

## **Waiver, Release of Liability and Assumption of Risk Agreement**

Before any potential claims can be assessed, the Waiver, Release of Liability and Assumption of Risk Agreement must be addressed. In ND, contracts which have for their object, directly or indirectly, the exempting of anyone from responsibility for that person's own fraud or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law. Danny cannot be exempt from willful injury to another person, it can be shown that it was his will to injure Abby, Burt, and Chris by forcing them to dress in clothing known to him to cause injuries to trained employees, and by his actions to scare Abby, Burt and Chris, as well as his insistence that Burt try "lumber surfing" Furthermore, in ND, every stipulation or condition in a contract by which any party thereto is restricted from enforcing that party's rights under the contract by the usual legal proceedings in the ordinary tribunals or which limits the time within which that party thus may enforce that party's rights is void, except as otherwise specifically permitted by ND law. Specifically the Agreement contains, the clause "I hereby release, waive discharge, and agree not to sue Ye Olde Sawmill ...", which would appear to violate the statute. Lastly, it would also need to be questioned whether Abby, Burt, and Chris were given a proper amount of time to review the Agreement and whether they understood what they were reading. Based on the foregoing, it is

reasonable to begin to assess the potential claims of Abby, Burt, and Chris.

### **Danny v. Hunters**

Danny would have an intentional torts claim for “trespass to land” against the hunters. The three hunters were walking across a section of Ye Olde Sawmill property by the creek. The hunters may not have known that they were on private property, but it occurred nevertheless. The act of being on the surface of the private property of the Sawmill was a physical invasion of the Mill’s real property.

As a result, Danny may seek compensatory damages in the form of property damages.

### **Hunters v. Danny**

The estates of the three hunters killed by the collapse of the IMAX theatre would have a negligence claim against Danny. Danny’s duty of care was owed to all foreseeable plaintiffs; considering that it was hunting season, Danny had reason to believe that it was foreseeable that hunters may trespass on to his property and that his duty of care would extend to them as well.

But-for the machinery continuing to run without anyone there to oversee the functioning of the machines, the machinery would not have jammed, which proximately led from the dome of the IMAX theatre being dislodged from its foundations and ultimately crushed

the hunters. It was foreseeable that if the machinery was left running with no one to control it, a malfunction could occur.

When Danny left the machinery unattended, he breached his duty to the hunters. A reasonable person in Danny's circumstances, as the only person knowing how to operate the machinery, would have shut-down the machines before leaving for the hospital.

As a result, the estates of the hunters could expect to receive personal injury compensatory damages and punitive damages.

### **Chris v. Danny**

Chris would have a negligence claim against Danny. Danny owed Chris a duty of care that included applying first aid for common sawmill injuries. First aid charts were posted in various locations at Ye Olde Sawmill, and Danny, as the CEO, was well aware of these charts. The reasonable person would have looked to the chart to discover both the symptoms and treatments for a potential concussion. When Chris was knocked down and mentioned that he had a concussion, Danny failed to check on him. Later, when Chris failed to act after Burt's accident and fell into a deep sleep, Danny wrote off Chris' actions as a character fault. By failing to ever check the chart, and furthermore failing to check upon Chris, Danny breached his duty to Chris. But-for Danny not following his own posted instructions in treating common

sawmill injuries, Chris would not have fallen asleep and fell into a coma.

As a result, Chris could expect to receive personal injury compensatory damages.

### **Burt v. Danny Claim 1**

As a paid invitee to Ye Olde Sawmill, Burt was owed a duty of care from Danny to be warned of the dangers of each activity that he participated in. The reasonable owner would have warned his invitees that “lumber surfing” was extremely dangerous and that the invitee would be risking his body limbs, and even his life, by playing this game. (The reasonable owner would not have allowed his invitees to engage in such a reckless activity that had nothing to do with recreating the sawmill experience.) Burt breached this duty of care when he not only failed to warn Burt of the dangers of “lumber surfing,” but he actually coerced him into participating by berating him in front of his fiancé.

But-for Danny failing to warn Burt of the enormous risk he was about to endeavor upon, Burt would have understood how unsafe “lumber surfing” was and have declined to participate. Instead, Danny led Burt to believe that “lumber surfing” was fun; however, Burt lost both of his feet in a gruesome accident after attempting to lumber surf.

As a result, Burt could expect to receive personal injury compensatory damages and punitive damages due to Danny's malicious coercion.

However, Danny may have a defense in comparative responsibility because it is reasonable for a person to believe that attempting to balance on a log as it is being mulched to pieces by a large saw may result in severe injury, in addition to undertaking this irresponsible activity, Burt will argue that Burt read the clause of the Agreement which stated, "I further acknowledge that working with antiquated fast-moving saws, conveyors, and other milling equipment involves certain risks and injuries that can occur ..."

### **Abby v. Danny**

Abby may have an intentional tort claim of "outrage" against Danny. Abby witnessed the event of Burt having his feet chopped off, and as a result, sought treatment for post-traumatic stress disorder, even needing prescription anti-depressants and sleep aids. Danny's coercion of Burt was so reckless that it led Burt to believe that he needed to redeem himself by riding a log at a spinning saw blade. Danny did not try to prevent Burt from riding or coach him on the technique; instead, Burt rode the lumber for too long and had his feet

cut off in a gruesome manner. Both feet were sent flying and blood filled the air. Abby witnessed the event, which ended with Burt's disfigured body lying in a crumpled mess.

Abby could expect personal damages.

### **Burt v. Danny 2**

Burt may also have an intentional tort claim for "assault" against Danny. Danny's practical joke was intended to make Burt believe that he was in grave danger. Screaming at Burt, "Get Down! That saw blade is going to hit you! Duck!" created a sense of immediacy in that Burt believed the blade was right behind him and frantically dove to avoid the saw blade. The sound of the saw and the tone in Danny's voice had Burt believing he was in danger, causing him to frantically dive to safety and grazing his head off a sharp edge. But-for Danny's practical joke, Burt would have no reason to fear for his life.

If Burt can win personal injury damages, then he could most definitely win punitive damages.

Burt and Chris may have strict liability claims, too. Danny has an absolute responsibility for the safety of his invitees. The Ye Olde Lumber Experience is an abnormally dangerous activity in which there

are multiple risks of serious harm. The harms could not be rendered safe; in fact, Ye Olde Sawmill could not comply to the standards laid out by the OHSA so the 'Mill turned to tourism.

Danny would be liable for the aforementioned injuries because his waiver would be deemed invalid. A negligent action that results in injury can be actionable because a person cannot acquire the right to be negligent towards others.

Even if the waiver is valid, releasing Danny from liability towards Abby, Burt, and Chris, the estate of the hunters would still have claims because the hunters never signed the waiver agreement.