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## WHITE PAPER ALERT

Civil Procedure  
Waiver and Release

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City of Santa Barbara v. Superior Court  
**Court of Appeal, Second District - January 26, 2006**

Participants in sporting and/or dangerous activities often sign a release of liability prior to participating. This case discusses whether such a release extends to claims of gross negligence.

A disabled fourteen year old child, drowned while participating in a recreational activity program for developmentally disabled children operated by the City of Santa Barbara. Her parents filed a wrongful death action, alleging the accident was caused by negligence on the part of the City and the program counselor. The City of Santa Barbara and the counselor filed a motion for summary judgment, contending that a release agreement signed by the child's mother barred liability. The trial court denied the motion. The City of Santa Barbara filed a petition for Writ of Mandate to the Court of Appeal.

The Court of Appeal, in a 2-1 decision, denied the petition. The Court, in its decision, noted the child suffered epileptic seizures, often while in water. She also suffered seizures while attending a prior camp. Special precautions were taken during her activities at this camp. The counselor's attention was momentarily distracted, and when the counselor looked back, the child had disappeared from sight. Five minutes later she was found at the bottom of the pool, and later died.

The Court ruled that the release did not violate public policy. The City of Santa Barbara was providing a non-essential recreational activity, and the plaintiffs were not compelled to send their daughter to that activity. Releases for ordinary negligence for injuries arising from sports and recreational activities have been uniformly held valid. The Court therefore concluded that the release was valid and enforceable.

However, the Court held the release did not extend to gross negligence. This type of conduct is conduct which is aggravated, reckless, or flagrant so as to show a lack of care to the consequences of one's act or failure to act. The Court noted that no California case expressly invalidated a release of liability for gross negligence. However, the Court noted the current view is that there can be no exemption for liability for intentional wrongdoing, gross negligence, or violation of law. The language of the release did not contain a release for gross negligence. Because it did not explicitly notify the parents that the release was intended to cover such acts, such a claim was not barred.

The Court held that the issue of gross negligence was a triable issue of fact for a jury. Therefore, the petition was denied and the plaintiffs were allowed to continue prosecution of their case based on a gross negligence theory.

The dissent disagreed that a release is invalid as a matter of public policy to the extent it purports to release conduct that could be characterized as gross negligence. The dissent noted that the case had not been pled as a gross negligence action. In addition, he found no support in the authorities cited that a release could not be given for gross negligence. The dissent would have granted the petition and dismissed the Complaint.

### **COMMENT**

Due to the split in the Court, and the characterization of this case as one of first impression, it is likely a petition for review will be filed in the Supreme Court. Given the potential implications of this decision, this is a case where the Supreme Court may well grant review.

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