risks.¹⁸⁴ When sport participants and spectators assume the sport's inherent risks, they cannot recover damages for these injuries from others.¹⁸⁵

Courts have considered a number of ski-injury cases where pre-trial motions could dismiss lawsuits. For example, in *Schaefer v. Mt. Southington Ski Area*, a plaintiff was injured when she hit a rut on the "Giant Slalom" course.¹⁸⁶ The defendant ski provider argued immunity under the provisions of the Connecticut Ski Statute.¹⁸⁷ Under the statute, the plaintiff assumed responsibility for skiing's inherent hazards.¹⁸⁸ The statutory description of inherent risks provided that they included "variations in the terrain of the trail or slope" and variations in snow conditions.¹⁸⁹ The court found no issue of fact to be determined.¹⁹⁰ The ski provider was not liable for the plaintiff's injury because it arose from an inherent risk.¹⁹¹

3. Immunity under the Statutes

An additional feature of sport responsibility statutes involves grants of immunity for sport providers.¹⁹² Statutes commonly grant activity providers immunity against some sports participants' civil

to person or property resulting from any of the inherent dangers and risks of skiing. . . .").

184. See, e.g., N.C. GEN. STAT. § 99E-13 (2004) ("[S]pectators are deemed to have knowledge of and to assume the inherent risks of roller skating, insofar as those risks are obvious and necessary.").

185. See *Ritchie-Gamester v. City of Berkley*, 597 N.W.2d 517, 527 (Mich. 1999) (requiring plaintiff to demonstrate defendant's reckless behavior to defeat defendant's motion for summary disposition).

186. See *Schaefer v. Mt. Southington Ski Area, Inc.*, No. CV 970340387S, 1997 Conn. Super. LEXIS 2864, at *7 (Conn. App. Ct. Oct. 22, 1997) (stating plaintiff considered herself "very close" to being an expert skier").

187. See CONN. GEN. STAT. ANN. § 29-212 (West 2003) (listing assumption of risks of injury by skier).

188. See *Schaefer*, 1997 Conn. Super. LEXIS 2864, at *5-7 (describing how plaintiff failed to provide any evidence that defendant provider had statutory duty of care).

189. CONN. GEN. STAT. ANN. § 29-212(1) (noting exception that skiers do not assume risk of variations caused by operator).

190. See *Schaefer*, 1997 Conn. Super. LEXIS 2864, at *7 (granting summary judgment in favor of defendant).

191. See *id.* (holding terrain or snow variation should not cause provider to be liable because variations are inherent risks of skiing).

192. See, e.g., TENN. CODE ANN. § 68-114-107(a) (2001) ("Unless a ski area operator is in violation of this chapter or other state acts pertaining to ski areas, which violation is causal of the injury complained of, no action shall lie against any such operator by any skier or passenger or representative thereof. . . .").

actions.¹⁹³ Alternatively, a statute may state that persons providing sport activities are not liable unless the failure to comply with duties caused the damage.¹⁹⁴ Under either of these immunity grants, sport providers can avoid liability for some injuries. The potential for the sport responsibility statutes to achieve their stated purpose of reducing the liability of recreational operators may be observed by examining two cases that considered the Idaho Ski Statute.

In *Northcutt v. Sun Valley Co.*, Christopher Northcutt sued the ski operator for negligently placing a signpost.¹⁹⁵ While both plaintiff and defendant agreed the ski statute¹⁹⁶ immunized the defen-

193. See, e.g., UTAH CODE ANN. § 78-27-53 (2005) (stating skiers cannot make claims against ski area operators for injuries resulting from inherent risks).

194. See, e.g., W. VA. CODE § 20-3B-5(a) (2002) (containing pertinent statutory language).

No licensed commercial whitewater outfitter or commercial whitewater guide acting in the course of his employment is liable to a participant for damages or injuries to such participant unless such damage or injury was directly caused by failure of the commercial whitewater outfitter or commercial whitewater guide to comply with duties placed on him

Id.

195. See *Northcutt v. Sun Valley Co.*, 787 P.2d 1159, 1160 (Idaho 1990) (rejecting ski operator's liability for "improper placement of a sign erected" to "lessen the inherent risks in skiing").

