



## Are Some Sports Waivers Unfair To Players – Parents ?

by John Sadler - Sadler & Co.



Here is an excerpt out of a sports waiver / release from Seattle School District:

"I am aware that track & field is a high risk sport... involving many risks of injury, including brain damage, blindness, paralysis and, of course, death. The kicker, however, was the following line: "Competing in track and field may result not only in serious injury but a serious impairment of my future abilities...generally to enjoy life."

What is "enjoyment of life"?

"When someone is injured in a car accident, a workplace mishap or in any other circumstance where blame is assigned by a civil court, you probably know that the defendant must pay for the injured party's medical expenses. And you might know that defendant must pay for the injured party's medical expenses. And you might know that the defendant could also have to pay for future lost wage potential. But, according to Smith, those injured through negligence – or worse—face all sorts of other future life costs. Suppose an avid amateur cello player is hurt in a car accident and is no longer able to play her instrument. She hasn't lost future wages, but something that she loved has been taken from her. To Smith, the way to make that person whole is to compensate her for the lost of enjoyment of being an amateur musician. Smith calls this "hedonic damages," named after the Greek word for pleasure."

Smith, the man who is responsible for the "enjoyment of life" provision in thousands of sports waiver / release forms, is a little upset over its use.

"This is a cover your butt thing," he said. "It's a very blunt statement that is ominous and threatening.... They are shoving it in the parents' faces and implicitly saying, 'Crap happens.'"

"Smith thinks such warnings certainly have a place in school waivers. But he wishes they were accompanied by an equally clear statement that districts will work hard to minimize risk and keep kids safe."

" I think it would go a long way if schools or organizations would take responsibility and say, 'We will take precautions and set forth reasonable standards,'" he said. "Wouldn't that be nice to hear the other side of this?"



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Theresa Amato, who runs a Website devoted to outing fine print called FairContracts.org, said she's seen similar issues with school districts and other kid-oriented organizations before. They often purchase contract templates from legal form sellers, then have a district lawyer tweak it to suit their needs. That explains why these kinds of contracts are so similar around the country, she said. Also, Amato noted, districts probably feel pressure from insurance companies to include such sweeping language.

She's not concerned about how a parent's signature on such a waiver would impact a jury trial – entities can't use small print to avoid responsibility for negligence, for example. But she is worried that the language could have a chilling effect on injured parties and prevent them from bringing cases in the first place.

In my opinion: I totally disagree with the statements made by Smith and Amato. They miss the point of the sports waiver / release. The reason that it exists is to balance the scales of the justice system, which is tipped in favor of plaintiffs as evidenced by frivolous litigation and excessive jury verdicts. Just visit the liability crunch of the 1980s where volunteers refused to offer their services when affordable General Liability insurance was not available.

Furthermore, many courts will strike a waiver / release if it is not graphically specific in terms of the injuries and damages that may occur. In addition if you try to soften the blow as recommended by Smith, a court could use such language to invalidate the waiver / release. Waiver/releases are upheld for the purpose of dismissing a minor's lawsuit in about 10 states if there was no gross negligence and if the waiver / release was intelligently drafted. In the other 40 or so states, the waiver / release may be introduced into evidence to trigger an assumption of risk defense which often reduces the amount of settlement by up to 30%.

by John Sadler - Sadler & Co. - SODA National Insurance Program Administrator

Thanks Again,  
SODA/New York



Source: MSNBC

