



RELEASE OF LIABILITY CONTAINED IN EVENT ENTRY FORM HELD TO APPLY TO A SUBSEQUENTLY ADDED EVENT SPONSOR

***COLLEEN HOLMES AND RICK HOLMES V. MULTIMEDIA KSDK, INC., ET AL., --- S.W.3D ---,
2013 WL 150809 (Mo.App. E.D., JANUARY 15, 2012)***

On any given week, most of us are asked to sign at least one or two releases of liability for various sporting and recreational events. The Missouri Court of Appeals for the Eastern District recently held those releases may be effective as to entities who were not releasees at the time the releasor signed the document.

On May 12, 2009, Plaintiff Colleen Holmes executed an entry form for the 2009 Susan G. Komen Race for the Cure to be held on June 13, 2009. The form included a section titled "Race Waiver and Release" which contained the following language as to the individuals and entities to be released: "The St. Louis Affiliate of Susan G. Komen for the Cure, their affiliates, and any affiliated individuals, any Event sponsors and their agents and employees, and all other persons or entities associated with this Event..."

Defendant KSDK, who ultimately broadcasted the event, was not an event sponsor at the time Plaintiff executed the release and did not become an event sponsor until June 1, 2009. Plaintiff alleged that during the race she tripped and fell over an audio-visual box owned and operated by KSDK as part of its broadcast. The lower court entered summary judgment in KSDK's favor on the basis that KSDK was covered by the language of the waiver and release as an event sponsor and that Plaintiff's claims were barred by the waiver and release.

On appeal, Plaintiff argued the language of the release was ambiguous because it did not specifically name the individuals and entities being released and that such specificity is required in a purported release of future negligence. The Eastern District Court of Appeals disagreed, holding that the release's use of the phrase "any Event sponsors" is unambiguous and enforceable to bar claims against third parties who were not specifically named.

Plaintiff also argued that the release could not operate to bar claims against KSDK because, not only was it not specifically named in the release, it was not even an event sponsor at the time she signed the release. Plaintiff contended this made the release impermissibly ambiguous because it did not specify whether it applied to event sponsors who had not yet signed a sponsorship agreement at the time the release was executed. The appellate court again disagreed. The release, signed well in advance of the event itself, specifically governed liability for injuries or accidents arising out of the releasor's participation in the race to be held at a later time. It released "any Event sponsors" and KSDK was an event sponsor on the day of the event. According to the Court, therefore, the plain language of the release could not reasonably be interpreted to apply only to those who had signed sponsorship agreements before a participant executed the release. According to the Court, the fact that KSDK did not become an event sponsor until after Plaintiff executed the release had no effect on the validity of the release.

SUBMITTED BY

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