

Adventure Based Training, Falling Off a Log—and Landing in Court!

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On a clear, warm morning in August, a contract trainer whom we'll call Mr. Smith welcomed 14 nervous employees of a major telecommunications company to the first session of a three-day course of outdoor, adventure-based training. This group was different from the previous bunches of young, energetic managers who had mastered the corporation's experiential teamwork-training program. These were union workers, technicians and craftspeople who had never received any training remotely like what they would encounter today. Their knowledge of the teamwork program came entirely from the company grapevine, which referred to it as the "Rambo Course." Their supervisor had completed it about a year earlier and now was requiring his work groups to attend.

The company had contracted with Smith to deliver a series of experiential learning programs for senior and midlevel management personnel. The course was designed by a business specializing in adventure-based educational programs. Smith had been trained and certified by the supplier to facilitate the program. Additionally, he had been supervised and coached by the staff trainers of the telecommunications company to which he was contracted. He had already conducted the course 12 times, with groups of nine to 15 participants. This would be the 13th class, unusual only in that it involved non-management people.

The course always began the same way. The first morning opened with a lecture that described safety procedures and outlined the agenda for the three-day event. On this particular morning, as usual, Smith explained the program, its rules for participation and its rationale: that teamwork was an important part of these people's jobs, and that this course could help improve their working relationships. Smith also described the concepts of experiential training and the physical nature of the exercises, or "initiatives," that the participants would be undertaking.

The group had heard of some of the more famous initiatives, such as "The Wall," the "Tarzan and Jane Snake Pit" and "The Spider Web." Part of the morning discussion was devoted to countering the misinformation that had circulated about these exercises. Using posters, flip charts and written materials, Smith went over the crucial rules of participant safety. He also explained an option called "Challenge Out," which allowed any trainee to opt not to participate physically in any initiative without having to explain; the person needed simply to indicate to the team that he or she desired to challenge out of the exercise. The individual would remain fully involved with all phases of planning, implementation, discussion, celebration, spotting and safety, but could not be required to participate in the actual physical event.

THE SWINGING LOG

After about two hours of classroom briefing and instructions, Smith took the group outside to begin the experiential program. The first of several initiatives was the "Swinging Log." This is an exercise that immediately challenges the group to evaluate issues regarding planning, leadership, participation, and the different personal comfort levels of individual group members. The swinging-log exercise is designed for failure; few groups master it in the time allowed. The purpose of the activity is to use that failure as an opportunity to introduce a planning model that will be helpful in mastering the remaining initiatives—and useful in real work situations back on the job.

The swinging log is a 20-foot pole, about 12 inches in diameter, suspended by a cable at each end. The top of the suspended log is approximately 19 inches from the ground. There is a tether cable at each end to limit the swing of the log to about three feet from side to side.

The group must first plan and then try to execute a strategy that will allow all participating team members to stand on the log, with all of their body parts above its horizontal center line, for a count of 10. The team itself defines what is meant by a count of 10 and evaluates its own level of success.

The group is allowed 25 minutes for planning, and only three attempts to complete the exercise. Safety spotters are arranged around the log whenever anyone is attempting to mount it. Other safety and comfort checks are routinely observed. Of the 14 team members, three challenged out of this exercise. Along with trainer Smith, these three acted as spotters for the 11 who attempted to mount the log.

The team had tried twice and failed to achieve the objective. On the third and final attempt, about three hours into the teamwork program, one woman fell over sideways trying to maintain her balance. The safety instructions had cautioned participants to step down from the log rather than jumping when they felt themselves losing their balance. But rather than step down and cause her team to fail, this woman tried to hang on to the person in front of her. As she fell, she pulled the other person with her. The second individual was not injured, but as the first woman struck the ground, the large bone in her left leg was fractured in several places.

The injured woman was 59 years old. She had worked for the telecommunications company for more than 25 years. She was a craft worker, a union member, and received an hourly wage. Her participation in the teamwork course was mandated by her supervisor. The company's worker's compensation insurance paid all of her medical bills. She qualified for retirement based upon her age and years of service.

THE LITIGATION

About 10 months after the accident, trainer Smith answered the doorbell at this home one evening around 8 pm and found himself face to face with a civil process server. This officer of the court established that Smith was, indeed, Smith, then handed him a summons. As he walked away, the process server told Smith that he had 20 days in which to respond to the court concerning the allegations of the complaint, and suggested that he should get a lawyer.

The complaint was filed, of course, by the woman who had broken her leg. Smith was stunned to discover 14 allegations of negligence against him and the telecommunications company. He and his wife sat up late that night talking over the devastating news and its ominous personal, professional and financial implications.

Fortunately, Smith had taken some precautions when the accident occurred. First, on the day of the accident, he had written a four-page summary report of the events prior to and immediately after the accident. He described the complete incident in detail, noting times and names of persons involved. He even recorded the locations of the safety spotters and others in relationship to the swinging log. He filed a copy of his report in the telecommunications company's personnel files and gave another copy to his supervisor/contact at the company.

Smith also kept all the posters and flip chart pages that were used in the class on the morning of the accident. In addition, several days after the accident, he had done a walk-through of the events leading up to the accident with the company's safety inspector.

