

June 13, 2007 - StrandVise® - Additional Information

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To: Ropes Challenge Course Colleagues

RE: Additional StrandVise® Information

First we would like to thank you who have done so for acknowledging the PRCA's effort to bring this advisory to the attention of the industry. To those individuals and associations who responded with their thanks and we applaud your morality and sense of responsibility to the industry and the safety of all involved. This advisory is not something that we sought out and much effort has been expended in the attempt to minimize any potential impacts on our industry; alas to no avail both due to past circumstances beyond all of our control and safety concerns.

The PRCA apologizes for the delay in responding to your request for additional recommendations on how to proceed in light of this advisory. There were continuing communications with MacLean Power Systems and research was being conducted into applicable areas for additional information on how this may affect all members of the industry.

Let us clarify the issues:

Neither the PRCA nor ACCT has the means to employ legal researchers to search West, Lexis or any other law digest on a regular basis. Nor are the ACCT or the PRCA listed on a notification list with the multitude of various court systems encompassed within our country. Therefore, we do not receive notifications of each lawsuit filed, settled, settled with gag orders or adjudicated involving injuries on challenge courses. We rely on information from you our colleagues, our members, lawyers looking for expert witnesses and in this case a manufacturer. We have now all heard of injury suits related to StrandVise® use/installations in 1993, another in California and the suit that directly named MacLean Power Systems.

Additionally, the industry itself, industry publications, the prior PRCA and ACCT voluntary industry standards, the current ACCT 6th edition voluntary industry standard and the current ANSI BSR/PRCA 1-2006ED3-200x Draft national standard all acknowledge failures and the potential for failure of the StrandVise®. This industry wording has included: "(the most common failure)", "slipped", "may fail to hold the wire rope", "Strandvise®[\[sic\]](#) placements subjected to a steady load, as opposed to intermittent load/release cycles also appear to be less prone to slippage failures" (intermittent load/release cycles are the normal loading encountered on a belay line during fall or leap situations), "occasional fatigue cracks causing breakage", "heavier guage bail which appears less likely to fail", "constructed using the lightweight bail ... subjected to intermittent loads (such as those produced by trees rocking in the wind), then fatigue failure appears to become a much more likely occurrence", careful monitoring of all Strandvise® [\[sic\]](#) applications, particularly those where failure is most likely", "connection failure due to wire rope

slippage and bail failure", "cartridge slippage on cable", "bail deformity and/or bending", "fatigue cracking inside the bail at termination and bolt contact", " the possibility of failure by slippage or cable crushing within the cone of the StrandVise® [sic]", and "an overloaded StrandVise® [sic] will deform or compress a wire rope to the point of weakening or deformation". These statements and whatever other like terminology has been used in print by our industry in the past are an acknowledgment of the failure potential of these devices in our life safety applications. Combining this with the knowledge of prior injuries direct or indirectly related to StrandVise® connector applications, and a manufacturer's non-applicable use product safety advisory would be strike three in a court of law.

Everyone should know that even after conveying the advisory MacLean has still expressed a deep concern to both the PRCA and ACCT that the industry does not seem to comprehend the seriousness and true intent of this advisory. Once MacLean had issued the advisory and it was dispersed as it was to the industry and MacLean's vendors, MacLean had basically met the requirements set forth in the Uniform Commercial Code Article 2 and the Restatement (Third) of Torts: Products Liability sections which would provide them with a positive defense in a suit for injury related to the use of their product on a ropes course. Legally they were clear. MacLean did not stop their involvement with the advisory, as a manufacturer and an approved standards developer themselves they understand the need for safety for employees and customers. MacLean disclosed that the counterfeit StrandVise® involved in the current case was a true counterfeit. The device carried the MacLean markings and identifiers however the product was vastly inferior; the tensile strength was lower, the camming ability and general overall quality were lower and the device had to be dismantled and closely examined by the manufacturer to determine that it was not their product. The differences between the counterfeits and original products are not easily discernible without disassembly. As to why MacLean chose this moment in time to readdress this issue, this has no bearing on how the industry must respond to the advisory. The advisories exist. The full history, a factual presentation based on information from both MacLean and ACCT sources, of the entire process was and is presented at <http://www.prcainfo.org/industry-advisory/strandvise-advisory/> for all as: A. a means to understand MacLean Power Systems stance on not granting a moratorium. B. a source of downloadable information for associations, vendors, and owners/operators of courses with StrandVise® connector applications to provide documentation that they could present to their legal counsel and insurance carriers in determining how they may best proceed in regard to the current advisory. C. the information is and was by no means or intent a critique of any individual association, person or persons, actions or inactions. It is a factual recounting of communications and events as reported to the PRCA by both MacLean and ACCT sources.

The manufacturer, MacLean Power Equipment clearly states that the devices do not belong on challenge courses for the reasons that they have cited, all of which relate to safety concerns due to potential failure. Once a manufacturer has issued such a statement, and absent a regulatory or judicial decision that would allow use to the contrary, it is incumbent upon the course owner/operator and course worker employer to determine how to proceed in a prudent manner.

