

## Recreation Law

This blog will be used to discuss the legal issues in outdoor recreation. Human powered outdoor recreation which includes hiking, backpacking, rock climbing, mountain climbing, skiing/snowboarding (alpine, Nordic, AT, etc.), running, racing, cycling anything you can do outside to have fun and invigorate your spirit. I'll post news and excerpts from cases and lawsuits and provide you with the opportunity to reply. © 2008 James H. Moss

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SUNDAY, AUGUST 2, 2009

### Give me a break! Teen charged \$25K for a rescue he did not need

A Facebook page started to round up money, but we would be better off paying an attorney to fight it for him

Here is the story. A 17 year old Eagle Scout went hiking in the White Mountains of new hampshire last April. He sprained an ankle, tried a different route out, it failed and he spent 3 days backtracking. In the mean time a Search and Rescue (SAR) was called. Volunteers and state employees were called to search for the youth. He was found, hiking, OK and not needing a rescue. When found by SAR he was described as on his way home.

Three months later the state of new hampshire sent him a bill for his non-rescue for \$25,000. They are saying that he was negligent.

*Fish and Game Maj. Tim Acerno said the decision to fine Mason came from what was deemed as the teen's negligence for continuing a hike with an injury -- a sprained ankle -- and veering off a trail to what Mason recalled was a shortcut. Only the shortcut was cut short by a stream swollen from melting snow and snow still on the ground in April. See [Teen walloped with NH rescue fine](#)*

In new hampshire it is negligent to hike with a sprained ankle! Or is it negligent to try and take a shortcut when you sprain an ankle.

The state is forcing people to decide whether going outdoors is worth it. Is the value of my life without the outdoors worth risking everything I have gained indoors?

But as cynical as I sound, if you are a professional or volunteer, if you are part of a SAR unit and you work in the US this can have a disastrous effect on your business or volunteer work.

If the state can prove someone is negligent for hiking on a sprained ankle when he tried to take a shortcut, how easy will it be to use that case law and prove you were negligent as a guide for not getting your

### About Me



James Moss  
Colorado, United States

I'm an attorney, professor, speaker and writer who specializes in human powered recreation law. When I'm not practicing law or writing, I still work as a river guide for commercial whitewater rafting companies.

[View my complete profile](#)

### Welcome and Why

*He who asks is a fool for five minutes, but he who does not ask remains a fool forever.*

I've spent twenty-years practicing outdoor recreation law. My clients range from university outdoor programs to Everest guide services and equipment manufactures. I've been involved in litigation concerning raft companies, mountaineering guide services, canoe liveries, climbing hardware, ropes (challenge) courses and many others. I've written over 100 legal articles on the subject and given more than 100 speeches on the topic. I also recently completed a textbook on the subject.

I'm one of the co-founders of the National Outdoor Book Awards and I serve on the board of directors of the Trade Association of Paddlesports. I teach a ski area risk management course for Colorado Mountain College both online and in

client back when you predicted. For not getting your client home 100% safe.

What about SAR missions. If the state can prove negligence in this case, it will be easy to prove negligence for failing to find or failing to adequately rescue.

This could have serious domino effect.

Here is the new hampshire statute

206:26-bb Search and Rescue Response Expenses; Recovery.

*I. Notwithstanding RSA 153-A:24, any person determined by the department to have acted negligently in requiring a search and rescue response by the department shall be liable to the department for the reasonable cost of the department's expenses for such search and rescue response. The executive director shall bill the responsible person for such costs. Payment shall be made to the department within 30 days after the receipt of the bill, or by some other date determined by the executive director. If any person shall fail or refuse to pay the costs by the required date, the department may pursue payment by legal action, or by settlement or compromise, and the responsible person shall be liable for interest from the date that the bill is due and for legal fees and costs incurred by the department in obtaining and enforcing judgment under this paragraph. All amounts recovered, less the costs of collection and any percentage due pursuant to RSA 7:15-a, IV(b), shall be paid into the fish and game search and rescue fund established in RSA 206:42.*

*II. f any person fails to make payment under paragraph I, the executive director of the fish and game department may:*

