

Georgia Law Impacting Agritourism Operations

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Why Does It Matter?

A farmer owns and operates several orchards and allows the public on his property to pick fruit from the trees for purchase. The farmer directed mother and adult daughter to an area on his farm to pick nectarines. As the daughter was walking between the rows of trees, her leg went into a hole up to the height of her knee, causing her to fall and fracture her right ankle. The daughter claimed she failed to see the hole, despite looking down for snakes, because it was covered by approximately one foot of grass. Farmer testified that the grass was cut once every 10-14 days and that paraquat was sprayed around the trees every 3-4 weeks. The farmer claimed he was never able to locate the hole where daughter was injured.

Why Does It Matter?

Participant enters an unlit, haunted corn maze between 10:00 PM and 11:00 PM. No signs warned patrons about the terrain inside the maze, and neither did the scripted speech given by the tractor driver, who transported customers to the start of the maze. About 30 minutes after the patron arrived, "a downpour" started. After being at the corn maze an hour, while the patron stepped over flowing water, he lost his footing and fell. While trying to get up, he fell again, twisting and breaking his leg. The patron knew of no means to "escape" the maze except by trudging through to the end. The injured party argued the area of his fall was effectively unavoidable and the owner had insufficient employees to guide visitors out of the maze when it began to rain heavily.

Topics

- Georgia Premise Liability Generally
- Georgia's Agritourism Statute
- Georgia's Pick Your Own Statute
- Releases

Georgia's Premise Liability

- Invitee
 - Where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe. O.C.G.A. § 51-3-1
- Licensee
 - Is permitted, expressly or impliedly, to go on the premises merely for his own interests, convenience, or gratification.
 - The owner of the premises is liable to a licensee only for willful or wanton injury.
- Trespasser
 - As to the trespasser, no duty arises of keeping the usual condition of the premises up to any given standard of safety, except that they must not contain pitfalls, man-traps, and things of that character.

Do You Owe the Same Duty as Kroger?

- While not an insurer of the invitee's safety, the owner/occupier is required to exercise ordinary care to protect the invitee from unreasonable risks of harm of which the owner/occupier has superior knowledge
- A duty of ordinary care to have the premises in a reasonably safe condition and not to expose the invitees to unreasonable risk or to lead them into a dangerous trap
- Duty includes inspecting the premises to discover possible dangerous conditions of which the owner/occupier does not have actual knowledge, and taking reasonable precautions to protect invitees from dangers foreseeable from the arrangement or use of the premises.
- Where a static condition is open and obvious condition and, therefore, could have been avoided in the exercise of ordinary care, there is no liability.

Robinson v. Kroger Co., 268 Ga. 735, 740 (1997)

What Does Constructive Knowledge Mean?

- A premise Owner can show lack of constructive knowledge by demonstrating compliance with reasonable inspection procedures
 - A reasonable inspection procedure varies based on nature of business
- Constructive knowledge may be inferred by the absence of such procedures

The Impact of Children on the Property

- Higher Standard
 - Because a child of tender years may be unable to appreciate a danger and, therefore, to have knowledge of the hazard equal to that of the owner/occupier, an owner/occupier may be held to a higher standard of care toward a child than toward an adult.
- Negligent Supervision
 - As a general rule, a person who undertakes the control and supervision of a child, even without compensation, has the duty to use reasonable care to protect the child from injury.
 - The measure of duty of a person undertaking control and supervision of a child to exercise reasonable care for the safety of the child is to be gauged by the standard of the average responsible parent.

Pick Your Own Immunity Statute (2001)

- The owner or operator of any farm specializing in pick-your-own agricultural products shall not be liable for an injury to or the death of a participant resulting from the inherent risks of harvesting agricultural products
 - (1) "Agricultural products" means Christmas trees, fruits, vegetables, pecans, nuts, horticultural products, and other such fresh farm products that are made available to the general public through pick-your-own farm operations.
 - (2) "Participant" means any person who enters the farm location, alone or with a group, for the purpose of harvesting fresh farm products from pick-your-own farm operations.

Pick Your Own Immunity Statute

- Exceptions
 - (1) Owns, leases, rents, or otherwise is in lawful possession and control of the land upon which the participant sustained injuries because of a dangerous latent condition, which was known or should have been known to the owner or operator;
 - (2) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or
 - (3) Intentionally injures the participant.
- Civil Liability Under Product Liability Laws

Pick Your Own Immunity Warning

- Every owner and operator of a pick-your-own farm operation shall post and maintain white signs which contain the warning notice in black letters, with each letter to be a minimum of one inch in height. Signs shall be placed in a clearly visible location near the entrance of the farm. Every written contract entered into by an owner or operator shall contain in clearly readable print the warning notice.

