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Defense attorney plies 'extreme tourism' niche

■ **Pat Murphy**

It's known as "extreme tourism," and for Lincoln litigator Rodney E. Gould, it's part of his niche practice representing tour operators and travel agencies that find themselves in trouble.

Gould made his mark in travel and tour operator law in 2005 when he appeared before the Florida Supreme Court to argue *Global Travel Marketing v. Shea*. The case involved the death of an 11-year-old boy on an African safari. The plaintiff in the underlying personal injury suit alleged that his son was dragged from his tent and mauled to death by hyenas.

The Smith, Duggan, Cornell & Gollub partner successfully argued that a parent's agreement to binding arbitration in the travel company's contract bound the minor child with respect to tort claims arising in the course of the safari.

In another extreme tourism case involving a tragic death in Africa, Gould represented the tour operator in *Geographic Expeditions v. Estate of Lhotka*, which involved a 37-year-old man who died from altitude sickness while climbing Mount Kilimanjaro. The 9th U.S. Circuit Court of Appeals in 2010 reversed the denial of an arbitration demand by Gould's client under a clause in the tour contract limiting damages to $16,831.

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Wikipedia defines extreme tourism as a "niche in the tourism industry involving travel to dangerous places or participation in dangerous events." Like extreme sport, the main attraction for people is the "adrenaline rush" derived from facing situations with an element of risk, according to Wikipedia.

"Juries are reluctant to impose liability in high-adventure, high-risk situations where there's been adequate disclosure of the risks," Gould notes.

The term "extreme tourism" has come into currency with the implosion of the Titan submersible on June 18, which was transporting tourists to the wreck of the Titanic.

Of course, the work has its challenges. Gould recently suffered a setback representing a travel operator that's being sued for negligence in U.S. District Court in Boston for a slip-and-fall that occurred during an excursion to Antarctica. But he doesn't view *Tippit v. Vantage Travel Service, Inc.* as an example of extreme tourism.

"Going to Antarctica is a little more involved than viewing castles on the Rhine or spending a few days in Paris," Gould says. "But this particular excursion was not particularly difficult or taxing."

On the other hand, he says Tippit raises certain liability principles that might apply in "extreme" cases.

The plaintiff in the case, Celia Tippit, broke her hip in a slip-and-fall that occurred during a 24-day "White Continent Holiday" expedition in 2021 on the cruise ship M/V Ocean Explorer. A resident of Oregon, the plaintiff purchased the travel package from defendant Vantage Travel in Boston.

Tippit fell during the ship's stop at Paulet Island. Regulations issued by the International Association of Antarctica Tour Operators require passengers to proceed through biocide baths before departing a vessel. The baths are intended to eliminate the possibility of contamination of ice floes.

"[The case] is unusual in that I don't know of anybody who has slipped while getting their feet washed off in these baths," Gould says. "It wasn't high-risk adventure. She just slipped."

According to the complaint, the plaintiff fell as she exited a three-tub biocide bath system before going ashore.

"In that sense, it's not a lot different from someone slipping in a bathtub or shower," Gould says. "I'm not exactly sure what [the plaintiff] thinks we ought to have done."

Among other claims, the plaintiff alleges that Vantage Travel was negligent for failing to (1) use reasonably safe biocide bath containers; (2) place the biocide containers in a reasonably safe position; and (3) provide passengers with a means of steadying themselves while undergoing decontamination.

In moving for summary judgment, Gould argued that his client had no liability because the excursion to Paulet Island was organized and staffed by a third-party excursion operator, Bryde GmbH.

"In most cases, the tour operator — the one who organizes the trip — isn't the one leading the activity," Gould says. "The question then becomes who did you select to run the trip? Did you select a competent individual or company? If you had reason to believe they were competent, that's usually enough [to avoid liability]."

But on July 5, U.S. District Court Judge Nathaniel M. Gorton denied Vantage Travel's motion, finding the plaintiff's allegations sufficient for the case to proceed.

"Although Vantage is correct that a tour operator is not liable for the negligence of an independent third-party supplier of services, Tippit alleges that Vantage retained significant control over onboard activities and held Bryde staff out to be its own agents," Gorton wrote. "For example, Bryde employees wore Vantage branded uniforms and waterproof outdoor gear and sought to photograph staff wearing the branded clothing for Vantage's promotional use."

Tippit's attorney, Jonathan E. Gilzean of Boston, did not respond to a request for comment.

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