



**WHAT'S THE RISK? RISK
MITIGATION STRATEGIES FOR
LCOS ENGAGING IN FIXED
ANCHOR REPLACEMENT**

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DISCUSSION TOPICS

- **What's the Risk?**
 - Understanding what it means for your LCO to engage in fixed anchor replacement
 - High level overview of a potential claim against an LCO
 - Volunteers conducting fixed anchor replacement
 - Paying for fixed anchor replacement
- **Mitigation Strategies:**
 - Waivers for Installers
 - Best Management Practices
 - Insurance coverage
 - Legal Defense Costs
- **Presentation is informed by the Salt Lake Climbers Alliance's experience standing up a rebolting initiative in the Wasatch Front (WARI—Wasatch Anchor Replacement Initiative)**



Understanding what it means for your LCO to engage in fixed anchor replacement

- Root Causes of the Risk Exposure:
 - Installation Risk
 - Post-Installation:
 - Failure of Fixed Anchor
 - Ongoing Maintenance
 - Monitoring/Documentation



EXISTENTIAL LCO QUESTION ON FIXED ANCHORS

- Is the installation of fixed anchors at the **core of your LCO's mission?**
 - Insulating the risk by having another entity other than the LCO do the work (Red River example—SUCKA)
 - SLCA chose to engage in replacement as the SLCA based on past practice and member survey results
 - Fund raising value—we have been publicizing our efforts as part of our development efforts
 - SLCA Board ultimately concluded replacing aging bolts in the Wasatch is part and parcel of carrying out its mission



LCO'S LEGAL LIABILITY RISK FOR INSTALLING FIXED ANCHORS

Is an LCO's involvement in installing fixed anchors a zero-risk proposition?

- **NO**, an LCO may be sued by an injured climber/installer who is injured as a result of the failure of a fixed anchor.
 - Note: No known claims or cases.
 - If no claims or cases, why should we be concerned about this liability?
 - Climbing is rapidly growing and so with this growth there will be more access related issues, namely safety based concerns on aging fixed anchors.
 - LCOs are and will become more developed organizations—WE CAN'T JUST WHISTLE PASS THE GRAVEYARD
 - LCOs need to manage risk just like an other organization managing the risk associated with its mission critical activities
- GOAL= MINIMIZE THE LCO'S RISK EXPOSURE, TO THE EXTENT PRACTICABLE, CAUSED BY ENGAGING IN FIXED ANCHOR REPLACEMENT



INJURED CLIMBER'S HYPOTHETICAL LEGAL CLAIM AGAINST THE LCO

Injured Climber's claim: The LCO **negligently installed** the bolt and should be held liable for his injuries.

General Rule: persons have a duty to use **reasonable care** to avoid injury to others and may be held liable if their careless conduct injures another person.

Facts of accident support the Injured Climber's claim that LCO **failed** to take reasonable care in installing the bolt and their careless conduct caused GG's injuries.

Note: Other claims could be brought by volunteer engaging in replacement installation efforts



LCO'S DEFENSES:

Assumption of Risk:

- An exception to the general rule of liability.
- **Policy:** Court does not want to “chill” participation the sport by imposing liability.
- GG assumed the risk by engaging in the sport of rock climbing and more specifically the **inherent risks** of rock climbing. Thus, the LCO should not be held liable.
- Defendants do **not have a duty to eliminate the risk inherent to the sport** but **do have a duty not to increase those risks.**
 - Did the SLCA/LCO increase the risks inherent to climbing by engaging in replacement efforts?



Volunteers conducting fixed anchor replacement

- Are they skilled enough to perform the work?
- How, as the LCO, will you feel confident that the installer is qualified?
- SLCA has adopted a mentorship program to assure individuals are qualified



Paying for fixed anchor replacement

- Issue: Does paying an independent contractor to install fixed anchors poses more liability exposure to the LCO?
 - Answer: *Maybe*
 - Pros of Paying:
 - YOU GET WHAT YOU PAY FOR: Individual worth paying more likely to do a better job installing—minimizing a future risk of failure
 - Cons of Paying:
 - Plaintiff's lawyer may use payment for installation to support claims—installer/LCO should be held to a higher standard of care since payment was exchanged
 - Worker compensation laws come into play—must carry their own insurance
 - LCO must be assured that the independent contractor has his/her own insurance—could be subject to fines
 - Obtaining such insurance is likely cost prohibitive
- Conclusion: May be less liability exposure by not paying for fixed anchor replacement→
REAL BENEFIT=Less Administrative Headache



MITIGATING LIABILITY—WAIVERS FOR INSTALLERS

- Is your LCO getting fixed anchor replacement installers to sign waivers?
 - Fixed anchor replacement installers are just like other volunteers conducting trail work for the LCO—**they need to sign a waiver**



MITIGATING LIABILITY—BEST PRACTICES

- Best Practices for the installation of fixed anchors
 - **Purpose:** Set general replacement standards for replacing fixed anchors that will be generally adhered to by climbers replacing bolts
 - Installer can't just be a robot—needs to account for site specific factors
 - **Pros:** potentially avoids careless errors in the installation of fixed anchors
 - Insurance industry may grow more comfortable with insuring this risk by having such a document in place and adhered to by LCOs
 - **Cons:** creates a standard of care for installing fixed anchors—failure to follow “best practices” makes it easier to establish liability
 - Access Fund Fixed Anchor Best Management Practices Document
 - SLCA's effort to put together such a policy



MITIGATING LIABILITY–INSURANCE

- SLCA has investigated procuring insurance to minimize its risk exposure from fixed anchor replacement
 - 2012: Received preliminary quote=>**\$10K (cost prohibitive)**
 - 2016: Received preliminary quote=~\$7K (still cost prohibitive)
 - Initial Broker feedback=insuring the risk is unfamiliar in the marketplace
 - Broker Feedback/Suggestion:
 - Underwriting individual LCOs may be cost prohibitive;
 - Programmatic coverage with a larger entity (Access Fund) as primary insured and LCOs as additional insureds may be cost effective and have a large enough premium to entice underwriters
 - Next Steps:
 - Continue dialogue with underwriters so they can better understand the risk
 - Access Fund's Best Management Practices document may help underwriters insure this risk if LCOs adhered to these practices



MITIGATING LIABILITY–INSURANCE

- How many LCOs have a general liability policy?
 - GL Policy **may** cover an LCOs litigation costs for claims brought related to a fixed anchor replacement issue (failure or installation) **BUT damages may not be covered**
 - Need to work with your broker
- If insurance was procured specific for replacement efforts, then legal defense and damages, if awarded, would be covered under the policy



CONCLUSIONS

- ACHIEVING GOAL= MINIMIZE THE LCO'S RISK EXPOSURE, TO THE EXTENT PRACTICABLE, CAUSED BY ENGAGING IN FIXED ANCHOR REPLACEMENT
- USE Access Fund's Best Management Practices Document → Implementing Best Management Practices is the most cost effective way to mitigate risk exposure and should result in better work product
- What other LCO specific best management practices will you implement?
 - Mentoring?
- Get Volunteers doing the work to sign waivers
- Review existing insurance policies to determine whether defense coverage exists

