

DISSENTING OPINION BY DUFFY, J.,
IN WHICH ACOBA, J., JOINS

I respectfully dissent. In my view, no reasonable person would find that the recreational tour operator's failure to disclose the waiver requirement of Dahana Ranch, Inc. during negotiation of the horseback riding activity was a deceptive trade practice under HRS § 480-2. The Courbats concede that waivers are an acceptable method by which recreational tour operators and sponsors may seek to limit their liability in response to rising insurance and litigation costs, and admit that they were required to sign such a waiver before participating in a snorkeling activity earlier during the same Hawai'i vacation. Applying the Cliffdale Assoc. test to the undisputed facts in this case involving the inherently dangerous activity of horseback riding, I respectfully submit that the tour operator's failure to disclose the waiver requirement of Dahana Ranch, Inc. during negotiation of the horseback riding activity with the Courbats was not a material omission implicating a deceptive trade practice under HRS § 480-2. I would thus affirm the circuit court's grant of summary judgment in favor of Dahana Ranch, Inc.


James E. Duffy, Jr.