

OREGON LAW UPDATE

Chimp Bit Off Intern's Thumb During Attack and Sanctuary Found Not Liable

From the desk of Jeff Eberhard: Releases if worded right will be enforced by Oregon courts. However, even if the release is valid the plaintiff can still allege a claim for gross negligence. This case demonstrates how difficult it may be to maintain a claim for gross negligence.

Claims Pointer: A history of attacks and secrecy policies does not constitute gross negligence because it fails to demonstrate a reckless disregard for safety or an indifference to the consequences of: (1) leaving a tunnel door leading to a chimpanzee cage unoccupied by chimpanzees unlocked, or (2) failing to control a chimpanzee after it has attacked an intern.

case in point...

Kristen M. Howard v. Chimps, Inc., in the Court of Appeals of the State of Oregon, A145765, --- P3d --- (August 8, 2012).

Kristen Howard (Kristen) was accepted into an internship program at Chimps, Inc. (Chimps), a wildlife sanctuary providing refuge for chimpanzees. Prior to beginning her internship, Chimps sent her an intern manual and a release of liability waiver. After reading the manual, Kristen spoke with Chimps' executive director who mentioned that she "would never have physical contact with the chimpanzees." At no time was Kristen informed that on at least five occasions, chimpanzees injured people on Chimps' property.

Kristen signed the liability waiver releasing Chimps from liability for "all claims for death, personal injury, or property damage" arising out of her involvement at the sanctuary. After signing the release, she began her internship at the sanctuary. Ten days later, a chimpanzee attacked Kristen while she was cleaning an unoccupied cage. The cage was connected to a series of overhead tunnels that attached to other areas the chimpanzees were occupying at the time. It was later learned that one of two doors within a connecting tunnel was not locked when Kristen was inside the cage. While cleaning, a chimpanzee (Kimie) came through the tunnel, jumped on Kristen's back, and hit and bit her multiple times. During the attack, Kimie bit off the majority of Kristen's left thumb. Kimie fled and Kristen left the cage for the interns' residence. Chimps' staff attempted to locate and restrain Kimie but was unsuccessful. As Kristen approached the interns' residence, Kimie spotted her, jumped on her and resumed the attack. Eventually, Kristen escaped and she was treated by emergency medical services. Chimps' president approached Kristen after responders arrived and said, "Who called 911? It's just your thumb."

Kristen filed a lawsuit against Chimps alleging negligence and strict liability. Chimps filed for summary judgment arguing the waiver of liability precluded Kristen's claims. The trial court agreed with Chimps, granted its motion and Kristen appealed to the Court of Appeals.

On appeal, Kristen argued that the waiver was unenforceable. The Court of Appeals determined the parties had a binding agreement and Kristen waived her right to sue. Kristen argued Chimps was still liable because the waiver of liability only released Chimps from negligence, and not gross negligence. She claimed Chimps' history of attacks (three of the four serious attacks over a fourteen year time span resulted from violations of Chimps current policies) and policies of secrecy about those attacks showed Chimps' reckless disregard for safety or indifference to consequences of its conduct. The Court of Appeals considered Kristen's gross negligence claims and concluded Chimps' history of attacks and secrecy policies did not constitute reckless disregard or indifference to the consequences of: (1) leaving a tunnel door leading to a chimpanzee cage unoccupied by chimpanzees unlocked, or (2) failing to control Kimie after the first attack. No evidence suggested Kristen's injuries resulted from anything other than "entirely inadvertent" negligence. Thus, the Court of Appeals found Chimps not liable for Kristen's injuries. This is powerful because even if a release is valid and the plaintiff is left with a gross negligence claim, the Court of Appeals will look at the facts of the case and may find the plaintiff's claim insufficient.



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