



Y220CIVL10N

Lines: The CWA Newsletter

Vol. 2, No. 3

November 2, 2006

Welcome

Dear Colleagues,

Welcome to this edition of Lines, the voice of the Climbing Wall Industry. In each issue we try to distill the important issues, industry news, and insights to help members of the climbing wall industry grow stronger and more successful.

If you are not a member, please check out our new member benefits and join the CWA today. If you are a member, let us hear from you: email us with your comments, suggestions, articles, or use the CWA Message Board at climbingwallindustry.org/community.php to post questions, job announcements, and more!

If you've been to the CWA web site, you've noticed some big changes and improvements. For example, all of the back issues of LINES are now available on line. We have also made it easier for you to submit news or press releases. If you have news or a press release, submit your news item here: www.climbingwallindustry.org/submitnews.php. I'm sure you'll find other improvements if you check out the new site.

Very Best Regards,

Bill Zimmermann,
Executive Director

Climbing Wall Summit & Managers' Symposium

The Climbing Wall Association announced the schedule for the first Climbing Wall Summit & Managers Symposium, April 12-14, 2007 to be held in Boulder, Colorado. The Symposium will offer classes, clinics, and workshops on many aspects of management and operation of manufactured climbing walls. The three day event will bring together expert faculty and climbing wall operators from diverse facilities including climbing gyms, colleges and universities, recreation centers, YMCA's, and camps. The Summit will offer numerous opportunities for industry participation, networking, and professional development.

Engineering Standards Committee Formed

The Engineering Standards Committee has formed and has been busy drafting a revised design and engineering specification. The committee includes the following members: Jeff Brewer, Brewer's Ledge; Dave Custer, MIT; Steve Holmes, Eldorado Wall Company; John Pinckney, Entre Prises USA; Nate Postma, Nicros; and Drew Sloss, Climb Nashville. The committee has held four meetings since the summer and has embraced a sound strategy for standards development. The following is a summary of each of the five stages of the CWA standards development process:

1. Drafting/Research Stage. Identify standards needed. If the standards committee agrees that a standard or a revision is needed a draft is submitted and posted for review and comment by the committee.
2. Proposal stage. The "draft" is reviewed by the committee by a stated deadline and will be reviewed and revised or discussed within the committee until objections are resolved.
3. Comment Stage. "Proposed" standards are posted for public review and comment.
4. Approval Stage. After open comment, the final version of "proposed" standards will be circulated to all committee members for a final Yes/No vote. The committee approves standards by majority vote.
5. Publication Stage. Once an "approved" standard is submitted, only minor editorial changes, if and where necessary, are introduced into the final text.

Manufacturers' Roundtable Meeting a Success at Outdoor Retailer

The CWA hosted a well-attended manufacturers' roundtable meeting at the Outdoor Retailer Summer Market in August. Representatives from Petzl, Trango, Entre Prises, Nicros, Asana, Black Diamond, Pyramide USA, Extreme Engineering/Walltopia, Liberty Mountain, and BlueWater attended to voice their support for CWA programs such as ClimbSmart! and to explore how they can become involved with the pressing regulatory issues that face the climbing wall industry.

Principal CWA efforts are being directed to fighting regulation of climbing walls as "amusement devices" (like Ferris wheels and roller coasters) or to lessen the negative impact of potential regulation, in "bellwether" states like Massachusetts, New Jersey, California and other states.

Several manufacturers, including Black Diamond, and Trango stepped forward to join the CWA and to support the future of climbing. The CWA vitally needs support of member gyms, manufacturers, and the entire industry to fend off onerous legislation and regulations that could damage the industry, limit its growth, and threaten its status as a sport.

Petzl and Black Diamond Products Recalled

These leading manufacturers, in cooperation with the consumer product safety commission, recently issued voluntary recall notices for climbing equipment. Black Diamond voluntarily recalled some speed harnesses, and Petzl voluntarily issued recalls for certain William and Am'D Ball-Lock carabiners.

New Pro-deal Benefits for CWA Members!

CWA members are now entitled to complete pro-deal benefits with Outdoor Prolink, the premier resource for climbing and outdoor professionals. Outdoor Prolink offers pro-deals easily, efficiently, and securely from over 25 Brands including La Sportiva, Julbo, Gregory, and more.

Sign up at www.OutdoorProlink.com. Current CWA Members will be verified and approved within 24 hours! Questions? Contact the CWA office.

Legal Matters: Liability, Releases, and Minors

In my last column, I discussed some of the legal protections available to climbing facility operators under traditional tort and contract principles. I received interesting feedback on these issues, which illustrates the level of concern among operators about liability for accidents, particularly those involving minors. In turn, this reflects the fact that group outings involving minors are an important part of the business of many facilities. In most states, minors cannot release facilities from future negligence claims, and the limitations period does not begin to run until the minor reaches the age of majority. Also, parents cannot release these rights on behalf of minor children in most jurisdictions. So the written release of liability/assumption of risk document may be of limited usefulness in protecting against the claims of minors.