THE TRIAL

The case came to trial approximately 14 months after the accident. In the four months leading up to the court date, and during the eight days of the trial itself, Smith's meticulous records of the teamwork program proved invaluable. It was those notes and posters that provided the most detailed and vivid account of what had occurred. Other witnesses who were called to testify verified the recorded events as they had been described in Smith's notes. The documentation was the key to Smith's own defense against negligent training, and it allowed him to become the key material defense witness for the corporation as well.

As the trial progressed, Smith reaped additional benefits due to good record-keeping. He had maintained a complete training manual in exactly the condition that he received it when he was certified to teach the course. Often professional trainers will discard or cannibalize training manuals once the material has been learned. Smith's manual was not only intact but included a number of handwritten notes and instructions that he had received from the master trainers who certified him.

Smith spent six and one-half hours on the witness stand being grilled by the plaintiffs attorney. The injured woman's lawyer hammered at every aspect of Smith's certification and training, leading Smith page by page through the teamwork certification manual. With great passion and verve, the attorney

attempted to portray Smith as "Rambo Trainer," who bullied little old ladies into performing physically dangerous stunts.

The fact that Smith had kept an intact certification manual, and his knowledge of the contents, were crucial to demonstrating the integrity of the training process. He had to show the jury that he knew the purpose of each exercise, the conditions under which each could be conducted safely, and how to modify the exercises to meet various conditions.

An additional two hours of cross-examination were required by the defense attorney. Using the flip charts and easel posters, which were brought into the courtroom, Smith re-created the first morning of the teamwork class. As a witness for himself and the corporation, he explained the content and process of the teamwork program. Ironically, the training skills that Smith employed to teach teamwork and other subjects to workshop participants were now being used to educate the judge and jury concerning the facts of the case before the court. The courtroom became a classroom.

THE VERDICT

In a case with multiple defendants (the contract trainer and the corporation, in this instance), the jury must determine not only where to lay blame but also the percentage of blame that each defendant deserves. When the verdict came in, Smith was cleared of all negligence; the telecommunications company was found to be 100 percent negligent. The jury awarded a judgment of \$875,000 to the plaintiff.

The corporation appealed, and that judgment was ruled excessive. The parties eventually agreed to a settlement in the neighborhood of \$300,000. (Since settlements are not usually a matter of record, such amounts are often hearsay, and that is the case here.)

THE IMPLICATIONS

Companies and instructors involved in outdoor experiential training obviously should be aware of certain liabilities regarding their efforts. Whether the trainer is a free-lance contractor or a staff employee of the company, it is wise to follow a systematic and clearly defensible approach in developing or providing experiential training--or any kind of training that involves potential legal risks. Here are a few suggestions for both the sponsoring organization and the trainer.

For the company:

- An organization that sends employees to adventure-based or experiential training courses must offer participants an alternative program to accomplish the required development. In other words, employees should not be required to attend an adventure-based course, nor should they be punished at performance-appraisal or promotion time for declining to participate.
- The company and the trainer should always keep training manuals and notes intact. If a suit is ever filed, the manual and any other pertinent documents will be among the first items requested by the plaintiffs' attorney.
- Reasonable efforts must be exerted to assess the trainer's competence and qualifications to teach the course. The company should send a test group to an adventure-based program before committing to an agreement with contract trainers.
- The company should inquire into the insurance coverage of the business that supplies the adventure-based training or certifies the trainer. In the case discussed here, the contract stipulated that the trainer, Smith, provide liability insurance if required by the company. However, no representative of the company ever required Smith to produce a certificate of coverage. Indeed, Smith was fortunate because the defendant corporation desperately required his testimony and therefore decided to represent him with corporate counsel.

- A company using contract trainers should find out if there has been previous litigation against the trainer and/or the business that certifies him. If possible, interview records should be kept on file for review should a contract trainer perform negligently.

For the trainer:

- Contract trainers should have their contracts reviewed by a competent attorney. Ask about the need for liability insurance or a nonperformance bond as a safety net. It may seem costly, but it is well worth the peace of mind, especially if the trainer is involved in adventure-based training.
- Contract trainers should consider including language in the contract requiring the client company to provide legal assistance under the corporate umbrella as long as the trainer operates within the scope of the contract and/or in keeping with the dictates of the training manual.
- Any trainer, be she a contractor or an in-house staff member, should keep copious notes of activities during the training program. Do not stray significantly from program manuals and materials that would invalidate your certification. When changes are authorized by the supervisor or company, records of the new procedures or exercises should be inserted into the trainer's manual.
- Inspect equipment used in adventure-based programs prior to use by each group. Make notes of equipment problems, and request in writing immediate attention to defective equipment.
- If possible, co-train any adventure-based program with another certified trainer. Use each other to make informed decisions concerning safety and potential injury.

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AUTHORS' NOTE:

This article chronicles the events surrounding an actual lawsuit filed against a corporation and an independent contract trainer by an injured employee who alleged that negligent training was responsible for her injury. The facts and outcome are a matter of court record. For reasons of discretion, the names of the trainer and the company that sponsored the outdoor experiential-learning program are not used.

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For additional information regarding adventure based training, see Sample, J. (2007). Chapter 5. Adventure Based and Newage Experiential Learning Liability. *Avoiding legal liability for adult educators, human resource developers, and instructional designers*. Malabar, FL: Krieger Publishing, pp. 135-160.

This information should not be construed as legal advice or as pertaining to specific factual situations. Always consult competent legal counsel regarding important employment law questions.

Have any thoughts, comments or feedback? Drop Dr. Sample an email at John@sampleandassociates.org.