Oregon Senate and House Committees on the Judiciary

I support SB 1517 and could possibly support some of the various amendments.

However, after hearing the testimony at this morning's public hearing, I am compelled to submit written testimony.

All of these discussions arise from an Oregon Supreme Court decision in 2006 (known as The Bagley decision), which said that it was unconscionable to have a liability release that waived all claims of any sort – including gross negligence. As that court case was about Mt. Bachelor's specific blanket liability release, the OR Supreme Court overruled the lower courts and voided in the liability waiver in its entirety.

That occurred quite a while ago and little has changed as the insurance industry and the larger clients stuck with overbroad releases at their own peril.

The common sense solution, which the ski industry and many others could (but have not) easily adopted is to simply re-write the standard liability releases so that they ONLY cover ordinary negligence, not gross negligence. The Bagley court said that sort of liability release would be valid and enforceable.

The successful legal cases brought by people who suffered injury since *Bagley*, and there have been a number of them, all involved deaths or catastrophic injury and all had signed liability releases that had the EXACT SAME language as the one in the *Bagley* case.

Despite having been told almost 20 years ago that it was not possible to have people sign a legally enforceable liability waiver in which folks waive EVERY claim of any sort, the ski industry (and others) continue to do just that.

The blanket waivers deter most people from trying to bring a claim when they are injured but when a person decides to challenge the blanket waivers, predictably, the courts in Oregon (and elsewhere) have each time thrown out the entire blanket release because it goes too far.

The principle reason that some ski area insurers have left OR recently is NOT the state of the law (that has been on the books for almost 20 years) - It is because several insurance companies made VERY bad decisions to take death and/or catastrophic injury cases (including several against Ski Bowl) to trial instead of making reasonable settlement offers, and as a result, lost jury trials and were saddled with multi-million dollar verdicts.

Despite the industry rhetoric, the driving force behind trying to enforce overly broad liability waivers are the insurance industry profits, not liability waivers - that is what is creating expenses for recreational providers.

It does not make sense to take away people's legal rights for redress for injury by allowing recreational providers to dodge responsibility for gross negligence and willful misconduct.

It is unreasonable for anyone to make the claim that expenses will be at all reduced by allowing more blanket liability waivers.

The Legislature should ask for any examples of when or where insurance premiums have actually gone down after some measure of "Tort Reform" was enacted. That is what the insurance industry and the recreational industry implies would happen if statutory law is changed to subvert the basic rule found in the *Bagley* case.

It is highly unlikely there is evidence of any cases where insurance premiums drop. Instead, the insurers keep the premiums high, and because they now have to pay fewer claims, their profit margins only seem to go higher.

Call me a cynic on this - but it is likely the evidence would likely show that insurance providers are leaving Oregon because of our forest fire risks, not recreational liability.

As someone who has not skied since the resorts got really crowded and expensive in the 1990s (and as I witnessed friends run over by people learning how to snowboard as that sport grew), I cannot say I have a dog in this fight.

However, I have colleagues who are trial lawyers and I know they will not spend unpaid hours on a case where there is good evidence that a provider of a service performed that service in a manner that ensured their clients would not be hurt by an act or omission.

There is the constant refrain of "frivolous lawsuits" being the unintended result of holding providers responsible for their acts or omissions - there are two points here:

First, there are mechanisms to address a lawsuit that is truly frivolous and serious consequences when a frivolous suit is pursued.

Second, I would ask those who bring up frivolous suits as the scary and expensive "boogie man" to put themselves in the shoes of a private citizen, who, based on no fault of their own, is injured in a material manner because of an act or omission by a provider. How likely is it that any reasonable attempt for redress will always be labeled as "frivolous?"

My guess is that each and every attempt for redressing an injury will be so labeled- so let's just agree to put aside that label and instead, hold our providers to a high standard of reasonable care.

All of us should have a reasonable expectation that we will not be hurt or killed when skiing, rafting, climbing, etc. when we pay for a service that is capable of being provided in a safe manner.

This isn’t about acts of god, but acts or omissions by a provider that are not up to standards.

There must be accountability - and the right to hold a provider to certain standards legally is part and parcel to the relationship between these parties.

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