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By Paul Sullivan

Who's at Fault? Read the Fine Print to Make Sure You're Not at Risk

Ray Mantle, driving, with his golfing partner, Bob Gaca, at the Queen's Harbour Yacht & Country Club in Jacksonville, Fla. Mr. Mantle is fighting the club's liability waiver for golf cart use. Credit...Todd Anderson for The New York Times

By Paul Sullivan
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If the old printer at his golf club had not been replaced, Ray Mantle probably would not have realized that he and his friends had been signing a liability waiver that could expose them to expensive litigation and damages.

Mr. Mantle, a retired New York lawyer whose specialty was intellectual property, said he had noticed something on the back of the receipt for a golf cart rental at his club, Queen's Harbour Yacht and Country Club in Jacksonville, Fla., that alarmed him.

Appearing clearly in black ink on white paper, thanks to the new printer, was an agreement that exempted ClubCorp, which owns the club, from any liability incurred while any person — the renter, a family member or even a third party — was using the cart.
These types of waivers, often written in small print with legal verbiage, have become a part of modern life. They typically exempt a business or a person from blame or liability should something go wrong; instead, the onus is on the person who signs the waiver.

But Mr. Mantle thought this one went too far, because it tried to absolve the club's owner from basic responsibility. So he complained to the manager, only to find out that he had overlooked the agreement for years, when it was printed in gray ink on yellow paper.

Mr. Mantle, 81, began a campaign against the waiver, enlisting fellow members to challenge its use with Queen's Harbour and ClubCorp.

His effort goes beyond one gated golf community in North Florida. It raises issues for anyone who has taken a child to a trampoline park, driven around a go-kart track or rented sporting equipment: How enforceable are these ubiquitous waivers, what rights does a signer give up, and are individuals unwittingly taking on risk that a business should assume?

States have a lot of say over waivers of liability. Lee Wickert, a lawyer in the Austin, Tex., office of Matthiesen, Wickert & Lehrer, compiled a list of how each state interprets them. He found that only Louisiana, Montana and Virginia ban them. California interprets them strictly, while in Alabama, pretty much anything goes. Florida, he said, often sides with the business over the individual; in Wisconsin, it's the opposite.

At the heart of any of these waivers are two points: whether the language is clear and what bargaining powers the person being asked to sign the waiver has.

"A lot of times, people aren't even aware of the language," Mr. Wickert said. "Oftentimes, it's a hindsight question: The court says, 'If he did read it, would he have understood it?'"

In Florida, the state looks at whether the service or area covered by the waiver is essential to the public, like a park. If it is, the waiver is not valid. A golf course does not fall under the public service designation. But how the ClubCorp waiver would be enforced is not clear.

Mr. Mantle said he and his fellow members were concerned that if an accident occurred on the golf course, they could be sued while the waiver's legality was debated in court.

"It's likely unenforceable, but before it got to that point, the person would be sued and have to hire a lawyer," he said. "And there's always some uncertainty about whether you'd win."

The costs to someone who had signed that waiver could be staggering, depleting savings and other assets like a house. Mr. Mantle said the waiver had not deterred him from golfing. But he and his golfing buddies make sure to cross it out.

Vince Catalli, another member of Queen's Harbour and a friend of Mr. Mantle's, has helped lead the charge against ClubCorp.

"The issue isn't any golfer being responsible for his own negligence," Mr. Catalli said. "The issue is ClubCorp saying we need to be responsible for their negligence."

Neither Kimberly King, senior associate counsel at ClubCorp, nor the company's spokeswoman, Patty Jerde, would discuss the matter by phone. In an email, Ms. Jerde defended the policy, equating the risk that golfers take to those assumed by a skier.

“Similar to other hosts of recreational sites (e.g., ski resorts), we use an assumption of risk policy so that our members and guests can understand their own personal responsibility,” she wrote. “We believe we’ve struck a fair balance between offering a great recreational experience and the associated risks assumed with the enjoyment of our facilities.”

In an email to Mr. Catalli, Ms. King said the company would not change its language and compared its waiver to ones she had signed for bike rides, summer camp for her children and bounce houses.

But when using entertainment equipment, like a trampoline or a bounce house, parents and children are required to acknowledge lengthy agreements before being allowed to participate. It’s clear that dozens of children bouncing on a trampoline carries risk of injury. But even those agreements do not always hold up in instances of negligence by the company, lawyers said.

Or consider an ice-skating rink, where a waiver would be required. If a skater gets hurt, the skater has waived liability against the owner of the rink. If a skater hurts someone else, the skater is still liable.

“If you injure someone else, that liability is now part of your personal liability coverage,” said Scott Teller, executive vice president at Chubb, the insurance company, adding that a lawsuit could be financially devastating. “It only takes one single liability event like that to impact your financial well-being.”

Lawyers questioned whether putting a waiver of liability on the back of a golf cart slip was even valid, let alone aboveboard. The waivers that hold up best in court are written with bold type highlighting the risks to a person, who then has to agree to them by signing, Mr. Wickert said.

“Warnings on the back of tickets aren’t so strong,” he said.

But this can be a hazy area, because Queen’s Harbour is also open to the public. At a private club, such exculpatory language does not exist — and most likely would not be tolerated by members, said Tom Walker, vice president at RPS Bollinger Sports & Leisure Insurance.

“If you’re a member, you don’t have anything contractually that you’d sign off on,” he said. “Nor would your guests be involved with that.” A private club might try to mitigate risk with private contractors who work there, however.

Yet there are instances when being on a private course is not protection from liability. To protect yourself, insurers stress the need for excess liability coverage, also known as umbrella policies. Traditionally, these policies pick up coverage where automobile or homeowner policies leave off.

Ross Buchmueller, president and chief executive of Pure Insurance said his company had settled a claim a few years ago after a client’s golf club slipped from his hands during a swing on a course in Miami and struck a cyclist on an abutting bike route.

The cyclist, of course, was not required to sign a waiver for a bike ride, Mr. Buchmueller said. “He went on a path open to the public — maybe it had signs warning about golfers — but either way, the person got hurt,” he said. His company paid a claim in excess of $100,000 because the golfer had an umbrella policy.

Mr. Mantle said ClubCorp’s waiver had not deterred him from golfing. But he and his golfing buddies make sure to cross it out and write that they do not accept it.

“So far, the people manning the cash registers let me do it,” he said. “My own preference is to take out those terms that release me from liability and indemnifies the club from liability. But as a lawyer, I’ve modified the terms, and they’ve accepted it.”

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