

ASSUMPTION OF RISK WAIVERS: ARE THEY VALID?



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If you or your child have ever played organized sports, in all likelihood you have signed a waiver that allegedly protects the

league and its participants from lawsuits for injuries that may be sustained as a result of participating in that sport.

If you don't sign the waiver, you are not allowed to play, so of course you sign it. "Assumption of the risk" is often the term used for these type of waivers. But what risks are you

actually assuming?

In accordance with Florida law, the only risks you are "assuming" are "known risks." In other words, "expected risks." It is assumed that when you play ice hockey, there is a chance of injury from being hit by someone's

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hockey stick, the puck, or from being body checked in some leagues.

However, there is a big difference between a player being injured from being tripped by a hockey stick and a person taking a baseball swing at another player's head, causing them to black out from a concussion. It is certainly not a known risk that a person will attempt to end another player's life on the ice. If a waiver allowed people to act in this malicious fashion, there would be a beeline of psychopaths joining athletic teams. There has to be some balance.

An athletic facility or playing field must be in reasonable playing condition for participants; otherwise, they can be held negligent. Let's say a player in a softball game hits a ball way over the right fielder's

head, and as the right fielder runs to retrieve the ball, he steps into a 6-inch hole left in the outfield, breaking his ankle.

That player could have a claim against the owner of the field or the league as the player likely had no knowledge that such a defect would exist on the softball field. In comparison, if the player running the bases slips and breaks his ankle, he would not have a claim as this would be a known risk of playing softball. There is a world of difference between the player hurting himself due to exertion than due to a problem with a field that is expected to be maintained.

Although waivers are enforceable in Florida, the law does not favor them and strictly construes them against the person who created the waiver. The next time you are presented with a waiver, take a close look at the wording of the waiver.

Sometimes there will be language concerning absolving the league or the facility from negligence. But what negligence is the waiver presenter talking about? This again presents the issue that a person can only assume "known risks." To allow otherwise would provide facilities and leagues a free pass to be as careless and negligent as they elected to be and face no consequences.

Waivers are necessary to protect entities from an endless stream of lawsuits stemming from sports and other injury-prone activities. However, just because a waiver exists does not lessen the duty of the facility or league to act responsibly with regards to the safety of participants.

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