



Y220CIVL10K
Climbing Wall Association

Lines: The CWA Newsletter

Vol. 3, No. 3

December 17, 2007

Welcome

Dear Colleagues,

A lot has been going on here in Boulder at the CWA office. First, we have enabled our web site for secure e-commerce which should make joining, renewing, and purchasing products from CWA much easier and faster! Check out our new products and services page. On-line membership management is coming in 2008.

We have begun development on a workers' compensation program for members and have already met with potential carriers. We have also announced the dates of the 2008 Climbing Wall Summit and issued a call for workshop proposals! Join us for the second annual CWA conference.

We also released the third edition of the Industry Practices! The publication was shipped to current CWA members on October, 22nd after a successful round of public review and comment. Thanks to everyone that submitted thoughtful comments and suggestions. Thanks also to the CWA Operations Standards Committee who worked for a year from July 2006 to July 2007 on the project.

Thanks to everyone that has pitched in and helped to make these projects a success. Remember - together we're stronger.

Best Regards,

Bill Zimmermann,
Executive Director

2008 Climbing Wall Summit, Save the Date, Call for Proposals!

The Conference Committee have been busy discussing preparations for next year's CWA member conference -- the 2008 Climbing Wall Summit. After considering all of the options, we decided it would be best to return to Boulder, Colorado for the 2008 Summit! The dates of the conference will be Thursday, May 1st through Sunday May 4th, 2008. Please save the dates, for more information go to our web site.

Legal Matters: Minors and Exculpatory Agreements

This column revisits a troublesome issue for many facilities: the written release of liability/assumption of risk document, especially as it pertains to minors. A correspondent recently contacted the CWA with two questions regarding releases by, or on behalf of, minors:

1. When a minor, who has had a release signed by their parent, turns 18 should they complete another release now that they are 18? The short answer is yes. In a past column, I pointed out that releases on behalf of minors may have limited usefulness in protecting facilities against claims, even those which accrue before the minor reaches 18. That is so because in many if not most jurisdictions, minors cannot release facilities from future negligence claims, and the limitations period for a personal injury action does not begin to run until the minor reaches the age of majority. Also, parents can release these rights on behalf of themselves, but not on behalf of minor children in most jurisdictions. If a minor is injured in your facility, the result may be a "next friend" lawsuit brought by the parent on behalf of the minor. In such a case, the parents may try to get around the release they signed by claiming loss of companionship, which, they will argue, was not waived by the release.

The legal situation changes when the minor attains the age of majority. At that point, the law presumes that the person has full legal capacity to enter into a written agreement. In the event of an injury, a participant may disavow a release entered into on his or her behalf during minority. It is much more difficult to disavow an agreement entered into by the participant on his or her own behalf.

In addition to having a new release signed, the attainment of the age of majority is also a good time to make certain that your facility has accurate records on file for each participant, including date of birth. You should also be aware of, and document, any special-needs participants. Some of these participants, such as persons with mental retardation or developmental disabilities, may require the consent of a parent or guardian even after they attain the age of majority.

2. We have a boarding school near our gym where the school has guardianship of the minor (In Loco Parenti). They do have a written agreement between the school and the minor's parents. Are the school's agents allowed to sign on the minors' behalf? Should we obtain a copy of the contract between

the parents and the school? The legal doctrine of *in loco parentis* ("in the place of the parents") formerly described the legal relationship between school authorities and pupils in any educational setting, public or private. While it is still a viable doctrine, my sense is that it may be more symbolic than real these days, at least in the public schools. It may be a different matter in private schools, especially private boarding schools. The school administration may well have the same rights, and the same limitations, in signing releases on behalf of minors that their parents would have. That is, the school administrators could give their consent to participation, but would not be able to release causes of action on behalf of minors. If I were advising you in a particular case, I would want to know exactly how the agreement defines "guardianship" of the students. If you have a situation like this, the best course of action would be to obtain copies of the contracts between the school and the parents, and have them reviewed by an attorney knowledgeable in this area of the law in your state. Based on that review, you may wish to tailor your release accordingly. Remember also that you are not obligated to accept a release drafted by the school administration, but instead you may insist that the parents or administrators sign a release that you draft for your own situation.

The release of liability/assumption of risk document is just one weapon in your defensive arsenal. Of at least equal importance are the need to keep accurate records on all of your participants, train your employees well, have clear operational procedures and follow them strictly, instruct climbers and belayers clearly and make sure they understand the instructions, make sure the employees supervising climbers are where they are supposed to be, and have a written procedure for documenting incidents and follow that procedure every time.

Best wishes for your success.

Robert Angell, Esq.
CWA Board Member
URL: www.angellawohio.com
E-mail: rangell@columbus.rr.com

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.

Workers Compensation Program Update

The CWA and Stratus Insurance Services, have begun to develop a workers' compensation insurance program for CWA members. Bill Zimmermann, Chris VanLeeuwen and Cameron Allen met with insurance company representatives at Ibex Climbing Gym to give the underwriters a facility tour and brief them on workplace safety issues in our industry. It looks as though a workers comp insurance program for CWA members could be a reality very soon if all goes well!

Thanks to the staff of Ibex and all of you who participated by providing information regarding your workers compensation classifications and thanks to Nicros and Entre Prises USA for their expert assistance in routesetting and workplace safety issues. This process is one more example of how we can help one another if we work together collaboratively.

The CWA has submitted justification for suitable classification codes and supplemental questions for the insurance application for our industry to the carrier. CWA members that have adopted the Industry Practices should have the workplace safety measures in place to successfully participate in this program.

Insurance Industry Outlook

What Does a Climbing Wall Have to Do with the Sub-Prime Mortgage Crisis?

