

WAIVER AND RELEASE

– A Valuable Risk Management Tool –

A Waiver and Release is a written document to record the conditions under which a participant agrees to participate in an activity and identifies the possible risks associated with that activity. When an individual signs a Waiver and Release document, he or she voluntarily agrees to assume those risks and not to sue the other parties to the Waiver. The Waiver and Release is widely used in the sports and entertainment industry as a risk management tool as it provides a means of defense for organizations from legal exposure resulting from injuries to participants.

The Waiver and Release form is an exculpatory contract that acknowledges the participant's assumption of risk inherent in the activity. A Waiver and Release form does not take away a participant's right to sue; it does, however, provide written evidence that the participant and/or the parent/guardian acknowledges and understands the inherent risk of the activity or event in which they are participating. Over the past 30 years, a body of law has been established in most jurisdictions in the United States recognizing that participants assume the risks inherent in their chosen activities. The Waiver has proven to be an effective defense tool in protecting organizations from these types of law suits where an individual "assumes the risks" associated with the activity in which he or she decides to participate.

The following are key factors which courts will consider when determining the applicability of a Waiver:

- A Waiver can only release negligent activity, not intentional activity
- A Waiver must be signed voluntarily and with the full knowledge of the rights being waived
- A Waiver must be clear and unambiguous
- The parties to the Waiver must have equal bargaining power
- The Waiver cannot be applied to an essential service that would make it a matter of public policy
- A Waiver can be found unenforceable if it is deemed too general

BASIC ELEMENTS TO A WAIVER AND RELEASE FORM

A properly drafted Waiver and Release is a precise document that has evolved in both form and content. It is designed to take full advantage of legal precedent in each state and includes the following components:

- Acknowledgement of risks
- Acceptance of risks
- Agreement to release the Releasees from liability for risks
- Agreement to defend and indemnify the Releasees from any fees and costs incurred to enforce the Waiver
- Signature line to be signed by the participant. If the participant is a minor, or legally impaired, it should then be signed by his/her parent/guardian.

The Waiver and Release document contains the word “negligence.” The term “negligence” must be read in concert with the law and should not be interpreted as barring recovery from all types of negligence. As used in the document, the term “negligence” has been found by courts to apply only to ordinary negligence. It has not been found by courts to apply to willful, wanton, or gross negligence by the Releasees.

WAIVERS WITH ADULTS AND MINORS

Many organizations encourage adults and minors to sign a Waiver and Release as a condition of participation. With respect to adults (18 years of age and older), the vast majority of states enforce written Waivers as a complete bar to recovery for injuries that result from ordinary negligence as described above. With respect to minors, since minors cannot enter into legally binding contracts, parents/guardians should sign the document in addition to the minor.

CONCLUSION

The Waiver and Release can be a very effective risk management tool in protecting sports and entertainment organizations from the exposure and costs associated with litigation involving injuries occurring from participation in a wide variety of activities and events. Many cases involving serious injuries and large demands by plaintiff attorneys can be resolved with little defense expense because of the value of the Waiver. In order to best capitalize on the protection provided by this body of law, insurance companies can provide their insureds with a legally enforceable form of Waiver and Release as a companion to general liability coverage.

