

Landowner Liability

National Tree Farmer Convention 2011

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Nationwide Assessment of Rural Landowners Liability

(Hill & Kaiser 1995)

“Threat to Landowners is Probably Exaggerated”

“Be Familiar with Specific State Laws”

“Incorporate Safety & Risk Management”



Public Liability

The part of the law of tort which focuses on civil wrongs. The injured party usually sues the owner under common law based on negligence and/or damages. Claims are usually successful when it can be shown that the owner/occupier was responsible for an injury, therefore they breached their duty of care.

The duty of care: in basic terms it is the standard by which one would expect to be treated while one is in the care of another.



Personal and General Liability Claims

Personal liability claims and general liability claims may involve any conceivable kind of activity which results in injury or damage to a claimant.

The activities can relate to the ownership of property, usually in the area of slip or fall type claims in dwellings or commercial buildings or outside the premises.



Negligence

Commercial General Liability Based on Concept of:

- Duty Owed
- Careless Breach
- Connection
- Damages



Types and Duties

- Invitees – Highest Duty
- Licensee – Invited to hunt for no charge
- Trespasser – Least duty
 - New Category
 - “Known Trespasser”*



Inspect and Warn

**Landowners that take money
for activities have a duty to
inspect and warn**



Inspect and Warn

Inspections should have a routine schedule and club members warned of any hazards or changes

Landowner and Club members should also inspect tree stands, gates, and other hazards



Hunting Club Liability

Recreational Use Statute

- **Duty of Care Reduced**
- **Purpose is to Encourage Owner's of Land to Make Land Available to the Public for Recreational Users**
- **Without Charge - Except for Land Leased to State**



Liability Issues

- ✓ **Understand the Legal Responsibility to Recreational Users**
- ✓ **Common Sense**



Are You Negligent?

New York Recreational immunity

- does not cover non-recreational use, willful or malicious “traps”, and compensated uses.



Negligent?

Case in New York determined the duty of care owed by landowner depends on the “foreseeability” of the risk of injury.



Negligent?

Who owns land

Injured persons age

Paid for use

Location – population

Measures necessary to find and/or prevent danger



Negligent?

Example – Highest duty – children paying to use urban property where it would be easy to find and fix a known danger



Negligent?

Least Duty – unknown trespasser on remote rural property where not easy known danger.



Negligent?

Georgia – Malicious or willfull

four part test

owner (1) Knows being used

(2) Condition exist involving
unreasonable risk

(3) Not apparent to users

(4) owner chose not to guard or
warn



Negligent?

Ohio - Purchased beer went to farm to ride a Rhino
Flipped – Broken leg of guest
Suit dismissed on summary judgement

Debate about was it a “recreational vehicle” or
“utility vehicle”



Negligent?

Court – intended use

Not how to classify vehicle

Recreation defined as “refreshment of strength and spirits after work”



Negligent?

| | |
|------------------|-----------------------------|
| Pennsylvania - | Recreational Immunity |
| New Jersey - | Recreational Immunity |
| Louisiana - | Utility Guide Wire |
| Texas - | Tree Stumps |
| South Carolina - | Recreational vs. Trespasser |



Liability Insurance

Is it covered?







Hunting Club and Timberland Liability

Insuring Agreement – ISO – 2001

- A. We will pay the sums that the insured becomes legally obligated to pay as damages because of “Bodily Injury” or “Property Damage”...



Hunting Club and Timberland Liability

Broad Statement – Covers almost everything....
Except for...

- B. Exclusions – Standard**
 - Intended**
 - Liquor – “in the business of”**
 - Workers Compensation**
 - Pollution**
 - Aircraft, Auto, Watercraft**
 - Mobile Equipment – Transporting**
 - War**
 - Property – Care, Custody, Control**



Hunting Club and Timberland Liability

C. Specific Exclusions/Endorsements can be added to base policy

Example

- Abuse/Molestation
- Computer related
- Microorganism
- Terrorism

Important to see if no specific exclusions added for hunting exposures

- Tree stands
- ATV's
- Members



Examples

1. **Auto Guest**
2. **Gates**
3. **Swimming Hole**
4. **Horses on road**
5. **Shooting under recreational immunity law.**
6. **ATV's**
7. **Tree Stands**



