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When is a Release a Release? Signed releases of all claims aren't always enforceable

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Businesses that provide recreational activities or other services where injuries are not uncommon often require that participants sign a release of all claims ("general release" or "release") before allowing them to engage in the activities. As a general rule, releases are valid and enforceable, but a release's enforceability will be dependent on many factors.

In three personal injury lawsuits against a Tennessee adventure camp/retreat center, a release was or could have been a defense to some or all of the claims against the retreat center. However, the "release" defense prevailed in only one of the three lawsuits. These three cases reflect the current law in Tennessee and, further, they provide some practical advice for any business offering recreational services.

Case No. 1: Retain a Copy of the Signed Release

In the first lawsuit, a woman who was participating in a hayride at a church retreat sued the retreat center for personal injuries when she shattered her ankle as she jumped from the hayride wagon. The retreat center had required all participants to sign a general release acknowledging that the participants were agreeing to release and indemnify the retreat center for all claims, damages, etc. "arising out of" participation in activities at the retreat center. The center's potential "release" defense vanished when they were unable to produce a copy of the woman's signed release. The lesson here is the importance of keeping good records and retaining the original, or a copy, of all signed releases in a safe place. In Tennessee, the delay between the event and the filing of a lawsuit can be as much as one year, so keeping the releases in a place where they can be readily retrieved is crucial.

Case No. 2: Obtain the Signatures of All Parents and Guardians When a Minor is the Participant

In the second lawsuit, a child participating in a school weekend retreat suffered injuries while participating in a "giant swing" activity. The release signed on behalf of the minor was signed by only one parent. The other parent sued individually and on the minor's behalf. In this case, the release defense was effective only as to potential claims of the parent who actually signed the release. Tennessee courts had adopted the majority rule that parents may not waive the rights of their minor children; thus, a general release signed on behalf of a minor is sufficient to preclude only the recovery by the person signing the release. The lesson here is that the business offering hospitality services to minors should require that all adults responsible for the child — whether parents, guardians, or custodians — sign the release. In this case, having both parents sign would have precluded recovery for the child's medical expenses.

Case No. 3: Releases Should Be Unambiguous

In the third case, a man was injured while participating in a corporate leadership retreat that his employer sponsored at the retreat center. The man admitted that he signed a general release prior to participating in the leadership/team-building activities and that he did so willingly and without duress. The general rule in Tennessee provides that a release is valid and enforceable in the absence of fraud and overreaching so long as the release is unambiguous and the releasor signed it without duress. The court dismissed his lawsuit upon a finding that the release at issue was unambiguous and voluntarily signed.

When is a release "ambiguous"? Under Tennessee law, a release is ambiguous only when it is of uncertain meaning and may be fairly understood in more than one way. Courts will take the language at face value and will refuse to find ambiguity where none exists. For example, failure to include the term "negligence" or "negligent" will not render the release ambiguous so long as the person signing the release had actual knowledge of the release and personally signed it. Even so, it is advisable that a general release expressly provide that the releasor is foregoing all claims based on negligence.

How does the court determine the intent of the person signing the release? The intent of the releasor will be determined from the unambiguous language of the release and from that language alone.

How does the court determine the scope of a release? A release generally covers all matters that might have been within the contemplation of the parties (as expressed in the release) when it was signed.

What if the releasor later claims not to have read the terms of the release? In the absence of fraud or duress, the failure of a party to read a release before signing does not affect its validity.

The lesson here is this: Releases should be unambiguous and must be signed without duress. This case also brings to light another tip to keep in mind: If an employer sponsors a retreat for employees and attendance/participation is not a condition of employment, the employer should require every employee/participant to sign a release as a condition of participation.

Conclusion: Enforceable Releases

Courts in the majority of states, including Tennessee, have concluded that agreements releasing parties from future liability for personal injuries caused by their own negligent conduct are permissible in the context of recreational activities. Tennessee courts have upheld releases in a wide variety of circumstances: white-water rafting events; horseback riding; riding a mechanical bull at a social club; health clubs; speedway racing events; hair straightening services at a cosmetology school; a burglar alarm service; snow skiing; sky diving businesses and other private recreational businesses. In Tennessee, courts will enforce a release even if the injury occurred during an activity that was not foreseeable or associated with a risk "inherent in the sport" so long as the release sufficiently demonstrates the parties' intent to eliminate liability for negligence. Releases have been enforced when health club patrons were injured by an exercise machine collapsing and by the broken belt of a vibrating machine and when a white-water rafter slipped and fell while disembarking from a bus used to transport participants from the river.

Note, however, that a release may not be enforceable if the incident was not the type contemplated by the parties when the release was signed. For example, a summary judgment for a health club was overturned in a case where the patron's injury resulted from inhalation of dangerous vapors created when a health club employee negligently mixed cleaning compounds, because this was arguably not the type of injury that was foreseeable to the patron at the time he signed the health club's release.

The cases and examples outlined in this article offer general guidance on the enforceability of releases, but enforceability of any release will depend on the specific circumstances of the case and applicable law. Businesses that could be liable for damages resulting from injuries incurred by their patrons are strongly encouraged to seek counsel for specific rulings and law that would impact their business.