

## **Federal Court Holds that Jet Ski Rental Agreement Does Not Provide Indemnification for Riders Own Injuries**

Recently, Judge Joseph Irenas of the United States District Court, Camden, held that a jet ski rental agreement did not provide indemnification to the rental company for injuries suffered by the jet skier rider. Instead, the court found that indemnification was only available to the rental company for injuries caused by the jet skier to others.

In this matter, Anthony Dinneno (13 years old) and George Djukanovic (18 years old) were guests of their friends, the Hughes family, on a trip to Wildwood, New Jersey. On August 30, 2007, the group went to Lucky Fin Water Sports to rent a jet ski. Dinneno was to ride as a passenger (due to the fact he was a minor) and Djukanovic was to operate the jet ski. As Dinneno's parents were not present, Robert Hughes, the father of Dinneno's friends, signed the rental agreement as the "parent/guardian or responsible party" for Dinneno. The rental agreement provided, in relative part, as follows:

*NOW THEREFORE, in consideration of the permission extended to me by Lucky Fin Water Sports, LLC, through its officers, and agents to take such a trip or trips, I do hereby for myself, my heirs, executors, and administrators, remise, release and further discharge Lucky Fin Water Sports, LLC,...from all claims demands, actions, or causes of action on account of my death or on account of any injury to me which may occur from any cause during the trip or trips or continuation thereof, as well as any operations incident to such trip or trips.*

*The undersigned further agrees they shall indemnify and save harmless Lucky Fin Water Sports, LLC,...against all loss, cost or damage on account of any injury to persons or property occurring or rising out of this lease.*

Mr. Hughes went to a restaurant while Dinneno and Djukanovic rode the jet ski. During their time on the jet ski, a collision occurred between the jet ski operated by Djukanovic and a jet ski operated by Mark Roy. As a result of this collision, Dinneno alleges to have sustained injuries. Accordingly, Dinneno's father brought suit on behalf of his son against Lucky Fin, Roy and Djukanovic. Lucky Fin in turn filed a third party complaint against Hughes seeking indemnification per the rental agreement he signed. Lucky Fin and Hughes subsequently filed motions for summary judgment motions for a determination with regard to the indemnification issue and liability as to Hughes.

The court found that the rental agreement signed by Hughes only obligated Hughes to indemnify Lucky Fin for injuries caused to another individual as a result of Dinneno's actions. Additionally, the court found that Hughes could not be found negligent for the happening of the accident as he was on land when it occurred. Accordingly, the court granted Hughes' motion for summary judgment as to liability and denied the motion for summary judgment filed by Lucky Fin, finding that no indemnification was owed by Hughes.

Importantly, the court noted that "the true issue in this case, which neither Lucky Fin, nor Hughes seems to recognize, is whether the release of Lucky Fin, which Hughes signed...is enforceable against Steven Dinneno, the 'guardian ad litem' bringing suit" on behalf of his son. As is noted above, the rental

agreement signed by Hughes releases Lucky Fin from “all claims, demands, actions or causes of action on account...of any injury to me [Dinneno] which may occur from any cause during the trip.”

Accordingly, this is an issue which will have to be further litigated in this matter. However, New Jersey law is clear in that exculpatory clauses, signed by a minor’s guardian releasing the minor’s potential tort claim is prohibited by public policy. Hojnowski v. Vans Skate Park, 187 NJ 323 (2006). As such, it is likely that the release provision of the rental agreement will be found unenforceable.

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