

Missouri Hunting Leases: Does the “Hold Harmless” Contract Work?

I had a hunting outfitter come into my office a while back wanting a “hold harmless” contract to keep hunters from suing him. Unfortunately, as I explained, no contract will keep you from being sued. As the joke goes, “you don’t need a reason to sue, you just need a lawyer.” The key then is to try to prevent that attorney from pursuing the case by limiting your liability.

While there are other ways to limit your personal liability, the “hold harmless” and “release of liability” agreements have gained favor largely due to their simplicity and relatively low cost. However, the Missouri Courts have considered those agreements to be highly disfavored - almost to the point of being against public policy.

The Western District Missouri Court of Appeals explained its position on the matter in a recent case. In the case Frank v. Mathews, a student was taking horse riding lessons, fell off, and sued the riding instructor and the owner for various injuries she suffered. The defendants, to their credit, had required the student to sign a one-page “hold harmless” agreement purportedly releasing the defendants from any liability due to accidents caused by the employees or animals at the stable. However, despite the release and hold harmless agreement, the court allowed the student to pursue her case against the defendants.

The court’s decision was based largely on the principle that contracts are strictly construed against the drafting party. The courts typically do not want someone to be able to limit his liability for his own future negligence. In order to actually limit this liability, there must be a “clear and unmistakable waiver,” thereby shifting the risk of injury from the landowner to the hunter. “Exculpatory clauses that exonerate parties from their own future negligence are disfavored...”.

The court states that a “reasonable person” must fully understand exactly what future claims he is waiving, and, if the language of the document does not show a “clear and unmistakable waiver” of those rights, the clause is unenforceable. Even if the clause states that the owner will be released from “any and all claims,” this language has been held insufficient to bar a personal injury action. The rationale is that a paying hunter, for example, should not have to accept additional possibilities of injury caused by the carelessness or negligence of the very person whom he expected to keep him safe.

This principle of law is great for a hunter, but leaves landowners, guides, and outfitters with a problem. Do I accept a few thousand dollars from a hunter and risk losing the entire farm? Not a very good prospect. So what do you do?

While little is foolproof, I have added a clause to my hunting leases that limits the landowner’s liability for his own future negligence. Because the courts seem to consider the placement of the clause in the agreement, as well as the “conspicuous” nature of the language, not only do I make the language more thorough, I also pay attention to the placement of the clause in the agreement, as well as making the clause “eye-catching” so that the average person with no legal background will understand the rights they are waiving.

Of course there are multiple other ways to limit liability that are beyond the scope of discussion in this article. Additionally, any hunting lease agreement will have several other vital provisions based on liability and contract law. In regards to the hold harmless clause, though, Missouri law has at least shown some clarity on the issue, giving us parameters on how to draft the provisions to effectively eliminate that liability.