*(a) Order any license, permit, or tag issued by the fish and game department to be suspended or revoked, after due hearing.*

*(b) Notify the commissioner of the department of health and human services of such nonpayment. The nonpayment shall constitute cause for revocation of any license or certification issued by the commissioner pursuant to RSA 126-A:20 and RSA 151:7.*

*(c) Notify the director of motor vehicles of such nonpayment and request suspension of the person's driver's license pursuant to RSA 263:56.*

#### Emphasizes Added

No jury, no court no judicial authority makes the determination as to whether or not there was real negligence. Under most state laws, no "department" can determine if someone is negligent. That is left

a traditional classroom. I write for SNEWS, GearTrends and the Wilderness Medical Society Journal.

I know this area of the law.

This blog is going to discuss issues in recreation law. It is not designed to educate you in the subject. If you need that take a class and read several books. A thorough discussion and analysis of cases can be found at the Outdoor Recreation Law Review a subscription site which I edit. But for quick news and fast analysis this blog should be a great source of information. I'll highlight lawsuits that have occurred and their status. New risk management trends and problems. I try and provide a short synopsis of what is happening in this end of the legal world.

Stick around, it should be fun. I hope it is informative and educational as well.

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Strange SAR results in a lawsuit: RCMP helicopter ...

Legal Shield or Level Playing Field: North Carolin...

It's Not My Fault, Its Their Fault: School Canoe T...

Great Article from Middle

*Duh Joe, what's the budge look like this week? Really a little short, well let's bill somebody. Let's see I helped a little old lady across the street, she looked lost to me, I think she's good for \$50 K!*

I hear politician's everyday say at what point do US citizens take responsibility for their own actions. Well here is the perfect case and the state says you can't be responsible. A well trained individual got in trouble and got himself out of trouble. Now the state wants money from him?

Another article quotes the state as saying

*Scott Mason had been praised for utilizing his Eagle Scout skills — sleeping in the crevice of a boulder and jump-starting fires with hand sanitizer gel. But authorities say he wasn't prepared for the conditions he encountered and shouldn't have set out on such an ambitious hike.*

*"Yes, he'd been out there in July when you could step across the brooks. And people have been out there in winter in hard-packed snow. But with these spring conditions, it was soft snow, it was deep snow," said Fish and Game Maj. Tim Acerno.*

*Mason was negligent in continuing up the mountain with an injury and veering off the marked path, Acerno said. Negligence, he said, is based on judging what a reasonable person would do in the same situation.*

Emphasizes Added

See: [Teen fined \\$25,000 for cost of NH mountain rescue.](#)

So now hiking is OK, but only when it is summertime. It was snowing in the Colorado mountains last week, should we have closed the mountains? The makers of snowshoes, avalanche beacons, back country ski gear and cold weather gear are going to be disappointed when they find out you can't use their gear outdoors anymore.

A reasonable person would have lay down and died, or spent hours watching a cell phone battery die. This kid got himself out of the jam and was walking home!

The young man has until August 9<sup>th</sup> to pay the bill or to go to supposedly court to contest the fine. I don't see anywhere in the statute where he has an option of going to court. But he should and we should help. For more information on helping Scott Mason please read to the end.

Negligent Hiking?

I am stumped on how the state can create a law about negligent hiking. 25 years practicing law, 20 years specializing in outdoor recreation and I've never heard of or even thought of the idea of negligent hiking, negligent self rescue. More importantly what

Mountaineer...

Sometimes you can't resist  
and I can never resist ...

New Colorado Bike Law Poster

Federal Appellate Court  
Upholds Right to  
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I was quoted in Outside  
Magazine

Vancouver charging for  
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Give me a break! Teen  
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Moving Mountains: Journal of  
Sport for Development...

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like to see more of?

Email:

constitutes negligence when going for a hike? Negligence is composed of four steps all of which must be met. There must be a:

- duty,
- a breach of that duty,
- an injury, and
- damages proximately caused by the breach of the duty.

