

Heroes Among Us: Good Samaritan Laws and Paddlers Turned Swiftwater Rescuers

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Introduction

THIS ARTICLE IS ABOUT GOOD SAMARITAN LAWS that often fail to protect volunteer rescuers. This Article focuses upon the quintessential Good Samaritan, the volunteer swiftwater rescuer, ready and willing to help others in distress on whitewater rivers.

Whitewater paddlers frequently prepare for emergencies on the river; devoting personal time and resources to develop swiftwater rescue skills through organized training programs and purchasing safety equipment. Paddlers are often called to be on-the-spot emergency caregivers to anyone who finds themselves in deep water. Their proximity to trouble puts them in a position to potentially save lives, long before professional first responders arrive on the river.¹ They can render first aid to potential drowning victims and pull potential drowning victims to shore through turbulent water so that medical first aid can be given.

Part I of this Article discusses the unique characteristics of Good Samaritans and how paddlers may not fit within the narrow language of Good Samaritan statutes in emergency situations. It continues by discussing the popularity, risks, and rewards of padding whitewater that creates the special characteristics of paddlers who are called to become Good Samaritans. Part I also discusses how safety is on the conscience of many paddlers, motivating them to prepare for emergencies on the river. It explains the risks of whitewater kayaking and the implied moral creed in the paddling community to rescue anyone

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1. See *infra* note 38 and accompanying text (describing paddlers' swiftwater rescue efforts).

in deep water on swiftwater, even if it means jeopardizing one's own life in a risky rescue attempt. Safety-mindedness, preparedness, and proximity place paddlers in a position to save lives on the rivers. Their intervention can make the difference between a body recovery or a live rescue.

Part II discusses the risks of tort liability during rescue attempts on whitewater and the need for Good Samaritan laws to apply to paddlers who become volunteer swiftwater rescuers. Emergencies call for swift action. Paddlers are often capable of stepping in before fire departments and professional swiftwater rescue teams arrive on the scene of an emergency. Additionally, there is a growing need for swiftwater rescuers to keep up with the rise in people taking up kayaking. Given the recent Coronavirus Disease ("Covid-19") protocols, and the fact that kayaking is a perfect activity for social distancing, novice paddlers are becoming a greater presence on the water.² With the growing popularity of paddling, local resources to conduct professional swiftwater rescues become stretched and paddlers with swiftwater rescue training may fill a necessary void.

Part III of this Article provides an overview of the traditional "no duty to rescue" rule under American law. Such a rule contravenes a moral duty felt by many bystanders to rescue others in need and the rescue culture of paddlers. It then focuses upon legislative efforts to ameliorate the harsh consequences of the traditional "no duty to rescue" rule. Good Samaritan statutes encourage volunteer rescues by immunizing volunteers from negligence liability in situations where the attempted rescue was a "voluntary, gratuitous, and good-faith attempt to assist someone in an emergency."³ Part III provides an overview about how the language in Good Samaritan laws greatly vary across the states and how narrow the language can be. Good Samaritan laws in some states protect limited classifications of potential rescuers and limited types of emergency situations.

Part IV of this Article proposes that Good Samaritan laws should broadly protect rescuers who volunteer to help others in distress, despite the lack of any legal duty to do so. Specifically, it proposes that

2. Linda Younkin, *Kayaking Experiencing Surge in Popularity*, STATE J. (Aug. 30, 2020), https://www.state-journal.com/local_sports/kayaking-experiencing-surge-in-popularity/article_e0f9ba56-eb1e-11ea-ba74-a3671b18a995.html [https://perma.cc/8KCB-2TV5] ("[k]ayaking is a sport that works well with protocols in place for COVID-19" and the sport is also growing with the number of younger, outdoor centered people buying so many boats that Canoe Kentucky cannot keep them in stock.).

3. See Dov Waisman, *Negligence, Responsibility, and the Clumsy Samaritan: Is There a Fairness Rationale for the Good Samaritan Immunity?*, 29 GA. STATE U.L. REV. 609, 627 (2013).

Good Samaritan laws should immunize certain volunteer swiftwater rescuers from potential tort liability for ordinary negligence during any rescue conducted on rivers.

Next, Part IV contends that many Good Samaritan laws, as currently written, apply to paddlers who are trained in swiftwater rescue, cardiopulmonary resuscitation (“CPR”), or wilderness first aid because they may fit into some of the narrow categories of “medically trained” persons acting in “emergency” situations. Moreover, it argues that courts should liberally apply the terms “emergency first aid” in Good Samaritan laws because there will be no first aid unless the paddler first pulls the victim to shore. The true first aid is the aid the paddler turned swiftwater rescuer provides to a swimmer. Applying Good Samaritan laws to encompass volunteer swiftwater rescuers encourages rescues, saves lives, and alleviates the burden from fire departments and professional swiftwater rescuers.⁴ Alternatively, legislators should expand Good Samaritan laws to protect all of the heroes among us, regardless of their training or the type of rescue situation.⁵ This Article provides examples of statutory language that protects broad categories of rescuers.

Finally, this Article concludes that federal Good Samaritan laws govern some rescues on whitewater rivers. The Federal Boater Safety Act includes a Good Samaritan statute that extends to those who are under a duty to rescue under admiralty law.⁶ It may fill a void, where state laws fail to provide immunity to volunteer swiftwater rescuers.

I. Volunteer Swiftwater Rescuers: Good Samaritans and Potential Tortfeasors

“The big question is whether you are going to be able to say a hearty yes to your adventure.”—Joseph Campbell

Paddlers turned volunteer swiftwater rescuers are adventurers and quintessential Good Samaritans. Paddlers enjoy a tight community of people who are passionate about river running. But they also understand the risks of boating in swiftwater and prepare for inevita-

4. 46 U.S.C. § 2304(a)(1) (2012). The statute provides a master of a vessel has a duty to assist at sea and up to a \$1000 fine and/or possible two years imprisonment for failing to attempt a rescue. 46 U.S.C. § 2304(b).

5. See David Weldon, *Forgotten Namesake: The Illinois Good Samaritan Act's Inexcusable Failure to Provide Immunity to Non-Medical Rescuers*, 43 J. MARSHALL L. REV. 1097, 1114–18 (2010) (advocating for the Illinois' adoption of a broader Good Samaritan Act to provide tort immunity to volunteer non-medical rescuers for ordinary negligence and providing a compensation fund for Good Samaritan rescuers).

6. 46 U.S.C. § 2303(c).

ble swims. There is a saying in the paddling community that “we’re all between swims.”⁷ Werner Team paddlers Danny Mongno and Tony Gianfagna attest, “[n]o matter if you’re a new boater getting the hang of the sport, the aggressive boater thinking, ‘if you ain’t swimming you ain’t pushing it,’ or the conservative boater who gets caught up in the inevitable fact that the river is the boss,”⁸ swimming, as a result of flipping or capsizing a kayak, is an inevitable part of whitewater paddling.⁹ “For some the swim is most damaging to our ego, more red in the face when we surface from embarrassment than from fatigue or fear. But there is going to be the time, when it really goes bad.”¹⁰

An inevitable part of whitewater paddling is that many paddlers on rivers must prepare for swims and rescues. They often attend swiftwater training courses and buy specialized rescue equipment to carry on the river. Paddlers take care of fellow paddlers and others, including non-paddlers on and along the rivers, even though they may be strangers.

A. The Rush of Whitewater

As recreational activities on and along the rivers grow, the chances of paddlers encountering other people in peril on rivers are also increasing. This popularity in growth means risks exist and more accidents are inevitable, for which paddlers prepare.¹¹ The most skilled kayakers, for example, are equipped to throw themselves over steep rapids and waterfalls in a small boat, to greet huge boils of water and hard rocks at the bottom. To reach the top of their ability and do

7. Tony Gianfagna & Danny Mongno, *Whitewater Wednesday-Volume 2*. “We’re All Between Swims.”, WERNER PADDLES (Jan. 28, 2015), <https://web.archive.org/web/20150202015154/https://wernerpaddles.com/blog/whitewater-kayaking/whitewater-wednesday-volume-2.-were-all-between-swims> [<https://perma.cc/63WM-TH9J>].

8. *Id.*

9. See Jennifer Jolly-Ryan, *Don’t Go Chasing Waterfalls: The Intrepid, Pioneering Whitewater Paddler’s Right to Stop on Private Land*, 17 U. N.H. L. REV. 129, 165 (2018). Almost every paddler has heard the paddling cliché: “we’re all between swims.” It is usually offered as salve for egos bruised from out-of-boat experiences. *Id.* Swimming is a necessary and inevitable part of kayaking, and “we’re not going through it alone.” *Id.* See also Leland Davis, *Swims and Beatdowns: Finding Your Threshold for Kayaking Carnage*, NW. RIVER SUPPLIES: DUCT TAPE DIARIES (Sept. 7, 2012), <https://community.nrs.com/duct-tape/2012/09/07/swims-and-beatdowns-finding-your-threshold-for-acceptable-carnage/> [<https://perma.cc/KVF4-RFYZ>].