Liability claims by minors often involve a claim of "negligent supervision" against the facility. That is, the plaintiff may claim that facility employees were not properly trained or qualified to instruct climbers and/or belayers, were absent from or inattentive to the group they were supervising, used procedures that deviated from the facility's operating standards, and/or that the facility itself was negligent in hiring these employees. Defending against such a claim may involve an argument that the minor assumed an inherent risk of the activity (the "primary assumption of risk" doctrine), and/or that the minor's own negligence contributed to the injury, resulting in reduction or elimination of the plaintiff's damages under comparative-fault laws. As the cases below illustrate, it is important in any case for the facility to show that its employees were properly trained, that the facility had written operational standards in place, and that its employees strictly adhered to those standards.

In *Dunn v. Southern California Seventh Day Adventists*, a 1998 case from California, a 14-year-old boy fell while rock climbing on a church-sponsored camping trip. The plaintiff claimed that the adult supervisors were negligent in undertaking a rock climbing activity without sufficient experience and in failing to supervise the plaintiff. The plaintiff decided to climb a rock face without a helmet or safety ropes; rock climbing was not on the agenda of activities. He suffered severe brain injuries. The defendant attempted to assert an assumption-of-risk defense, but the case was reported as settled with seven-figure liability against the defendant. The case report states: "[M]uch was made of the fact that the adult individuals in charge of this camping trip were simply unqualified to conduct such high-risk adventure outings. None of the adults were certified or formally trained in any type of dangerous recreational activity, such as rock-climbing or mountain-climbing."

In *Voight v. Colorado Mountain Club*, 819 P.2d 1088 (Colo. App. 1991), the plaintiff sued for severe frostbite and other injuries after she became separated from her hiking group. The court upheld a jury verdict finding the Club 70% and the plaintiff 30% negligent under comparative-fault law. The court's findings state: "[D]espite stringent rules to the contrary [i.e., the Club's operating procedures], the leader failed to keep the group together; no assistant leader was appointed; and equipment and clothing were not checked to ensure the participants on the hike were properly outfitted [for dangerous weather conditions]. Every expert who testified stated that hike leaders are obligated to keep the group

together to prevent individual hikers from becoming separated and lost." Though this case did not involve rock climbing or a climbing wall operator, the failure-to-supervise claim can be easily made in the climbing arena.

In *Muder v. Winnacunnet School District*, a 1988 New Hampshire case, the 15-year-old plaintiff attended an outdoor learning course through her school. She wandered away from her group and fell while attempting to climb a rock formation. The defendants claimed they had provided adequate instruction on the necessity of staying with the group and making decisions only as a group. The plaintiff's expert testified that the students had not received adequate instruction in "group dynamics," especially the importance of functioning only as a group. The jury found for the defendants. An important factor was apparently the plaintiff's admission on cross-examination that she was specifically instructed not to climb without a helmet and a partner but disregarded those instructions. This case illustrates that a failure to follow clear instructions that the plaintiff understood can be a powerful defense against a claim of negligence.

In summary: train your employees well, have clear operational procedures and follow them strictly, instruct climbers and belayers clearly and make sure they understand the instructions, and make sure the employees supervising climbers are where they are supposed to be. If anything out of the ordinary occurs, document, document, document! And, as always, if you are facing a claim or if you just want more information, seek the help of competent legal counsel who are familiar with the laws in your state.

N.B. In my last column, I suggested that the facility's release of liability should include a release of liability for the negligence of co-participants. An alert reader pointed out that in a few states, such a release is void as against public policy. *Mea culpa* - this serves to illustrate the point that operators should consult counsel who are familiar with their state's law for specific legal advice. Best wishes for a safe and productive fall.

Definition: Comparative fault (or comparative negligence) is a tort-law principle whereby each party in an action for negligence is required to pay a share of the damages in proportion to its percentage of fault. Generally, in order to realize a net recovery, the plaintiff must show that the defendant's share of fault is 51% or more.

Disclaimer: The information provided above is offered for the general guidance of members of the Association and is not intended, and should not be construed, as the provision of legal advice in any pending or anticipated matter. Please consult your legal counsel for advice regarding any such matters.

by Robert Angel, Esq.

CWA Board Member

www.angellawohio.com

rangel@angellawohio.com

Operations Standards Committee Formed

The CWA has formed the Operations Standards Committee to gather information from members and develop a strategic approach to the operational issues that face the industry.

Members of the committee are: Dan Hague, Chair, Climbing Wall Management; Bryan Pletta, Vice Chair, Stone Age Climbing Gym; Jeff Clapp, Rockreation; Rich Johnston, Vertical World; Tom Kopp, CCPR; Jason Noble, Vertical Endeavors; and Chris Wood.

One of the first orders of business was a nationwide survey of climbing wall operators designed to help the CWA committee identify and better understand core industry issues and current operational practices. The survey was a big success, with a high rate of participation, and good information for the committee.

The committee will be focusing its efforts on the following areas for the next edition of the Industry Practices: belay training and testing, auto belay systems, bouldering, landing surfaces, supervision, human resources, and equipment. Proposed revisions to the Industry Practices will be made available for public review and comment once the committee has agreed upon recommendations.

About the Climbing Wall Association, Inc. (CWA). The CWA is a 501(c)(06), non-profit, trade association incorporated in May of 2003 for manufacturers of climbing wall equipment, builders of climbing walls, operators of climbing walls, and others involved in the climbing industry.

The CWA is the only trade association addressing the needs and interests of the climbing wall industry and climbing wall operators. The mission of the Climbing Wall Association is to support the growth, health and independence of the climbing wall industry, and to promote the sport of climbing.