



Contract Clarification

ADMINISTRATION

By Gregg Scharaga

As the soggy ground turns to green grass once again, it's natural to get excited about the start of a new camp season. Campers will soon be climbing ropes courses, perfecting their archery skills, and leaping from docks into crisp, cool water at the lakefront.

But before you welcome the first camper back, it's important to dig out the necessary legal documents that ensure safety for both your campers as well as your camp. While no one wants to think about a fall from a ropes course tower or a slip on a slick dock, make sure to dot all the "i's" and cross the "t's" with the appropriate legal documents to address camp-enrollment agreements, liability for personal injuries, and liability for the actions of camp staff and campers.

Note: Before creating enrollment agreement forms, a camp should first get advice from local counsel about the enforcement of the agreement. As state laws differ, some states prohibit parents from releasing camps of their liability when children are involved.

Legal Jargon

The most common negligence claims that parents bring against camps include negligent hiring, retention, and supervision. In order for plaintiffs to recover under a negligence theory, they must prove that:

1. The defendant owed a duty to the infant plaintiff.
2. The defendant breached that duty.
3. The resulting injury was proximately caused by that breach.



To demonstrate that a duty of reasonable care was breached, the plaintiffs must show that the defendant either created the allegedly dangerous condition, or had actual or constructive notice of the condition that caused the injury and, despite having such knowledge, failed to undertake reasonable steps to remedy that condition. For example, a camp owes a duty to a child to take all steps necessary to ensure that the activity a child engages in is as safe as it can be, considering the assumptions of risk involved with camp activities. In this hypothetical case, the camp breaches that duty

when a piece of playground equipment is not secured properly and a child is injured. If the camp has in its records a prior notification of the condition of the equipment and the need for it to be secured or replaced, and does not do so before camp begins (or during the camp session), a parent can prove that the resulting injury was proximately caused by that breach.

Responsibility And Release Of Liability

The responsibility and release of liability forms involve a waiver and release of a camp's liability and the assumption of risk that parents must acknowledge in sending a child to camp. Activities such as sports and swimming involve a degree of risk. In signing the assumption-of-risk agreement, parents also are releasing the camp of liability concerning these risks. Below is an example:

“My child has permission to participate in all camp programs, camp trips, and special outings planned and supervised by Camp _____. I understand that there might be risks and dangers connected with some of the activities that are conducted at Camp _____ and on trips and special outings away from Camp _____ and I agree to release the Camp, its owners, directors, and its employees, to the fullest extent possible under the law, from any liability, legal actions, or claims which I or my child have, or might have, for any damage or injury to the child as a result of being enrolled as a camper at Camp _____ or from participating in any activity that results in damage or injury to my child or loss or damage of personal property, whether caused by the negligence of Camp _____ its owners, directors, employees, agents, or otherwise. The agreement is deemed to be entered into in the State of _____ and to be governed and enforced pursuant to _____ law.”

When defending such lawsuits, camps often rely upon the assumption of risk as a potential defense because it provides that someone who voluntarily participates in a sporting or recreational activity “consents to those commonly appreciated risks which are inherent and arise out of the nature of the sport generally and flow from such participation.” Having this language in a camp's enrollment agreement would abrogate any duty the camp defendant might have had to the plaintiff. The doctrine does not require that the injured plaintiff have foreseen the exact manner from which the injury occurred “so long as [he or she] is aware of the potential for injury of the mechanism from which the injury results.”

Forum Selection Clause

The forum selection clause is perhaps the most important part of a camp-enrollment agreement. This clause allows camps to decide under which jurisdiction a legal action will be heard. The selected courts must have some connection to the location of the camp and where it is operated. This is extremely beneficial, as the lawsuit would take

place in “the camp’s own backyard.” The jury also may consist of people from the camp’s surrounding area, which is another plus. It would be inconvenient for the parents and their attorneys to bring their suit to your choice of jurisdiction.

“I agree that this agreement will be governed by and construed in accordance with the laws of the State of _____. I submit to the exclusive jurisdiction of any court of the State of _____ located in the County of _____ for the purpose of any suit, action, or other proceeding, including those for personal injuries arising from or related to the Camp or this agreement. I agree that in any event that I take any legal action against Camp, which is decided in favor of Camp, I will be responsible for all legal fees, court costs, and out-of-pocket expenses of Camp, its owners and employees.”

When creating the forum selection clause, it is important to use mandatory language as opposed to permissive. For example, “Any lawsuit shall or must be brought into the County of Westchester.” The words “shall” and “must” are the mandatory words to be used instead of “should,” a permissive word. Another example is the word “exclusive.” “Parents submit to the exclusive jurisdiction of the courts of Westchester County.” This mandatory word discourages the parents or attorneys to bring the suit into another jurisdiction, which is beneficial for the camp, as the suit is brought at the court of its choice.

Medical Authorization Clauses

Medical authorization clauses are important to include in enrollment agreements in case of emergencies or previously existing illnesses or disabilities.

“Authority is granted without limitation to Camp, its owners, directors, employees, and agents in all medical matters to hospitalize, treat, order injection, anesthesia, surgery for the camper. The parent is responsible for advising/providing to Camp, its owners, directors, employees, and agents all pre-existing medical conditions of the camper, out-of-camp medical, surgical, hospital, pharmaceutical, allergy expenses, and for providing adequate quantities of necessary medications and allergy serums to camp in pharmacy containers with doctor’s instructions. Parent ensures that the child is physically and mentally able to participate in physical activities and has been examined by a licensed medical physician within one (1) year prior to attending this camp. The parent(s) or legal guardian(s) hereby states that the camper is in good, normal health.”

Sealed With A Signature

At the end of each enrollment agreement, acknowledgement language must exist:

“I have read, understand, and accept all of the terms and conditions set forth in this enrollment agreement.”

It is important that the mother, father, or primary guardian sign the enrollment agreement on behalf of the camper instead of allowing the camper to sign because the parents are signing the agreement to the benefit of the child. Therefore, the terms of the agreement are applicable to the child as a third-party beneficiary to the agreement. There are exceptions that may replace a signature on the dotted line, however. Clicking and agreeing to the terms of a similar electronic agreement on a computer also is sufficient. Certainly in this day and age where the Internet dictates many business transactions, there are ways to track and demonstrate that a parent agreed to the terms via clicking that they accept the terms through electronic mail and services.

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