What is the basic duty that was breached? Does a hiker owe the state a duty not to get hurt or lost? (Consequently doesn't the state owe the hiker a risk free trail and signs so the hiker does not get hurt or lost? like in any downtown city in the US?). Where is the duty owed and to whom? Citizens only owe the state a duty if the state by law has said there is a duty. The best example is to pay taxes. Not to walk the way the state wants you to walk or to behave in the woods the way the state wants you to behave.

If we don't get involved to fight this law several major things are going to happen.

SARs are going to get messier. Instead of calling when things are bad, people, in fear of a \$25K or higher bill will wait till it is too late. A fine is not going to stop people from going hiking or doing stupid things. If that was the case, our jails would be empty and our taxes would be higher. (No speeding tickets a city has no income.) new hampshire is going to fine everyone they believe will give them some money.

The capstone for this is the family of the rescued young man sent \$1000.00 to the search and rescue group for helping to find Scott.

If you would like to contribute to the Rescue Scott Mason Fund send a check to:

Scott Mason Contribution Fund  
Mutual Bank  
336 Plymouth Street  
Halifax, MA 02338

What else can you do?

1. Avoid New Hampshire. Sure states need money now, but they should not put the lion's share on the back of those of us who enjoy the outdoors. More so the state should not place people in a position where they measure the value of their life in the outdoors against their life without the outdoors. If we stay away from New Hampshire because of these risks, the state may catch on.
2. Contact the governor of new hampshire and let him know what you think and that charging a young man for not being rescued is ridiculous

Office of the Governor  
State House  
25 Capitol Street  
Concord, NH 03301

Outdoor Recreati...	0 (0%)
Commercial Outf...	0 (0%)
College/Universi...	0 (0%)
Manufacture Pro...	0 (0%)

Votes so far: 0  
Poll closed

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[Kokatat Launches Official Blog For Paddling Community](#)

[Consumer Reports calls out things consumers hate about retailers -- ouch!](#)

[REI Offers Remedies to Reduce Cabin Fever this Winter: Get Outside!](#)

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(603)271-2121  
(603)271-7680 (fax)

[Click here to access the governor's email account.](#)

Tell the governor to cancel the rescue fee and to change the law or you will boycott the state.

1. Send money, but encourage the family to use the money to fight the case. I believe it will be impossible for a jury to decide that Scott Mason was negligent.
2. Contact the new hampshire fish and wildlife division and let them know what you think. The website to contact them is [http://www.google.com/url?q=http://www.wildlife.state.nh.us/Inside\\_FandG/contact\\_fish\\_and\\_game.htm&ei=XyF2SsDuKonatgO1ueHGCA&sa=X&oi=smap&resnum=1&ct=result&cd=6&usq=AFQjCNGpxWsnYGqilZ3FFnUWqKRxKFv3tg](http://www.google.com/url?q=http://www.wildlife.state.nh.us/Inside_FandG/contact_fish_and_game.htm&ei=XyF2SsDuKonatgO1ueHGCA&sa=X&oi=smap&resnum=1&ct=result&cd=6&usq=AFQjCNGpxWsnYGqilZ3FFnUWqKRxKFv3tg). However I've never got it to open, it keeps crashing.  
☺ Maybe they are getting a lot of traffic over this?

For more discussions about charging for Search & Rescue see [Search & Rescue and charging for it](#) and [Vermont getting serious about charging for Search and Rescue](#). For a great post on the right to do we want to do in the wilderness see [Jon Heshka and the Right of the Individual to Die Doing What We Love](#).

To see a facebook Page about the issue see: [Rescue Scott Mason AGAIN](#).

Posted by James H. (Jim) Moss, J.D. at 5:46 PM

Labels: [Criminal Liability](#), [Government Intervention](#), [Search and Rescue \(SAR\)](#)

### 7 comments:

[Walter Underwood](#) said...

NH has described their expectations of hikers in the [Hiker Responsibility Code](#). Rummage around [www.hikesafe.com](http://www.hikesafe.com) for more info.

Any defense against a charge of negligence should probably be based on that. I'll quote one sentence that seems to apply, "Don't assume you will be rescued; know how to rescue yourself."

August 2, 2009 6:50 PM

[James H. \(Jim\) Moss, J.D.](#) said...

