



Urban Kayaking in South Carolina: What Tour Operators Need to Know

By Collins & Lacy, P.C. Attorney Claude Prevost
Retail/Hospitality Law, Professional Liability & Construction Defect Litigation
803.255.0490 | cprevost@collinsandlacy.com
Posted August 29, 2012
<http://retailhospitalitylaw.com/>

South Carolina is known for its abundance of natural resources including lakes, rivers and streams that flow from the Upstate to the coastal estuaries of the Lowcountry. South Carolinians and tourists have been taking advantage of these natural resources for decades. Over the past several years, South Carolina businesses including tour groups and outfitters also have been taking advantage of South Carolina's waterways, and a niche market of the tourism industry has developed: kayak tours. Touring by kayak is an excellent way to observe South Carolina's vibrant ecosystems, as well as view the cityscapes that surround these systems. Urban kayaking is now a popular alternative for traditional sight seeing.

However, as Ben Kessling recently reported in the Wall Street Journal, "City Kayak Tours Fan Safety Worries," kayak tours are not without risk. In Chicago, rescuers were called in to retrieve kayaking tourists from the Chicago River. A violent storm tipped over kayaks sending tourists down stream, while others rushed for cover. Fortunately, no one was injured. According to Kessling, two kayak companies in Chicago were issued citations and face possible fines for renting kayaks to a tour group prior to a storm.

In South Carolina, "there is no duty to warn of dangers that are open and obvious. . . when the risk complained of is open and obvious to consumers,

there is no duty to warn of that risk as a matter of law." *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 42, 674 S.E.2d 500, 504 (Ct.App. 2009) (citations omitted). Moreover, while there does not seem to be any South Carolina case law on point, tour providers can look to other jurisdictions for guidance related to duties owed to tourists or kayak renters:

[N]umerous courts have held that tour companies and guides have no duty to warn of obvious dangers their customers encounter on trips. See, e.g., *Tei Yan Sun v. Governmental Auths. of Taiwan*, 2001 U.S. Dist. 1160, at *31-32 (finding no liability for failure to disclose dangers of "severe undertow, high waves, and strong surf" at beach, and noting that travel agents have no duty to disclose obvious dangers to travelers) (citing *McCollum v. Friendly Hills Travel Ctr.*, 172 Cal.App.3d 83, 95, 217 Cal. Rptr. 919 (Cal.Ct.App.1985)); *Passero v. DHC Hotels & Resorts*, 981 F.Supp. 742, 744 (D.Conn.1996) ("A tour operator may be obligated, under some circumstances, to warn a traveler of a dangerous condition unknown to the traveler but known to it.... This doctrine applies to situations where a tour operator is aware of a dangerous condition not readily discoverable by the plaintiff. It simply does not apply to an obvious dangerous condition equally observable by plaintiff."); *Stafford v. Intrav, Inc.*, 841 F.Supp. 284, 287 (E.D.Mo.1993) (noting that travel

agents owe no duty to disclose information that is obvious and apparent to the traveler).

In the case of kayak tour providers, it seems those providers may have a duty to warn tourists of conditions not readily discoverable to the tourists. It also may be helpful for providers to discuss, before the tour begins, the likely conditions of the body of water, especially if torrent or laden with obstacles. However, arguably, dangerous weather conditions could be considered an open and obvious danger to which tour providers owe no duty to warn as the weather condition is equally discoverable by the tourist/renter. Nevertheless, a tour provider should probably notify tourists of dangerous weather, cancel the tour, or decline the rental of a kayak. However, it is likely liability would arise if a tour provider embarked on a tour with the knowledge of imminent dangerous weather conditions.

Boaters, tourists, and tour providers alike should consider several factors before getting on South Carolina's waters. First, tourists should consider the experience and training/certification of the group providing the tour. A well-trained and experienced tour provider is essential when navigating South Carolina's waters. Second, boaters and tourists should consider their own skill level when heading out on South Carolina waterways. Most South Carolina waterways are flat and calm, but may become rough and choppy in an unexpected afternoon thunderstorm. Finally, tourists and tour providers should consider the weather forecast. The citations in Chicago and above case law suggest tour providers probably have a responsibility to monitor the weather prior to and during a tour. If a tour provider rents kayaks or embarks on a tour knowing dangerous weather is eminent, and someone gets hurt, the tour provider could have some liability issues on their hands. Similarly, tourists should also consider the weather before going out on the water. Considering these factors will hopefully ensure boaters and tour providers alike stay safe, have fun, and enjoy a profitable kayak tour season this summer.

About Bennett Crites

Claude T. Prevost is an associate practicing in construction defect litigation, professional liability, retail/hospitality/entertainment law including negligent work allegations and premises liability law including "slip and fall" cases. During law school, Claude served as a summer intern for The Honorable Sol Blatt, Jr. in Charleston in 2006. During the summer of 2007, Claude served as a summer intern for The Honorable Bristow Marchant in Columbia while also working as a law clerk for Collins & Lacy. Claude performed 300 hours of Pro Bono work during law school prior to joining Collins & Lacy in 2008.

About Collins & Lacy, P.C.

In 2012, Collins & Lacy, P.C., celebrates 28 years of providing legal services to South Carolina. With offices in Charleston, Columbia, Greenville and Myrtle Beach, South Carolina, the firm's primary focus is defense litigation, representing local, regional and national clients in the areas of:

- construction
- employment law
- hospitality/retail & entertainment law
- insurance/bad faith
- products liability
- professional liability
- commercial transportation
- workers' compensation

Collins & Lacy is committed to upholding the highest standards for integrity, civility and community service. For more information, visit www.collinsandlacy.com.