LEGAL OPINION on LANDOWNER LIABILITY

Below is a copy of the New York State's General Obligations Law, Section 9-103. It is followed by a legal opinion, prepared by NCC attorney Michael Breen, on how the law provides a landowner protection from lawsuits, with some restrictions, while permitting recreational use of their property. The opinion was prepared for the NCC in 2000.

New York General Obligation Law
§ 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 11-2111 of the environmental conservation law, owes no duty to keep the premises safe for entry or use by others for hunting, fishing, organized gleaning as defined in section seventy-one-y of the agriculture and markets law, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, speleological activities, horseback riding, bicycle riding, hang gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes 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 any act of persons to whom the permission is granted.
c. an owner, lessee or occupant of a farm, as defined in section six hundred seventy-one of the labor law, whether or not posted as provided in section 11-2111 of the environmental conservation law, owes no duty to keep such farm safe for entry or use by a person who enters or remains in or upon such farm without consent or privilege, or to give warning of any hazardous condition or use of or structure or activity on such farm to persons so entering or remaining. This shall not be interpreted, or construed, as a limit on liability for acts of gross negligence in addition to those other acts referred to in subdivision two of this section.

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 11-0925 of the environmental 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.

Legal Opinion prepared by Attorney Michael Green

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 natures, 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.