

Getting Ahead

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Talk to My Lawyer

QUESTIONS OF LAW

Activity waiver clauses not always ironclad



Daisley

"Talk to My Lawyer" offers information about the law from area lawyers. We welcome reader questions. This week we tapped Mike Daisley of Wells & Daisley, P.A., whose practice includes insurance and injury law.

Q. *I enjoy activities, such as whitewater rafting, canoeing and horseback riding, that involve signing a waiver that says I can't sue the company providing the service if I get injured. Are those waivers legally binding?*

President Truman reportedly once screamed that he wanted to see a "one-handed economist" because every economic advisor he met would say, "Well, Mr. President, on the one hand, the economy might (whatever), but on the other hand ..."

I don't think Harry would have liked lawyers much better because the short answer to your question is one of our all-time favorites: "It depends."

This type of waiver is known as an "exculpatory clause," and can indeed be enforced. However, N.C. courts stress that they are "looked upon with disfavor," and are "strictly construed against the parties seeking to enforce them."

This very issue came up in a federal case in North Carolina just this summer. A customer at a ski resort was permanently paralyzed while skiing after he hit a bare spot on the slopes. He filed

suit, claiming that the ski resort failed to maintain the slopes properly and to adequately warn skiers of a dangerous hazard.

The court strictly interpreted the exculpatory clause the customer had signed in the ski rental shop, ruling that it did not waive the resort's liability because the injury did not actually result from the equipment rented. However, the court decided that another waiver printed on the back of the lift ticket did apply but ruled that this unsigned waiver was unenforceable due to public policy reasons. In other words, the skier's suit could proceed.

On the other hand (don't you just love lawyers and economists?), six years ago the federal Fourth Circuit Court of Appeals affirmed an N.C. judge's ruling that a jet ski rental shop could

protect itself with a signed waiver. In other words, the jet skier's suit could *not* proceed

Any real difference? Maybe. The more recent case explained that the ski industry is "sufficiently regulated and tied to the public interest to make exculpatory clauses improper."

Bottom line for businesses and customers - these cases are often close calls. So check with your lawyer.

The "Talk to My Lawyer" column offers general information about the law. It should not be relied on as legal advice. The Mecklenburg County Bar operates a referral service that can direct you to a lawyer. Contact (704) 375-0120; Web site: www.meckbar.org Have a question about the law? Contact MoneyWise at (704) 358-5166; obsbiz@charlotteobserver.com