

Texas Case Offers Good Analysis of Enforceability of Liability Release

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One way that Texas landowners can protect themselves from liability is to ensure that guests sign liability waivers before engaging in certain activities. For example, oftentimes hunters that plan to hunt on the property of another are asked to sign a liability waiver (also called a release of liability). A recent Texas case, *Quiroz v. Jumpstreet8, Inc.*, the court addressed whether a liability waiver was valid when a plaintiff was injured at a trampoline park. The court addressed several issues, including the question of whether a release can waive claims for gross negligence.



Background

Ms. Quiroz and her son went to a trampoline park called Jumpstreet. Prior to jumping, Ms. Quiroz signed a release form required by Jumpstreet. While jumping, Ms. Quiroz was severely injured, leaving her paralyzed from the waist down.

Ms. Quiroz filed suit against Jumpstreet for negligence and gross negligence. She also filed claims on behalf of her minor children for loss of consortium and bystander claims for mental anguish. Jumpstreet filed a motion for summary judgment arguing that her claims should be dismissed because the release she signed expressly released any claims for negligence or gross negligence. Ms. Quiroz alleged the release was invalid for a number of reasons, including because it would be against public policy to allow a release to waive claims for gross negligence. The trial court granted Jumpstreet's motion and dismissed the case. Ms. Quiroz filed an appeal.

Basics of Liability Waiver Law

Generally, Texas courts will enforce a waiver of liability against an adult when it is signed before the activity and is properly drafted. Under Texas law, a waiver must be express and conspicuous. Express means that the waiver must expressly state that the person signing releases the other party from any claims for negligence. Further, the conspicuous requirement provides that the waiver may not be hidden in the fine print of a contract, instead, it should be clear based on the title, size of font, use of bold lettering, etc. that the person signing the document is signing a liability waiver. [For more information on that, please read [this prior blog post.](#)]

Decision

The Dallas Court of Appeals affirmed the decision of the trial court. In doing so, the court addressed a number of issues raised by Ms. Quiroz. [Read opinion [here.](#)]

Name on the Release

A defendant can claim protection of a release only if the release refers to him by name or with such descriptive particularity that his identity is not in doubt. Here, the release referred to all Jumpstreet, LLC and its entities, including all parent companies, affiliates, subsidiaries, assigns, employees, etc. Jumpstreet, LLC was dissolved in 2011, but testimony made clear that the defendants were the same owners and the parent company of Jumpstreet, LLC. Thus, the court found that the identity of the defendants was never in doubt. The court rejected this argument.

Ambiguity

The release was two pages long, but it contained bold headings and capitalized font. It warns that the persons signing are giving up legal rights and instructs them

to read the document carefully. There was an additional waiver and release warning right above the signature box. The court held that this release was not ambiguous.

Express Negligence

The release did not violate the express negligence doctrine. It lists both the types of injuries that could occur and expressly states above the signature line that the undersigned is waiving “negligence claims, gross negligence claims, personal injury claims, and mental anguish claims.” This is the type of express language required by the doctrine and this point of error was rejected as well.

Waiving Claims for Minor Child

Next the plaintiff argued that a parent cannot sign a liability waiver to waive claims in behalf of a minor child in Texas. Although this has been an accurate statement of the law applied by a number of appellate level courts in Texas, this court distinguished those cases. In the other cases, it was the child who was injured and the court held that a waiver signed by a parent did not apply to bar the claims of the injured child. Here, it was not a child, but the parent who was injured. Thus, most of the claims made on behalf of the children were derivative—and any defenses available to the injured parent’s claim also apply to such derivative claims as well. Thus, this argument did not invalidate the release.

Application to Gross Negligence

Finally, Ms. Quiroz argued that a release cannot apply to gross negligence claims on public policy grounds. There is currently a split among Texas appellate courts on this issue, some agreeing with Ms. Quiroz’s position and disallowing waivers to release gross negligence claims and others taking the position of Jumpstreet and enforcing such waivers. To date, the Texas Supreme Court has not ruled on this issue. In some cases, courts have held that because a gross negligence claim is technically still a negligence claim, a waiver releasing negligence claims also waives gross negligence claims. The Dallas Court of Appeals has previously disagreed with that line of cases, holding that in order to release a claim for gross negligence, a waiver must expressly include language waiving “claims for gross

negligence.” Here, the release did just that by expressly stating that Ms. Quiroz waived claims for both negligence and gross negligence.

In light of the analysis above, the court affirmed the trial court’s decision, enforced the liability waiver, and dismissed the case. Ms. Quiroz sought review by the Texas Supreme Court, but that review was denied in December.

Takeaways

As I always say at presentation discussing landowner liability, the law regarding liability releases is complicated, and this is an area where I really urge landowners to seek legal advice in getting valid, enforceable waivers drafted. Whether a waiver is enforceable or not can hinge on mere words. It is will worth spending the money up front to be sure one’s waiver is drafted as carefully and legally as possible.

Further, anyone who provides releases should review this case and ensure their own release would be enforceable under the Court’s analysis—does it name all of the correct parties or entities, is it conspicuous, and does it satisfy the express negligence doctrine. Further, it is important for landowners to understand that there are unsettled questions in Texas law where even appellate courts disagree about the validity of waivers such as when claims are waived on behalf of a minor or when a release waives claims for gross negligence. In light of this, landowners should consider other steps for reducing their potential liability as well. [See prior blog post offering 5 steps for landowners to take to avoid liability, [click here](#).]