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PRACTICE AREAS

Workers Compensation
Personal Injury
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Illinois court holds release signed by plaintiff enforceable

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The Appellate Court of Illinois, First District, recently addressed the issue of whether a release signed by a plaintiff before she embarked on a paid tour of Chicago precluded her from bringing a [personal injury lawsuit](#) based on injuries that she sustained during the tour.

The facts in the case, *Hamer v. City Segway Tours of Chicago, LLC*, No. 1-08-3371, are relatively simple. The plaintiff signed up for a tour with the defendant. During the tour, all participants rode their own [Segway](#) and, before the tour, were taught by employees of the defendant how to use the Segway. The plaintiff was injured during the tour when she fell off of the Segway, as she attempted to ride it up a small, grassy hill. She then sued, claiming that the defendant was liable for her injuries since it allowed her to ride in a dangerous location and failed to instruct her of the danger posed by that location.

Prior to the tour, the plaintiff signed a release that included the following language:

"I do hereby * * * release * * * the CST Indemniteses from any and all losses, claims, suits, causes of action, etc. for * * * personal injuries * * * I may have, suffer or sustain while riding or operating the Segway, whether arising from my own acts, actions, activities and/or omissions or those of others, except only those arising solely from the gross negligence of the CST Indemniteses.



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*** I understand and acknowledge that this *** release will apply even in circumstances where a CST Indemnitee may be *** released and absolved from the consequences of their own negligence.

I *** understand that riding a Segway will *** expose me to various hazards and risks, including, among others, *** dangers arising from irregular road and pavement surfaces, *** which present a risk of injury, including *** the risk that I could fall and *** suffer contusions, lacerations, sprains, fractures, and other, potentially more serious, injuries." (Emphasis in original.)

According to the release, the "CST Indemnitees" include all CST employees, including its officers and tour guides.

In reaching its decision regarding the enforceability of the release, the court noted that Illinois does not favor exculpatory clauses in contracts and strictly construes these types of clauses against the party benefiting from the clause. However, the court also acknowledged that where the exculpatory clause is clearly written and the language encompasses the activity that resulted in the plaintiff's injuries, it may be held enforceable, which was the case in this situation:

In the release, Hamer accepted the risk that she could fall; in her complaint she alleged that she fell. In the release, she accepted the risks of riding on irregular roads and pavement surfaces; in her deposition she admitted that she rode on an unpaved, irregular surface. In the release, she accepted the risk of personal injury caused by the actions of others, excepting only gross negligence by CST employees; in her complaint she alleged that the injury resulted from CST's acts of ordinary negligence. We find that the release clearly applies to the occurrences complained about in Hamer's complaint as well as those described in her deposition.

The court likewise concluded that other exceptions that would have made the release unenforceable did not apply in this case and thus upheld the lower court's dismissal of her complaint.

This case serves as a reminder that a well-drafted release may very well preclude an injured party from recovering for injuries sustained during the activities covered in the release. For that reason, it's important to review releases carefully and ensure that you understand the ramifications of signing each release and the risks of engaging in the activities covered by the release.

Of course, not all releases are as well-drafted as the one in this case, and



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exceptions apply which may make the release unenforceable. Each case is different and a careful review of the facts by an **experienced personal injury attorney** is the only way to determine whether your particular case has merit.

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