ENFORCING RELEASE PROVISIONS IN HEALTH AND FITNESS CLUBS IN CALIFORNIA

With the continuing emphasis on exercise and proper nutrition, which has become especially important with the ever-increasing trend of nationwide obesity, there has been an explosion in the opening and expansion of health and fitness clubs, especially in California. Every nationally-recognized club requires their members to sign membership agreements, almost all of which contain some type of release or exculpatory provision. California's jurisprudence has generally enforced such provisions under a public policy basis reasoning that, due to the wide range of recreational activities available to the general public, failing to enforce such provisions would make the cost of these activities prohibitive. However, there are limits to the enforceability of such a provision that can expose a club to the risk of a personal injury or premises liability claim or lawsuit, depending on the strengths and weaknesses in the language of an enforceable release. This article summarizes the law on this issue and explores the limits on the doctrine.

Releases and express assumption of risk agreements are common in the area of exercise facilities, recreational activities or sports and they are usually upheld. *See, e.g., Guido v. Koopman* (1991) 1 Cal. App. 4th 837, 841-842 (horseback riding); *Paralift, Inc. v. Superior Court* (1993) 23 Cal. App. 4th 748, 756 (skydiving); *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal. App. 4th 158, 162 (swimming); *Buchan v. United States Cycling Federation, Inc*. (1991) 227 Cal. App. 3d 134, 150 (bicycle racing); *Saenz v. Whitewater Voyages* (1990) 226 Cal. App. 3d 758 (white-water rafting); *Madison v. Superior Court* (1988) 203 Cal. App. 3d 589, 599 (scuba diving). Many recreational activities available to the public would be too costly if release provisions were not enforced. *National and Internat. Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal. App. 3d 934, 938.

Health and fitness clubs, in particular, have relied on release provisions in their membership agreements to manage the risk of lawsuits resulting from injuries sustained by its members, who either participate in activities at their clubs or while using the club's facilities. The enforceability of these provisions – assuming that there is, in fact, a signed written membership agreement containing the applicable provision – can depend on the scope of the language in the release. Essentially, club members are prospectively and expressly releasing the club from any and all future claims, lawsuits, injuries or damages that may be incurred while the member is participating in an activity or utilizing the facility.

There are numerous California court of appeals decisions that have upheld releases in the health club context. *See e.g. Benedek v. PLC Santa Monica, LLC* (2002) 104 Cal.App.4th 1351 (member injured while attempting to hold a television above elliptical training machine prior to exercising); *Madison v. Superior Court* (1988) 203 Cal.App.3d 589 (member drowned while scuba diving); *Randas v YMCA* (1993) 17 Cal.App.4th 158 (member slipped and fell on wet

poolside tile); *YMCA v. Superior Court* (1997) 55 Cal.App.4th 22 (member fell down stairs while viewing a jewelry display); *Lund v. Bally's Aerobic Plus, Inc*. (2000) 78 Cal.App.4th 733 (member injured while using weight lifting equipment under the supervision of a personal trainer employed by defendant); *Sanchez v. Bally's Total Fitness Corp*. (1998) 68 Cal.App.4th 62 (member injured during a slide aerobics class).

What all of these cases have in common is that the courts focused on the Release language and whether the member's injury was reasonably related to the scope and purpose of the Release. With respect to the question of express waiver, the legal issue is not whether the particular risk of injury suffered is inherent in the recreational activity to which the release applies (Benedek v. PLC Santa Monica (2002) 104 Cal.App.4th at 1351, 1357; *Allan v. Snow Summit, Inc*. (1996) 51 Cal.App.4th 1358, 1372–1375; *Madison v. Superior Court* (1988) 203 Cal. App. 3d 589, 602, fn. 11), but simply the *scope* of the release. The interpretation of a written agreement is usually a legal question for a court to decide (and not a jury), as it necessarily involves a determination of whether a legal duty is owed in light of the release provision. Thus, in the proper case, a health club can move for summary judgment to dismiss the case and prevent incurring further costly litigation.

The scope of the release can be interpreted rather broadly and can include both pre-exercise and post-exercise activities. In *Benedek v. PLC Santa Monica* (2002) 104 Cal.App.4th 1351, the court upheld summary judgment for a health club when the plaintiff/member was injured after adjusting a television set for the purpose of preparing to use the television during exercise on a treadmill. Plaintiff argued she was not engaged in exercise or fitness-related activities at the time of her fall and hence the release of liability should not apply. The court rejected that argument and held that the scope and purpose of the release encompassed *preparation of exercise activities*.

The waiver at issue released the club from liability for all personal injuries sustained by a member on the premises whether using exercise equipment or not. The court stated that a release can be effective to "…release claims for injuries arising out of circumstances unrelated to fitness…a properly drafted release [can] release a health club from liability for injuries unrelated to fitness activities." *Benedek v. PLC Santa Monica*, *supra*, 104 Cal.App.4th at pp. 1358-1360.

Similarly, in *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal. App. 4th 158, a release was upheld when a member was injured on the YMCA premises, despite the fact that the waiver did not mention the word "premises" or "facilities." In that case, the plaintiff/member enrolled in a swimming class with the YMCA. Plaintiff signed a release and waiver of liability. After a swimming class, she slipped and fell on the wet poolside tile, injuring herself. She filed a personal injury action. The YMCA moved for summary judgment, which was granted and upheld on appeal. The plaintiff/member argued that the release was ambiguous and unclear.

The court rejected that argument and stated, "…to be effective, a release need not achieve perfection; only on Draftsman's Olympus is it feasible to combine the elegance of a trust indenture with the brevity of a stop sign." *Id*. at 162, *quoting National & Internat. Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 938. Although in *Randas* the release encompassed the active negligence of the YMCA, the court found that the purpose and scope of the release was to bar the YMCA's liability if the member was injured on the YMCA premises, despite never using the word "premises" in the release.

In our experience, a properly worded release provision that is likely to be found enforceable by a trial court will specifically include language that, by its own terms, will apply to exercise activities, as well as simply using the facilities on the property, including the locker room, swimming pool area, the steam room, etc., as well as using any equipment in the facilities. While other, less specific language may potentially be enforced by a trial court following the above decisions, the more prudent club will ensure that its release language will provide sufficient protection for the club in the event that a member sustains an injury on its premises for whatever reason. The ability to enforce such provisions minimizes the risk of exposure to civil liability for health clubs – which obviously provide valuable services to the public at large – and keeps the costs of operating and maintaining these facilities low enough so more of the public can readily enjoy the benefits of exercise and fitness.

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