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# SOFTBALL PLAYER SIGNED OFFICIAL TEAM ROSTER CONTAINING LIABILITY RELEASE

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Signed releases or waivers of liability in sports and recreational activities are generally referred to as exculpatory agreements in the law. Such agreements are contracts in which the participant agrees to hold the provider of a recreational opportunity free of any fault for acts of future negligence in exchange for the opportunity to participate. As a result, these agreements are governed by the general principles of contract law. One such principle holds that contracts of adhesion (i.e., those presented on a "take it or leave it basis") are narrowly construed against the party which had exclusive control over the language and terms of the agreement. Consequently, any ambiguity in agreements signed by participants in recreational activities lessens the probability that a court will enforce a waiver of liability when raised as a defense to recreational injury liability.

Ambiguity which may threaten the enforceability of a waiver of liability may arise when the release language is buried in a document serving one or more purposes unrelated to the exculpatory agreement. For example, an individual signs a "Membership Application" agreeing to join a health club. The application contains release language buried on the back of the form. When the waiver of liability is raised as a defense against negligence liability for injuries sustained in the health club, a court narrowly construing the language of the exculpatory agreement may very well find the document unclear, ambiguous and, therefore, unenforceable.

To avoid such problems, it may be advisable to segregate release language to a completely separate "waiver of liability" form. If not a separate form, release language within a document serving other unrelated purposes should be made clear, unequivocal and conspicuous through the use of a larger bolder and/or deferent color typeface, or similar means. In addition, the document may be structured to require the prospective participant to initial or sign the release of liability clause separately. The objective is to anticipate and discredit the inevitable challenges to a signed waiver of liability form that (1) the recreational user did not know what he was signing and (2) he did not have an adequate opportunity to read and understand the exculpatory agreement.

The *Paterek* opinion described below illustrates these points. Although the document at issue served a purpose unrelated to a waiver of liability ( a team roster), the release language was apparently clear and conspicuous enough to satisfy the court in this particular instance.

This report of the *Paterek* decision appears in Volume 8, number 2, of the *Recreation and Parks Law Reporter* (RPLR). RPLR is a quarterly publication which describes recently reported state and federal court decisions which address issues of recreational injury liability. For further information regarding a subscription to RPLR, please consult the advertisement which accompanies this column or contact NRPA.

## Blinded by the Light

In the case of *Paterek v. 6600 Ltd.*, 186 Mich.App. 445; 465 N.W.2d 342 (1990), plaintiff Daniel Paterek "injured his knee while turning to catch a fly ball during a softball game." The game was

conducted on a recreational field under the control of defendant 6600 Ltd., doing business as Liberty Park of America. Paterek argued that the field was improperly maintained. The trial court granted summary judgment to 6600 Ltd. on the basis that Paterek had signed "an official team roster and contract which purported to release defendant from liability for injuries occurring on defendant's premises." Paterek appealed.

As noted by the appeals court, Paterek had "printed his name on and signed a document entitled 1986 OFFICIAL TEAM ROSTER AND CONTRACT" prior to the start of the 1986 softball season. As described by the appeals court, this document provided in pertinent part as follows:

> EACH OF US, THE UNDERSIGNED PLAYERS, ACKNOWLEDGE, AGREE AND UNDERSTAND THAT: ***
>
> 2. PLAYING SOFTBALL IS HAZARDOUS AND MAY RESULT IN INJURY; AND
> 3. SLIDING IS DANGEROUS TO MYSELF AND OTHER PLAYERS; AND
> 4. OTHER ASPECTS OF SOFTBALL ARE DANGEROUS AND MAY RESULT IN INJURY TO ME OR OTHER PLAYERS; AND ***
>
> FURTHER, EACH OF US AGREE THAT IN CONSIDERATION FOR PERMISSION TO PLAY AT LIBERTY PARK OF AMERICA:
>
> 1. I ASSUME ALL RISKS OF INJURY INCURRED OR SUFFERED WHILE ON AND/OR UPON THE PREMISES OF LIBERTY PARK OF AMERICA; AND
>
> 2. I RELEASE AND AGREE NOT TO SUE LIBERTY PARK OF AMERICA, ITS AGENTS, SERVANTS, ASSOCIATIONS, EMPLOYEES OR ANYONE CONNECTED WITH LIBERTY PARK OF AMERICA FOR ANY CLAIM, DAMAGES, COSTS OR CAUSE OF ACTION WHICH I HAVE OR MAY IN THE FUTURE HAVE AS A RESULT OF INJURIES OR DAMAGES SUSTAINED OR INCURRED WHILE ON AND/OR UPON THE PREMISES OF LIBERTY PARK OF AMERICA; AND *** I HAVE READ THE ABOVE TERMS OF THE CONTRACT, UNDERSTAND THEM AND AGREE TO ABIDE BY THEM.
>
> I, THE UNDERSIGNED PLAYER, ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE ABOVE CONTRACT.

