



Exculpatory Provisions Can No Longer Preclude Liability for Reckless Acts in Pennsylvania: The Supreme Court of Pennsylvania's Recent Decision Shows that the Tide Is Turning

Joseph F. Rich • 215.665.7285 • jrich@cozen.com

Have you handled a good liability case only to find an exculpatory clause in the contract or lease allowing the targeted party to avoid liability for its negligent acts or omissions? Now, in Pennsylvania, liable parties no longer can claim blanket protection under an exculpatory provision if they were potentially reckless in bringing about a loss.

In *Tayar v. Camelback Ski Corp. Inc.*, 2012 WL 2913750,* 10 ___ A.3d ___ (July 18, 2012), the Supreme Court of Pennsylvania held exculpatory clauses that relieve a party of liability for "recklessness" are invalid as being against public policy. Specifically, the Supreme Court found "there is a dominant public policy against allowing exculpatory releases of reckless behavior, which encourages parties to adhere to minimal standards of care and safety."

In *Tayar*, the court considered whether public policy permits releases of reckless behavior in a pre-injury release. After a detailed analysis and discussion of the law applicable to exculpatory clauses, the Supreme Court concluded that it was against public policy to allow a party to exculpate itself in advance for reckless behavior. The Supreme Court reasoned to find otherwise "would remove any incentive for parties to act with even a minimal standard of care." The Supreme Court noted the overwhelming majority of states find exculpatory clauses releasing reckless conduct are against public policy, and commented that federal courts

in Pennsylvania had previously barred the enforcement of releases for reckless conduct. *Id.* at * 9 & n.13.

While the issue in *Tayar* addressed "recklessness," the court's decision also left "for another day the question of whether a release for gross negligence can withstand a public policy challenge." This is a further signal the tide may be turning in Pennsylvania against parties who seek to rely on exculpatory provisions to avoid liability for acts of gross negligence. In commenting on gross negligence, the court cited federal court decisions from U.S. District Courts for the Eastern District of Pennsylvania and the District of New Jersey in its analysis, in which those courts found exculpatory clauses in Pennsylvania cannot limit liability for gross negligence. The court also commented on the decision in *Valeo v. Pocono Int'l Raceway, Inc.*, 500 A.2d 492 (Pa. Super. 1985), which is often cited to support challenges to claims of gross negligence, noting the court there did not cite to "any authority" for approving a release that barred claims of gross negligence and "critically, did not address the public policy of permitting such a release."

*For additional information on the decision in *Tayar* or to discuss questions you may have about the decision, please contact Joseph F. Rich at jrich@cozen.com or 215.665.7285.*