The Hiker Responsibility Code can be found here: [http://www.hikesafe.com/index.php/hiker\\_responsibility\\_code](http://www.hikesafe.com/index.php/hiker_responsibility_code)  
However that cannot be a basis for a claim and you are right probably a good defense. In that case the young man did what the code says, he rescued himself.  
Where did you find the reference that NH was going to follow the code?

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Merry Moiseichik said...

Who called for the rescue? Weren't they (the rescuers) volunteers? How do they arrive at the figure \$25,000. The \$1,000 even seems a lot. They did not complete the rescue. If an ambulance gets called by someone and the person does not want to go, they do not get billed. No services received, no bill. Seems like that is the angle.

It seems to me that the law is saying that if the hikers are negligent, that is they do something that is stupid that gets them into trouble and thus need rescuing, they then are billed. He has to be compared to other people of like skill and I do not agree that other Eagle Scouts would not have done what he did. He did not do things that further endangered himself. It was just an accident.

What are some things that might be negligent - ... Read More hiking in flip-flops in the spring through the snow, perhaps? Anyway, interesting case.

[August 3, 2009 9:02 AM](#)

[Howard Paul](#) said...

The National Association for Search and Rescue joined the Mountain Rescue Association, the Colorado Search and Rescue Board, the International Association of Dive Rescue Specialists, the United States Coast Guard and the National Park Service - all of which either oppose billing, or do not bill, people after a search and rescue (SAR) operation. "Although it remains a local decision, billing for search and rescue operations is a dangerous practice that should be avoided," said NASAR President Dan Hourihan.

NASAR takes the position, "To eliminate the fear of being unable to pay for having one's life saved, SAR services should be rendered to persons in danger or distress without subsequent cost-recovery from the person(s) assisted unless prior arrangements have been made. The mission of SAR organizations is to save lives, not just the lives of those who can afford to pay the bill. As such, methods and means should be developed and used that diffuse the cost of humanitarian SAR operations among the many, allowing anyone to reasonably expect emergency aid without regard to their circumstances."

The idea of not billing for SAR services confuses many people. However, SAR professionals across the nation know of many instances in which someone - after an unforeseen accident, or spending hours searching for their missing companion - delayed calling for help. Each "remembered" hearing, seeing or reading, "somewhere" that rescues and searches cost "thousands of dollars - which they could not afford. Some have even chosen not to call for help, or refused emergency help.

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In 2006, a young hiker became stranded on Colorado's 14,270' Quandary Peak. She called 9-1-1, but asked the SAR team leader just to "talk her out of the area." The sun had already set and cold weather surrounded her in a dangerous area of the mountain. She repeatedly said the SAR team should not come to help her. After going back and forth with her on her cell phone, the SAR team leader finally asked why she didn't want help. She replied, "I can't afford it." He explained that there would be no charge and she then relented.

"A delay can place SAR personnel in danger and can unnecessarily compound and lengthen a SAR mission," said Hourihan. "Not calling for emergency SAR help could be as catastrophic as not calling the fire department when a small stove-top fire jumps to the ceiling and instantly fills the kitchen with flames, because the home owner's first thought was 'how in the world will I pay the fire department?'"

Then-U.S.C.G. Commandant James Loy explained it best, in 1999, in the Coast Guard's very similar position. "If the specter of financial reimbursement hung over the decision to report maritime distress, we could get fewer calls, we would get calls during later stages of emergencies, and more people would die at sea. This factor alone outweighs any consideration of how much money we might recoup," said Admiral Loy.

The full position statement is at [http://www.nasar.org/nasar/downloads/No\\_Bill\\_for\\_SAR\\_Position\\_Statement\\_-\\_NASAR\\_4-2009.pdf](http://www.nasar.org/nasar/downloads/No_Bill_for_SAR_Position_Statement_-_NASAR_4-2009.pdf)

August 3, 2009 9:14 AM

Howard Paul said...

