Journal of Legal Aspects of Sport, **4(1)**, 1994, 66-77

Effect of Exculpatory Agreements on Minors and Non-Signing Spouses or Heirs

Doyice Cotten
Georgia Southern University
Statesboro, Georgia

INTRODUCTION

Exculpatory agreements are used extensively throughout the field of sport management to protect a business entity from liability for its own negligence. In the simplest scenario, an adult signs an agreement releasing a business entity from liability in exchange for the opportunity to participate. In previous research, Cotten (1993) found that the effectiveness of such agreements varies markedly due to the differences in state laws. Although in the preponderance of states, a well-constructed exculpatory agreement will be effective, the same agreement may effectively protect one from liability in one state and may be useless in a neighboring state.

The purpose of this research was to examine the effectiveness of exculpatory agreements in two situations which can be much more complex. The first situation is the use of exculpatory agreements with minors. Essentially, an exculpatory agreement is a contract and as a general rule, minors are not bound by contracts (van der Smissen, 1990). The aspects to be considered here are the effect of an agreement: 1) signed by a minor, 2) signed by a parent or guardian on behalf of a minor, 3) signed by a parent or guardian on the right of the parent to bring subsequent suit, and 4) by a parent indemnifying an entity for injury to a minor.

The second situation also involves whether one person has the right to sign away the rights of another through an exculpatory agreement. It is common for exculpatory agreements to include a statement such as "... I, intending to be legally bound, do hereby, for myself, my heirs, executors, and administrators, waive and release ... all rights and claims for damages ...." [emphasis added] (*Simmons v. Parkette Nat. Gymnastic Training Center*, 1987, p. 141). The issue in such cases is often whether the non-signing spouse retains the right to such claims as loss of consortium and wrongful death, or whether such claim, as well as that of the signing spouse, is barred by the exculpatory agreement.

More than 300 sport-related cases involving the use of some type of exculpatory agreement were analyzed. Cases were found from 47 of the 50 states. All cases relating to the rights of a minor or to the rights of the non-signing spouse were further analyzed in order to clarify these issues.

MINORS

The conventional wisdom is that exculpatory agreements signed for or by minors are not valid because the minor may disaffirm the contract. While cases from many states were found supporting the belief that a minor is free to disaffirm a contract signed by the minor, the same is not always true when the exculpatory agreement is signed by the parent of the minor.

Sport-related cases were found from 16 states that involved both minors and exculpatory agreements. Results of an analysis of these cases is presented in Table 1 where they are categorized as to the effect of the agreement and by who signed the agreement. From the table, two observations become clear. First, in every case in which the minor alone signed the agreement, the minor was able to disaffirm said agreement. The second observation is that, in the majority of states where the issue is addressed, the minor can disaffirm when the parent signed the document.

Opinions from New York courts are representative of the states which hold that the minor can disaffirm or void a contract. Santangelo, Sr. had signed an exculpatory agreement on behalf of his son exempting the city and the league from

Table 1. Effect of Exculpatory Agreements Releasing One From Duty to a Minor[a]

	Minor May Disaffirm	Minor May Not Disaffirm	Parent Loses Right to Sue	Parent Retains Right to Sue	Decided on Other Issues
Parent Signed	CT ME NJ NY PA TN WA	CA GA IN NJ[b]	TN WA	NY	AR FL LA
Minor Signed	CA CO GA MA MN NY				
Both Signed	NJ NY PA	CA NJ[b]	PA		WA