196. See IDAHO CODE ANN. § 6-1103 (2004) (describing duties of ski area operators). Statute requires ski operator:

- (1) To mark all trail maintenance vehicles and to furnish such vehicles with flashing or rotating lights which shall be in operation whenever the vehicles are working or are in movement in the skiing area;
- (2) To mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes and trails;
- (3) To mark conspicuously the top or entrance to each slope or trail or area, with an appropriate symbol for its relative degree of difficulty; and those slopes, trails, or areas which are closed, shall be so marked at the top or entrance;
- (4) To maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes with each trail and slope rated thereon as to its [its] relative degree of difficulty;
- (5) To designate by trail board or otherwise which trails or slopes are open or closed;
- (6) To place, or cause to be placed, whenever snowgrooming or snowmaking operations are being undertaken upon any trail or slope while such trail or slope is open to the public, a conspicuous notice to that effect at or near the top of such trail or slope;
- (7) To post notice of the requirements of this chapter concerning the use of ski retention devices. This obligation shall be the sole requirement imposed upon the ski area operator regarding the requirement for or use of ski retention devices;
- (8) To provide a ski patrol with qualifications meeting the standards of the national ski patrol system;
- (9) To post a sign at the bottom of all aerial passenger tramways which advises the passengers to seek advice if not familiar with riding the aerial passenger tramway; and

dant from liability from skiing's inherent risks, they disagreed as to whether an inherent risk caused Northcutt's injuries.¹⁹⁷ Northcutt had collided with a sign and alleged the construction or placement of the sign involved negligence.¹⁹⁸ The defendant operator had placed a sign marking the relative degree of difficulty of the slope and trails pursuant to a duty specified by the ski statute.¹⁹⁹ In examining the Idaho Ski Statute, the Idaho Supreme Court found that operators have a statutory duty "[n]ot to intentionally or negligently cause injury to any person."²⁰⁰ However, operators have no duty with respect to activities undertaken to lessen risks inherent in the sport of skiing.²⁰¹ Under the statute, an operator's activities undertaken to reduce risks do not impose on the operator any further duty to accomplish such activities to any standard of care.²⁰² Therefore, the court dismissed the lawsuit, finding running into the signpost an inherent risk, and thus, statutory immunity applied to the defendant.²⁰³ Because of the immunity provided by the ski statute, the lawsuit could be dismissed.

In *Long v. Bogus Basin Recreational Ass'n, Inc.*,²⁰⁴ the Idaho Supreme Court again analyzed the Idaho Ski Statute.²⁰⁵ Christopher Long sued an operator for injuries from a ski accident.²⁰⁶ First, he argued that the defendant operator was negligent by not providing

(10) Not to intentionally or negligently cause injury to any person; provided, that except for the duties of the operator set forth in subsections (1) through (9) of this section and in section 6-1104, Idaho Code, the operator shall have no duty to eliminate, alter, control or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in section 6-1106, Idaho Code; and, that no activities undertaken by the operator in an attempt to eliminate, alter, control or lessen such risks shall be deemed to impose on the operator any duty to accomplish such activities to any standard of care.

Id. §§ 6-1103(1) – 1103(10) (alteration in original).

197. See *Northcutt*, 787 P.2d at 1161 (restating facts).

198. See *id.* at 1159-60 (arguing and listing defendant's specific conduct as negligent).

199. See IDAHO CODE ANN. § 6-1103(3) (2004) (requiring ski operator to mark slope or trail with appropriate difficulty level).

200. *Northcutt*, 787 P.2d at 1162 (quoting IDAHO CODE ANN. § 6-1103(10) (1989)) (alteration in original).

201. See *id.* at 1162-63 (concluding ski operators are not liable for skiing's inherent risks).

202. See *id.* at 1163 (discussing overall implications on ski operator's conduct).

203. See *id.* (concluding operators are not held to any standard of care in accidents involving skiing's inherent risks).

204. 869 P.2d 230 (Idaho 1994).

205. See IDAHO CODE ANN. §§ 6-1101 to -1109 (2004) (defining skiers' and ski area operators' responsibilities and liabilities).