Hunting Club Liability

A Sound Hunting Lease Program

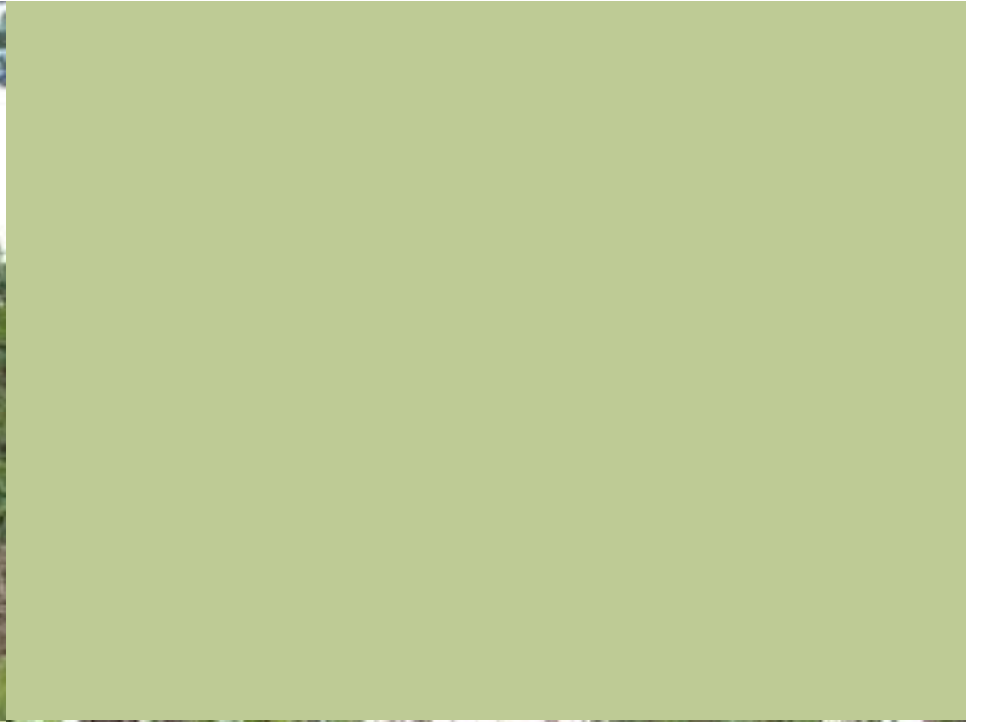
1. **Hunting Lease**
 - Hold Harmless
 - Responsibilities
2. **Map of Property Detailing Hazards**
 - Gates, Property Boundaries, and Adjacent Landowners
3. **Insurance for Club**
 - Landowner as an Additional Insured
4. **Check in Area**
5. **Particular Attention to Gates and Other Hazards**



Biggest Issues – Common Sense

1. Don't have cable gates
2. Look before you shoot
3. Don't let kids ride ATV;'s
4. Wear tree stand harness
5. Do not burn trash or brush during drought.
6. Put out fires.