10. Gianfagna & Mongno, *supra* note 7.

11. Hristina Byrnes, *Most Incredible Waterfalls for Kayaking*, ACTIVE TIMES (Aug. 5, 2016), <https://www.theactivetimes.com/water/canoe-kayak/most-incredible-waterfalls-kayaking> [<https://perma.cc/YGU9-GKPM>] (running steep waterfalls in small plastic boats is the Holy Grail for skillful, elite whitewater kayakers).

it safely, paddlers prepare and carry swiftwater rescue equipment.¹² But pushing the proverbial envelope in whitewater kayaking is not reserved for expert kayakers or dare devils. Improved boat design and equipment makes it possible for kayakers to paddle harder rapids and steeper waterfalls than ever before.¹³ The prevalence of social media broadcasting kayaking adventures has helped make kayaking a popular sport for the general public.¹⁴ Outfitters report that people are turning to outdoor pursuits such as kayaking due to the recent social restrictions caused by Covid-19.¹⁵ They are selling so many kayaks to new people discovering the joy of paddling that they cannot keep kayaks in stock.¹⁶

Although all paddling is becoming more popular, perhaps the reason paddling whitewater has become so popular is that it is the perfect blend of science, sport, and art. The science of rapid running in a whitewater kayak involves the strategic calculations and plans the paddler must make, based upon the raw power of the water. Paddlers know that a river or stream is seldom the same at the end of the day. Even the river, run by the same paddler in the same boat many times before, “can offer a totally different situation if water levels change or if the path of the water is altered in any way.”¹⁷

The paddler uses science to understand the difference in water levels and how they affect a stream or river—such as the scientific principle of hydraulics to study how holes or underwater ledges cause the water to recirculate and stop his or her descent and pick a line

12. See Jolly-Ryan, *supra* note 9, at 166 n.229. “Many paddlers learn safety skills by taking swiftwater rescue courses.” *Id.* “Paddlers also wear special safety equipment designed for whitewater kayaking, including helmets, PFDs, and clothing designed for cold weather.” *Id.*

13. Boat design can make it easier to paddle a rapid. Richard J. Pierce, Jr., *What Is a Navigable Waterway? Canoes Count but Kayaks Do Not*, 53 SYRACUSE L. REV. 1067, 1077 (2003) (“It is easy to overestimate the importance of boat design . . . in determining whether a waterway is navigable.”); see also Leland Davis, *How to Choose a Whitewater Kayak*, NW. RIVER SUPPLIES: DUCT TAPE DIARIES (May 23, 2014), <https://community.nrs.com/duct-tape/2014/05/23/choose-whitewater-kayak/> [<https://perma.cc/V6A6-WLXP>] (describing the different options for kayak designs and how those designs can improve the kayak’s performance in whitewater).

14. Jolly-Ryan, *supra* note 9, at 132.

15. Younkin, *supra* note 2 (discussing “Kayaking [a]s a sport that works well with protocols in place for COVID-19” and is also growing with the number of younger, outdoor centered people buying so many boats that Canoe Kentucky cannot keep them in stock).

16. *Id.*

17. Ken Whiting, *Running Waterfalls*, PADDLING.COM, <https://paddling.com/learn/running-waterfalls/> [<https://perma.cc/N9K7-CHXX>].

down the rapid.¹⁸ Paddlers look at rapids for hours, studying the water's speed, velocity, and flow.¹⁹

In addition to the science involved in descending whitewater rapids, kayaking and canoeing are popular and evolving sports, as evidenced by their prominence in the Olympics.²⁰ Canoe sprint has been a "full medal [Olympic] sport since 1936 with both canoe and kayak events."²¹ Women began competing in the Olympics in kayaks in 1948.²² Whitewater slalom in kayaks and canoes became an Olympic sport in 1972.²³ The sport of freestyle kayaking is also a popular, exciting, and growing sport.²⁴ Freestyle kayakers use a very short, specialized kayak to "play" or perform tricks and maneuvers on a whitewater wave feature. Freestyle kayakers perform "360-degree spins to airborne maneuvers including loops and airscrews (in layman's terms, 'flips and barrel rolls')," often caught on film and set to music.²⁵ Recording paddling adventures is not reserved for professional kayakers or filmmakers. Paddlers now often mount a GoPro²⁶ on the front of

18. Jolly-Ryan, *supra* note 9, at 132. See also *Holes and Waves*, PADDLE EDUC., <https://www.paddleeducation.com/whitewater-kayaking/the-anatomy-of-a-river/river-features-2/holes-and-waves/> [<https://perma.cc/HTF7-9BVB>] (stating "[h]oles and waves are hydraulics on a river that are created by water running over different obstacles and drops in gradient on the river bed, which has an effect on the current and river flow," and describing how to recognize different types of holes and waves so a paddler can make informed choices about his or her intended path).

19. Pip Stewart, *Top 5 Tips to Kayak a Waterfall*, REDBULL (June 21, 2016, 3:00 PM), <https://www.redbull.com/gb-en/top-5-tips-to-kayak-a-waterfall> [<https://perma.cc/XY77ZN3G>].

20. See *International Canoe Federation*, OLYMPIC, <https://www.olympic.org/international-canoe-federation> [<https://perma.cc/XM7C-KUYA>]; see also Matt Jackson, *Include Freestyle Kayaking in the Olympics*, ODYSSEY (Aug. 22, 2016), <https://www.theodysseyonline.com/include-freestyle-kayaking-in-the-olympics> [<https://perma.cc/4EV6-EU4V>].

21. *International Canoe Federation*, *supra* note 20.

22. *Id.*

23. Jackson, *supra* note 20.

24. *Id.*

25. *Id.* See also *Get to Know the World of Whitewater*, S2O DESIGN & ENG'G, <http://s2odesign.com/about/whitewater-parks-explained> [<https://perma.cc/7YVC-BVTP>] (noting that the popularity of freestyle kayaking has led to kayakers utilizing whitewater parks to host events); *Projects*, RECREATION ENG'G & PLAN., <https://www.repwaterparks.com/projects> [<https://perma.cc/JF2E-9GM2>] (displaying that Colorado has at least 15 whitewater parks with the majority created after the year 2000, others can be found in many other western states, and more have begun to open in the eastern states).

26. The GoPro is a sports action camera designed to capture "the essence" of adventurer's exploits. *Cameras*, GoPRO, <https://gopro.com/en/us/shop/cameras> [<https://perma.cc/989N-6GRV>]. Paddlers mount the action camera on the front of their kayaks or on their helmets to video their adventures down rapids or other paddlers. A GoPro is an "action camera" that is placed into a "rugged frame that's smaller, waterproof and, virtually indestructible." *Id.* Ananth Pandian, *What Is a GoPro, and What Can It Do?*, DIGITALTRENDS

their kayaks or paddlers' helmets, meshing the art of video making with the popularity of paddling.

B. The Risks of Whitewater

With all of its popularity, paddling whitewater has its risks. Drowning was the cause of death in 84% of kayaking accidents, making it the leading cause.²⁷ Despite risks, paddlers say that playing and dancing with the power of water is well worth it.²⁸ The close-knit kayaking community's loss of twenty-three-year-old expert paddler, Shannon Christy is case in point. Christy drowned on the Potomac River shortly before she was to participate in the annual Potomac River Festival's Great Falls Race,²⁹ featuring a steep kayak run—"a drop of 60 feet in 60 seconds."³⁰

American Whitewater describes how a paddler's accidental swimming of Great Falls' Center Lines is "a life threatening mistake that usually requires an elaborate rescue in full public view."³¹ American Whitewater warns that choosing the wrong line or swimming at Center Lines "could kill you and put access at risk for everyone."³² One of the most dangerous places at Great Falls is Subway, a steep double drop with a sieve at the top and a cave at the bottom. American Whitewater warns paddlers to avoid swimming at all costs, because of the fatal risk.³³ Yet, the mournful paddlers have no second thoughts about the risks of paddling. A veteran kayaker, Pat Keller, described the passion for paddling as he stood above the Potomac River: "For what we receive for playing on the waters and dancing with an element that is so

(Dec. 23, 2017), <https://www.digitaltrends.com/photography/what-is-a-gopro-action-camera/> [https://perma.cc/LM2C-86U5].

27. U.S. DEP'T. HOMELAND SEC. & U.S. COAST GUARD, 2014 RECREATIONAL BOATING STATISTICS 47 (2015), <https://www.uscgboating.org/library/accident-statistics/Recreational-Boating-Statistics-2014.pdf> [https://perma.cc/KMA8-3XN8] (displaying a table of its annual report on boating statistics that cover waters in the U.S. and its territories, which shows drownings were the leading cause of deaths in kayaking accidents eighty-four percent).

28. Tom Jackman, *Kayaking Community Mourns Shannon Christy, Who Drowned in Potomac River*, WASH. POST (July 13, 2013), https://www.washingtonpost.com/local/kayaking-community-mourns-shannon-christy-who-drowned-in-potomac-river/2013/07/13/086dbffc-ebee-11e2-8023-b7f07811d98e_story.html?utm_term=.935515c8cfe69 [https://perma.cc/RLM6-43HY].

29. *Id.*

30. *Id.*

31. *Potomac*, AM. WHITEWATER (Apr. 19, 2019), <https://www.americanwhitewater.org/content/River/detail/id/5564/main> [https://perma.cc/8R4R-R9QC].

32. *Id.*

33. *Id.*

much more powerful than us, . . . it's worth going out again and again and again."³⁴

II. The Need for Good Samaritan Laws to Protect Paddlers Turned Swiftwater Rescuers

Responsible whitewater paddlers plan for the risks of whitewater and minimize them.³⁵ Running most rivers with safety precautions and river rescue skills is what makes the whitewater paddlers community “some of the most safety-conscious people you will find on the water.”³⁶ But responsible paddlers often encounter other boaters, anglers, and people playing on and near the water who are not as safety conscious. For example, people may neglect to wear personal flotation devices (“PFDs” or life jackets), get caught in low-head dams, misjudge the weather or water temperature causing hyperthermia, or take on rivers they have insufficient skills or the right boat to paddle. Paddlers may also encounter “cabrewers,” those who irresponsibly combine canoeing with drinking alcohol—a dangerous combination on the river.³⁷

Fortunately, paddlers with swiftwater rescue skills and equipment on the rivers are often ready to help others who get into danger. These paddlers are well prepared to become Good Samaritans on the water.³⁸

34. Jackman, *supra* note 28.

35. *Risk Management*, WILD RIVER ADVENTURES, <https://www.riverwild.com/trip-planning/risk-management/> [<https://perma.cc/UBN3-72AX>].