Jim says it unlikely that cases of delay calls for help are likely unsubstantiated -- not so. Here are examples of endangered persons refusing SAR help, waiting to call for help or hiding from help because of fear of large bill! (from Colorado SAR Board research):

Victim says "I can't afford help"

Summit County, Colorado, 2005

A climber on the south side of Quandary Peak (14,270') got stuck. She called 9-1-1 and the on-call SAR team coordinator made contact with her by cell phone. She repeatedly refused assistance and said she just "wants to be talked out of this area." This particular area of Quandary is quite dangerous and it was after dark when she called. After going back and forth with her for some time, the SAR coordinator finally asked why she didn't want help and her answer was "I can't afford it". Once he explained to her that there would be no charge she instantly changed her tune and SAR went in and assisted her out.

Man miles from shore refuses rescue from lake

Utah County, Utah 2003

A man and a woman were stranded in the water at night 2-3

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miles from shore in Utah Lake. Either their boat sank or a watercraft quit. We found them at around 23:00, and as we pulled along the woman and prepared to help her into the boat, the man, twenty feet away, shouted "DON'T TOUCH HER!" It wasn't until he was assured that we didn't charge for rescue that he allowed us to give them a lift. Both were both coherent; hypothermia would have set in within hours and they likely would not have survived the night.

Snowmobiler first calls family, not 9-1-1, for help  
Boise County, Idaho c.1997

A stranded snowmobiler called, first, his wife for help. She then called the SAR team. When the wife told her husband that she was talking to SAR, he told her to hang up. This was after recent media coverage of the local ski area charging for "out of area" rescues. After assurances that the SAR team does not charge, they finally asked for help. The marine/backcountry deputy that reported this instance said he is regularly asked by the reporting party if there will be a bill for SAR.

Los Angeles County, California, 2000

A rescue of a 20-ish man involved a technical rescue of 150'-180' to raise him up to a dam access road. The person was "borderline hysterical" because a county FD helicopter was present and he was afraid of being liable to pay for it. It was not until the rescuer with the person convinced him that there would be NO costs that it was safe to work with the victim on a 40° -70° slope.

Lost runner hides from SAR  
Tucson, Arizona 1982

A gentleman went for an evening run with his two dogs in the desert near his house. He had minimal clothing and took only a water bottle. He became lost and hunkered down with the dogs. One of the dogs ran off and was found by searchers, which led them back to the subject, who was now moving - to avoid searchers. The man said he heard searchers during the night, however he was afraid he would be billed for the search, so he did not respond. The next morning he deliberately tried to avoid searchers while trying to sneak back to his house.

Women fears large bill, searches herself for hours, dangerous weather arrives

Mt. Evans Wilderness, Colorado, c. 1994

A newly married wife dropped off her new husband for some high altitude hiking and he failed to return to be picked up. She said on their way to the mountains, they had joked about which of their bank accounts would pay for "the \$10,000 rescue" if anything happened to him. Instead of calling for help, she drove the road for three-four hours looking for him, worried about the bill she anticipated. She finally called, but the search began late at night and by then the peak was enveloped in clouds. Searchers had visibility of a just a few feet and risked walking off the top of 600' cliffs.

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August 3, 2009 9:22 AM

Walter Underwood said...

As far as I can see, this is the official hiker education page for the USFS in NH and NH Fish & Game.

At the bottom of the page, it says "The hiker responsibility code was developed and is endorsed by The White Mountain National Forest and New Hampshire Fish and Game."

The front page says, "A joint effort between the White Mountain National Forest and New Hampshire Fish & Game Department to educate hikers on the inherent risks of hiking and how they can become better prepared before beginning any hike."

Also check the "About Us" link at the bottom.

The "Rescue" page points out the SAR cost recovery law. I think an earlier version of the site was more specific about the program as a response to increasing numbers of rescues in the White Mountains.

<http://www.hikesafe.com/index.php/rescue>

That page uses the word "reckless", which (to me, a non-lawyer) sounds like a higher standard for misbehavior than "negligent".

I found this site a few years ago when looking for specific and simple advice for Boy Scouts. The NOLS handbook has it scattered all over the place. The Guide to Safe Scouting is good, but sometimes only slightly more specific than "Be Prepared".

August 3, 2009 10:49 AM

James H. (Jim) Moss, J.D. said...

Wow, having records of people turning down rescue because of the cost is amazing. That needs to be sent to the NH governor.

August 3, 2009 12:00 PM

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