General risk management, US Regulatory, Product Liability and Tort issues enter at this point. In general the failure to follow manufacturer's recommendations, federal regulations or government approved standards may be construed in court as negligence. As Jim Moss pointed out even if

the item or method in question was not a direct cause of the injury, but it may be utilized to demonstrate the totality of the level of neglect or failure to protect. Punitive damages (to punish) may only be awarded when the defendant acts willfully or with such gross negligence as to indicate a wanton disregard of the rights of others. In other words a callous disregard for whether injury will occur. Ignoring a manufacturer's advisory may be found to fit this category.

MacLean Power Systems as we have stated would have a probable positive defense in any Tort action, by means of their advisories.

Vendors/contractors/builders/inspectors who: a. sells and installs, (installation in accordance with any industry standard does not meet the manufacturer's recommendation) b. sold and/or installed and does not convey the advisory to the owner/operator c. inspects and passes a StrandVise® application installed on a ropes or challenge course d. sells a StrandVise® for use on a ropes or challenge course legally creates an implied warranty that the device is safe. If an injury occurs directly or indirectly related to the device the vendor/contractor/builder/inspector would be found negligent as there is a legal duty to use care, there was a breach of that duty, and there was injury or damage. Those selling and/or providing and installing StrandVise® connectors Section 10 of the Restatement (Third) of Torts: Products Liability addresses a the duty to provide post-sale warnings. In this section, any entity in the product chain may have liability for harm or injury caused by failure to provide a warning after the time of sale and/or distribution of a product whenever a reasonable person in the entity's position would have provided a warning. A four-prong test is used to determine if a reasonable person in the entity's position should provide a warning after the time of sale: (1) they know or reasonably should have known that the product poses a substantial risk of harm (manufacturer's advisory), (2) those to whom the warning might be provided can be identified and may reasonably be assumed to be unaware of the risk, (3) the warning can be effectively communicated and acted upon; and (4) the risk of harm is sufficiently great to justify the burden.

Owners/operators If an injury occurs directly or indirectly related to the device and the owner/operator was aware, or should have been aware of the advisory, and took no corrective action to address the known risk then the owner could well be found to be negligent. Clients (Invitees) and employees are owed a high duty of care. Again in some jurisdictions taking no action in these situations is "Prima facie" evidence of negligence.

Ropes/Challenge Course Employers In both the United States and Canada employers must comply with specific employee safety requirements. In the U.S. (the Williams-Steiger Occupational Safety and Health Act of 1970) delineates the OSHA standards "General Duty Clause" wherein the employer "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;" (In Canada, Canada Labour Code -Canada Occupational Health & Safety there is a similar clause). This does not require an employee to be injured only that the hazard exists for the employer to be cited and potentially fined. Abatement of the hazard is usually required within a 30 to 60 day period, with the hazard closed and posted with the citation until abated. Regulatory compliance inspections may be random, initiated by employee, entity or individual persons complaint or may be part of a state or federal concentration program. Failure to comply with manufacturer's recommendations, specifications,

installation instructions and/or advisories are frequently cited issues within the General Duty Clause.

As you can see this manufacturer's advisory is not analogous to the staple issue. Due to the fact that the manufacturer has unequivocally stated that this is not an acceptable use of the device, the general knowledge within the industry that there is a continued potential for failure and have been failures of these devices, and the knowledge that there have been injuries associated with the use of and/or installation methods used with the devices - it is a horse of a different color.

Beyond the legal and regulatory issues do we not owe our employees, and ourselves safety at work. What about our clients, the ones who trust us to deliver a safe, fun, challenging experience? What about all of our families don't we owe them us coming home safely after a day at the course, whole and still able to work and play. If a rope manufacturer issued an advisory stating that for some reason a certain dynamic line was no longer considered safe for use on challenge courses as it may break (fail) at the belay device would we disregard that advisory? Just because we have used that rope belaying this way for years without problems? It fits the standards 11mm dynamic kernmantle? Maybe we just create a back-up, a prussic or rope grab in front of the belayer and continue using the rope anyway? Is this so different from the present case?

The decision as to what steps to take in regard to an advisory lies with the owner/operator of a course or the employer of a person working on the course who will be exposed to the hazard, these are the people with the legal and the moral duties. If a complaint is filed, an injury or fatality occurs you will face the regulatory agencies, the jury and the family.

Therefore unless an association, vendor, builder, inspector or other entity is guaranteeing in writing to fully indemnify an owner/operator for the continued use of these StrandVise® connectors, whatever the course installation or back-up method, the Professional Ropes Course Association highly recommends that you consult with your courses legal counsel and/or insurance carrier on how to proceed in regards to the advisory. If any additional information, recommendations, or methods of dealing with the advisory are determined the PRCA we will immediately alert the industry by these same posting and notification means.