36. Kevin Lindberg, *Unfair to Kayakers*, CONCORD MONITOR: LETTERS (May 24, 2017, 12:01 AM), <http://www.concordmonitor.com/Unfair-to-kayakers-10264047> (“People in the whitewater community are some of the most safety-conscious people you will find on the water.”).

37. Jolly-Ryan, *supra* note 9, at 166.

38. *See generally* Jolly-Ryan, *supra* note 9 (“The whitewater paddlers’ creed is to self-rescue whenever possible, and also rescue fellow paddlers on the river, creek, or stream if they get into troubled waters.”).

Paddlers look out for each other. Your first responsibility as a paddler is to know how to react in a rescue situation. Learn basic safety skills by taking a swiftwater rescue course, available at such venerable paddling schools as the Nantahala Outdoor Center and official swiftwater rescue sources. Bonus: classes are a great way to meet other paddlers.

20 Things Every Paddler Needs to Know, MEN’S J.: CANOE & KAYAK (May 12, 2015), <http://www.canoeandkayak.com/canoe/20-things-every-paddler-needs-to-know-essential-kayak-paddling> [<https://perma.cc/BLX2-PL2U>]; *see* Lindberg, *supra* note 36; *Boat and Paddle Rescue*, PADDLE EDUC., <http://paddleeducation.com/whitewater-kayaking/basic-rescues/boat-rescue/> [<https://perma.cc/S7DP-GBCP>].

Many paddlers wear and carry rescue equipment.³⁹ They keep ropes, carabiners, and throw bags on hand in case they need to pull fellow paddlers or others out of turbulent rapids on the river.⁴⁰ Paddlers can receive training in paddler safety and rescue through the American Canoe Association,⁴¹ the Swiftwater Safety Institute,⁴² private companies, local boating clubs, fire departments,⁴³ and water rescue teams.⁴⁴ As a result, many paddlers are educated, trained, and even certified in swiftwater rescue and sports or wilderness first aid.

Paddlers train and carry swiftwater rescue equipment because they know the risks and they know that “we’re all between swims.”⁴⁵ Once a paddler parts with his or her boat, the paddler is at the mercy of the river’s current. With this in mind, fellow paddlers go into rescue mode when they see someone out of a boat in a whitewater river. The whitewater paddler’s creed is to self-rescue whenever possible and rescue fellow paddlers on the river, creek, or stream. Rescuers focus on saving the swimmer first and equipment second.⁴⁶ Attempting swiftwater rescues extends many dangers to the rescuer.

Swiftwater emergencies call responsible paddlers into action. Considering the close sense of community among paddlers, coupled with their experiences on whitewater rivers, in swiftwater rescue training, and with equipment, there is little chance that responsible and experienced paddlers will commit misfeasance. However, even the most skilled whitewater paddler with swiftwater rescue training and the right rescue equipment has exposure to potential tort liability for misfeasance and misjudgment. Swiftwater is a dynamic environment, and one small mistake or misjudgment can snowball.

A volunteer swiftwater rescuer could put a victim and/or others assisting in the rescue attempt in peril through misfeasance, ordinary

39. *Paddling Safety and Rescue Gear*, REI CO-OP: EXPERT ADVICE, <https://www.rei.com/learn/expert-advice/paddling-safety-rescue-gear.html> [<https://perma.cc/FHB9-8DCZ>].

40. *Id.*

41. See *Safety & Rescue Courses*, AM. CANOE ASS’N (Aug. 28, 2020), https://www.americancanoe.org/page/Courses_SR (accessed on Feb. 24, 2021); see AM. CANOE ASS’N, LEVEL 5: ADVANCED SWIFTWATER RESCUE, AM. CANOE ASS’N 1 (2020), https://cdn.ymaws.com/www.americancanoe.org/resource/resmgr/sei-courses/l5_aswr_skills.pdf [<https://perma.cc/J5A9-N74C>].

42. See *Swiftwater Safety Institute – Swiftwater Rescue Training*, SWIFTWATER SAFETY INST., <https://swiftwatersafetyinstitute.com/> [<https://perma.cc/6ZAD-RD7K>].

43. See *Swiftwater Rescue*, TENN. SCENIC RIVERS ASS’N, <https://paddletsa.org/event-3719028> [<https://perma.cc/Z58W-LJ3U>].

44. See *Finding Swiftwater Rescue Classes*, NW. RIVER SUPPLIES, <https://www.nrs.com/learn/finding-swiftwater-rescue-classes> [<https://perma.cc/N86Z-BPF6>].

45. Gianfagna & Mongno, *supra* note 7.

46. *Boat and Paddle Rescue*, *supra* note 38.

negligence, or good faith misjudgment. He or she may misjudge the weather, water levels, and hazards, given the difficulty of the rapids. Despite acting in good faith, a volunteer swiftwater rescuer may fail to use safety gear proficiently, or the gear itself may fail. Moreover, the rescue itself may be unduly long and exhausting, causing injury to the victim and/or others assisting in the rescue.

Under common law, if a rescuer improperly performs CPR in an attempt to revive a swimmer, the paddler could face tort liability if he or she commits misfeasance.⁴⁷ Under the eyes of the law, even good faith misjudgment or mistake is considered misfeasance. For example, if during the rescue attempt a paddler hurts a swimmer's neck while pulling the swimmer to shore, the paddler could face tort liability. Although well intended, paddlers efforts to keep others safe on rivers could result in a finding of misfeasance and expose rescuers to potential tort liability for their Good Samaritan efforts.

It is difficult to imagine a more intense emergency situation than a swiftwater rescue and a more fitting scenario for applying Good Samaritan laws to protect paddlers turned swiftwater rescuers. Many whitewater runs are in isolated outdoor areas, where paddlers are the first responders. "Because of the inherent risks as well as poor judgment, lack of physical and mental preparation, or technical knowledge and skills, hundreds of individuals in the United States die or suffer severe injuries every year while participating in wilderness activities."⁴⁸ Boating is among those wilderness activities.

Boating incidents account for many local government responses from fire departments and government-sponsored swiftwater rescue teams.⁴⁹ During these emergencies, search and rescue workers risk in-

47. *Carter v. Reese*, 70 N.E.3d 478, 482 (Ohio 2016) (citing RESTATEMENT (SECOND) OF TORTS § 323 (AM. L. INST. 1965)) ("[O]ne who voluntarily and gratuitously renders services to another for the protection of the other person is liable at common law for injuries resulting from his failure to exercise reasonable care under the circumstances."). See also RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 37 cmt. c (AM. L. INST. 2012) (describing misfeasance in the context of rescues as "the actor's entire conduct creat[ing] a risk of harm").

48. Anne Villella & T.K. Keen, *Into the Wild: Can Regulation of Wilderness Recreational Activities Improve Safety and Reduce Search and Rescue Incidents?*, 21 JEFFREY S. MOORAD SPORTS L.J. 323, 327 (2014) (concluding that regulator efforts to improve wilderness safety and lower costs of search and rescue incidents should focus on prevention, including education, training, and equipment). See also Travis W. Heggie & Michael E. Admundson, *Dead Man Walking: Search and Rescue in the US National Park*, 20 WILDERNESS & ENV'T MED. 244, 248 (2009) (illustrating how many fatalities occur despite National Park Service's search and rescue operations each year).

49. Villella & Keen, *supra* note 48, at 333.

jury or death.⁵⁰ Swiftwater rescuers put their lives on the line during every emergency call. A Boulder swiftwater rescuer who spent 21 years as a Marine, Rex Laceby, said that he “learned to be ready for anything.”⁵¹ As a swiftwater rescuer, “he still finds himself leaping into life-or-death situations at a moment’s notice,” knowing that “[t]here could be death, there could be bodies, there could be danger.”⁵²

Paddlers who are already on the river in position to help those in distress may assist local fire departments and other swiftwater rescuers in helping others in peril on rapidly flowing water. In wilderness environments, professional rescue teams may be hours away. Thus, paddlers turned volunteer rescuers make the difference between rescuing a person and recovering the body of a victim who has drowned.⁵³ Moreover, kayakers have provided critical assistance to fire departments and other professional swiftwater rescue squads rescuing non-boaters from rivers. Kayakers and local government swiftwater rescue teams cooperatively work together.⁵⁴

For example, the Chattahoochee River near Atlanta, Georgia washed two women downstream after they jumped in to rescue their dogs. As the women held to the bridge abutments of I-75, rescue workers prepared to rappel off of the bridge to save them.⁵⁵ A kayaker saw the commotion and felt compelled to act.⁵⁶ While the firefighters helped one woman, the kayaker coaxed the other woman into an eddy⁵⁷ just upstream from a dangerous log jam that would have likely pinned the woman.⁵⁸ Together, paddlers and local swiftwater rescue workers were able to save the women’s lives.⁵⁹

50. Mitchell Byars, *Boulder County Swift-Water Rescuers Put Their Lives on the Line*, BOULDER DAILY CAMERA (July 2, 2015, 7:54 PM), <https://www.dailycamera.com/2015/07/02/boulder-county-swift-water-rescuers-put-their-lives-on-the-line/> [https://perma.cc/NCS2-XQD7].

51. *Id.*

52. *Id.*

53. See *Swiftwater Rescue*, *supra* note 43.

54. *Accidents, Emergency Workers, and Paddlers*, AM. WHITEWATER, <https://www.americanwhitewater.org/content/Wiki/stewardship:accidents> [https://perma.cc/S5BQ-BFPT] (noting an increased amount of cooperation between local rescue teams and paddlers in recent years).

