

LEGAL OPINION on LANDOWNER LIABILITY

The following is a copy of the New York State's General Obligations Law, Section 9-103. The copy is from the late 1970's, and although a few changes may have been made since then, the general meaning and intent remain the same.

Next is the legal opinion from our attorney, Michael Breen. It was prepared for and given to Callanan Industries as they study the South Bethlehem Cave project, and it obviously has value in any acquisition that we undertake in New York State.

ARTICLE 9 - OBLIGATIONS OF CARE

TITLE 1. CONDITIONS ON REAL PROPERTY

9 - 103. No duty to keep premises safe for certain uses; responsibility for acts of such users

1. Except as provided in subdivision two,

a. an owner, lessee or occupant of premises, whether or not posted as provided in section three hundred sixty-six of the conservation law, owes no duty to keep the premises safe for entry or use by others for hunting, fishing, trapping, hiking, horseback riding, bicycle riding, motorized vehicle operation for recreational purposes, snowmobile operation or training of dogs, or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes;

b. an owner, lessee or occupant of premises who gives permission to another to pursue any such activities upon such premises does not thereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by an act of persons to whom the permission is granted.

2. This section does not limit the liability which would otherwise exist

a. for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or

b. for injury suffered in any case where permission to pursue any of the activities enumerated in this section was granted for a consideration other than the consideration, if any, paid to said landowner by the state or federal government, or permission to train dogs was granted for a consideration other than that provided for in section two hundred forty-two of the conservation law; or

c. for injury caused, by acts of persons to whom permission to pursue any of the activities enumerated in this section was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

3. Nothing in this section creates a duty of care or ground of liability for injury to person or property.

Opinion

General Obligations Law 9-103 confers upon the owner of property used for speleological activities (among others) broad protection against lawsuits by persons who are injured on the property while caving, so long as the owner does not charge consideration (money, services or other things of value) for the use. A portion of the property may be commercial in nature, but so long as the property accommodates caving, and no fee is charged for that use, the protection still applies *Iannotti v. Consolidated Rail*, 74 NY2d and *Albright v. Metz* 88 NY2d 656.

The statute states that an owner owes no duty to keep the premises safe for entry or use, to warn of any hazardous conditions of the premises. It says that by giving such permission, the owner does not extend any

assurance that the cave is safe, creates no duty of care to a person using the cave, and does not "assume responsibility for or incur liability for any injury to person or property caused by any act of the person(s) to whom the permission is granted." This means that if a caver carelessly injures another, the owner is not responsible.

The owner is responsible for injury caused by "willful or malicious failure to guard, or to warn against a dangerous condition, use, structure or activity."

This law was originally enacted to encourage landowners to allow hunters access to their grounds but has been expanded over the years to other activities, including hand gliding and organized gleaning(!). The encouragement consists of a legislative guarantee that the owner will be protected from lawsuits for injuries caused by anything but the most egregious, irresponsible acts of the owner which cause injury. See *Ferres v. City of New Rochelle*, 68ny2D 446.

For example, the failure to install snow fences to prevent ice build up, or to warn of its existence, were not considered to be willful, malicious acts. *Garner v. Owasco River Railway*, 142 ad2D 61.

A chain stretching across a trail with which a snowmobile collided was not considered to be a willful or malicious act even though there was no warning sign of its impending danger. *Meyer v. County of Orange*, 123 AD2d 748; *Scuderi v. Niagara Mohawk Power Corp.*, 243 AD2d 1049.

The management plan and use which the Cave Conservancy proposes to put the cave is protected by this statute, and if the plan is followed, there would not be a risk of the owner paying damages for any personal injury attendant to caving by persons using the cave by permission, or to trespassers.