206. See *Long*, 869 P.2d at 231 (stating Long injured his right leg).

a sign indicating the trail's "relative degree of difficulty."²⁰⁷ The court decided Long was skiing in an undesignated area so the defendant did not have a duty to mark the area.²⁰⁸ Long then argued he was not a skier as defined by the statute because he went off the designated trails.²⁰⁹ The court decided that Long had violated his statutory duties under the skier statute by going off the marked trail.²¹⁰ Holding otherwise would enable skiers to nullify statutory obligations for participants.²¹¹ The court decided the statute established skiers' and ski operators' duties and standards of care.²¹² In *Long*, the operator had not violated any statutory duties while the injured participant had assumed the risk for his accident by skiing into an unmarked area.²¹³ Thus, the statute effectively prevented this errant skier from collecting damages from the operator.

4. *Issues to Be Resolved*

While sport responsibility statutes were intended to reduce litigation, sometimes they fail to accomplish this objective. *Mead v. M.S.B., Inc.*²¹⁴ discussed whether a plaintiff's injuries caused by skiing's inherent risk could be determined as a matter of law. Plaintiff, Zachary Mead, was injured when he came around a right hand curve on a trail and hit a rocky outcropping.²¹⁵ The question on appeal was whether the Montana Skier Responsibility Act²¹⁶ provided the defendant immunity from damages related to Mead's accident.²¹⁷ The Montana Supreme Court analyzed the Skier

207. IDAHO CODE § 6-1103(3) (2004).

208. See *Long*, 869 P.2d at 232-33 (stating ski operators have duty to post signs on designated trails only). Verugo Road, where plaintiff was skiing, was not a designated trail, and thus, the ski operators had no duty to mark it. See *id.* at 232.

209. See *id.* at 233 (advancing plaintiff's second argument that Idaho Code § 6-1102(6) did not apply because he was "business invitee").

210. See *id.* at 233 ("Long assumed the risk for his own accident, when he skied into an unmarked area."). Long was a skier. The statute reads: "'Skier' means any person present at a skiing area under the control of a ski area operator for the purpose of engaging in the sport of skiing by utilizing the ski slopes and trails and does not include the use of an aerial passenger tramway." IDAHO CODE ANN. § 6-1102(6) (2005).

211. See *Long*, 869 P.2d at 233 (responding to Long's argument that operator owed higher standard of care to skiers who go off designated trails).

212. See *id.* (rejecting Long's argument and holding skier statute established duties and standards of care).

213. See *id.* (summarizing facts and court's decision).

214. 872 P.2d 782 (Mont. 1994).

215. See *id.* at 784 (describing accident's details).

216. See MONT. CODE ANN. § 23-2-736(4) (2003) (detailing specific examples of inherent risks).

217. See *Mead*, 872 P.2d at 788 (rejecting defendant's argument that its duties were limited to those listed in Montana Skier Responsibility Act).

Responsibility Act's provisions describing inherent risks for which the plaintiff had to accept responsibility.²¹⁸ If all of the evidence proved Mead was responsible for his accident according to the statutory provisions, the case could be dismissed.²¹⁹

The court also addressed the defendant's argument that skiers accepted injuries arising from variations in skiing terrain involving snow and ice conditions.²²⁰ The facts conclusively demonstrated that a rocky outcrop from a vertical surface injured Mead.²²¹ This meant that the defense concerning acceptance of variations in terrain did not apply. The second consideration was the rocky outcropping.²²² Was this outcropping within the statutory definition of a bare spot? The court decided the evidence did not prove as a matter of law whether the outcropping should have been covered with snow or was a bare spot.²²³ In the absence of such evidence, the court could not determine whether Mead had assumed responsibility for the accident.²²⁴ A third issue involved the absence of conclusive proof that Mead skied beyond the boundaries of the trail.²²⁵ Given the contradictory facts, a fact-finder needed to decide whether inherent risks caused Mead's injury.²²⁶

IV. CONCLUDING COMMENTS

Law is a "social construct".²²⁷ It grows out of people's needs.²²⁸ While law involves fairness and efficiency, the major purpose of a legal system is to provide civil justice. Rules of law govern the satisfaction of claims and the discharge of obligations. When parties cannot resolve disputes, they turn to courts. Impartial judges and

218. *See id.* at 788-89 (outlining duties under MONT. CODE ANN. §§ 23-2-736(4)(a)-736(4)(d) (1989)).