55. *Id.*

56. *Id.*

57. An eddy is a type of current that is created by obstacles in rivers and can result in almost completely still water— “great places for kayakers to stop and take a break.” *Eddies*, PADDLE EDUC., <https://www.paddleeducation.com/whitewater-kayaking/the-anatomy-of-a-river/river-features-2/eddies/> [https://perma.cc/LE2D-MMEG].

58. *Id.*

59. *Id.*

In Townsend, Tennessee, a Good Samaritan kayaker helped a volunteer fire department's swiftwater rescue team with pulling people who fell into the Little River in the Smokey Mountains.⁶⁰ The river was flowing swiftly because of recent heavy rains, and rescuers had to swim out to one woman to put a life jacket on her and get her safely to shore.⁶¹ While the fire department rescuers helped the woman, a man was stranded further up the river.⁶² A kayaker helped swiftwater rescuers get across to him and deliver a life jacket to him. Together, the kayaker and fire department rescuers were able to use a rope to pull the man safely to shore.⁶³

Another kayaker, who rescued a father and his two daughters on the class IV Housatonic River in Connecticut, described his experience as a paddler turned swiftwater rescuer.⁶⁴ His story emphasizes the importance of proximity and timing of paddlers in saving lives of both fellow paddlers and stranger non-paddlers in peril on and in swiftwater.⁶⁵

As kayakers we think our primary responsibility is to look out for our fellow kayakers on the river. Last June I had an experience . . . that showed me just how much this responsibility extends beyond our fellow boaters. I was playing in the squirt spot below the Flume rapid and luckily, it turned out, I got washed out over towards the west bank of the river. There had been lots of rain and the river was running high . . . The current was strong and two young girls who had gone swimming . . . got swept out into the strong current. Their father rushed in to help them and soon got into difficulties himself. Luckily for him I was nearby . . . I realized that something was seriously wrong and went to give him my kayak bow to grab. The daughters had been able to make it into a big eddy and I shunted him in behind them. It had been a close call. He was about to go under and would not have made it to shore without my help.⁶⁶

60. Victoria Aldrich, *Swiftwater Rescue Team Rescues Two near Townsend*, DAILY TIMES (July 24, 2019), https://www.thedailytimes.com/news/swiftwater-rescue-team-rescues-two-near-townsend/article_5dc743a2-16e3-5c22-a4d5-295f52680bb2.html [<https://perma.cc/EF8V-3JRV>].

61. *Id.*

62. *Id.*

63. *Id.*

64. Roger Gocking, *A Good Samaritan on the Housatonic*, NEWSL. KAYAK & CANOE CLUB N.Y., Fall 2002, at 1, <http://www.kccny.com/Data/Newsletters/200209.pdf> [<https://perma.cc/7FT5-SEYY>].

65. *Id.*

66. *Id.* (explaining that American Whitewater describes the Housatonic River's level of difficulty between Bulls Bridge Dam and Power Plant as class IV). See *Housatonic*, AM. WHITEWATER (Nov. 13, 2015), <https://www.americanwhitewater.org/content/River/view/river-detail/448/main> [<https://perma.cc/77RT-L48Z>]. Whitewater is rated on a scale of increasing difficulty, and the skill required to paddle Class IV is "advanced" because of

Swollen, rain-filled rivers and people who fail to take precautions for their safety (such as wearing a life-saving PFD) are a dangerous combination to both victims and rescuers. Things can quickly take a turn for the worse and snowball in the dynamic environment of white-water. As it stands, the law is often inadequate to recognize such emergencies and applies ordinary negligence during attempted rescues gone wrong, as described below.

III. State Law: No Duty to Rescue and Good Samaritan Statutes

The bystander rule in the United States is an anomaly and is contrary to paddlers turned swiftwater rescuers' moral duty to rescue their fellow paddlers and others on rivers.⁶⁷ Unlike many European countries that impose a duty on bystanders to rescue others,⁶⁸ the American common law imposes no duty on bystanders to render emergency care to those who suffer injuries or to rescue others in peril.⁶⁹

In response to the American no duty to rescue rule, states have adopted Good Samaritan laws.⁷⁰ Good Samaritan laws attempt to mitigate tort law's harsh consequences for volunteer rescuers' ordinary negligence and good faith mistakes.⁷¹ In response to the duty to rescue that the "Law of the Sea" imposes, and to encourage rescues, Good Samaritans on navigable waterways may also be immune from ordinary negligence, if admiralty jurisdiction applies.⁷²

"[p]owerful, turbulent, and predictable rapids with large, unavoidable waves and holes or constricted passages." Ken Whiting, *River Classifications*, PADDLING.COM, <https://paddling.com/learn/river-classifications/> [https://perma.cc/KZY3-ZX53].

67. Jay Silver, *The Duty to Rescue: A Reexamination and Proposal*, 26 WM. & MARY L. REV. 423, 424 (1985).

68. *Id.* at 434–35. See also Weldon, *supra* note 5, at 1097, 1101, n.26; *id.* at 1114 (advocating for the Illinois' adoption of a broader Good Samaritan Act to provide tort immunity to volunteer non-medical rescuers for ordinary negligence).

69. See *Yania v. Bigan*, 155 A.2d 343, 346 (Pa. 1959).

70. See David A. Hyman, *Rescue Without Law: An Empirical Perspective on the Duty to Rescue*, 84 TEX. L. REV. 653, 679 (2006).

71. It should be noted that this Article does not address penalties for the failure to act. Very few Good Samaritan laws include a penalty for failure to act, requiring bystanders to assist another person who they know is in danger or suffering serious physical harm. See MINN. STAT. § 604A.01(1) (2001); 11 R.I. GEN. LAWS § 11-56-1 (1984); and VT. STAT. ANN. tit. 12, § 519(c) (1968); see also Jay Logan Rogers, Note, *Testing the Waters for an Arizona Duty-to-Rescue Law*, 56 ARIZ. L. REV. 897, 901–02 (2014) (discussing the three statutes departing from the common law no duty rule).

72. 46 U.S.C. § 2303 (1983).

A. State Law: The No Duty Rule to Rescue

Under American common law, one has “no duty to rescue”—absent a pre-existing duty or special relationship between an alleged tortfeasor and injured party.⁷³ American courts have made that clear. In *Yania v. Bigan*, the Supreme Court of Pennsylvania rejected the notion that individuals have an *affirmative duty* to rescue others.⁷⁴ In that case, the defendant remained a bystander while he watched another man drown on his own property. The court held that the bystander had no legal duty to pull the man from the water, unless he was legally responsible for placing him in the perilous situation in the first place or made the situation worse.⁷⁵

Although seemingly morally apprehensible, the absence of a bystander’s duty to rescue his or her fellow man in peril is based upon basic tort principles of misfeasance (active conduct that causes harm to another) and nonfeasance (or inaction that puts another in no worse position than before).⁷⁶ The former, misfeasance, implicates liability. The latter, nonfeasance, does not.

The no duty to rescue rule encourages bystanders’ inaction in emergencies. Indeed, potential legal penalties exist for one who chooses to act during an emergency. The rescuer who helps another becomes a potential tortfeasor. The rescuer must exercise a standard of care of a reasonably prudent rescuer under the circumstances, or the rescuer can be held liable for negligence.⁷⁷ The Restatement (Second) of Torts provides:

One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by (a) the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor’s charge, or (b) the actor’s discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him.⁷⁸

73. Such special relationships may arise between paddling business, such as rafting companies and paddling instructors.

[T]here is an exception [to the common law rule] when there is a special relationship between an alleged tortfeasor and an injured party—such as the relationship between a business and a patron . . . [T]his duty requires a business to take ‘reasonable action to protect or aid’ a patron . . .

Chaney v. Team Techs., Inc., 568 S.W.3d 576, 582 (Tenn. 2019).

74. *Yania*, 155 A.2d 343.

75. *Id.*

76. Weldon, *supra* note 5, at 1101 (discussing the history of the no duty rule).

77. RESTATEMENT (SECOND) OF TORTS § 324 (Am. L. Inst. 1965).

78. *Id.* See *Carter v. Reese*, 70 N.E.3d 478, 482 (Ohio 2016) (*citing* RESTATEMENT (SECOND) OF TORTS §§ 314–319, 323 (AM. L. INST. 1965)).

In sum,

[e]ven if a person has no pre-existing duty to provide aid or attempt a rescue, he or she can be liable in tort if (1) the person voluntarily ‘undertakes to perform acts to rescue or aid those in distress,’ and (2) his or her efforts to rescue (a) are reckless or wanton (that is, grossly negligent), (b) are negligent and place the plaintiff in a worse position (by increasing the risk of harm to him) than if there had been no rescue effort, or (c) prompts the plaintiff to detrimentally rely on the rescue effort.⁷⁹

B. The States’ Good Samaritan Statutes: Protection for the Heroes Among Us?

To mitigate the harsh consequences to bystanders who choose to exercise their moral duty to rescue or render emergency first aid to others despite no legal duty, all states have adopted Good Samaritan laws in some form.⁸⁰ Good Samaritan laws are historically based on the parable of the Good Samaritan in the *Gospel of Luke*.⁸¹ In the parable, a traveler is stripped of his clothing, beaten, and left for dead alongside the roadside. A priest and Levite ignore the man and leave him for dead.⁸² Then, a Samaritan helps the traveler, who not only is a stranger to him, but also his enemy.⁸³ The Samaritan feeds and clothes the traveler.⁸⁴ He makes certain that the traveler’s injuries are treated. A lawyer later asks Jesus “who is my neighbor?”⁸⁵ To answer, Jesus tells the lawyer the parable about the good Samaritan.⁸⁶

Good Samaritan statutes, like the parable, encourage bystanders to help others in the absence of any legal duty. The theory behind the law is to protect volunteer emergency caregivers and rescuers from

79. *McHenry v. Asylum Entm’t Del., LLC*, 260 Cal. Rptr. 3d 51, 63 (2020); *Wark v. United States*, 269 F.3d 1185, 1189 (10th Cir. 2001)

([P]laintiff must show that the defendant: (1) through its affirmative acts or through a promise to act, undertook to render a service that was reasonably calculated to prevent the type of harm that befell the plaintiff, and either (2) that the plaintiff relied on the defendant to perform the service, or (3) that defendant’s undertaking increased plaintiff’s risk.);

Mayall v. USA Water Polo, Inc., 174 F. Supp. 3d 1220, 1229 (C.D. Cal. 2016) (one who undertakes to do an act must do it with care).

