

Student Drowns During First Open Water Dive...

But Signed Liability Release Exonerates Instructors and Dive Company

In the summer of 2001, Mike Yargates and his brother-in-law, Jack, wanted to get certified to scuba dive. They investigated the local diving community and settled on American Dive Center for their scuba instruction.

Beginning on July 23, 2001, Mike and Jack reported to American Dive Center to begin their course. Over the next few days, they completed both classroom and swimming pool training successfully, thereby allowing them to attend the first two of the four “open water” dives required for certification.

The first ocean dive was scheduled for the morning of July 28. Mike and Jack reported to a beach location for their first two required open water dive training sessions. Upon their arrival, however, they discovered that their regular Instructor was not present. Instead, a new Instructor was there, along with a new Dive Master.

Mike and Jack completed the first scheduled ocean dive that day without incident. All of the students surfaced for a period of time between dives (called a “surface interval”). After practicing various skills on the surface, everyone in the class descended for the second dive. The Instructor arranged the students in a semi-circular pattern and began working with them in pairs. All of the divers had their arms locked.

During this second dive, Mike Yargates suddenly let go of Jack’s hand and went to the surface. He would never be seen alive again. Emergency calls were eventually made, prompting searches by the Marine

Patrol and a Coast Guard helicopter crew. Mike was finally found floating motionless in an area south of the dive site. Resuscitation efforts failed and Mike was pronounced dead upon arrival at the hospital.

An investigation of this tragic event revealed that Mike was having buoyancy problems on his first dive, and that the Dive Master knew it. Those problems continued during the second dive, and likely caused or contributed to Mike’s unexplained ascent. In addition, it was learned that the Dive Master, who is in charge of keeping the class together while the Instructor works with students individually, never saw Mike leave the group and go to the surface. Another diver had to inform the Dive Master that Mike had ascended. The Dive Instructor was also unaware of Mike’s ascent. Eventually the Dive Master surfaced to look for Mike Yargates, but he was nowhere to be found. The Dive Master then returned to the ocean floor and waited while the Instructor finished the training exercises. The class then surfaced,

and that is when Mike was first thought to be missing.

Following her husband’s death, Mrs. Yargates hired Attorney Ed Middlebrooks to investigate the circumstances of the dive. Mr. Middlebrooks, in turn, referred her to Earl Denney and Karen Terry of the Searcy Denney firm. Ms. Terry filed suit against American Dive Center, its Instructors, and the Dive Master. However, the defendants quickly moved for Summary Judgment, citing the release form signed by Mr. Yargates prior to beginning

the class. The document released American Dive Center and its Instructors from liability. Judge Estella Moriarty granted Summary Judgment on behalf of the Instructors and American Dive Center.

Following the Summary Judgment hearing, the only defendant left in the case was the Dive Master, who held a lesser certification than the Instructor. Judge Moriarty tenuously agreed that it remained a jury question as to whether the Dive Master was acting as an agent of American Dive Center or whether he was merely an independent **Continued on page nine.**



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Continued from page three. contractor of the shop. Unfortunately, the facts of the case, and the law that applied to it, were not favorable to Mrs. Yargates, and the case was eventually settled for a nominal sum.

This case demonstrates the power of a liability waiver signed by anyone choosing to become a certified scuba diver under PADI, which is the most prominent scuba-certifying agency in America. PADI implements standard release language for all scuba students. The releases, if properly executed, are virtually airtight in excusing the dive shop and its Instructors from liability, regardless of how egregiously negligent the instruction and/or supervision might have been.

This case demonstrates the power of a liability waiver.

Any consumer seeking to obtain a sport-diver's scuba certification, whether through PADI or any other certifying agency, must read the release language very carefully. In doing so, be aware that by signing the release you are more than likely waiving your right to seek legal recourse in the event that any negligent conduct on the part of the dive shop or its Instructors causes you injury or death. Nevertheless, anyone who suffers loss, injury, or death due to negligent scuba diving instruction should promptly seek legal counsel to have the circumstances of the case, along with any such release language, closely reviewed.

Accolades



Greg Barnhart

Greg Barnhart spoke at The Academy of Florida Trial Lawyers' 2003 Seminar "Proving Damages." He spoke on the topic "Maximizing Damages from Beginning to End."

Greg enjoys public speaking. His speeches are well received by legislators, lobbyists, consumer groups and other trial attorneys as his "after speech ratings" attest.

Harry Shevin

Harry Shevin has been elected to the Board of Directors of the Palm Beach County Trial Lawyers Association.



Sean Domnick and Darryl Lewis

Sean Domnick and Darryl Lewis have become Shareholders at Searcy Denney Scarola Barnhart & Shipley.

Greg Barnhart & Jack Scarola

Greg Barnhart and Jack Scarola recently celebrated their 25th anniversary with the firm.

