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Email Legal Alert

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BREAKING NEWS: California Waivers Take a Big Hit

***California Supreme Court Holds that
Sports and Recreation Waiver and
Release and Express Assumption of the
Risk Agreements Cannot Exculpate a
Party from Gross Negligence; May Have Voided Thousands
of Existing Agreements***



Yesterday, the California Supreme Court issued a lengthy published legal opinion addressing the enforceability of waiver and release and express assumption of the risk agreements. The court held that such agreements cannot protect sports and recreation providers and organizers from "gross negligence" liability, which was defined as either a "want of even scant care" or "an extreme departure from the ordinary standard of conduct." This ruling is a departure from prior California case law which supported the conclusion that absent a statute providing otherwise, there was no legal distinction among degrees of negligent conduct (e.g. "ordinary negligence" versus "gross negligence"). As an immediate result of this ruling, one can expect that all lawsuits hereinafter filed relative to injuries suffered by participants in sports and recreation will include a cause of action for "gross negligence." This decision clearly makes it easier for a plaintiff to create triable issues of material fact and defeat motions for summary judgment. More cases will inevitably proceed toward trial resulting in a high percentage of settlements and increased settlement value as the result of reduced leverage. Courts will be reluctant to decide the absence of "gross negligence" as a matter of law, and juries will undoubtedly have a difficult time evaluating and understanding the distinction between "ordinary" and "gross" negligence.

Perhaps more importantly, the court's decision may end up having the sweeping effect of immediately voiding existing agreements that are currently being used by the industry. The court's ruling implied that any agreement that purports to cover more than ordinary negligence (e.g., by the use of language such as "any and all negligence" and/or "all forms of negligence") are unenforceable as contrary to public policy. As a result, every individual and entity using waiver and release and express assumption of the risk agreements needs to promptly evaluate and analyze their current agreements and make revisions necessary to comport with the new state of the law. Please feel free to contact us for additional information and assistance in this regard.

We additionally note that the court's opinion seriously questioned the enforceability of waiver and release, express assumption of the risk, and indemnity agreements signed by parents on behalf of minor children participating in recreational activities. The court strongly suggested that it would hold that such agreements are void and contrary to public policy. However, the court explained that the viability of minor agreement was not presently at issue and its opinion did not provide a ruling in that regard. Nonetheless, the Court's statements are an indicator that the minor agreements will face significant challenges in the future.

A more detailed analysis will follow shortly. In the meantime, for additional comment or information on the ruling please contact Cary Agajanian (cary@agajanianlaw.com), Paul Tetreault (paul@agajanianlaw.com) and/or Bill Anthony (bill@agajanianlaw.com). For the latest legal developments affecting the sports, recreation, and leisure industries, please visit our blog at www.defendingsports.com. The blog is regularly updated and touches upon developments across the country.

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* This case is not binding legal authority and should not be cited in legal briefs.

For more information or additional analysis on these and/or others cases, please contact us.

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