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EQUESTRIAN QUESTION FORUM by Lisa L. Lerch, Esq.

Is there any new case law that applies to equestrians?

Yes, in fact it deals specifically with liability release language.

In 2010, the California Appellate court overturned a judgment because it found the exculpatory language in the rental contract for scuba equipment did not provide a complete defense to a wrongful death action.

The case in issue, Huverserian v. Catalina Scuba Luv, Inc. (2010) 184 Cal.App.4th 1462 reiterated the courts' previous decisions stating that for a release to be valid and enforceable, a written release must be clear, unambiguous and explicit in expressing the intent of the parties. Further, if a party is to be released from such liability, the language used must be clear, explicit and comprehensible in each of its essential details and must clearly notify the prospective releaser of the effect of signing the agreement.

The release used by the Catalina Scuba Luv company stated, "Equipment rental agreement, liability release and assumption of risk of scuba and snorkel gear for boat dives or multiple day rentals". The problem with this language is its specificity, particularly the part stating "for boat dives or multiple day rentals".

The court found the release was unambiguous, clear and explicit and had the plaintiffs rented the gear for a boat dive or a multiple day rental, the release would have adequately protected Catalina Scuba Luv. Unfortunately, Huverserian rented the scuba gear, went to a dive area without a boat, and entered the water where he subsequently died. The court found the release did not address this type of activity and therefore Huverserian was not barred from pursuing a wrongful death action.

What can equestrians take away from this ruling? That it is necessary to draft a release broadly enough to encompass all anticipated equestrian activities while avoiding ambiguity. Liability release language will continue to be challenged and the law regarding releases will continue to evolve.

One tool that can be included in a liability release to deter a legal challenge is the inclusion of a covenant not to sue clause. This clause differs from a release in that the covenant not to sue is a promise not to pursue litigation while a release is an abandonment or relinquishment of a right or claim. When included in a liability release, if a party then proceeds with litigation against a stable, for example, the stable would be able to file a cross-complaint for breach of covenant. If paired with an attorneys' fees and costs clause to the prevailing party, the stable may be able to avoid the threat of litigation to challenge the language of the liability release.

If you would like more information on this or other topics, please feel free to visit our website www.legalequestrian.com or contact our office.

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