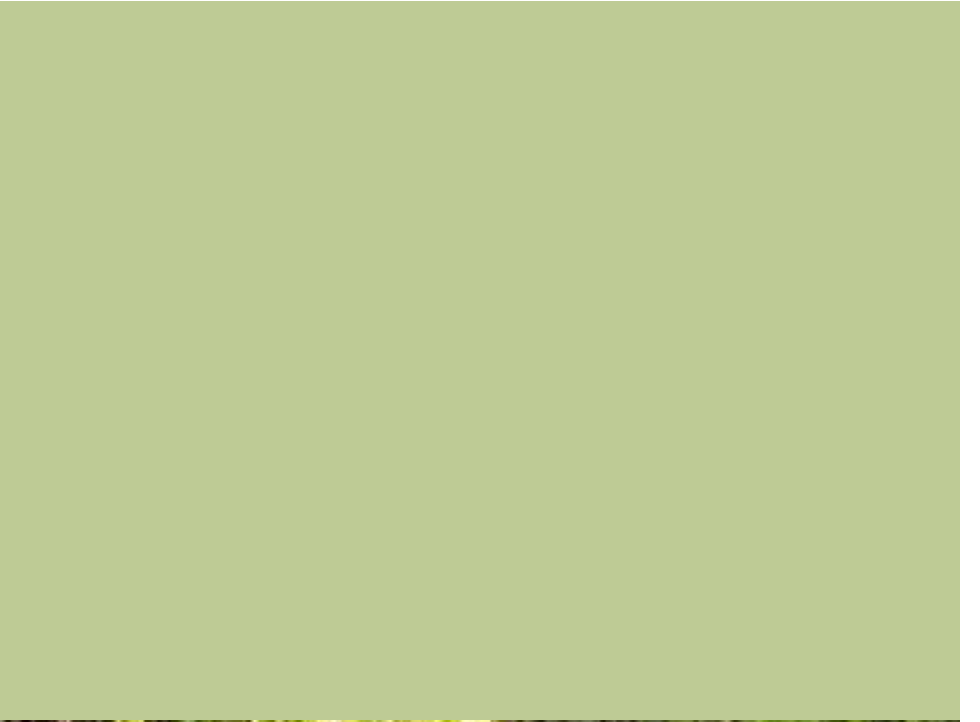




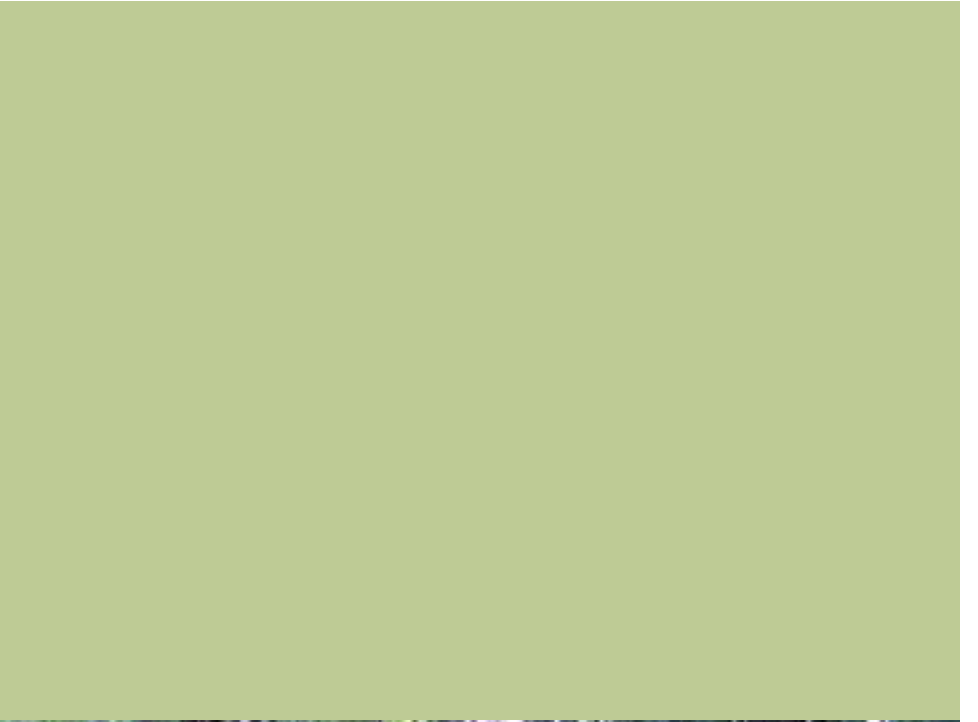








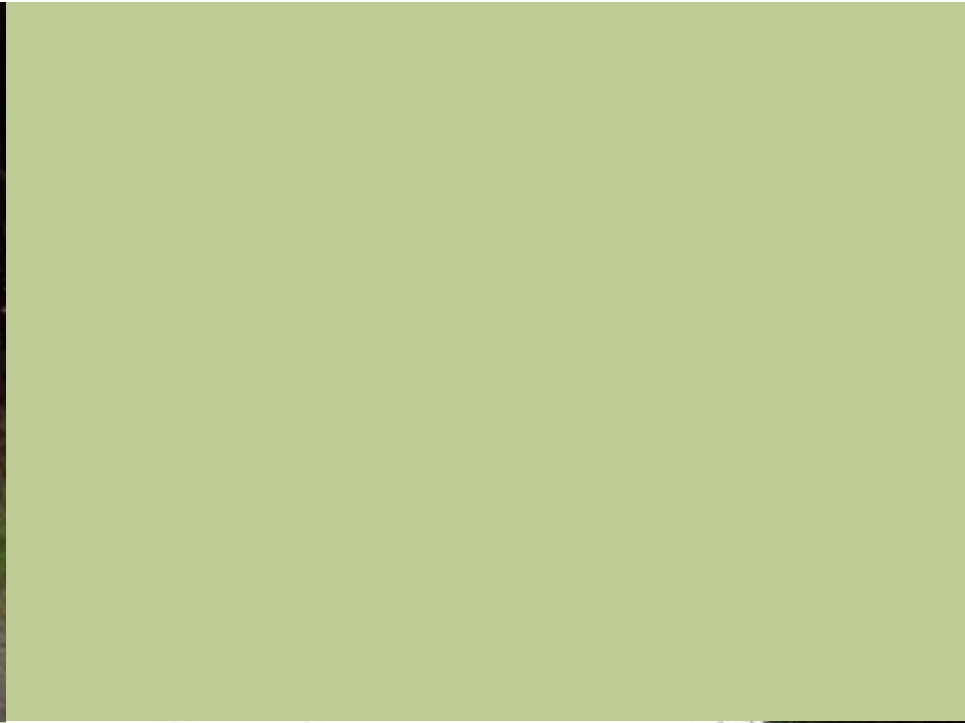
















NOT YOUR GRANDFATHER'S HUNTING STAND

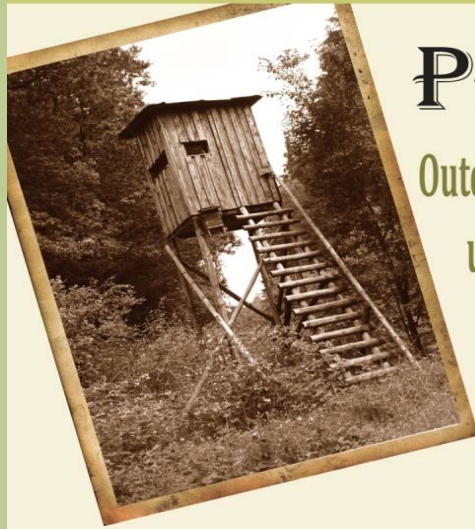


PHOTO CONTEST

Outdoor Underwriters is in search of the most unique, unusual, or just plain crazy hunting stands around this great country. Visit our website at outdoorund.com/contest to submit your photo to the contest today!

YOU COULD
BE
A WINNER

PRIZES

🔫 1ST PLACE

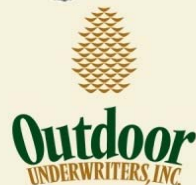
Remington - 700 Bonz Camo Edition

🔫 2ND PLACE

\$250 Cash Prize

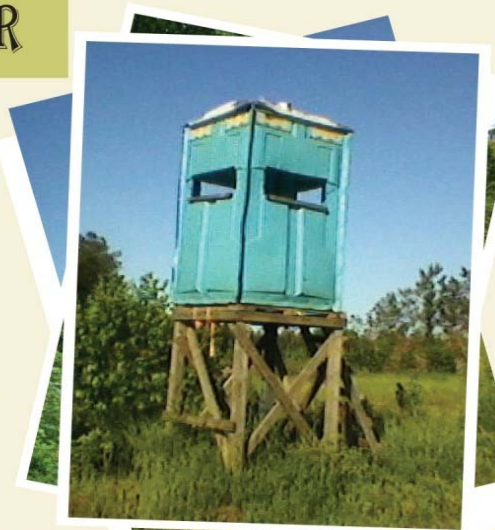
🔫 3RD PLACE

\$100 Cash Prize



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The End

Lawyer: “Doctor, before you performed the autopsy, did you check for a pulse?”

Witness: “No.”

Lawyer: “Did you check for blood pressure?”

Witness: “No.”

Lawyer: “Did you check for breathing?”

Witness: “No.”

Lawyer: “So, then it is possible that the patient was alive when you began the autopsy?”

Witness: “No.”

Lawyer: “How can you be so sure, Doctor?”

Witness: “Because his brain was sitting on my desk in a jar.”

Lawyer: “But could the patient have still been alive nevertheless?”

Witness: “Yes, it is possible that he could have been alive and practicing law somewhere.”