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


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

This is not decided. In general, contractual waivers of jury trials are enforceable, but there is no Connecticut case law on point addressing a jury trial waiver in the context of a release as applied to a personal injury or wrongful death matter. See L & R Realty v. Connecticut Nat. Bank, 246 Conn. 1, 10, 715 A.2d 748, 753 (1998). Here, again, even with regard to waivers that have been held to be enforceable, there are limitations. The court must find “reasonably clear evidence of the intent to waive.” L & R Realty v. Connecticut Nat. Bank, 246 Conn. 1, 10, 715 A.2d 748, 753 (1998). Factors to be considered include:

(1) the conspicuousness of the waiver clause, including (a) its location relative to the signatures of the parties, (b) whether it was buried in the middle of a lengthy agreement, and (c) whether it was printed in a different typeface or font size than the remainder of the contract; (2) whether there was a substantial disparity in bargaining power between the parties to the agreement; (3) whether the party seeking to avoid enforcement was represented by counsel; (4) whether the opposing party had an opportunity to negotiate the terms of the agreement; and (5) whether the opposing party had been fraudulently induced into agreeing specifically to the jury trial waiver.

246 Conn. at 15, 715 A.2d at 755.

III. Are agreements restricting claims for injury or death to binding arbitration enforceable in Connecticut?
As a general matter, agreements to arbitrate are enforceable in Connecticut, “except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally.” Conn. Gen. Stat. § 52-508. As discussed below, other than dicta there is no case law specifically considering the enforceability of an agreement to arbitrate in the context of a personal injury or wrongful death action. See Conn. Gen. Stat. § 52-408; Nussbaum v. Kimberly Timbers, Ltd., 271 Conn. 65, 71, 856 A.2d 364 (2004) (“Connecticut has adopted a clear public policy in favor of arbitrating disputes”).

The agreement to arbitrate must expressly state that arbitration is the exclusive method for settlement of disputes arising under such agreement. The intent that arbitration “be the exclusive method for the settlement of disputes arising under the contract must be clearly manifested. This express intent by both parties to enter into the arbitration agreement is essential to its existence.... An agreement to arbitrate must be clear and direct and not depend on implication.” Jacob v. Seaboard, Inc., 28 Conn.App. 270, 273, 610 A.2d 189, cert. denied, 223 Conn. 923, 614 A.2d 822 (1992).

A Connecticut trial court recently held that the arbitration clause within an assumption of risk and waiver form required by an amusement park to be unenforceable against an injured plaintiff, where the arbitration requirements were uni-directional, and where the terms and process created a one-sided contract of adhesion. Mack v. Brownstone Exploration & Discovery Park LLC, 2017 WL 961041 (Conn. Super. Ct., Jan. 25, 2017).