[a]State classifications are derived from rulings in the following cases. AR: *Williams v. U.S.*, (1987); CA: *Celli v. Sports Car Club*, (1972); *Hohe v. San Diego*, (1990); CO: *Jones v. Dressel*, (1978); CT: *Fedor v. Mauwehu*, (1958); FL: *O'Connell v. Walt Disney*, (1982); *Goyings v. Eckerd*, (1981); GA: *DeKalb v. White*, (1979); *Geo. R. Lane v. Thomasson*, (1980); *Smoky v. McCray*, (1990); IN: *Huffman v. Monroe County*, (1991); LA: *Powell v. Orleans*, (1978); MA: *Del Santo v. Bristol County*, (1960); ME: *Doyle v. College*, (1979); MN: *Scoles v. Franzen*, (1991); MO: *Salts v. Bridgeport Marina*, (1982); NJ: *Fitzgerald v. Newark*, (1970); NY: *Cunningham v. State*, (1942); *Kaufman v. American Youth*, (1957); *Kotary v. Spencer Speedway*, (1975); *Santangelo v. City of NY*, (1978); *Tepper v. New Rochelle*, (1988); PA: *Apicella v. Valley Forge*, (1985); *Simmons v. Parkette*, (1987); TN: *Childress v. Madison County*, (1989); *Rogers v. Donelson-Hermitage*, (1990); WA: *Scott v. Pacific West*, (1992); *Wagenblast v. Odessa*, (1988)

[b] Parent may release for minor if appointed guardian.

liability. The court ruled that neither the minor nor the parent was bound by the contract (*Santangelo v. City of New York*, 1978). In *Kaufman v. American Youth Hostels* (1957) both the parent and the minor signed the agreement. The court ruled that an infant does not have the capacity to bind himself by contracts and that any contract made by the minor may be avoided. *Kotary v. Spencer Speedway* (1975) involved an agreement signed only by a minor. Since the minor was killed in the accident, the parent retained the right of the minor to recover. The right of the minor was unaffected by the exculpatory agreement.

Georgia and California courts have ruled that agreements signed by the minor are voidable (*Smoky v. McCray*, 1990; *Celli v. Sports Car Club of America, Inc.*, 1972). The California court cited Civil Code section 35 which provides that a contract made by a minor while under the age of 18 may be disaffirmed by the minor himself prior to his majority or within a reasonable time after majority. The Georgia court likewise stated that a contract by which a minor waives a claim for damages is voidable and may be disaffirmed by the minor.

In California, *Hohe v. San Diego Unified Sch. Dist.* (1990) stated very clearly that parents may contract on behalf of their children. The court stresses that *Civil Code section 35* was not intended to affect contracts entered into by parents on behalf of their children. It also appears that minors in Georgia are not free to void contracts signed by a parent on behalf of the minor. In *DeKalb County School System v. White* (1979), the parent signed an "instructional waiver" which allowed his son to repeat the eighth grade on the condition the son would not be eligible for competition as a senior. The court upheld the signature on behalf of the minor. In addition, in another case (*Smoky v. McCray*, 1990, p. 795) the court stated that ". . . McCray was fourteen years old and unaccompanied by any parent or guardian, . . ." [emphasis added] Although not explicitly stated, one might infer from this that the agreement would have been upheld had a parent or guardian been present.

In contrast, in Pennsylvania and in Tennessee, the minor was allowed to disaffirm an exculpatory agreement which was signed by the parent (*Simmons v. Parkette Nat. Gymnastic Center*, 1987; *Apicella v. Valley Forge Military Academy*, 1985 citing *Crew v. Bartels*, 27 F.R.D. 5 (E.D.Pa.1961); *Rogers v. Donelson-Hermitage Chamber of Commerce*, 1990; *Childress v. Madison County*, 1989). In Pennsylvania, the court pointed out that parents do not have the authority to release present or future claims by a minor child. The two cases in Tennessee involving a minor and an incompetent resulted in similar rulings. The court stated that

> The status of guardians of incompetent persons is similar to that of guardians of infants,...The general rule is that a guardian may not waive the rights of an infant or an incompetent (Childress v. Madison County, 1989, p. 6, citing 39 *Am.Jur.2d*, Guardian & Ward 102 [1968]).

