

BACE LAW REPORT

LEGAL NEWSLETTER

VOLUME 2 - JAN. 2008

Recreational Injury & Release Agreements

So, you have decided to jump out of a plane, bungee, compete in a triathlon, shoot some paint balls, ice skate at a private rink, rent a moped, or simply join a health club. All the preceding activities have two issues in common; each are inherently dangerous in varying degrees, and each generally require you to sign a “Release” of liability as a prerequisite to your participation.

Most participants do not pay much attention to, understand, or even *read* and understand these agreements prior to attaching their signature. However, the old adage, “you just signed your life away” may have even more legal significance today than *caveat emptor*.

Release Agreements, or Release of Liability Agreements are contracts; the signor effectively waives certain rights as a prerequisite to their participation in the event/sport/health club. More often than not, these agreements contain language that requires the signer to “hold harmless” the organizer of the event or service for “any and all” injuries that occur on the premises.

Most of us blindly sign these agreements, but what if you are actually injured?

The central question often becomes whether or not you effectively and legally waived your right to bring a claim against whoever is responsible for organizing the skydive/triathlon/moped rental. Most would be surprised to find out, that generally speaking, you don’t even need to read the Release for it to be effective against you. It is a concept worth repeating: generally speaking, you do not even need to *read* the Release, or understand its terms, for it to be an effective release of liability. Failure to read a Release Agreement will not automatically void its terms in the Commonwealth.

So, what if you do not read or understand the Release Agreement, sign it, and then are injured? Of course, the following standard legal answer will apply: “it depends.” Issues in litigation where Release Agreements are central to the discussion, can include any of the following: whether or not the terms of the Release are clear and unambiguous, whether or not the Release is limited in scope or not, whether or not the cause of the injury is within the scope of the Agreement, etc... etc...

LAW OFFICE OF MICHAEL J. BACE, ESQ.
245 FIRST STREET, SUITE 1800
CAMBRIDGE, MA 02142 PH: 508.922.8328
WWW.BACELAW.COM

Page 1 of 2

The most powerful Release Agreements are those that are unambiguous, and effective against any injuries and causes of injury even remotely related to the activity. For example, in a recent Supreme Judicial Court opinion, the SJC found that a leaky roof which caused a soft spot on an ice skating rink resulting in the plaintiff's injury was a liability effectively released by a powerful and clearly worded Release Agreement (Hunter, 1999 Mass. App. Div. 274).

The implications of such a Release are simple: your injury claim can be dismissed very early in the proceedings.

Why?

Public policy dictates the need for effective Release Agreements. We like the availability of dangerous activities. People like to jump out of planes, ice skate, and join health clubs. But, if there was no mechanism for the owners/organizers of certain activities to shield themselves from liability - lawsuits would abound, and bungee jumping would be effectively outlawed.

You should rest assured that there are limits to the scope of Release Agreements. Such documents cannot free the ice rink, or bungee company from "gross negligence." Even if the agreements states that it includes injuries caused by the gross negligence of the staff, that clause will not be enforceable. The difference between

ordinary and gross/willful negligence is a discussion that is beyond the scope of this newsletter, the hosts of these dangerous activities generally cannot be protected from their Release Agreements if their behavior is deemed willful or grossly negligent.

To compile data on the most dangerous recreational activities would be nearly impossible. An injury-per-participant breakdown of moped rentals, bungee jumps, and health clubs would be impractical to compile. However, the data below lists annual hospital visits (in thousands) for sports related injuries in the U.S. for 1997-98:

Sport	Number of Injury Visits	% of All Injury Visits
Basketball	447,000	3.8
Football	271,000	2.3
Bicycling	421,000	3.5
Hockey	112,000	.9
Snow Sports	111,000	.9
Ice Skating	150,000	1.3

The best advice? Always seek professional advice before signing any contract that potentially waives a legal right. In most cases, this office would be happy to review a Release Agreement and give an opinion as to its legal significance. Call your lawyer today.