

Liability Concerns Associated with Living Shorelines

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Living Shorelines for Coastal Protection in Alabama
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Areas of Discussion

- Product Liability
- Signage marking structure
- Personal Injury Liability
- Storm Damage Removal



Product Liability

- Basically deal either misrepresentation about the product or defects in the product.
- Misrepresentation refers to:
 - Someone in the business of selling products who, in connection with the sale of a product,
 - Makes a fraudulent, negligent, or innocent misrepresentation of material fact concerning the product
 - Becomes subject to liability for harm to persons or property caused by the misrepresentation.

Product Liability

- Common legal challenges brought in product liability cases include:
 - Breach of Warranty
 - Negligence
 - Strict Liability
 - Consumer protection laws



Breach of Warranty

- Focuses on statements made by contractor to the property owner about the shoreline installation
 - may come from terms of contract between parties
- 3 Types of Claims:
 - Breach of Express Warranty
 - Breach of Implied Warranty of Merchantability
 - Breach of Implied Warranty of Fitness for a Particular Purpose

Breach of Express Warranty

- Created by a promise or guarantee made by the seller to the buyer related to the product
- Claim requires proof that:
 - Warranty existed,
 - Was breached, and
 - Buyer was harmed by breach.
- Defenses: include disclaimers

Breach of Implied Warranty

- Warranty of fitness for a particular purpose
 - Is implied when a buyer relies upon the seller to select the goods to fit a specific request.
 - This implied warranty can also be expressly disclaimed by name, thereby shifting the risk of unfitness back to the buyer.
- Warranty of merchantability
 - Implies the goods reasonably conform to an ordinary buyer's expectations, i.e., they are what they say they are.
 - Is implied, unless expressly disclaimed by name, or the sale is identified with the phrase "as is" or "with all faults."

Negligence

- 5 Elements of Claim:
 - Legal duty to exercise reasonable care;
 - Failure to exercise reasonable care;
 - Cause in fact of physical harm by the negligent conduct;
 - Physical harm in the form of actual damages; and
 - Proximate cause, a showing that the harm is within the scope of liability.

Negligence

- Standard of Care
 - That standard which the ordinary, reasonable, and prudent person would observe in the same circumstances,
 - Considering the foreseeable consequences of their actions and the seriousness of their effect on persons to whom a duty of care is owed.
- This is known in law as the ‘objective standard’.

Strict Liability

- Focuses on the product itself rather than behavior of the seller
- Imposes liability for the manufacture of unreasonably dangerous products
- Unlikely to be brought in context of living shoreline installations.

Signage for Living Shorelines

- Structures that interfere with navigation require adequate lights and signs.
- Placement of signs is regulated by U.S. Coast Guard and state marine police agencies.
- Requirements likely will be determined during the permitting process.

Liability for Personal Injury

- Is a property owner liable for boat or watercraft accidents or personal injury related to the reef structure?
- General Rule: Property owner not liable for harms of recreational users.
 - Alabama Recreational Use Statute (Ala. Code 35-15-1)
 - Mississippi Recreational Use Statute (Miss. Code 89-2-1)
- But: property owner may have liability if structure is not properly marked (see signage discussion).

Storm Damage to Structures

- Who is responsible for strewn reef components and repair following a storm event?
 - Generally the permit holder for the reef installation is responsible.
 - If components interfere with navigational channel, USACE may remove.

Thank you

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