The issue as to whether an exculpatory agreement signed as a minor is binding upon the individual once the person reaches majority was addressed in cases from four states. A California court (*Celli v. Sports Car Club of America, Inc.*, 1972) specified that disaffirmance must be within a reasonable time. The court ruled that disaffirmance may be made by any act or declaration and that no express notice to the party is necessary. Similar rulings were made in Colorado, Minnesota, and

Massachusetts (*Jones v. Dressel*, 1978 citing *Fellows v. Cantrell*, 352 P.2d 289 (1960); *Scoles v. Franzen*, 1991; *Del Santo v. Bristol County Stadium, Inc.*, 1960).

Effect on Parent's Claim. The issue as to whether the parent is bound by an exculpatory agreement the parent signed on behalf of the minor is sometimes of concern. Cases addressing this issue were found from four states.

Pennsylvania courts ruled that the parent's action was barred by the exculpatory agreement (*Simmons v. Parkette*, 1987; *Apicella v. Valley Forge*, 1985). Similarly, in Tennessee the court held that ". . . the release was effective to waive any claim [parent] would have had in her own right" (*Rogers v. Donelson-Hermitage*, 1990, p. 12). In another Tennessee case, the court ruled that although the agreement was effective to release defendant from liability to the signing parent, it did not release liability as to the non-signing parent (*Childress v. Madison County*, 1989). In contrast, a Washington ruling seems to indicate that the signature of one parent bars both parents from recovery (*Scott v. Pacific*, 1992). Only in New York did the court hold differently in stating that the father is not bound by the agreement because his cause of action is derivative (*Santangelo v. City of New York*, 1978 citing *Kotary v. Spencer Speedway*, 1975).

Indemnification for Damages to Minors. Sometimes parents are asked to indemnify a third party against liability toward the minor. The indemnification agreement is intended to move the financial liability for any damage to the minor from the third party to the parent. When allowed, this agreement has the effect of exculpating the third party from liability for negligence.

Eight cases of this nature were found and Table 2 shows that the results are mixed. In two states, the cases were decided on other issues. Results of cases in California, Georgia, and Missouri have indicated that such agreements are legal in those states (*Hohe v. San Diego Unified Sch. Dist.*, 1990; *Geo. R. Lane & Associates v. Thomasson*, 1980; *Salts v. Bridgeport Marina, Inc.*, 1982). The California court clearly stated that ". . . a parent may contract on behalf of his or her child" (*Hohe v. San Diego Unified Sch. Dist.*, 1990, p. 1560).

In contrast, courts in Tennessee, New Jersey, and Washington have ruled that such agreements are not valid in those states (*Childress v. Madison County*, 1989; *Fitzgerald v. Newark Morning Ledger Company*, 1970; *Scott v. Pacific West*

Table 2. Effect of Indemnification Agreements Executed by Parent to Protect Tortfeasor From Claims by Minor[a]

Indemnification Allowed	Indemnification Void	Not Addressed
CA GA MO	NJ TN WA	FL ME

[a] State classifications are derived from rulings in the following cases. CA: *Hohe v. San Diego*, (1990); FL: *O'Connell v. Walt Disney*, (1982); GA: *Geo. R. Lane v. Thomasson*, (1980); ME: *Doyle v. College*, (1979); MO: *Salts v. Bridgeport*, (1982); NJ: *Fitzgerald v. Newark*, (1970); TN: *Childress v. Madison County*, (1989); WA: *Scott v. Pacific West*, (1992)

Mountain Resort, 1992). The Tennessee court says it best in stating that indemnity agreements

> . . . executed by a parent or guardian in favor of tort feasors... against an infant or incompetent, are invalid as they place the interests of the child or incompetent against those of the parent or guardian . . . (*Childress v. Madison County*, 1989, p. 7).

■ LOSS OF CONSORTIUM CLAIMS

Exculpatory agreements often include a statement by which the signer exculpates the relying party from liability for negligence to both the signer and to other parties. The following excerpt illustrates such a statement:

> HEREBY RELEASES, WAIVES, DISCHARGES AND COVENANTS NOT TO SUE ... [persons] herein referred to as RELEASEES, from all liability to the Undersigned, his personal representatives, assigns, heirs and next of kin for all loss or damage, and any claim or demands therefor, on account of injury to the person ... whether caused by the negligence of the releasees or otherwise . . . [emphasis added] (*Nickell v. Speedway*, 1983).