80. *See Carter*, 70 N.E.3d at 482.

81. *Luke* 10:25–37.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

liability, thereby encouraging emergency care and rescues.⁸⁷ Virtually all states have adopted Good Samaritan statutes, mitigating some of the harsh consequences of volunteer emergency care givers' and rescuers' exposure to tort liability. Although the language varies, the requirements of the Good Samaritan statutes generally are: (1) the situation must be an emergency that the potential tortfeasor did not cause; (2) the services the potential tortfeasor renders must be voluntary or unpaid;⁸⁸ (3) the victim receiving care must consent to it; (4) the potential tortfeasor must act "in good faith" to help; and (5) the potential tortfeasor must not act with gross negligence.⁸⁹

Good Samaritan laws avoid the chilling effect that a decision against a Good Samaritan would have upon life-saving rescues.⁹⁰ The court will not judge the rescuer in hindsight, as an "armchair admiral after the fact," but will consider the rescue attempt "in the light of the circumstances that faced the rescuers when they acted."⁹¹ The Good

87. See, e.g., *Mueller v. McMillian Warner Ins. Co.*, 714 N.W.2d 183, 189 (Wis. 2006) (defining the purpose of the Wisconsin Good Samaritan statute); *Swenson v. Waseca Mut. Ins. Co.*, 653 N.W.2d 794, 797 (Minn. Ct. App. 2002) (defining the purpose of the Minnesota Good Samaritan statute); *Hardingham v. United Counseling Serv.*, 672 A.2d 480, 483 (Vt. 1995) (defining Vermont's Duty to Aid the Endangered Act's purpose). Danny R. Veilleux, Annotation, *Construction and Application of "Good Samaritan" Statutes*, 68 A.L.R.4th 294, art. 2 (1989).

88. For example, in *Lee v. State*, 490 P.2d 1206, 1209 (Alaska 1971), a state trooper was unable to rely on the Good Samaritan statute to relieve him of liability for his negligent act of shooting a child while rescuing her from a caged lion. The court held that statute's purpose was to induce voluntary rescuers by removing the fear of liability and therefore did not apply to a rescuer who was otherwise under a duty to act. *Id.* "[T]here is an exception [to the common law rule] when there is a special relationship between an alleged tortfeasor and an injured party—such as the relationship between a business and a patron [T]his duty requires a business to take 'reasonable action to protect or aid' a patron" *Chaney v. Team Techs., Inc.*, 568 S.W.3d 576, 582 (Tenn. 2019). As applied to paddling, Good Samaritan Statutes will likely not shield rafting companies and paddling instructors because of a pre-existing duty of care applicable to a business and patron.

89. See, e.g., *Bunting v. United States*, 662 F. Supp. 971 (Alaska 1987); *Guerrero v. Cooper Queen Hosp.*, 537 P.2d 1329 (Ariz. 1975); *Held v. City of Rocky River*, 516 N.E.2d 1272 (Ohio Ct. App. 1986). See also *Carter v. Reese*, 25 N.E.3d 1086 (Ohio Ct. App. 2014). In *Carter*, a truck driver slipped between the back of his truck trailer and a loading dock, pinning, but not hurting, his right leg. *Id.* at 1087–88. The driver asked a passerby to move the truck forward and to avoid putting it into reverse. The passerby, despite having no experience driving trucks, attempted to move the truck, but put it in reverse instead. The truck crushed the driver's leg which had to be amputated at the hospital. The court held that the statute provided immunity to rescuers for all but willful or wanton conduct that causes injury, and therefore, the passerby had no liability for what was likely grossly negligent conduct. *Id.* at 1093–94.

90. *Korpi v. United States*, 961 F. Supp. 1335 (N.D. Cal. 1997).

91. *Id.* at 1347 (quoting *Afran Transp. Co. v. S/S Transcolorado*, 458 F.2d 164 (5th Cir. 1972)).

Samaritan rescuer will only be liable for gross negligence or reckless conduct during the rescue attempt.⁹²

However, these laws fail to encourage rescues by all bystanders or in every emergency situation. Although it would seem that Good Samaritan laws protect all bystanders who become would-be heroes through voluntary actions to help others in distress, the laws are far from uniform. Good Samaritan statutes often protect limited categories of people acting in limited situations, depending upon the jurisdiction. The most common limitations involve the requirements of medical training and the type of emergency.⁹³

Some Good Samaritan statutes protect all persons providing emergency medical care, while others limit the protected class to trained medical personnel.⁹⁴ Some apply broadly, to protect those involved in non-medical situations.⁹⁵ Good Samaritan statutes generally fall into three categories: (1) those that specifically include by reference only medically trained persons; (2) those that apply to the rendition of medical aid by any person; and (3) those that more broadly apply to any person rendering emergency care, treatment, or other kinds of assistance without expressly requiring that such actions be medical in nature.⁹⁶

Good Samaritan laws among the states create a confusing hodgepodge and fail to protect many heroes among us from tort liability.⁹⁷ Commentators on the variation of the language in Good Samaritan statutes across the country postulate that the laws are “so confusing and ambiguous, that the people whom they are meant to protect either do not know that they are covered under a particular statute or cannot understand the extent of their protection.”⁹⁸ As a result, fear of potential lawsuits deter some bystanders from rescuing others in emergency situations.⁹⁹

92. *Id.*

93. *See generally* Carter v. Reese, 70 N.E.3d 478 (Ohio 2016) (summarizing Good Samaritan statutes and their limitations).

94. *Id.* at 482; *see also* Danny R. Veilleux, *supra* note 87.

95. Veilleux, *supra* note 87.

96. *Id.*

97. Eric A. Brandt, *Good Samaritan Laws — The Legal Placebo: A Current Analysis*, 17 AKRON L. REV. 303, 304 (1983).

98. *Id.*

99. *Id.*

1. Medically Trained Versus Non-Medically Trained Volunteers

Under many states' Good Samaritan statutes, those who are medically trained and specifically referenced within the statute have protection from liability in rescue situations. In Connecticut, Illinois, Kentucky, Michigan, and Missouri, for example, Good Samaritan statutes apply to registered or licensed medical professionals rendering medical assistance.¹⁰⁰ All states, except Kentucky, provide protection from liability for any licensed physician providing Good Samaritan emergency care in that state, regardless of their state of licensure.¹⁰¹ Kentucky protects only physicians licensed in Kentucky.¹⁰²

Connecticut's general Good Samaritan statute¹⁰³ lists a broader variety of people who may encounter an emergency situation and protects them from tort liability for ordinary negligence.¹⁰⁴ Connecticut's statute provides protection to:

[a] paid or volunteer firefighter or police officer, a teacher or other school personnel on the school grounds or in the school building or at a school function, a member of a ski patrol, a life-guard, a conservation officer, patrol officer or special police officer of the Department of Environmental Protection, or emergency medical service personnel, who has completed a course in first aid offered by the American Red Cross, the American Heart Association, the National Ski Patrol, the Department of Public Health or any director of health, as certified by the agency or director of health offering the course, and who renders emergency first aid to a person in need thereof, shall not be liable to such person assisted for civil damages for any personal injuries which result from acts or omissions by such person in rendering the emergency first aid, which may constitute ordinary negligence.¹⁰⁵

Connecticut's Good Samaritan statute also protects railroad employees¹⁰⁶ and parties, specifically including teachers, school person-

100. *Carter v. Reese*, 70 N.E.3d 478, 482–83 (Ohio 2016).

101. *See, e.g.*, CONN. GEN. STAT. ANN. § 52-557b(a)(1) (West 2020) (“A person licensed to practice medicine and surgery . . . or dentistry . . . or members of the same professions licensed to practice in any other state of the [U.S.], a person licensed as a registered nurse . . . or certified as a licensed practical nurse . . .”).

102. Kentucky's Good Samaritan Statute, KY. REV. STAT. ANN. § 411.148 (West 2020), covers the following persons: (1) “physicians licensed under KRS Chapter 311,” (2) “registered or practical nurse licensed under KRS Chapter 314,” and (3) “certified as an emergency medical technician by the Kentucky Cabinet for Health and Family Services . . .” KY. REV. STAT. ANN. § 311.668 also provides immunity from civil liability for users of automated external defibrillators.

103. CONN. GEN. STAT. ANN. § 52-557b(a)(1).

104. *See* CONN. GEN. STAT. ANN. § 52-557b.

105. § 52-557b(b).

