The issues will be discussed as follows **(1)** Ye Olde Sawmill (YOS)'s liability to its sawmill employees employed before YOS suspended operations; **(2)** YOS's liability to the hunters and the possible effects of the IMAX; **(3)** YOS's liability to Burt (B), Chris (C), and Abby (A); **(4)** A, B, C, & Danny (D)'s liability to each other.

(1) The original employees before YOS suspended operations will have an action against YOS for making them wear puffy shirts and floppy shoes. This went against custom of sawmills, and later the Occupational Safety and Health Administration (OSHA) made rules against these practices as unsafe working conditions. Even if wearing the floppy shoes and bell-sleeved shirts were industry custom, YOS still breached a standard of care. In *The T.J. Hooper*, having receiving sets (or radios) on tug boats was not industry custom; however, the court determined that even absent a custom, it was reasonable for the court to require tug boat owners to equip their tugs with radios. Since YOS was aware of the risk of the uniform after the first injury, a court would find it unreasonable for them to have continued to enforce those uniforms.

Several employees were maimed from tripping over the floppy shoes and getting the bell-sleeves caught in blades. After the first incident, YOS should have changed the unsafe conditions (uniforms), but instead more than one employee was injured. Learned Hand's BPL analysis from *Carroll Towing* can be used to show that the burden on

YOS of preventing the injury was not greater than the probability of the injury multiplied by the extent of the harm or damage. Especially after the first injury occurred, the probability that another injury would occur increased, and the extent of the damage was known. The injury to employees and the probability of more injuries was much greater than the burden on YOS of changing the uniforms to something safer. Therefore, YOS will be liable to those maimed employees. YOS may have to pay more damages because of OSHA and the previously maimed employees, which may not change the standard of care owed, but show that YOS was aware of the effects of the uniform and did not change it. Therefore, YOS acted willfully and wantonly in this situation and the ones that follow (like Splashers' hypothetical).

(2) The hunters were anticipated trespassers because YOS knew it was hunting season and purposefully advertised their lumber experience to bring in hunters. Danny (D), the CEO, also knew that hunters frequented the forest in the area. Therefore, YOS had a duty to warn or make save concealed artificial conditions which were known to them and involved a risk of death or serious injury. The company didn't breach this duty because it was not aware that the IMAX dome would roll off the building and kill the hunters. This accident was caused by D who negligently failed to turn off the machinery before taking B to the hospital. However, the hunters were not foreseeable plaintiffs under the standard of proximate cause from *Palsgraf*, so

YOS and D did not proximately cause the deaths of the hunters. If liability was imposed on YOS, the scope of liability would be too great. The accident also did not fall within the foreseeability test or the harm-within-the-risk test. Andrews would want to impose liability on YOS because the incident happened in the same time and location as the negligent act, without any intervening causes, and YOS is better able to compensate for the hunter's deaths than the individual families affected by them. However, YOS will escape liability because the hunters were not foreseeable plaintiffs. Also the IMAX might cause a problem with attractive nuisance if there are children in the area of the IMAX dome, because it looks like Epcot in Disney World.

(3) As an innkeeper, YOS would owe the "highest degree of care" to its patrons like common carriers. An innkeeper would also owe a duty to aid its patrons. A, B ,C are considered invitees, and YOS would have a duty to inspect and make safe any concealed dangers in the area. The hazards were not hidden to YOS because of the previously maimed employees discussed in section one. The hazards of log surfing and other dangerous sawmill activities were not hidden to A, B, and C because they signed a waiver. D also discussed the dangers with them before asking them to participate in log surfing. Any negligent actions on the part of D will create liability in YOS because of respondent superior or vicarious liability.

Negligence per se may also apply. While A, B, & do not specifically fall under the OSHA regulation, as they are not "employees", they could be considered the class of plaintiffs the statute meant to protect (*Ryan*), and their injuries may be considered the class of injuries the statute was meant to prevent. Continuing to allow people to wear dangerous clothing after OSHA specifically ordered them not to shows that YOS did fall below the standard of care as it applies to the clothing standard. B could not clear his feet from the saw blade possibly because of the floppy shoes he had to wear. Also, OSHA addressed the issue of not having a red light flash prior to the saw starting. YOS's saw does fall into the regulation because the blade was 60 inches which is over 12 inches; however, B's injuries were not caused as a result of normal working procedures in a sawmill. The requirement of the red light was not designed to tell people to stop 'log surfing' rather it was only there to warn of the starting of the saw blades. The light flashing at the wrong time did not warn B of the blade starting up. He knew it would have to start. While B would later be able to show that red lights render him paralyzed with fear, the operator without this knowledge would have no foreseeability that B would have jumped off the log.