The question is whether an agreement with such a phrase is effective in barring claims brought by the spouse of the injured party for loss of consortium. Loss of consortium is defined as a loss of "society, services, sexual relations and conjugal affection which includes companionship, comfort, love and solace" (*Bowen v. KilKare. Inc.*, 1992. p. 17 citing *Clouston v. Remlinger Oldsmobile Cadillac, Inc.*, 258 N.E.2d 230, p. 235).

Courts have tended to take one of two stances regarding loss of consortium claims defended by exculpatory agreements. One approach is that the consortium claim by the non-signing spouse is dependent upon or derivative from the validity of a claim by the spouse who signed the agreement. In other words, if the agreement prevents the injured spouse from making a successful claim, it also prevents successful action by the non-signing spouse. The second approach is that a non-signing party has a separate claim or a separate cause of action for damages suffered, i.e., loss of consortium, against the negligent party. With this approach, the non-injured spouse can mount a successful cause of action even if the exculpatory agreement successfully protects the negligent party from liability to the injured party.

One or more sport-related cases involving the issue of the effect of exculpatory agreements on loss of consortium claims by the non-signing spouse were found from 16 states. The cases are classified by the stance of the court in Table 3. On the basis of statements in the rulings holding that claims by the non-signing spouse were dependent on the claim by the signer of the agreement, eight states were classified as derivative. In four states, the court stated clearly that loss of consortium is a separate cause of action. In the remaining four states, the issue of loss of consortium was not addressed since the cases were decided on another point of law.

Derivative Cause of Action. The approach taken by the Supreme Court of Mississippi is illustrative of that of states classified as derivative. The court stated that consortium actions "are derivative actions subject to all defenses that would have been available against the injured persons" (*Byrd v. Matthews*, 1990, p. 260 citing *Choctaw v. Wichner*, 521 So.2d 878, 881 [Miss. 1988]). The court further

Table 3. Effect of Exculpatory Agreements on Loss of Consortium Claims[a]

Cause of Action Is Derivative	Separate Cause of Action	Not Addressed
AL GA MD MS NH NY WA WY	CO MA OH WI	CA MN PA VT

[a]State classifications are derived from rulings in the following cases. AL: *Rommell v. Automobile Racing*, (1992); CA: *Powers v. Superior Court*, (1987); CO: *Barker v. Colorado*, (1974); GA: *Hall v. Gardens Services*, (1985); *Lovelace v. Figure Salon*, (1986); MA: *Gillespie v. Papale*, (1982); MD: *Winterstein v. Wilcom*, (1972); MN: *Schlobohm v. Spa Petite*, (1982); MS: *Byrd v. Matthews*, (1990); NH: *Rubin v. Loon Mountain*, (1985); NY: *Blanc v. Windham Mountain*, (1982); *Ciofalo v. Vic Tanney*, (1961); OH: *Bowen v. Kil-Kare*, (1992); *Nickell v. Speedway*, (1983); PA: *Weiner v. Mt. Airy*, (1989); VT: *Pitasi v. Stratton*, (1992); WA: *Conradt v. Four Star*, (1986); WI: *Arnold v. Shawano County*, (1982); *Dobratz v. Thomson*, (1990); *Hammer v. Road America*, (1985); WY: *Boehm v. Cody Country*, (1987)

stated that since the right of the spouse to consortium damages was derivative, it was logical that the deprived spouse have no better standing in the court than the injured spouse (*Byrd v. Matthews*, 1990).

A Washington court ruled that a consortium claim is a separate, non-derivative action, but since a valid exculpatory agreement successfully abolishes the underlying tort, the effect is that of a derivative action (*Conradt v. Four Star Promotions, Inc.*, 1986).