Pick Your Own Immunity Warning

- The signs and contracts described in subsection (a) of this Code section shall contain the following warning notice:

"Under Georgia law, an owner or operator of a pick-your-own farm location is not liable for an injury to or the death of a participant from the inherent risks of harvesting agricultural products, pursuant to Article 7 of Chapter 14 of Title 2 of the Official Code of Georgia Annotated."
- Failure to comply with the requirements concerning warning signs and notices provided in this Code section shall not prevent an owner or operator from invoking the privileges of immunity provided by this article.

What is Georgia's Agritourism Immunity Statute?

- A landowner who charges admission for a person who is 18 years of age or older to hunt or fish on the owner's property or to enter the owner's property for the purposes of agritourism shall be immune from civil liability for any injuries caused by the inherent risk associated with agritourism, hunting, or fishing activity.
- EXCEPTION: The landowner's conduct does not constitute gross negligence or willful and wanton misconduct.
- Enacted in 2009

What is Agritourism for Purposes of the Statute?

- The term "agritourism" means charging admission for persons to visit, view, or participate in the operation of a farm or dairy or production of farm or dairy products for entertainment or educational purposes or selling farm or dairy products to persons who visit such farm or dairy (same definition as in CUVA from 2007).
- CLEAR EXCLUSIONS
 - Farm Weddings
 - Rodeos

Two Important Conditions of Agritourism Statute

- The landowner has posted at the main point of entry, if present, to the property a sign with a warning notice stating . . . on the sign in black letters, with each letter to be a minimum of one inch in height;
- The person who has paid admission to the landowner to enter such landowner's property to hunt, fish, or for the purposes of agritourism has signed a waiver of liability form stating that the person entering the landowner's property has waived all civil liability against the landowner for any injuries caused by the inherent risk associated with agritourism, hunting, or fishing activity.

Agritourism Warning

"Warning: Under Georgia law, there is no liability for an injury or death of a participant at least 18 years of age in a registered agritourism activity conducted at this registered agritourism location if such injury or death results from the inherent risks of such agritourism activity. Inherent risks of agritourism activities include, but shall not be limited to, the potential of you to act in a negligent manner that may contribute to your injury or death and the potential of another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this registered agritourism activity."

What is Willful and Wanton Conduct?

- Willful conduct is based on an actual intention to do harm or inflict injury.
- Wanton conduct is that which is so reckless or so charged with indifference to the consequences as to be the equivalent in spirit to actual intent.
- Willful misconduct, or willful failure or refusal to perform a duty required by statute, is more than negligence or even gross negligence; it involves conduct of a criminal or quasi-criminal nature, the intentional doing of something, either with the knowledge that it is likely to result in serious injury, or with the wanton and reckless disregard of its probable consequences.

Other Statutory Immunity

- Hunting and Fishing – Title 51
 - Requires Sign
- Fishing – Title 27
 - Requires Sign
- Equine and Llama Liability – Title 4
 - Requires Sign
- Recreational Property Act – Title 51
 - No Fee
 - Open to Public
 - O.C.G.A. 27-3-1(e) extends immunity to owner “who gives permission to another person to hunt, fish, or take wildlife upon the land with or without charge”

Contractual Waivers/Releases

- A contracting party may waive or renounce that which the law has established in his or her favor, when it does not thereby injure others or affect the public interest. [O.C.G.A. § 1-3-7](#).
- Exculpatory clauses in Georgia are valid and binding, and are not void as against public policy when a business relieves itself from its own negligence.
- Parties to a contract are presumed to have read their provisions and to have understood the contents.
- Not Effective Against Gross Negligence

Other Considerations for Waiver/Releases

- Business Realities
- Minors Do Not Have Capacity to Waive Rights.
- Parents Generally Do Have Right to Release Medical Expense Claim
- Corporate Structure – Naming the Right Releasees
 - Out of possession Landlord

Liability Takeaways

- Identifying, Avoiding, and/or Eliminating Unreasonable Risks
- Creation of a Reasonable Inspection Procedure
- Compliance with the Applicable Pre-requisites to Statutory Defenses
- Releases/Waivers
- Responsiveness

If an Incident Occurs

- Obtain Medical Attention
- Report it to Insurer
- Take Photographs
- Make a Report
- Take Names/Witness Statements
- Correct Any Condition

Questions?

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