YOS breached the standard of care to aid its patrons by letting B "lumber surf" and not providing reasonable aid after his injury. YOS will be liable for D's negligence because of respondent superior. D

breached YOS's emergency protocol by not calling 911, and he didn't save B's feet by wrapping them and putting them on ice, as the protocol called him to do. Instead D drove B to the hospital. In *Beswick v. City of Philadelphia*, an employee did not follow protocol for 911 calls. The employee's decision to not follow protocol was determined to be sufficient for both actual and proximate cause. The defendant's omission created a risk of harm to the plaintiff, and it became a question for the jury to decide if the omission was a substantial factor in producing the harm (*Hamil*). Using this analysis, not following protocol can be said to have actually and proximately caused B's injuries. A jury, given the chance to decide if D's omission of protocol was the legal cause of B's injuries, would likely find that it was. B lost both feet and has to walk using prosthetic limbs. If D had followed protocol, B's feet would have been on ice and possibly been saved. Therefore, his injury was worsened because D did not follow the protocol. B should receive compensatory damages from YOS for D's negligence.

After C's injury occurred, D also did not follow the protocol for concussions because D did not monitor C's level of attentiveness or keep C from falling asleep. D also did not get C to a doctor, so D breached his duty to C. D's negligence actually and proximately caused C's coma because D did not keep C from falling asleep. Because the first-aid chart lists the symptoms of a concussion and the

protocol, C's resulting coma was foreseeable. The jury would likely determine that D's omission was a substantial factor in causing C's coma. C suffered damages from being in a coma. Not only was he deprived from work during that time period, but he also suffered economic loss because his business closed completely. Many other individuals who worked for him and lived in his community also suffered economically because they lost their jobs, and the closure damaged the vitality of their community. Compensatory damages are not given for mere economic loss. An oblique injury such as economic loss of this type may create liability under oblique torts (see next semester). However, C should be able to recover because his economic loss was accompanied with a physical injury. YOS is liable to C for negligence.

Due to seeing B's accident, A suffers from post-traumatic stress syndrome and sought medical treatment. She may be able to recover compensatory damages for severe emotional distress under negligent infliction of emotional distress (NIED) depending the statutes, common law, and elements of NIED in the state. Assuming that this state falls into the majority of states who allow NIED for plaintiffs who fall under the class of plaintiffs who can bring a wrongful death action, A could not recover for NIED because she is not the spouse or close relative of B.

YOS's main defense for each claim is the waiver signed by A, B, & C which signed off to serious injury, death, & property damage. Therefore, A, B, & C assumed the risk both expressly and impliedly. They expressly assumed the risk by signing the waiver. However, express agreements are not valid for certain defendants including common carriers and innkeepers which includes YOS, and express agreements are not valid for gross negligence. D's behavior may be considered willful and wanton because he encouraged B to lumber surf and played the practical joke on them "to keep them on their toes" which he should have know would result in an injury. Even absent D's conduct, the waiver is still not a valid defense because YOS is an innkeeper (a defendant like a common carrier). A, B, & C also assumed the risk (impliedly) by working in YOS when they were aware of the all the dangers and their lack of training. Specifically, B assumed the risk by choosing to "lumber surfing" out of his own will. Because of B's actions, YOS may use comparative negligence as a defense. B may be said to be comparatively negligent because he willingly lumber surfed, and his damages will be reduced, likely by percentage of fault.

(4) Generally there is no affirmative duty to act absent a special relationship (*Osterlind v. Hill*). When people engage in a common undertaking there is a special relationship as co-venturers. Therefore, A & B owed each other an affirmative duty to warn and assist because

they went on this trip together and were engaged. Also, A & D had a duty to act reasonably because they undertook assistance to both C & B. Because D is an employee of the company, he was already viewed to be negligent on their behalf (see section three). D owed a duty to A, B, & C because anyone who maintains a business must warn and assist a business visitor, regardless of the source of the harm.

B may be responsible for C's injury because he knocked C off his feet, and then C hit his head and had a concussion. Because C's peril was caused by B's negligence in falling, B had a duty to assist C. B didn't attempt to help C at all because B went lumber surfing instead. However, B's negligence toward C is not significant compared to A & D's negligence. A had a duty to help C if they were considered co-venturers. Even if they were not co-venturers, A assumed the duty by assisting C and had to proceed with reasonable care. A had a duty to keep C safe which neither A or D did when they left C at YOS. A could not discontinue her aid if doing so would make C's condition worse, and after A & D left, C fell into a comma. A attempted to help C but did not do as an ordinary prudent person would do in that circumstance. Instead of taking C to receive medical help, A (who is not medically trained) made the assessment that C was fine. Therefore, she did not act reasonably in offering assistance to C. She had to act reasonably because her assistance was preventing anyone else from helping C. A also did not pay attention to C's

symptoms and let him fall asleep. Since A behaved carelessly in these ways, she will be liable to C. D will also be liable to C because he did not assist his business visitor, C, at all.

A, C, & D had a duty to protect B, but they did not. A & D should have acted reasonably in helping B because they undertook to rescue him. They should have called 911, but they drove him to the hospital instead. They are liable to B in the same ways they are liable to C. Both B and C's injuries were worsened due to A & D acting unreasonably in their attempt to assist them. C had a concussion and ended up in a coma because he did not receive medical help. B could have gotten to the hospital faster if A & D had called 911, and the doctors may have been able to save his feet.

In conclusion, YOS will likely be held liable for the injuries sustained by their employees prior to suspending operations (especially after the first employee was injured). YOS will likely be held liable to B & C because D, as YOS's employee, did not follow the emergency protocol which caused greater injuries to them, and A & D will likely be held liable to B & C for assisting them unreasonably.