

WASHINGTON CASE UPDATE

Enforcing Release and Waiver of Liability Agreements for Health Clubs

case in point...

From the desk of Joshua Hayward: Under Washington law, a release and waiver of liability clause is valid unless: (1) it violates public policy; (2) the defendant's breach constitutes gross negligence; or (3) the clause is so inconspicuous that a reasonable person could find it was signed unwittingly. Is a workout gym's membership application that includes a release and waiver provision printed on the backside of the application enforceable against a member of the gym who is injured on the gym's premises?

Claims Pointer: Here, the court concluded that while a health club membership is beneficial, it is not an indispensable necessity and therefore the release and waiver clause did not violate public policy; the YMCA's breach did not constitute gross negligence; and the release and waiver clause was conspicuous. Therefore, the health club's release and waiver signed by the injured member was enforceable and barred the member's negligence claims against the health club.

DeAsis v. Young Men's Christian Ass'n of Yakima, 2014 WL 4376038 (Sept. 4, 2014) [Unpublished Opinion].

Danny DeAsis ("DeAsis") slipped and fell on a puddle of water in a hallway outside the swimming pool office, which resulted in a dislocated knee. DeAsis sued the YMCA, in part, for negligence. The YMCA filed a motion for summary judgment arguing that DeAsis' action for negligence was barred by a release and waiver of liability signed by DeAsis.

When DeAsis applied for a membership at the YMCA in 2010, DeAsis completed the club's two-sided membership application form. He completed the front side with required personal and credit card information. The back side of the form was a printed full-page agreement, the greater part of which was captioned: "RELEASE and WAIVER of LIABILITY and INDEMNITY AGREEMENT." The bottom of the agreement included language: "I HAVE READ AND UNDERSTAND THIS DOCUMENT AND RELEASE," followed by a line for the applicant's signature and the date.

DeAsis failed to sign and date the backside of the form when he originally completed the membership paperwork. However, YMCA records indicated that when DeAsis returned the following day, DeAsis was presented with the form and signed it. DeAsis admitted that it was his signature on the YMCA membership agreement form but testified that he did not read the document before signing it.

Approximately nine months later, the YMCA aquatics supervisor was working when he noticed that a swimmer had just left the pool and had dripped water down the hallway outside the pool office door. The supervisor headed to the pool office where he knew there were towels to clean up the water. Just

as the supervisor was bringing the towels back, he saw DeAsis, who was leaving the building after his workout, slip and fall on the wet floor. DeAsis was taken to the hospital where he was diagnosed with a dislocated kneecap.

DeAsis then sued the YMCA, in part, for negligence. The YMCA filed a motion for summary judgment arguing that DeAsis' action for negligence was barred by a release and waiver of liability signed by DeAsis. The trial court granted the YMCA's summary judgment motion and dismissed DeAsis' negligence claim. DeAsis appealed.

Under Washington law, a release and waiver of liability clause is valid unless it: (1) violates public policy; (2) the defendant's breach constitutes gross negligence; or (3) the clause is so inconspicuous that a reasonable person could find it was signed unknowingly. DeAsis argued that all three exceptions apply to render the release that he signed unenforceable.

First, the court advised that public policy does not prevent parties from releasing one or the other from liability for negligence. Prior Washington cases conclude that release agreements that are found to be void against public policy generally deal with essential services—e.g., hospitals, housing, public utilities, and public education. Washington courts have previously held that a gym is not subject to the public policy exception, and that there is no public interest in adult recreational activities. While health club membership is beneficial, it is not an indispensable necessity as a matter of public policy. Accordingly, the court concluded that the public policy exception did not apply to render the YMCA agreement unenforceable.

Second, the court concluded that the YMCA release language was conspicuous. The court found that



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the release and waiver clause was set apart by the use of boldface print or capital letters, it contained repeated cautionary and warning language; and it stated above the signature line, "I HAVE READ AND UNDERSTAND THIS DOCUMENT AND RELEASE." Accordingly, the court concluded that the YMCA release did not fall within this exception to enforcing release provisions.

Third, the court concluded that the language of the YMCA release and waiver provision clearly conveyed the parties' intent to shift the risk of loss. Further, DeAsis failed to show any evidence that he was denied the opportunity to read the release or was misled about its terms. The court advised that a person who signs an agreement without reading it is bound by its terms as long as there was ample opportunity to examine the contract in as great a detail as the signor cared, and the signor failed to do so for his own personal reasons.

The court rejected DeAsis' argument that the release was an unenforceable adhesion contract. The court concluded that people interested in recreation and exercise have many alternatives; and the "take it or leave it" nature of the YMCA membership agreement did not render it unenforceable. Accordingly, the court dismissed DeAsis' negligence claim.

Finally, the court addressed DeAsis' contention that the YMCA was grossly negligent, and therefore the release and waiver of liability could not effectively bar his claims. Gross negligence, the court advised, has been defined as negligence substantially and appreciably greater than ordinary negligence. Here, the court concluded that the YMCA was not grossly negligent and therefore it dismissed DeAsis' gross negligence claim as well.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.



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