It was about six years ago when companies in the climbing industry had tremendous difficulty finding adequate or affordable insurance coverage. Up until last year the insurance market was still turbulent for most members. Now, it appears as though we are out of the woods, and the market is changing. Premiums have begun to decrease again, showing that a softening market may be returning. Could this be another wolf in sheep's clothing?

Insurance companies make their profits in two major ways; 1) through strict underwriting practices where they collect more in premiums than they pay in losses, and 2) through investment income. For over two decades, starting in the 80s, the insurance industry lost money with their underwriting, but continued to be profitable because of their investment income. When the recent hard market hit, it was due to years of poor underwriting discipline combined with a serious downward spiral in investment returns. The insurance carriers were bleeding from both ends. The carriers reacted in dramatic fashion, by getting out of certain kinds of business -- like the climbing wall industry -- or by raising premiums 200%, 300% and even 500% for some risk purchasing groups -- including ours. However, with the increase in premiums, the return of underwriting discipline, slowed losses, and the recent revival of investment income, it appears the insurance carriers have reversed the trend. But hold that thought...

Consider this... The world's largest reinsurer, Swiss Reinsurance Co., lost \$1.07 billion on derivatives in October alone, amidst the U.S. sub-prime mortgage crisis. The 144-year-old Swiss Re earns almost two-thirds of its income from the property-and-casualty business. Record foreclosures on U.S. home loans, due to predatory and unethical lending practices, rattled debt markets and caused about \$50 billion of trading losses and investment write-downs at the world's biggest financial institutions, most of which are insurance companies. Citigroup, owner of household names like The Traveler's Insurance Company, Sears Life, and American Financial, is among those companies crippled by this investment catastrophe.

Investments and market conditions have left the insurance industry unsettled. The sub-prime mortgage crisis will deepen for the first two quarters of 2008 due to adjustable rate mortgages resetting. Adjustable mortgage interest rate increases are closely correlated with increased foreclosures. In the first six months of next year, the number of variable-rate sub-prime mortgages that are scheduled to reset will exceed all of the mortgages that reset in 2007 (\$521 billion vs. \$515 billion)! If we are experiencing huge default rates now due to the sub-prime mortgages resetting, just wait for next year. This suggests to us that the number of foreclosures is due to rise dramatically from the already high current levels. The increasing default rates will continue to put heavy pressure on investors in mortgaged backed securities, such as large insurance companies. It will be quite some time for the U.S. economy to completely absorb the "sub-prime shock."

Therefore, it is vital to maintain relationships with healthy insurance carriers and continue to develop our strong and growing risk purchasing group. Banded together we can continue assisting one another to keep our insurance available, stable, and financially within reach. As your insurance renewals approach, make sure that you keep Stratus in the loop. Stratus was recruited to bring us together and provide stability in a turbulent market and it has done a good job. It will be up to each of us to make sure we control our future premiums when others around us on their own wonder what happened... just like last time the market changed.

The CWA weathered a significant insurance market storm very successfully, and continues to protect its members by bringing member companies together in an unsettled marketplace. Our insurance base rates have not changed in four years, while the rest of the industry's rates have bounced around (mostly upwards). Our base rates for CWA members may go down for 2008; of course individual circumstances and loss histories will dictate your rates.

In Summary, our CWA insurance programs have provided stable pricing, consistency, and high quality coverage for years in a volatile market. We hope to continue to serve you for many more years, despite the market's ups and downs.

Bret VanLeeuwen
Stratus Insurance

New-School Economic Development — Bouldering Gym Project in Lhasa, Tibet!

Mike and Kelly Randall, avid climbers in their early 30s are an American/Australian couple who have been living in Tibet for the last 5 years teaching English and working for a trekking company. Mike has developed over 100 boulder problems in the Lhasa area. Mike and Kelly are now starting up a bouldering gym, guiding service, and rock shop in Lhasa.

Lhasa has some local crags but has yet to offer a bouldering gym (though bouldering gyms have really taken off in other parts of China). Their goal is to employ local Tibetans from the Tibet Mountaineering School (TMA), as well as others, to run the bouldering gym and be guides for rock and alpine excursions. There is a desperate need for employment for Tibetans as so many Chinese are coming to Lhasa and monopolizing employment.

The Tibet Mountaineering School was founded to give Tibetans from the Everest region of Tibet (one of the poorest regions in Tibet) training and a chance to earn an income as rock and alpine guides. Fortunately, the school has taken off, but there are more graduates than there are jobs for them.

Mike and Kelly's goals are to be proactive in not only providing jobs to Tibetans but also in providing the youth of Lhasa with healthy alternatives to playing computer games, getting into trouble, or just wasting time. They seek to cater to Tibetans, Chinese tourists, and also the many western tourists that come through Lhasa each year seeking the adventure of a lifetime. Contact them at lhasarockgym@gmail.com.

Passé Montagne — Holding on to Number One in Canada

Passé Montagne began in 1988 manufacturing and assembling climbing walls in Montreal, Canada. Today they build walls, produce wall texture, create climbing programs for schools, and are the manufacturing leader of climbing holds in Canada with products sold around the world.

This year Passé Montagne developed a new line of durable climbing holds with a straightforward design to suit the needs of all levels of climbers. The 367 new holds are stronger than ever, with a new flexible formula which reduces breakage during installation. With fun colors like Mango and Azure the holds stick out. Passé Montagne continues to produce innovative products and interesting wall designs around the world. Visit Passé Montagne at www.passemontagne.com.

Passé-Montagne
1760 Mtee 2e rang,
Val-David, Quebec, Canada J0T 2N0
Phone: 800-465-2123
FAX: 819-322-2948

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.