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SUPPOSE THE THREE WISE MONKEYS FACED A CLASS ACTION

A product-liability scenario

Douglas Walker

There is a general perception that those who control the policy directions of the recreational diving organisations live in hope that, if they say and do nothing to draw attention to the misadventures which inevitably occur to divers, they will escape notice and censure when a major

accident occurs. Strangely none of their Insurance companies appear to have drawn their attention to the very real dangers of such a policy. The "Three Wise Monkeys" response is fraught with danger to all who seek to follow it. This stems from the product liability aspect of business which holds that a product should be suitable for its intended use and that every care has been taken to discover and remedy faults. Those who have had to appear before a Coroner after the death of a pupil, or of a diver in a group where they were present, will be painfully aware of the interest taken in examining the training and actions of not only the victim and the dive organiser but also the protocols of the parent organisation. Such are not held to be sacrosanct or safe from severe criticism, and liability suits can feed on such a rich diet. So let us consider the "monkeys" one by one.

The term "evil" will be used throughout because the reporting of problems, even those which have been efficiently managed, has long been regarded as both dangerous to the person making the report and lacking real importance "because everything is already known" about the problems affecting divers. In consequence a report is made only when the reporter thinks that a liability claim may be possible and that the Insurance company will ask whether a report was filed. The attitude of the diving organisations has reinforced this view as they often show no response to the reports they do receive. They appear to neither commend good reports nor request more details where the reports are inadequate. My attempts to obtain their active involvement in research into specific problems have failed because the value of the information has not been recognised and there has been a prejudice against asking for information which may not be to the liking of the organisations. Governments avoid this dilemma by careful choice of the chairman and members of any investigatory committee they set up. The diving organisations can avoid being directly identified with complaints and suggestions for changes in diver training and dive management by supporting surveys by those bound by codes of confidentiality.

The "Hear no evil" monkey is the Pontius Pilate option whereby no responsibility is accepted, an avoidance of any attempt to improve safety by taking notice of problems talked about but not formally recorded, an acceptance of "misadventures" because there has been no serious morbidity, in consequence a failure of any alerting of the generality of divers to observed problems which should be receiving attention before serious consequences occur. If problems continue to be accepted and tolerated (not "heard") they will increase and one day reach a critical level.

To take the next monkey "See no evil". If an organisation has a product which during normal and intended use is associated with injury to the user a tort has been committed. There is an implied warranty that the

product is fit for its purpose. In the context of recreational diving there is the clear implication that the purchase of a course of instruction, or a dive supervised by a person holding appropriate qualifications, will ensure that the purchaser does not suffer from exposure to any of the predictable dangers common to the diving environment. Diving training is given only by those certified as qualified to provide such instruction, and trainees certificated at the conclusion of all courses will assume they have a specified level of skill and an understanding of their limitations. Such is a reasonable even if unstated expectation of those learning to dive.

So it is essential that courses are constantly updated to ensure they maintain the maximum relevance to the conditions and problems which occur, that they incorporate the lessons learnt from an analysis of the results of "quality control", which in the case of diving is represented by monitoring the types and severity of diver morbidity. If problems are not noted, discussed and analysed by those immediately involved, both at instructor and organisational level, they will occur again and again within the diving community until, inevitably, one day there will be a cascade effect and more serious morbidity or even a death will occur. If problems are not "seen" there will be no reason to take any action.

The injunction to "Speak no evil" is a child of the "don't do it" philosophy, which ensures a persistence of unsafe practices and training inadequate to meet the situations the diver is likely to experience. If problems are not reported by those involved or observing them, either by deliberate refraining from reporting for fear of criticism or from a belief that the problem is too common to bother about (or far too obvious not to be known), the person with the information must share some of the responsibility for failure to update the course. Project Stickybeak, a method for the confidential reporting of diving-related problems, has existed for decades. The Diving Incidents Monitoring Study (DIMS) has been running for a few years. There is no reason for anyone to fail to assist in improving diving safety by reporting what they hear or see even when the exact details of the problem are uncertain.

The law assumes that anyone with special skills should employ them when appropriate, even when they are not immediately contractually involved. Taking notice of, and then reporting, all matters which detract from the safety of divers to whom they owe any duty of care could be considered appropriate. An instructor could be expected to correct dangerous errors observed in a diver or dive group even where the person(s) involved were not employing his or her services. An instructor could be expected to provide assistance in any situation where their training has particularly qualified them.

Failure to seek out problems and dangers can no longer be treated as an acceptable option, or one without potential for expensive and painful proceedings in a Court of Law. If one can demonstrate an active pursuit of information, and its use towards reducing identified problems, a better defence can be made, to claims that a diver was inadequately trained or warned or supervised, if all those involved had followed a course of action based on such an information.

This is a plea for the recognition by diving organisations and individual divers of the need for, and value of, details of all types and degrees of diving-related problems. There is a particular need for reports of effectively managed problems and of occasions where early intervention prevented a potentially adverse situation developing. It is time to recognise the moral (and legal) necessity for divers becoming involved in the collection of data on all types and severities of diving problems, particularly those where the response was effective and the dive was able to continue without further problems. Remember two things, reports are treated as being medically confidential, and the life you save could be your own.

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SPUMS NOTICES

REVISION OF THE SPUMS POLICY ON EMERGENCY ASCENT TRAINING

The Society's policy on emergency ascent training (EAT) was published in the Journal in 1993.¹ One of the features of that policy was that buddy breathing was considered to be suspect and to warrant ongoing review. This review is now complete and, especially in the context of the Diving Incident Monitoring Study data that Dr Chris Acott is to present to the 1994 Annual Scientific Meeting of the European Undersea and Biomedical Society, the advocacy or teaching of buddy breathing can no longer be supported, with or without reservations. It follows that the Society's policy