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Family Law Update

For All You Soccer Moms and Dads

There is currently a split in our County Trial Courts as to whether a child or his parents can release liability for injuries sustained by the child.

Everyone knows that we live in a litigation prone society. As a result, we often see efforts to limit the potential for lawsuits.

How many times have you seen the phrase “at your own risk” attached to activities you are about to enjoy, such as a favorite roller coaster ride or a concert? And how often, in your daily life, have you encountered the phrase “not responsible for?” Restaurants warn that they are “not responsible for” the coat you leave in their coat check room. Baseball stadiums claim they are “not responsible for” any injury you may experience while sitting in the stands. Parking garages state that they are “not responsible for” the loss of any personal property left in your car. And on and on.

If you have children, you confront this phenomenon regularly. Recall the innumerable permission slips you signed containing various release of liability statements. Now, however, the effectiveness of such releases is being called into question as a result of recent litigation. In the case of Shaner v. State System of Higher Education, a Dauphin County Judge has ruled that a release form signed by a child and her father

before she attended a softball camp would not prevent her from suing to recover money for a seriously broken leg she suffered at the camp.

In Shaner, 14 year old Susan enrolled in the Bloomsburg University summer softball camp. During a game at the camp, she hit a ball and ran to first base, but the first base bag slid when she reached it, and she collided with the first baseman. Susan suffered a serious break in her leg which required months of physical therapy. The accident left her with a permanent injury to her ankle.

When suit was brought, the Defendants argued that they should be able to avoid any responsibility because Susan and her father had each signed a release of liability. The Judge ruled, however, that the release was like a contract. Since Susan was only 14 when she signed it, she was technically unable to enter into the contract, so it would have no legal effect. (Under the law of contracts, minors are generally considered incompetent to enter into valid contracts except those for necessities such as food and shelter.) The Judge also determined that Susan’s father did not have the authority to release Susan’s right to sue just because he was her parent. Consequently, the lawsuit was permitted to proceed against the Defendants despite the release that Susan and her father had signed.

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But don't ignore those releases just yet. A Wayne County Judge recently looked at this issue and came to the opposite conclusion. In Watkins v. Rotary Club of Newfoundland, a student participated in a foreign exchange program to Brazil. While in Brazil, she was allegedly sexually assaulted in her host's home. She then brought suit against the sponsors of the exchange program.

The Defendants asserted that release language contained in their exchange program contract protected them from being sued. This time, the Court agreed and found that the release was valid and binding and the student was prevented from continuing with the suit. The Judge reasoned that this

contract was actually a contract for necessities, so the minor was competent to enter into it. The Judge also pointed out that she had in fact received benefits from the contract.

Two different Judges, two different results. There is currently a split in our County Trial Courts as to whether a child or his parents can release liability for injuries sustained by the child. The Superior Court will be resolving this issue in the near future because the Shaner case is now on appeal. In the meantime, try to avoid those release forms. If you do have to sign one, remember that it may later be deemed enforceable in some Courts.

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The information contained in Family Law Update is not meant to provide opinions or advice on specific legal matters. If you would like to consult with me on a specific issue, please call.

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