Separate Cause of Action. Courts in four states have strongly supported loss of consortium as a separate cause of action. The Ohio Supreme court stated:

> In Ohio, it is well established that a wife has a cause of action for damages for loss of consortium against a person who, either intentionally or negligently, injures her husband .... Likewise, a husband has a cause of action for injuries caused his wife by a person who, thereby, deprives the husband of the love, care and companionship of his wife" (Bowen v. Kil-Kare, Inc., 1992, p. 17).

The court further stated that even a properly executed exculpatory agreement would not defeat the consortium claim of the non-signing spouse (*Bowen v. Kil-Kare, Inc.*, 1992). The court went on to say that in Ohio there is an:

> ... independent right of the wife to be compensated for her loss of consortium. The right is her separate and personal right arising from the damages she sustains as a result of the tortfeasor's conduct. The right of the wife to maintain an action for loss of consortium occasioned by her husband's injury is a cause of action which belongs to her and which does not belong to her husband (*Bowen v. Kil-Kare, Inc.*, 1992, p. 18).

Courts in Massachusetts, Colorado, and Wisconsin said that an exculpatory agreement does not bar the claim of the non-injured spouse for loss of consortium (*Gillespie v. Papale*, 1982 citing *Diaz v. Eli Lilly and Co.*, 302 N.E.2d 555; *Barker*

v. Colorado Reg.-Sports Car Club of Am., Inc., 1974; *Arnold v. Shawano County Agricultural Society*, 1982). Each stated very clearly that loss of consortium constituted a separate cause of action. In Wisconsin, however, the court pointed out that the defense of contributory negligence on the part of the injured would be a valid defense and could defeat recovery (*Arnold v. Shawano County Agricultural Society*, 1982).

WRONGFUL DEATH CLAIMS

Wrongful death is a "...cause of action in favor of the decedent's personal represenative for the benefit of certain beneficiaries (e.g. spouse, parent, children) against person who negligently caused the death of spouse, child, or parent, etc." (Black's Law Dictionary, 1990, p. 1612). The cause of action in wrongful death claims is for the wrong done to the beneficiaries, not to the victim (Black's Law Dictionary, 1990).

Wrongful death action is sometimes brought in cases where a participant in a sports event is killed. The surviving spouse, parent, or child then sues for damages suffered by the survivor.

The defendant may offer as a defense an exculpatory agreement signed by the decedent similar to the one quoted from *Nickell v. Speedway* (1983) in the preceding section. At issue here is whether such an exculpatory agreement signed by the victim bars recovery by the survivor in a wrongful death action.

As was the case with loss of consortium claims, wrongful death claims may be considered to be derivative or a separate cause of action. In states where the action is derivative, the wrongful death claim by the plaintiff is subject to the same defenses, i.e., exculpatory agreements, available to the defendants had the decedent lived. In states where wrongful death constitutes a separate cause of action, an exculpatory agreement signed by the decedent has no effect on the survivor's claim.

One or more sport-related cases involving both an exculpatory agreement and a wrongful death claim were found from 20 states. The cases are classified by the stance of the court in Table 4. On the basis of opinions voiced in the rulings, eight states were categorized as derivative. Five more (Illinois, Kentucky, New York, Oregon, and Washington) were included in the category since exculpatory agreements defeated wrongful death claims in these states. The courts in two states stated very clearly that a wrongful death action constitutes a separate cause of action. In the remaining five states the issue of wrongful death was not ruled upon since the cases turned upon another point of law.

The reasoning of the Georgia court seems to be fairly representative of the courts in states that treat a wrongful death action as a derivative claim. The court says that the action created by the wrongful death statute is different from the cause of action the victim would have possessed had he lived. However, any defense which would have been good against the victim is good against his representatives in a wrongful death action. Hence, a valid exculpatory agreement which would have barred the deceased's cause of action for negligence will bar the plaintiff's cause of action for negligence under the Wrongful Death Act as well (Wade v. Watson, 1981).