219. *See id.* at 790-91 (discussing Mead's conduct and statutory provisions).

220. *See id.* at 789.

221. *See id.* (noting defense asserted plaintiff had left trail and was not on ski terrain).

222. *See Mead*, 872 P.2d at 788-89 (deciding whether rocky outcropping was "bare spot").

223. *See id.* at 789 ("There is no indication in the record whether the rocky outcropping would normally be covered with snow at that location, and if so, whether the amount of snow which normally covered the surface would have been sufficient to prevent the kind of injury in this case.").

224. *See id.* (noting evidence presents question of fact).

225. *See id.* (observing conflicting deposition testimonies).

226. *See id.* at 791 (reversing district court and remanding case).

227. *See* William E. Nelson, *From Fairness to Efficiency: The Transformation of Tort Law in New York, 1920-1980*, 47 *BUFF. L. REV.* 117, 226 (1999) (describing tort law as social construct "which grows out of the needs and ideas of the people").

228. *See id.* (observing tort law's changes and predicting its further evolution).

juries hear claims and decide which are valid. Justice through litigation involves significant costs, but the alternative - injustice and anarchy - would be costlier.

Many Americans are unwilling to accept responsibility for their injuries and seek to blame others. In the absence of a governmental safety net, they resort to lawsuits to recover damages to pay for medical bills and institutional care. Thereby, litigation serves as a substitute for more extensive social welfare programs.²²⁹ This recompensatory system, however, fails to compensate ninety percent of injured persons, and victims only receive about one-third of amounts paid out.²³⁰ Persons with minor injuries cannot afford to litigate. Moreover, all lawsuits involve costs for legal counsel and governmental judicial resources.²³¹

Experts have suggested numerous ideas to modify legal rules to thwart some of the inefficiencies and abuses that the media so readily shares with us. Dependence on common law negligence may not be the most effective response to injuries.²³² Reconciling the deterrence of dangerous situations, responsibilities of personnel overseeing sport activities, and obligations of participants present challenges.²³³ Concerns about excessive litigation and expenses in defending lawsuits suggest legislatures might want to consider legis-

229. Alternatively, does litigation operate to set social policy? See Deborah R. Hensler, *The New Social Policy Torts: Litigation as a Legislative Strategy Some Preliminary Thoughts on a New Research Project*, 51 DEPAUL L. REV. 493, 495-96 (2001) (noting "social impact litigation" is being used as tool to shape social policy); Deborah R. Hensler, *Revisiting the Monster: New Myths and Realities of Class Action and Other Large Scale Litigation*, 11 DUKE J. COMP. & INT'L L. 179, 211 (2001) (questioning whether litigation should be employed as "governance tool").

230. See David A. Hyman, *Medical Malpractice and the Tort System: What Do We Know and What (If Anything) Should We Do About It?*, 80 TEXAS L. REV. 1639, 1644 (2002) (claiming relatively few injured persons with medical malpractice claim ever file their claim); Kagan, *supra* note 44, at 867 (observing debate that tort victims are either over- or under-compensated); see generally Marc Galanter, *Real World Torts: An Antidote to Anecdote*, 55 MD. L. REV. 1093 (1996) (noting failure of tort law to compensate needy, deserving victims).

231. See, e.g., Kagan, *supra* note 44, at 854 (claiming high litigation costs and legal unpredictability stem from basic structures of civil litigation in United States and constitute tort litigation system which "can hardly be called anything but woefully inefficient").

232. See Jeffrey O'Connell & Joseph R. Baldwin, *(In)juries, (In)justice, and (Il)legal Blame: Tort Law as Melodrama - or Is It Farce?*, 50 U.C.L.A. L. REV. 425, 456 (2002) (positing Americans should find efficacious alternatives to tort law that lessen litigation's "intolerable uncertainties, delays, and transaction" costs especially after century of workers' compensation laws).

