1. Persuasive brief to insurance co (letter form)
    a. The recreational use statute will apply because SKMR is operated for recreational purposes
        i. The statutory list does not purport to be complete, but is only illustrative (Schneider)
        ii. Even if not enumerated by the statute, determining whether an activity falls within an enumerated statutory activity should be based on TOTC (Gerkin; Schneider)
    b. SKMR's commercial status is not relevant to the determination of whether the statute applies
        i. Michigan and Louisiana statutes were not intended for commercial enterprises, but Columbia's statute makes no mention of it
        ii. Requiring consideration applies the statute and makes SKMR's commercial nature irrelevant
        iii. Courts should construe the exceptions for consideration narrowly (Johnson)
    c. How the biking program will be operated
2. Memo to Manuel
    a. How SKMR should operate the program to maximize the likelihood that the recreational use statute will apply
        i. Charge access fee? No
            1. Any charge for access is sufficient to preclude application of the statute (-Thompson cited in Jones)
            2. Pratt: The court in Pratt mentions that nominal charges (25-50 cents were charged for use of the pool in that case) did not indicate a managerial philosophy oriented toward profit maximization and thus did not render Defendant's nature commercial.
        ii. Carry mountain bikes on tram? Yes
        iii. Sell and rent bikes? Yes
            1. Consideration means some type of entrance fee or charge for permitting a person to use specially constructed facilities (-Moore cited in Jones)

+Schneider (SC Columbia 1997)

- The statutory list does not purport to be complete, but is only illustrative. Any number of clearly recreational activities suggest themselves. Neither as a matter of grammatical construction, nor common sense, is the statute to be read as applying only to the recreational activities expressly named
    - The statutory definition of "recreational purpose" begins with the word "includes," ordinarily a term of enlargement rather than limitation
    - They range from risky activities to more sedentary pursuits. Some require a large space while others can be done in a more limited setting. There is no distinction between natural and artificial conditions
- The landowner owes a duty of reasonable care to any person coming upon the land whose permission to enter is granted for a consideration
    - Get on free → no duty

- Whether one has entered property for a recreational purpose within the meaning of the statute is to be determined through a consideration of the TOTC, including prior use of the land
- In this case, Π walked down beach steps to drink coffee and got injured by tripping. Π sued because she intended none of the enumerated activities in the statute. However, the court held that the manifest purpose of Δ preserve was recreational. Π's presence was occasioned by the recreational use of the property, and her injury was the product thereof. The preserve obtained summary judgment, and the court affirmed it
    - While Π's subjective intent will not be controlling, it is relevant to show purpose (-Gerkin)

-Johnson (Columbia COA 1998)

- Hold harmless agreement (indemnity –)
- Purpose of 846 is to encourage landowners to permit people to use their property for recreational use without fear of lawsuits
    - Π in Jones argued that this purpose is not met when the public has a right and expectation to use the land that preexists the passage of the Act and the gov't has no right to bar entry
- Courts should construe the exceptions for consideration narrowly
- In this case, a hold harmless agreement was a remote, potential "benefit" that did not constitute consideration to Π. Since it was not consideration, the exception to immunity did not apply here.
- The mere potential for reimbursement for defense costs incurred if a suit were filed is neither current payment for entry
- "where consideration has been received from others" suggests that consideration is not limited only to direct payment of entrance fees – a landowner must gain immediately and reasonably direct advantage, usually in the form of an <u>entrance fee</u>, before the exception to immunity for consideration applies

Jones (15th Cir. COA 1982)

- The gov't is entitled to protection of the statute and is therefore only liable for willful or malicious failure to guard or warn against a known dangerous condition
- Any charge for access is sufficient to preclude application of the statute (-Thompson cited in Jones). Consideration means some type of entrance fee or charge for permitting a person to use specially constructed facilities (-Moore cited in Jones)
    - In this case, Π paid a dollar to rent a tube but not to enter the park. Π could have used the park without paying if she had brought her own tube

Gerkin (Columbia COA 1982)

- The language and historical background of 846 show that the legislature did not intent to immunize landowners from liability for all use of their properties, but only those uses which could justifiably be characterized as "recreational" in nature
    - For example, "all types of vehicular riding" does not mean anyone traveling in a car but only recreational vehicular activity such as motorcycling for pleasure or dune buggying

- Determining whether an activity falls within an enumerated statutory activity should not be based on Π's state of mind. It must be made through a consideration of TOTC. Π's subjective intent is relevant to show purpose
- In this case, Π crossed Δ's (Saint Clara Valley Water District's) property because it was the shorted route between Π's apartment and the supermarket and was a method regularly used by residents. Thus, Π was not "hiking" within the commonly understood recreational sense of the word

Danaher (SC **Michigan** 1981)

- In this case, Π was struck by a golf ball while viewing the pond at a country club without actually having paid a fee, thinking about the pond's fishing potential
- TC ruled against Δ country club because the Michigan's Recreational Use Statute was not intended to apply to commercial enterprises. However, the courts of appeals have held that it did apply to where consideration was in the form of an "entrance fee." This is parallel to Columbia's statute
- The benefit Δ expected to receive from prospective customers was sufficient consideration for the implied permission to use the facilities

Pratt (COA **Louisiana** 1981)

- Profit as a primary objective of the venture would be essential to render it commercial
- In this case, 25-50 cents were charged for use of the pool. These nominal charges did not indicate a managerial philosophy oriented toward profit maximization