Table 4. Effect of Exculpatory Agreements on Wrongful Death Claims[a]

Cause of Action Is Derivative	Separate Cause of Action	Not Addressed
CA FL GA IL IN KY NY OR PA TX WA WI TN	CA MN	AK CO KS OH OK

[a] State classifications are derived from rulings in the following cases. AK: *Kissick v. Schmierer*, (1991); CA: *Burlingame v. Penninsula*, (1971); *Coates v. Newhall*, (1987); *Madison v. Superior Court*, (1988); *Saenz v. Whitewater Voyages*, (1991); *Scroggs v. Coast Community*, (1987); CO: *Ward v. United States*, (1962); FL: *Thomas v. Sports Car Club*, (1980); GA: *Geo. R. Lane v. Thomasson*, (1980); *Wade v. Watson*, (1981); IL: *Falkner v. Hinckley*, (1989); *Fasules v. D.D.B. Needham*, (1989); *Simpson v. Byron*, (1991); IN: *LaFrenz v. Lake Cty.*, (1977); KS: *Fee v. Steve Snyder*, (1986); KY: *Peters v. United States*, (1991); MN: *Hammerlind v. Clear Lake*, (1977); NY: *Lago v. Krollage*, (1991); *Phibbs v. Ray's Chevrolet*, (1974); *Solodar v. Watkins Glen*, (1971); OH: *Goldstein v. D.D.B. Needham*, (1990); OK: *Trumbower v. Sports Car Club*, (1976); OR: *Mann v. Wetter*, (1990); PA: *Grbac v. Reading Fair*, (1981); TN: *Rogers v. Donelson-Heritage*, (1990); TX: *Winkler v. Kirkwood Atrium*, (1991); WA: *Hewitt v. Miller*, (1974); WI: *Dobratz v. Thomson*, (1990); *Ruppa v. American States*, (1979)

It is interesting to note that California is listed in both categories, Cause of Action Is Derivative and Separate Cause of Action. The court from the Second Appellate District stated that a wrongful death claim is derivative. "Behavior which is authorized is not wrongful and, logically, cannot be the basis of a wrongful death action" (Coates v. Newhall Land & Farming, Inc., 1987, p. 184). In contrast,in another 1987 case, the Fourth District Court of Appeals held just the opposite.

> Contracts seeking to release in advance the right to bring a wrongful death action, are not binding on the decedent's heirs, and there is no compelling reason to create an exception in the case of so-called "sports risk" cases (*Scroggs v. Coast Community College Dist.*, 1987, p. 919).

Although the cause of action in wrongful death claims is generally to remedy the wrong done to the survivor, the law in Tennessee differs.

> The right of action which a person, who dies from injuries received from another, . . . would have had against the wrong-doer, in case death had not ensued shall not abate or be extinguished by his death but shall pass to his . . . next of kin. *Tenn. Code Ann.* @ 20-5106 (a)

Thus the plaintiff has no new cause of action. The right of action for wrongful death in Tennessee is that which the deceased would have possessed had the deceased lived and any recovery is in the right of the deceased (*Rogers v. Donelson-Hermitage Chamber of Commerce*, 1990).

SUMMARY AND CONCLUSION

The following summary statements refer to the effect of a sport-related exculpatory agreement:

1. Without exception, in the six states represented here, a minor who signs an agreement may disaffirm at any time prior to reaching majority or within a reasonable time thereafter.
2. In seven of the 11 states where a parent signed an agreement on behalf of the minor, the minor could disaffirm.
3. Indemnification agreements by a parent were ruled ineffective in protecting against claims by the minor in three of six states.
4. In eight of the 12 states ruling on the effect on the non-signing spouse in loss of consortium claims, a valid agreement defeated the claim of the spouse.
5. In 13 of 15 states ruling on the effect on the non-signing spouse or heir in wrongful death actions, a valid agreement defeated the claim of the survivor.