233. See Mark McLaughlin Hager, *The Moral Economy of Victim Responsibility: Substance and Product Abuse in Tort Reform's "Common Sense"*, 64 TENN. L. REV. 749, 762 (1997) (advocating that "victim's actual knowledge of danger" forms "proper basis for defeating liability, but only where it outweighs the supplier's harm-preventing capacity").

lative changes. Laws can place additional obligations on participants to reduce litigation and the expenses that accompany this compensation mode. The equestrian liability and sport responsibility statutes adopted by most states have enacted these obligations. Alternatively, a somewhat wasteful insurance program might be superior to a horribly inefficient litigation system.²³⁴ Changing to a program that adopts ideas from governmental workers' compensation and private no-fault insurance laws would seek to compensate injured persons without major confrontations. Changes to the tort system could reduce costs and direct more funds to injured persons.

TABLE 1. EQUESTRIAN IMMUNITY STATUTES

State	State Codifications
Alabama	ALA. CODE § 6-5-337 (2005).
Alaska	ALASKA STAT. § 09.65.290 (2005) (including equine activity in general sports liability provision).
Arizona	ARIZ. REV. STAT. ANN. § 12-553 (2005).
Arkansas	ARK. CODE ANN. §§ 16-120-201 to -202 (West 2005).
Colorado	COLO. REV. STAT. ANN. § 13-21-119 (West 2005).
Connecticut	CONN. GEN. STAT. ANN. § 52-557p (West 2005).
Delaware	DEL. CODE ANN. tit. 10, § 8140 (2005).
Florida	FLA. STAT. ANN. §§ 773.01 — .05 (West 2005).
Georgia	GA. CODE ANN. §§ 4-12-1 to -5 (West 2005).
Hawaii	HAW. REV. STAT. ANN. §§ 663B-1 to -2 (LexisNexis 2005).
Idaho	IDAHO CODE ANN. §§ 6-1801 to -1802 (2005).
Illinois	745 ILL. COMP. STAT. ANN. 47/1 to 47/999 (West 2005).
Indiana	IND. CODE ANN. §§ 34-6-2-40 to -43, 34-6-2-69, 34-6-2-95, 34-31-5-1 to -5-5 (West 2005).
Iowa	IOWA CODE §§ 673.1—.3 (2005).
Kansas	KAN. STAT. ANN. §§ 60-4001 to -4004 (2005).
Louisiana	LA. REV. STAT. ANN. § 9:2795.1 (2005).

234. Social as well as private insurance must be employed to respond to accidents. See Ulrich Magnus, *Compensation for Personal Injuries in a Comparative Perspective*, 39 WASHBURN L.J. 347, 362 (2000) (observing governments and private insurance can assist in compensating for personal injuries so that "no one is financially ruined for life").