106. § 52-557b(c).

nel, and school bus drivers, who have received training in administering epinephrine pens to others in an emergency.¹⁰⁷

Similarly, Illinois' Good Samaritan statute protects broad categories of volunteer rescuers as long as they hold some form of medical licensing for emergency training.¹⁰⁸ It extends protection from tort liability to: (1) "any person trained in basic cardiopulmonary resuscitation who has successfully completed training in accordance with the standards of the American Red Cross or the American Heart Association";¹⁰⁹ (2) persons using "an automated external defibrillator," provided they have requisite training;¹¹⁰ (3) any dentist or any person licensed as a dentist" in the United State;¹¹¹ (4) physicians licensed in the United States;¹¹² (5) practical or professional nurses licensed in the United States;¹¹³ (6) pharmacists licensed in the United States;¹¹⁴ (7) physical therapists as defined by the Illinois Physical Therapy Act;¹¹⁵ (8) veterinarians licensed in the United States;¹¹⁶ (9) "any person who is currently certified in first aid by the American Red Cross, the American Heart Association, or the National Safety Council";¹¹⁷ (10) "disaster relief volunteers" provided they have some form of licensure or registration provided for in this provision;¹¹⁸ and (11) "[l]aw enforcement officers, firemen, emergency medical technician (EMTs), and first responder."¹¹⁹

Michigan's Good Samaritan statute¹²⁰ applies to the following medical personnel, provided they are licensed and registered under Michigan statutes: (1) physician; (2) physician assistant; (3) registered professional nurse; (4) practical nurse; or (5) EMS provider. Michigan's statute includes two exceptions: (1) it prohibits compensation for the administration of aid and (2) physician-patient relationship (or the equivalent based on the helping party's license, i.e., EMS provider-patient relationship) must not exist between parties.¹²¹

107. See § 52-557b(e-i)

108. See Good Samaritan Act, 745 ILL. COMP. STAT. ANN. 49 (West 2020).

109. § 49/10.

110. § 49/12.

111. § 49/15.

112. § 49/25.

113. § 49/35.

114. § 49/36.

115. § 49/45.

116. § 49/60.

117. § 49/67.

118. § 49/68.

119. § 49/70.

120. MICH. COMP. LAWS ANN. § 691.1501 (West 2020).

121. *Id.*

Given the breadth of many states' Good Samaritan statutes, the requirement of "medical training" or "licensing" may be satisfied in a variety of situations. A broad construction of medical training or licensing may render some Good Samaritan statutes applicable to paddlers turned swiftwater rescuers.

2. Acts of Medical Aid

Some states' Good Samaritan statutes limit the type of emergency that protects a volunteer rescuer or emergency care giver from potential tort liability. In states with Good Samaritan statutes that apply only to medical aid (or similar language) in an emergency situation, the question is what acts or services are considered medical aid.

Certain categories of medically trained personnel are immunized only when their conduct is within the confines of the statute.¹²² For example, a Good Samaritan statute may not apply to an individual who successfully completed American Red Cross training in basic CPR when administering first aid or emergency care; they may only have immunity when administering CPR to a person who is an apparent victim of acute cardiopulmonary insufficiency.¹²³

Idaho, North Carolina, Oklahoma, and Oregon apply Good Samaritan statutes to protect medical professionals and non-medically trained people as well, as long as they are rendering emergency medical aid.¹²⁴ All states and the District of Columbia's Good Samaritan Laws exempt people from liability when using automated external defibrillators ("AEDs") in an emergency.¹²⁵ Many Good Samaritan statutes apply to a person who holds a certificate from the American Red Cross and renders emergency CPR.¹²⁶

122. See Good Samaritan Act, 745 ILL. COMP. STAT. ANN. § 49/36, 67 (West 2020) (limiting pharmacist immunization to only when administering an opioid antagonist; limiting immunization of person certified in first aid to only when administering "first aid" which is distinguished from "emergency care").

123. *Id.* at 49/10.

124. *Carter v. Reese*, 70 N.E.3d 478, 483 (Ohio 2016).

125. See, e.g., Connecticut's Good Samaritan statute which protects:

a medical technician or any person operating a cardiopulmonary resuscitator or a person trained in cardiopulmonary resuscitation in accordance with the guidelines set forth by the American Red Cross or American Heart Association, or a person operating an automatic external defibrillator, who, voluntarily and gratuitously and other than in the ordinary course of such person's employment or practice, renders emergency medical or professional assistance to a person

CONN. GEN. STAT. ANN. § 52-557b(a)(1) (West 2020).

126. For example, the Kentucky Good Samaritan Statute provides immunity from ordinary negligence to persons certified by the American Heart Association or the American Red Cross to perform cardiopulmonary resuscitation, or employees of any board of educa-

Courts have broadly interpreted the phrase “emergency medical services.” For example, in *Taylor v. City and County of San Francisco*, the court broadly construed the phrase to include “rescue procedures and transportation, or other related activities necessary to ensure the health or safety of a person in imminent peril.”¹²⁷ Under a broad interpretation of a Good Samaritan statute, first aid would apply to a paddler’s transporting a potential drowning victim safely to shore.

Similarly, North Carolina courts broadly construe the term “medical aid.” The North Carolina Good Samaritan statute uses “first aid,” “emergency health care treatment,” and “medical or other health care” as the qualifying language for conduct that is protected under the Good Samaritan statute.¹²⁸ In a North Carolina case of first impression regarding the interpretation of their Good Samaritan statute, the court concluded that the plain language of the statute “seeks to insulate anyone who stops at the scene of an accident and renders *assistance* to someone injured in that accident from civil suit”¹²⁹ The court noted, however, that the North Carolina legislature could have “made clearer their true intent.”¹³⁰ The court relied upon Maine’s Good Samaritan statute as an example of clear legislative intent. It provides:

[A]ny person who voluntarily, without the expectation of monetary or other compensation from the person aided or treated, renders first aid, emergency treatment or rescue assistance to a person who is unconscious, ill, injured or in need of rescue assistance, shall not be liable for damages for injuries *alleged to have been sustained by such person nor for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid, emergency treatment or rescue assistance*, unless it is established that such injuries or such death were caused willfully, wantonly or recklessly or by gross negligence on the part of such person.¹³¹

Additional states’ Good Samaritan statutes fall under the third, broad category of protection for potential tortfeasors in a rescue situation. The Good Samaritan statute applies to any person rendering

tion who has completed a course in first aid and who maintains current certification therein in accordance with the standards set forth by the American Red Cross. KY. REV. STAT. ANN. § 411.148 (West 2020).

127. *Taylor v. City & County of San Francisco*, No. 97-16403, 1999 WL 23141, at *2 (9th Cir. Jan. 13, 1999).

128. N.C. GEN. STAT. ANN. § 90–21.14 (West 2020).

129. *Hutton v. Logan*, 566 S.E.2d 782, 786 (N.C. Ct. App. 2002) (emphasis added).

130. *Id.*

131. *Id.* (quoting ME. REV. STAT. ANN. tit. 14, § 164 (West 2001)).

emergency care, treatment, or other kinds of assistance without expressly requiring such actions be medical in nature.¹³²

The Ohio Supreme Court's decision in *Carter v. Reese*¹³³ also broadly interpreted a Good Samaritan statute's language, while recognizing the great variation in language of other states' Good Samaritan statutes. In *Carter*, a truck driver slipped between the back of his truck trailer and a loading dock, pinning, but not injuring, his right leg.¹³⁴ The pinned driver asked a bystander to move the truck forward and to avoid putting it into reverse.¹³⁵ The bystander had no experience driving trucks.¹³⁶ When he attempted to move the truck, he put it in reverse instead of forward.¹³⁷ The truck crushed the driver's leg and his leg was amputated.¹³⁸ The court of appeals held that the Good Samaritan statute protects rescuers for all but willful or wanton conduct.¹³⁹

Two issues were before the Ohio Supreme Court in *Carter*. First, the court addressed what the legislature intended when it used the phrase "no person shall be liable in civil damages."¹⁴⁰ The court questioned whether the legislature intended for the Good Samaritan statute to apply to "only health care professionals who administer emergency care or treatment at the scene of an emergency, or, more broadly, to include *any person* who administers emergency care or treatment at the scene of an emergency?"¹⁴¹ The court concluded that "Ohio's Good Samaritan statute applies to any person who administers emergency care or treatment at the scene of an emergency including but not limited to health care professionals."¹⁴² The court further noted, if the legislature had intended for the statute to apply only to health care professionals, it would have used the terms medical professionals, health care professionals, or similar language in the statute.¹⁴³

Second, the court considered what "the General Assembly intend[ed] by using the phrase 'administering emergency care'—did it

132. See *Carter v. Reese*, 70 N.E.3d 478, 483–86 (Ohio 2016) (reviewing the language of Good Samaritan statutes in the relevant states).

133. *Id.* at 483–86, 489.

134. *Id.* at 480.

135. *Id.*

136. *Id.*

137. *Id.* at 480.

138. *Id.*

139. *Id.*

140. *Id.* at 481–82.

141. *Id.*

142. *Id.* at 489.

143. *Id.* at 486.

intend to limit emergency care to only the administration of *medical* care, or, did it intend to include all forms of care administered at the scene of an emergency?”¹⁴⁴ The court concluded that “the phrase ‘administering emergency care’ in the statute is not limited to medical acts and includes rendering medical and any other form of assistance to the safety and well-being of another when the result of an unforeseen combination of circumstances calls for immediate action.”¹⁴⁵

Given the breadth of many states’ Good Samaritan statutes, the requirement of “medical aid” or “emergency aid” may also be satisfied in a variety of situations. A broad construction of those terms may protect paddlers turned swiftwater rescuers, as discussed below.

IV. Good Samaritan Laws for Paddlers Turned Swiftwater Rescuers

Paddlers become Good Samaritan volunteer swiftwater rescuers and help fellow paddlers and non-paddlers every day on swift, white-water rivers. Courts should construe state and federal Good Samaritan statutes to immunize volunteer swiftwater rescuers.

A. State Good Samaritan Statutes

In states where Good Samaritan statutes apply only to the medically trained, many volunteer swiftwater rescuers may be protected because they receive specialized training through swiftwater rescue courses and certifications. Those who are trained in first aid and CPR as part of their swiftwater rescue training should find protection under some Good Samaritan statutes that use “medical training” or “medical personnel” language in their statutes, but do not limit medical care to simply rendering CPR or AED.

