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WHITE PAPER ALERT

Duty Of Care -

Waiver and Release

IMPORTANT NEW DECISION

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Capri v. L.A. Fitness International, LLC
Court of Appeal, Second District – February 15, 2006

Most health clubs and recreation providers utilize agreements which contain a waiver and release of liability for injuries that occur during activities at their facility. This case opens a new, and disconcerting, avenue for claimants to challenge the validity and scope of those releases.

Mr. Capri joined the L.A. Fitness Health Club and signed their standard membership agreement containing a waiver and release of liability. Mr. Capri used the facilities, including the outdoor swimming pool, 2-3 times per week. While walking to the pool one day Mr. Capri slipped and fell on the pool deck. An accumulation of algae was subsequently found near a pool drain in the area where Mr. Capri fell.

Mr. Capri filed suit against L.A. Fitness International, alleging negligence and negligence per se causes of action. L.A. Fitness moved for summary judgment. The trial court granted the motion based on the waiver and release clause within the membership agreement. Mr. Capri appealed.

The Court of Appeal reversed. The Court held that while the waiver and release did bar the cause of action for negligence, it did not bar the cause of action for negligence per se.

Relying on the reasoning within the California Supreme Court decision in Tunkl v. Regents of University of California (1963) 60 Cal.2d 92, the court invalidated the contract as to the negligence per se cause of action. In Tunkl, the California Supreme Court held a release of liability is invalid if it violates the public interest. The Tunkl Court went on to state that where a violation of a statute is alleged, a violation of the public interest can be inferred. According to the court, the plain language of Civil Code Section 1668 renders exculpatory provisions invalid as against public policy where they seek to avoid liability for a violation of statutory law. As a result, while the release may apply to the negligence cause of action, its application in analyzing the negligence per se cause of action would violate Civil Code Section 1668 because of the alleged violations of the Health and Safety Code.

Mr. Capri's negligence per se cause of action was based upon the accumulation of mildew and algae around the swimming pool. The court found that if true, this violated State and County Health and Safety Codes and therefore may constitute negligence per se. As a result, the waiver and release clause was invalid, as to the negligence per se cause of action, under California Civil Code Section 1668.

L.A. Fitness also argued primary assumption the risk of injury. The court held the risk of algae growing on a pool deck was not an inherent risk in the sport of swimming and was not a risk assumed when at a swimming pool. As a result, L.A. Fitness was not entitled to summary judgment based on the primary assumption of the risk doctrine.

COMMENT

This is the same appellate district which decided the City of Santa Barbara case discussed in last month's White Paper. This case opens the door in every waiver and release case to allegations based upon a violation of statute or regulation. This decision will likely result in further appellate activity.

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