Maine	ME. REV. STAT. ANN. tit. 7, §§ 4101, 4103-A (2005).
Massachusetts	MASS. GEN. LAWS ch. 128, § 2d (2005).
Michigan	MICH. COMP. LAWS ANN. §§ 691.1661—.1667 (West 2005).
Minnesota	MINN. STAT. ANN. § 604A.12 (West 2005) (including equine activity in liability immunity for livestock activities).
Mississippi	MISS. CODE ANN. §§ 95-11-1 to -11-7 (West 2005).
Missouri	MO. ANN. STAT. § 537.325 (West 2005).
Montana	MONT. CODE ANN. §§ 27-1-725 to -728 (2005).
Nebraska	NEB. REV. STAT. §§ 25-21,249 to -21,253 (2005).
New Hampshire	N.H. REV. STAT. ANN. § 508:19 (2005).
New Jersey	N.J. STAT. ANN. §§ 5:15-1 to -12 (West 2005).
New Mexico	N.M. STAT. ANN. §§ 42-13-1 to -5 (West 2005).
North Carolina	N.C. GEN. STAT. §§ 99E-1 to -3 (2005).
North Dakota	N.D. CENT. CODE §§ 53-10-01 to -02 (2005).
Ohio	OHIO REV. CODE ANN. § 2305.321 (West 2005).
Oklahoma	OKLA. STAT. ANN. tit. 76, §§ 50.1—.4 (West 2005) (including equine activity in Livestock Activities Liability Limitation Act).
Oregon	OR. REV. STAT. §§ 30.687 — .697 (2005).
Rhode Island	R.I. GEN. LAWS §§ 4-21-1 to -4 (2005).
South Carolina	S.C. CODE ANN. §§ 47-9-710 to -730 (2005).
South Dakota	S.D. CODIFIED LAWS §§ 42-11-1 to -5 (2005).
Tennessee	TENN. CODE ANN. §§ 44-20-101 to -105 (West 2005).
Texas	TEX. CIV. PRAC. & REM. CODE ANN. §§ 87.001—.005 (Vernon 2005).
Utah	UTAH CODE ANN. §§ 78-27b-101 to -102 (West 2005).
Vermont	VT. STAT. ANN. tit. 12, § 1039 (2005).
Virginia	VA. CODE ANN. §§ 3.1-796.130 — .133 (West 2005).
Washington	WASH. REV. CODE ANN. §§ 4.24.530 — .540 (West 2005).
West Virginia	W. VA. CODE §§ 20-4-1 to -7 (2005).
Wisconsin	WIS. STAT. ANN. § 895.481 (West 2005).
Wyoming	WYO. STAT. ANN. §§ 1-1-121 to -123 (2005) (addressing equine activity in Recreation Safety Act).

TABLE 2

State	State Codifications
Alabama	ALA. CODE § 6-5-342 (2005) (roller skating and skateboarding).
Alaska	ALASKA STAT. §§ 05.45.010 — .210 (2005) (skiing).
	ALASKA STAT. § 09.65.290 (2005) (general sports).
Arizona	ARIZ. REV. STAT. ANN. §§ 5-701 to -706 (2005) (skiing).
	ARIZ. REV. STAT. ANN. § 12-554 (2005) (baseball).
Colorado	COLO. REV. STAT ANN. § 13-21-120 (West 2005) (baseball).
	COLO. REV. STAT ANN. §§ 33-44-101 to -114 (West 2005) (skiing).
Connecticut	CONN. GEN. STAT. ANN. §§ 29-211 to -213 (West 2005) (skiing).
Florida	FLA. STAT. ANN. § 316.0085 (West 2005) (skateboarding, inline skating, freestyle bicycling, and paintball).
Georgia	GA. CODE ANN. §§ 27-4-280 to -283 (West 2005) (fishing).
	GA. CODE ANN. § 51-1-43 (West 2005) (roller skating).
Idaho	IDAHO CODE ANN. §§ 6-1101 to -1109 (2005) (skiing).
	IDAHO CODE ANN. §§ 6-1201 to -1206 (2005) (outfitters and guides).
Illinois	745 ILL. COMP. STAT. ANN. 52/1 to 52/99 (West 2005) (hockey facilities).
	745 ILL. COMP. STAT. ANN. 72/1 to 72/30 (West 2005) (roller skating).
Indiana	IND. CODE ANN. §§ 34-31-6-1 to 31-6-4 (West 2005) (roller skating).
Maine	ME. REV. STAT. ANN. tit. 8, §§ 601, 603—08 (2005) (roller skating).
	ME. REV. STAT. ANN. tit. 8, §§ 801—806 (2005) (amusement rides).
	ME. REV. STAT. ANN. tit. 32, §§ 15217—218 (2005) (skiing).
Massachusetts	MASS. GEN. LAWS ch. 143, §§ 71H—71S (2005) (skiing).
Michigan	MICH. COMP. LAWS ANN. §§ 408.321—.344 (West 2005) (skiing).
	MICH. COMP. LAWS ANN. §§ 445.1721—.1726 (West 2005) (roller skating).