Based upon this evidence, one might reach the conclusion that an exculpatory agreement is likely to be ineffective in protecting a business from liability for its own negligence to a minor. Further, one could conclude that a valid exculpatory agreement will generally bar a claim for loss of consortium or wrongful death by the non-signing person. However, the conclusion which would best serve a business entity confronted with either of these issues is that the law differs markedly among states and that there can be no general rule. Therefore, the reader is urged to exercise caution in making decisions regarding sport-related exculpatory agreements in states not listed because there is no guarantee that a court in one state will rule in accord with courts in the states represented here.

References

Apicella v. Valley Forge Military Academy, 630 F.Supp. 20 (E.D.Pa. 1985)

Arnold v. Shawano County Agricultural Society, 330 N.W.2d 773

Barker v. Colorado Reg.-Sports Car Club of Am., Inc., Colo.App., 532 P.2d 372

Black, H. C. (1990). Black's Law Dictionary (6th edition). St. Paul: West Publishing Co.

Blanc v. Windham Mountain Club, Inc., 115 Misc.2d 404 Boehm v. Cody Country Chamber of Commerce, 748 P.2d 794 (Wyo. 1987)

Bowen v. Kil-Kare. Inc., 585 N.E.2d 384; 1992 Ohio LEXIS 227

Burlingame Motor Company, Inc. v. Peninsula Activities, Inc., 93 Cal.Rptr. 376

Byrd v. Matthews, 571 So.2d 258 (Miss. 1990)

Celli v. Sports Car Club of America, Inc., 105 Cal.Rptr. 904

Childress v. Madison County, 777 S.W.2d 1 (Tenn.App. 1989)

Ciofalo v. Vic Tanney Gyms, Inc., 13 A.D.2d 702

Coates v. Newhall Land & Farming, Inc. 236 Cal.Rptr. 181 (Cal.App. 2 Dist. 1987)

Conradt v. Four Star Promotions, Inc., 728 P.2d 617 (Wash.App. 1986)

Cotten, D.J. (1993, March). An Examination of Case Law to Determine the Effectiveness of Exculpatory Agreements in Each State. Paper presented at the Sixth Annual Sport Physical Education, Recreation, and Law Conference, Jekyll Island, GA.

Cunningham v. State, 32 N.Y.S.2d 275

DeKalb County School System v. White, 260 S.E.2d 853

Del Santo v. Bristol County Stadium, Inc., 273 F.2d 605

Dobratz v. Thomson, 455 N.W.2d 639 (Wis.App. 1990)

Doyle v. College, Me., 403 A.2d 1206

Falkner v. Hinckley Parachute Center, 533 N.E.2d 941 (Ill.App.2 Dist. 1989)

Fasules v. D.D.B.Needham, Worldwide, Inc., 1989 U.S.Dist.LEXIS 10573

Fedor v. Mauwehu Council, Boy Scouts of America, 143 A.2d 466

Fee v. Steve Snyder Enterprises, Inc., Civil Action No.84-2323 (Slip Opinion)

Fitzgerald v. Newark Morning Ledger Company, 267 A.2d 557

Geo. R. Lane & Associates v. Thomasson, 156 Ga.App. 313

Gillespie v. Papale, 541 F.Supp. 1042 (1982)

Goldstein v. D.D.B. Needham Worldwide, Inc.,740 F.Supp. 461 (S.D.Ohio 1990)

Goyings v. Jack and Ruth Eckerd Foundation, Fla.App., 403 So.2d 1144

Grbac v. Reading Fair Co., Inc., 521 F.Supp. 1351 (1981)

