I. Are pre-injury waivers/releases of claims for injury or death enforceable in Arizona?


However, in *Phelps v. Firebird Raceway*, 111 P.3d 1003 (Az. 2005), the Supreme Court of Arizona abrogated *Salt River* and *Benjamin* by constituting the waiver as a form of assumption of the risk. Under Arizona Constitution Article 18 sec. 5, in all cases contributory negligence and assumption of the risk are questions of fact for the jury. So the jury decides what the waiver/release means and whether it was knowingly signed.

In a memorandum opinion that is not precedential, *1800 Ocotillo v. WLB Group*, 2009 WL 1138049 (Az. Ct. App. Div. 1, 2009), the Court of Appeals of Arizona held that a limitation on damages provision was enforceable and not covered by a Constitutional provision because it was not assumption of the risk.

II. Are pre-injury waivers of jury trials enforceable in Arizona?

Yes, pursuant to arbitration agreement. No Arizona case deals with waiver of jury trial outside of arbitration agreement. However, jury trials are waived if not timely requested so no absolute right to a jury trial.

III. Are agreements restricting claims for injury or death to binding arbitration enforceable in Arizona?

Yes. Arizona Revised Statute 12-1501 provides that arbitration agreements are enforceable unless grounds for revocation of contract exist. In *Harrington v. Pulte Homes Corp.*, 119 P.3d 1044 (Az. Ct. App. Div. 1, 2005), it was held that the arbitration statute is valid unless the agreement was unconscionable or violated reasonable expectations. Arizona applies a 7 part test for reasonable expectations based on the *Darner* case.

*Day v. Kindred Hospitals West, LLC*, 2011 WL 6141282 (Az. Ct. App. Div. 1, 2011), is a memorandum opinion applying an arbitration provision to the case but recognizing that an arbitration agreement only applies to those who actually signed the agreement, not their heirs or representatives, unless they also signed the agreement.

There is no limitation on type of claim, but the type of claim could impact an analysis of conscionability and adhesion. *Cooper v. QC Financial Services, Inc.*, 503 F.Supp.2d 1266 (D.Ariz. 2007), held an arbitration agreement could not prevent class action because the agreement was unconscionable as an adhesion contract on a consumer claim for small damages.