In states that do not limit Good Samaritan laws to medically trained personnel and medical emergencies, protection should apply to rescuers providing more than CPR, AED, or first aid. For example, Good Samaritan statutes should apply to protect a paddler turned swiftwater rescuer when an attempted rescue goes badly. Good Samaritan statutes should apply to protect the paddler from liability for ordinary negligence occurring while pulling a victim to the riverbank, as there can be no opportunity to render first aid to a victim on shore unless the paddler can first pull the victim to shore. In essence, the

144. *Id.* at 482.

145. *Id.* at 489.

true first aid is the aid the paddler-turned-swiftwater rescuer provides to a swimmer while he or she is at the mercy of the water.

Alternatively, if courts cannot construe the language of state statutes to protect volunteer swiftwater rescuers, legislatures should remodel their state statutes after Good Samaritan statutes that protect medically trained bystanders, as well as those who have no medical training and act outside of a medical emergency. Arkansas' Good Samaritan statute is a good example of a statute that applies to non-medically trained Good Samaritans.¹⁴⁶ After addressing medically trained professionals in the first part of the statute,¹⁴⁷ it extends protection to non-medically trained Good Samaritans by providing:

(b) Any person who is not a health care professional who is present at an emergency or accident scene and who: (1) Believes that the life, health, and safety of an injured person or a person who is under imminent threat of danger could be aided by reasonable and accessible emergency procedures under the circumstances existing at the scene thereof; and (2) Proceeds to lend emergency assistance or service in a manner calculated in good faith to lessen or remove the immediate threat to the life, health, or safety of such a person, shall not be held liable in civil damages in any action in this state for any act or omission resulting from the rendering of emergency assistance or services unless the act or omission was not in good faith and was the result of gross negligence or willful misconduct.¹⁴⁸

California's Good Samaritan statute is another good example of legislation that protects all Good Samaritans, even those without medical training. It provides: "No person who in good faith, and not for compensation, renders emergency medical or non-medical care at the scene of an emergency shall be liable for civil damages resulting from any act or omission."¹⁴⁹

These statutes do not limit the category of people who can qualify as Good Samaritans. Nor do they limit the conduct of the Good Samaritan to emergency medical care. Thus, they are examples of Good Samaritan statutes that protect heroes among us, encouraging bystanders to become rescuers and avoiding penalizing them for their heroic actions.

146. ARK. CODE ANN. § 17-95-101 (West 2017).

147. *Id.*

148. *Id.*

149. CAL. HEALTH & SAFETY CODE § 1799.102 (West 2009).

B. Federal Good Samaritan Statutes

It may be surprising that federal admiralty law, rather than state law, may govern some claims arising from an accident involving paddlers occurring on navigable waters. It is more questionable, however, whether federal law, which includes a Good Samaritan statute in the Boater Safety Act, would apply to accidents on whitewater rivers.

Unlike land rescues unconnected to maritime, under the “Law of the Sea” and admiralty law, “a master or individual in charge of a vessel” is under an affirmative duty to rescue. Admiralty law codifies the longstanding moral convention of sea farers—requiring a duty to rescue those who “go down to the sea in ships”¹⁵⁰ have a duty to rescue.¹⁵¹ “A master or individual in charge of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master or individual in charge can do so without serious danger to the master’s or individual’s vessel or individuals on board.”¹⁵² These Rules shall apply to all “vessels of the United States upon the high seas and in all waters connected therewith, navigable by seagoing vessels.”¹⁵³

The federal Boating Safety Act also contains a Good Samaritan provision:

An individual . . . [who] gratuitously and in good faith render[s] assistance at the scene of a marine casualty without objection by an individual assist-ed, is not liable for damages as a result of rendering assistance or for an act or omission in providing or arranging salvage, towage, medical treatment, or other assistance when the individual acts as an ordinary, reasonable, and prudent individual would have acted under the circumstances.¹⁵⁴

Typically attached to incidents on the high seas, there are three requirements for determining whether a tort action falls within federal maritime jurisdiction. First, the incident must involve “a vessel;”¹⁵⁵ second, the incident must occur “on or over ‘navigable waters’”; and third, “the activity giving rise to the incident must have had a substantial relationship to traditional maritime activity.”¹⁵⁶ If the three requirements are met, federal admiralty jurisdiction extends to “cases of injury or damage, to person or property, *caused by a vessel*

150. *Psalm* 107:23–31 (King James).

151. 46 U.S.C. § 2304 (2020).

152. *Id.*

153. 33 U.S.C. § 1602 (2020) (editorial notes ¶ 2).

154. 46 U.S.C. § 2303(c) (2020).

155. 46 U.S.C. § 30101(a) (2020).

156. *Vasquez v. GMD Shipyard Corp.*, 582 F.3d 293, 298 (2d Cir. 2009) (quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995)).

on navigable waters, *even though the injury or damage is done or consummated on land.*¹⁵⁷ To address the gray area between admiralty jurisdiction over land and sea, Congress enacted the Admiralty Extension Act (“AEA”).¹⁵⁸

AEA provides, “[t]he admiralty and maritime jurisdiction of the United States extends to and includes all cases of injury or damage, to person or property, caused by a vessel on navigable water, even though the injury or damage is done or consummated on land.”¹⁵⁹ Applying the AEA, the Supreme Court in *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.* exercised jurisdiction over claims arising out of the flooding of a tunnel and buildings in Chicago, caused by piling work performed by a crane barge in the Chicago River.¹⁶⁰

The threshold issue in applying admiralty jurisdiction is whether the claim involves a “vessel.”¹⁶¹ The requirement is not difficult to meet. For example, a kayak or any small paddle craft is a “vessel” for purposes of admiralty jurisdiction.¹⁶² Under federal law, “[t]he word ‘vessel’ includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.”¹⁶³ An object is a vessel when, “a reasonable observer, looking to the [object]’s physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.”¹⁶⁴ The remaining requirements for admiralty jurisdiction over incidents occurring on whitewater are more difficult to satisfy.

157. 46 U.S.C. § 30101(a) (2021) (emphasis added). Applying the AEA, the Supreme Court in *Jerome B. Grubart, Inc.*, 513 U.S. at 530, exercised jurisdiction over claims arising out of the flooding of a tunnel and multiple buildings in Chicago, caused by piling work performed seven months earlier by a crane barge in the Chicago River.

158. Admiralty Jurisdiction Extension Act, 46 U.S.C. § 30101 (2020) (originally enacted as Act of June 19, 1948, ch. 526, § 740, 62 Stat. 496).

159. *Id.*

160. *Jerome B. Grubart, Inc.*, 513 U.S. at 530 (holding that “the District Court has federal admiralty jurisdiction over Great Lakes’ Limitation Act suit”).

161. *Id.* at 535.

162. *See* *Lozman v. City of Riviera Beach*, 568 U.S. 115, 121 (2013) (concluding an object is a vessel when “a reasonable observer, looking to the [object]’s physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water”). As such, kayaks and small paddle crafts would most likely be considered a vessel to a reasonable observer.

163. 1 U.S.C. § 3 (2020); *see also* *Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005) (noting that the definition of vessel has remained virtually unchanged between the 1873 revisions and the 1947 recodification).

164. *Lozman*, 568 U.S. at 121 (holding that a 60-foot by 12-foot floating home is not a “vessel”). Not everything that floats is a vessel. *See* *Powers v. Bethlehem Steel Corp.*, 477 F.2d 643, 649 (1st Cir. 1973) (raft which served as a platform upon which workers stood to repair a pier was not a “vessel” when it was tied to the pier); *People v. Heiple*, 478 N.E.2d

It is moderately difficult to apply admiralty law to whitewater rivers because the whitewater river must be a navigable river. Whether a river is a “navigable waterway” depends upon its nature and historic use. The U.S. Supreme Court established the federal navigability test for waterways in *The Daniel Ball*.¹⁶⁵ Rivers and other waterways are navigable “when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.”¹⁶⁶ It is “[t]he capability of use by the public for purposes of transportation and commerce” that is key to determining whether a river is navigable, “rather than the extent and manner of that use.”¹⁶⁷

Even if a river in its natural state is impassable because of rapids or other obstacles requiring portage, it is navigable so long as “the natural navigation of the river is such that it affords a channel for useful commerce.”¹⁶⁸ If a river with rapids—no matter how small or shallow—was historically used in the fur or logging trades, it is navigable.¹⁶⁹ A waterway can be navigable, even if it contains challenging rapids or is impassable because of the low water during certain parts of the year.¹⁷⁰ The U.S. Supreme Court in *United States v. Utah* held that the Green, Grand, San Juan, and Colorado Rivers flowing through Utah are navigable waterways, even in the absence of a history of navigation during the fur trade or other commercial activity, as “[t]he extent of existing commerce is not the test.”¹⁷¹ Rather, susceptibility of the use is the test.¹⁷²

Courts have held that many rivers flowing within the United States are navigable, despite rapids and waterfalls that make naviga-

1388, 1391 (Ill. App. Ct. 1985) (windsurfer convicted of failing to wear a life jacket was not riding a “vessel”).

165. *Daniel Ball*, 77 U.S. 557, 563 (1870).

166. *Id.* at 563; *see also* *Montello*, 87 U.S. 430 (1874) (holding that the Fox River in Wisconsin is a navigable river, even though it had rapids that needed to be portaged). Here, Wisconsin granted rights in the Fox River to a private company. The company removed rapids and added canals, to make the Fox River navigable for larger steamships. *Id.*

167. *Daniel Ball*, 77 U.S. at 441.

168. *Id.* at 442–43 (establishing a river’s navigability through its historical use by fur trading boats).