Hall v. Gardens Services, Inc., 332 S.E.2d 3

Hammer v. Road America, Inc., 614 F.Supp. 467

Hammerlind v. Clear Lake Star Factory Sky Divers Club, 258 N.W.2d 590

Hewitt v. Miller, Wash.App., 521 P.2d 544

Hohe v. San Diego Unified Sch. Dist., 224 Cal.App.3d 1559

Huffman v. Monroe County Community School, 564 N.E.2d 961

Jones v. Dressel, Colo., 623 P.2d 1057,

Kaufman v. American Youth Hostels, 13 Misc.2d 8

Kissick v. Schmierer, 816 P.2d 188

Kotary v. Spencer Speedway, 47 A.D.2d 127

LaFrenz v. Lake Cty. Fair Board, 360 N.E.2d 605

Lago v. Krollage, 571 N.Y.S.2d 689 (Ct.App. 1991)

Lovelace v. Figure Salon, 345 S.E.2d 139

Madison v. Superior Court (Sulejmanagic), 250 Cal.Rptr. 299 (Cal.App. 2 Dist. 1988)

Mann v. Wetter, 785 P.2d 1064 (Or.App. 1990)

Nickell v. Speedway, No. 991 Slip Opinion

O'Connell v. Walt Disney World Co., Fla. App., 413 So.2d 444

Peters v. United States Cycling Federation, 779 F.Supp.853

Phibbs v. Ray's Chevrolet Corp., 45 A.D.2d 897

Pitasi v. The Stratton Corporation, 968 F.2d 1558

Powell v. Orleans Parish School Board, La.App., 354 So.2d 229

Powers v. Superior Court of Sacramento County, 242 Cal. Rptr. 1955

Rogers v. Donelson-Hermitage Chamber of Commerce, 807 S.W.2d 242; 1990 Tenn.App. LEXIS 816

Rommell v. Automobile Racing Club of America, Inc., 964 F.2d 1090 (11th Cir. 1992)

Rubin v. Loon Mountain Recreation Corporation, No.84-6248 (Slip Opinion)

Ruppa v. American States Ins. Co., Wis.,284 N.W.2d 318

Saenz v. Whitewater Voyages, Inc., 276 Cal.Rptr.672 (Cal.App. 1 Dist. 1990)

Salts v. Bridgeport Marina, Inc., 535 F.Supp. 1038 (1982)

Santangelo v. City of New York, 66 A.D.2d 880

Schlobohm v. Spa Petite, Inc., Minn., 326 N.W.2d 920

Scoles v. Franzen, 1991 Minn.App. LEXIS 932

Scott v. Pacific West Mountain Resort, 119 Wash.2d 484

Scroggs v. Coast Community College Dist, 239 Cal.Rptr. 916 (Cal.App. 4 Dist. 1987)

Simmons v. Parkette Nat. Gymnastic Training Center, 670 F.Supp. 140 (E.D.Pa. 1987)

Simpson v. Byron Dragway, Inc., 569 N.E.2d 579 (Ill.App.2 Dist. 1991)

Smoky v. McCray, 396 S.E.2d 794 (Ga.App. 1990)

Solodar v. Watkins Glen Grand Prix Corporation, 36 A.D.2d 552

Tepper v. City of New Rochelle Sch. Dist., 531 N.Y.S.2d 367 (A.D.2 Dept. 1988)

Thomas v. Sports Car Club of America, Inc., Fla.App.,386 So.2d 272

Trumbower v. Sports Car Club of America, Inc., 428 F.Supp. 1113 (1976)

van der Smissen, B. (1990). *Legal Liability and Risk Management for Public and Private Entities*. Cincinnati: Anderson Publishing Co.

Wade v. Watson, 527 F.Supp. 1049 (1981)

Wagenblast v. Odessa Sch. No. 105-157-166J, 758 P.2d 968 (Wash. 1988)

Ward v. United States, 208 F.Supp. 118 (1962)

Weiner v. Mt. Airy Lodge, Inc., 719 F.Supp.342 (M.D.Pa.1989)

Williams v. U.S., 660 F.Supp. 699 (E.D.Ark. 1987)

Winkler v. Kirkwood Atrium Office Park, 816 S.W.2d 111 (Tex.App.-Houston 1991)

Winterstein v. Wilcom, 293 A.2d 821