	MICH. COMP. LAWS ANN. §§ 691.1541—.1544 (West 2005) (sport shooting).
Montana	MONT. CODE ANN. §§ 23-2-651 to -655 (2005) (snowmobiling).
	MONT. CODE ANN. §§ 23-2-731, 23-2-733 to -736 (2005) (skiing).
	MONT. CODE ANN. §§ 37-47-401 to -404 (2005) (outfitters and guides).
Nevada	NEV. REV. STAT. ANN. §§ 455A.010—.190 (West 2005) (amended by Act of May 24, 2005, ch. 148, 2005 NV Laws 261 (expanding original skiing statute to include snowboarding)).
	NEV. REV. STAT. ANN. §§ 455B.010—.100 (West 2005) (amusement rides).
New Hampshire	N.H. REV. STAT. ANN. §§ 225-A:1 to -A:26 (2005) (pending legislation of H.B. 619, 2005 Leg., 159th Sess. (N.H. 2005) (expanding original skiing statute to include snowboarding, snowshoeing, and snowtubing)).
New Jersey	N.J. STAT. ANN. §§ 5:13-1 to -11 (West 2005) (skiing).
	N.J. STAT. ANN. §§ 5:14-1 to -7 (West 2005) (roller skating).
New Mexico	N.M. STAT. ANN. §§ 24-15-1 to -14 (West 2005) (skiing).
New York	N.Y. GEN. OBLIG. LAW §§ 18-101 to -107 (McKinney 2005) (pending legislation of Assemb. B. 02962, 2005 Leg., 228th Sess. (N.Y. 2005)) (expanding ski statute to include snowboarding).
	N.Y. LAB. LAW §§ 865—868 (McKinney 2005) (pending legislation of Assemb. B. 02962, 2005 Leg., 228th Sess. (N.Y. 2005)) (expanding statutory language to include snowboarding).
North Carolina	N.C. GEN. STAT. §§ 99C-1 to -5 (2005) (skiing).
	N.C. GEN. STAT. §§ 99E-10 to -14 (2005) (roller skating).
North Dakota	N.D. CENT. CODE §§ 53-09-01 to -11 (2005) (skiing).
Ohio	OHIO REV. CODE ANN. §§ 4169.01—.99 (West 2005) (pending legislation of S.B. 61, 126th Gen. Assemb. Reg. Sess. (Ohio 2005)) (amending statute to include more activities).
	OHIO REV. CODE ANN. §§ 4171.01—.10 (West 2005) (roller skating).

Oregon	OR. REV. STAT. §§ 30.970-990 (2005) (skiing).
Pennsylvania	42 PA. STAT. ANN. § 7102(c) (West 2005) (skiing). <i>See</i> DeWeese v. Weaver, 880 A.2d 54, 55 (Pa. Commw. Ct. 2005) (holding comparative negligence section of § 7102 unconstitutional as it applies to sex offenders and proposed DNA Act).
Rhode Island	R.I. GEN. LAWS §§ 41-8-1 to -4 (2005) (skiing).
South Carolina	S.C. CODE ANN. §§ 52-21-10 to -60 (2005) (ice and roller skating).
South Dakota	S.D. CODIFIED LAWS §§ 32-20A-21 to -23 (2005) (snowmobiling).
Tennessee	TENN. CODE ANN. §§ 68-114-101 to -107 (West 2005) (skiing).
Texas	TEX. HEALTH & SAFETY CODE ANN. §§ 759.001—.005 (Vernon 2005) (roller skating).
	TEX. HEALTH & SAFETY CODE ANN. §§ 760.001—.006 (Vernon 2005) (ice skating).
Utah	UTAH CODE ANN. §§ 47-3-1 to -3-3 (West 2005) (sport shooting).
Vermont	VT. STAT. ANN. tit. 12, §§ 1037—1038 (2005) (skiing).
Washington	WASH. REV. CODE ANN. §§ 79A.45.010—.060 (West 2005) (skiing).
West Virginia	W. VA. CODE §§ 20-3A-1 to -8 (2005) (skiing).
	W. VA. CODE §§ 20-3B-1 to -3B-5 (2005) (whitewater rafting).
Wisconsin	WIS. STAT. ANN. § 895.525(4) (West 2005) (contact sports).
Wyoming	WYO. STAT. ANN. §§ 1-1-121 to -123 (2005) (recreational sports).
	WYO. STAT. ANN. § 6-9-301 (2005) (skiing).