169. *United States v. Appalachian Elec. Power Co.*, 311 U.S. 377, 405–06 (1940) (explaining that rivers with rapids are navigable if once used for floating out logs). Shallow rivers used in the past to transport furs by canoe are navigable, even if obstructed. *Econ. Light & Power Co. v. United States*, 256 U.S. 113, 117 (1921).

170. *United States v. Utah*, 283 U.S. 64, 84 (1931).

171. *Id.* at 82, 89.

172. *Id.* at 82.

tion difficult and require portages. Navigable rivers include the classified-IV portion of the New River, which flows through West Virginia and Virginia.¹⁷³ The Niagara River, with its huge waterfalls, including Horse Shoe Falls and American Falls, is also a navigable river.¹⁷⁴ Rivers are a web of roadways upon which paddlers and other boaters travel for both recreation and commerce. Many rivers flow across state borders and others flow into the seas, subject to federal navigation law. However, for admiralty jurisdiction, more is required than declaring a waterway is navigable. A court exercising admiralty jurisdiction must also find a nexus or connection to traditional maritime aspects.¹⁷⁵ The connection test for admiralty jurisdiction has two requirements. First, the *type of incident* involved must create a potential hazard to maritime commerce.¹⁷⁶ Second, the *type of activity* involved must bear a “substantial relationship to traditional maritime activity.”¹⁷⁷

The U.S. Supreme Court has made clear that claims arising out of noncommercial, small craft, pleasure boating on navigable waters may meet the maritime nexus requirement.¹⁷⁸ *Foremost Ins. Co. v. Richardson* involved a collision between an eighteen-foot pleasure boat and a sixteen-foot recreational fishing boat on a river in Louisiana.¹⁷⁹ The collision resulted in the death of a passenger.¹⁸⁰ Neither of the small boats were involved in any commercial maritime activities.¹⁸¹ While observing that pleasure boats may have little connection with traditional maritime commerce, the Court found that the “potential disruptive impact of a collision between boats on navigable waters, when coupled with the traditional concern that admiralty law holds for navigation, compels the conclusion that this collision between two pleasure boats on navigable waters has a significant relationship with maritime commerce.”¹⁸² The policy of protecting maritime commerce is found in uniform rules of conduct for all boaters,¹⁸³ concluding that the “failure to recognize the breadth of this federal interest ig-

173. *Appalachian Elec. Power Co.*, 311 U.S. at 418, *superseded by statute*, Clean Water Act, 33 U.S.C. § 1362(7) (2014), *as recognized in* *Rapanos v. United States*, 547 U.S. 715 (2006).

174. *See* *Pierce, Jr.*, *supra* note 13, at 1077; *Sawczyk v. U.S. Coast Guard*, 499 F. Supp. 1034, 1039 (W.D.N.Y. 1980).

175. 46 U.S.C. § 30101 (2021).

176. *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 675 n.5 (1982).

177. *Id.*

178. *Id.* at 674.

179. *Id.* at 678 (Powell, J., dissenting).

180. *Id.* at 669.

181. *Id.* at 670.

182. *Id.* at 675.

183. *Id.*

nores the potential effect of noncommercial maritime activity on maritime commerce.”¹⁸⁴

Since the question of whether admiralty law can apply to small pleasure boats, with little—if any—connection to maritime commerce, was considered, courts have found creative ways to make the maritime connection. For example, the Southern District Court of New York applied admiralty jurisdiction to an incident involving a rescue of a swimmer by a kayaker.¹⁸⁵ In *Roane v. Greenwich Swim Committee* a lifeguard kayaker rescued a swimmer during a distance event.¹⁸⁶

The court noted that, in exercising admiralty jurisdiction there is no requirement “that the maritime activity in question ‘be an exclusively commercial one.’”¹⁸⁷ The Southern District Court of New York characterized the rescue of swimmers as “life salvage” incidents, which “traditionally are heard by district courts sitting in admiralty.”¹⁸⁸ More specifically, admiralty courts decide whether a “salvor has acted so negligently as to become liable for additional damage to the property sought to be salvaged, applying the generally recognized rule that ‘the Good Samaritan, once he has entered upon his office, will be treated like anyone else’ in respect to tort liability.”¹⁸⁹ The court concluded that the circumstances satisfied the second part of the connection test, as the lifesaving practices of the parties was substantially related to traditional maritime activity.¹⁹⁰

In determining that the incident was related to maritime activity, the court concluded, “an incident’s potential disruption of commercial activity need not be of a high degree to satisfy admiralty jurisdiction.”¹⁹¹ According to this lowered degree of commercial connection and because commercial ships traversed the waters, the court reasoned that commercial ships would be distracted from normal waterfaring hazards if they undertook the rescue of a swimmer. Therefore, the court found that the incident had a “sufficient potentially disruptive impact upon maritime commerce,” satisfying admiralty jurisdiction.¹⁹²

184. *Id.*

185. *Roane v. Greenwich Swim Comm.*, 330 F. Supp. 2d 306, 309–15 (S.D.N.Y. 2004).

186. *Id.* at 308.

187. *Id.* at 311 (quoting *Foremost Ins. Co.*, 457 U.S. at 674).

188. *Id.* at 314.

189. *Id.* *Roane*, 330 F. Supp. 2d at 314. *Id.* at 315. *Id.* *Exec. Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972). *Sisson v. Ruby*, 497 U.S. 358, 363 (1990).

190. *Roane*, 330 F. Supp. 2d at 314.

191. *Id.* at 315.

192. *Id.*

In an earlier case, *Executive Jet Aviation, Inc. v. Cleveland*, the Supreme Court held that “a collision between two pleasure boats pursuing no commercial purpose fell within admiralty jurisdiction.”¹⁹³ In yet another case, the Supreme Court opines, “[t]he jurisdictional inquiry does not turn on the *actual* effects on maritime commerce of the [incident] Rather, a court must assess the general features of the type of incident involved to determine whether such an incident is likely to disrupt commercial activity.”¹⁹⁴

However, the West Virginia Supreme Court ruled that a commercial rafting incident did not meet the last two prongs of the admiralty jurisdiction test, without reaching the question of whether the incident occurred on navigable waters.¹⁹⁵ In *River Riders, Inc. v. Steptoe*, drowning victims’ families argued that a commercial rafting outfitter/operator was negligent, careless, and failed to conform to the standard of care of reasonable outfitters, by unsafely running a raft trip on the Shenandoah River during high water.¹⁹⁶ In rejecting admiralty jurisdiction over an accident occurring on whitewater, the court observed:

[I]t is hard to envision how the act of whitewater rafting could have a potentially disruptive impact on maritime commerce, However, even assuming, for the sake of argument, . . . , it still did not bear a substantial relationship to traditional maritime activity The cases before us . . . do not concern piloting, shipping, or navigational error, or other aspects of traditional maritime activity. [citation omitted] The requisite maritime connection is therefore missing.¹⁹⁷

The court further noted the dearth of court decisions applying admiralty jurisdiction to whitewater rafting and surmised why that is the case:

Perhaps this is because the very nature of the activity of whitewater rafting is not the customary mode of travel or transportation with which maritime law has ever been concerned. Whitewater rafting is a recreational activity where participants seek the adventure of paddling a rubber raft in rapidly moving whitewater streams and rivers. Such use of streams and rivers carrying people, not as traveling passengers, but rather as participants seeking adventure, makes it difficult to conceive that whitewater rafting bears a substantial relationship to traditional maritime activity.¹⁹⁸

193. *Exec. Jet Aviation, Inc.*, 409 U.S. 249.

194. *Sisson*, 497 U.S. at 363; *see also* *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 533–34 (1995).

195. *River Riders, Inc. v. Steptoe*, 672 S.E.2d 376, 388 (2008).

196. *Id.* at 381.

197. *Id.* at 388.

198. *Id.*

The *River Riders, Inc.* case demonstrates the reluctance of courts to apply admiralty jurisdiction to whitewater rafting or paddling, even if the river is navigable. Of note, the commercial raft operator was subject to West Virginia's Whitewater Responsibility Act.¹⁹⁹ Yet, it is arguable whether the federal admiralty law, including Good Samaritan provisions, could apply to claims growing out of a swiftwater rescue occurring on navigable waters if the nexus requirements can be argued. There is a benefit to applying admiralty law where state Good Samaritan statutes are inadequate or too narrow to protect volunteer swiftwater rescuers.

Conclusion

Some states' Good Samaritan statutes are too limited to protect the heroes among us from potential tort liability for ordinary negligence during rescues. They often limit the categories of protected rescuers to medically trained rescuers and medical emergencies. A narrow interpretation of the limiting language does not protect the quintessential Good Samaritan: a paddler turned volunteer swiftwater rescuer. Trained in swiftwater rescue and carrying rescue equipment, paddlers are often first responders to an emergency on the river, as they are already on or near the scene of an emergency, ready and willing to help. They render the very first and necessary first aid by delivering potential drowning victims safely to shore. Their rescue efforts can make the difference between a body recovery and live rescue.

Good Samaritan statutes should be construed to recognize the special swiftwater training that many paddlers possess and the emergency equipment that they carry with them on rivers. Although not specifically medical training, some training involves CPR and wilderness first aid, which may bring paddlers turned volunteer swiftwater rescuers within the statutory language. Alternatively, legislators should amend their states' Good Samaritan statutes to more broadly protect the heroes among us.

Finally, local (navigability) and nexus requirements may limit admiralty jurisdiction over many incidents that occur on whitewater rivers that are far removed from traditional maritime activities on the high seas. But the possibility of admiralty jurisdiction should not be overlooked where state laws are inadequate and one can make the connection to maritime activities.

199. *Id.* at 381; *see also* W. VA. CODE § 20-3B-3(b) (1987).