On appeal, Paterek maintained that "at no time was it explained to him that the document was a release or waiver of his rights." Specifically, Paterek claimed that "he was simply told that the document was an official team roster which he had to sign before playing in the softball league." As a result, Paterek contended that "there was an issue of material fact as to whether the nature of the document which he signed was misrepresented as a roster, as opposed to a release."

As noted by the appeals court, "it is not contrary to this state's public policy for a party to contract against liability for damages caused by ordinary negligence." Further, the appeals court stated that the following principles of contract law would govern the validity of waiver of liability agreement.

> As with other contracts, the validity of a contract of release turns on the intent of the parties. To be valid, a release must be fairly and knowingly made. A release is not fairly made and is invalid if 1) the releasor was dazed, in shock, or under the influence of drugs, 2) the nature of the instrument was misrepresented, or 3) there was other fraudulent or overreaching conduct.

Applying these principles to the facts of this case, the appeals court found that the release contract at issue had not been misrepresented or obtained through fraud.

> We believe, however, that Paterek has misconstrued the meaning of "misrepresent" in this context. A fair reading of the cases... which have addressed the validity of releases leads to the conclusion that to warrant rescission or invalidation of a contract of release, a misrepresentation must be made with the intent to mislead or deceive. In the instant case, none of the documentary evidence available to the trial court raised a reasonable inference that 600 Ltd. or its agents intentionally or fraudulently misrepresented the nature of the roster/contract. At the most, the document may have been innocently misrepresented, which would not have been sufficient to invalidate the release. Therefore, there was no genuine issue of material fact and Paterek's claim was barred by the release.

In addition, the appeals found their conclusion was supported by the generally accepted principle that "one who signs a contract cannot seek to invalidate it on the basis that he or she did not read it or thought that its terms were different, absent a showing of fraud or mutual mistake."

> Failure to read a contract document provides a ground for rescission only where the failure was not induced by carelessness alone, but instead was induced by some stratagem, trick or artifice by the parties seeking to enforce the contract. This principle is directly applicable to the facts of this case, where Paterek admits to signing the release contract, but claims that he was not aware of the terms of the document...
>
> [T]he release contract... contain[s] a plain and clear statement, directly before the signature lines, stating that the player acknowledged reading and understanding the contract.

The appeals court further rejected Paterek's argument that "the release contract was somehow invalidated by a notice on the official scoresheet stating that the field had been inspected by the umpire and was playable."

> The scoresheet was not part of the release agreement and has no bearing on the validity of the release. We also note that the scoresheet contained an additional liability disclaimer.

Finally, the appeals court considered Paterek's argument that "the release was invalid for lack of consideration." For a contract to be valid, there must be "consideration", i.e., a mutual exchange of performance or promises to perform. In this situation, the appeals court found sufficient consideration to sustain the validity of the waiver contract between Paterek and 6600 Ltd. Specifically, Paterek agreed to forego any claim against 6600 Ltd. for future negligence in exchange for 6600 Ltd. providing Paterek the opportunity to play softball on 6600 Ltd.'s field.

> Defendant's agreement to allow Paterek to play softball on its field was adequate consideration because it was 1) a legal detriment 2) which induced Paterek's promise to release 6600 Ltd. from liability, and 3) promise to release defendant from liability induced defendant to suffer the detriment.

The appeals court, therefore, affirmed the judgment of the trial court which found the waiver agreement signed by Paterek barred his negligence claim against favor of defendant 6600 Ltd. for improper maintenance of its ballfield.

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