Unexpected Loopholes to Liability for Special Events

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The upcoming warmer weather will signal the start of race season, with organizations and businesses throughout central Pennsylvania hosting 5k run/walks, bike races and or any kind of outdoor activity to raise money for charity. Those hosting and organizing these kinds of events should learn the harsh lesson of liability that recently cost a Pennsylvania event organizer millions.

Earlier this month, a Philadelphia jury awarded nearly $3.2 million in a verdict against Philadelphia and ELM Productions after a bicyclist sustained injuries when he hit a sinkhole during a charity bicycle race in 2015. The bicyclist had signed a liability waiver prior to participating in the event, but neither the judge nor jury were convinced the bicyclist waived his right to sue for receiving no warning of such a known, dangerous condition on the race route.

Liability waivers for special events are common, but while they may be partially effective at reducing lawsuits, they are by no means iron-clad. Pennsylvania courts have held that they will always be interpreted as narrowly as possible, and many exceptions apply to enforceability. For one, unless there is a specific waiver of "gross negligence," a simple negligence waiver may not prohibit suits alleging gross negligence. Similarly, even if the participant has signed a waiver of recklessness, in Pennsylvania, such waivers are void as against public policy. The line between negligence, gross negligence and recklessness frequently involves complex factual questions that require depositions and a jury determination. Even if the injured party is complaining of conduct for which he waived his right to sue, the waiver will not relieve the event sponsor of the obligation to defend the suit through trial.

The precise words of any liability waiver are extremely important, because courts can determine that unexpected risks were not bargained away by the signer. In one case, while a participant in a racquetball game had signed a waiver discharging all claims against the gym "due to negligence or any other fault," the Superior Court narrowly interpreted the language to only waive liability for injuries sustained related to the negligence of entities other than the gym.

To add more difficulty for those hosting special events, most special event insurance policies or endorsements contain an "athletic or sports participant exclusion" for bodily injuries sustained by any event participants, essentially limiting coverage for spectator bodily injury. Even activities such as dancing can lead to exclusion by an insurance carrier under this provision. These dual concerns can lead an event sponsor to a situation where it faces the prospect of being directly liable for a multi-million dollar verdict after an injury despite having its participants sign a liability waiver and despite obtaining special event insurance.

For those hosting special events, there are always risks of litigation, even when participants sign a liability waiver and even when the host purchases special event insurance. Sponsors should be sure their liability

waivers are carefully and specifically worded to provide maximum immunity from suit. Even if a liability waiver is signed, sponsors should still take precaution to remove dangerous conditions or to warn participants of any conditions that cannot be removed. Event hosts should also take a detailed look at their insurance policy language to ensure that in the event there are unexpected injuries, coverage is provided.

If you have questions about protecting your company for an upcoming special event, please reach out to me or anyone in Barley Snyder's Litigation Practice Group.

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