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

Pre-injury waivers or releases of claims are enforceable except “to the extent that they limit[] a party’s liability for gross negligence, recklessness or intentional torts.” Moore v. Waller, 930 A.2d 176, 179 (D.C. 2007) (quoting Carleton v. Winter, 901 A.2d 174, 181 (D.C. 2006)).

“A fundamental requirement of any exculpatory provision is that it be clear and unambiguous.” Moore v. Waller, 930 A.2d 176, 181 (D.C. 2007) (quoting Maiatico v. Hot Shoppes, Inc., 287 F.2d 349, 351 (1961)). “[E]xculpation must be spelled out with such clarity that the intent to negate the usual consequences of tortious conduct is made plain.” Maiatico, 287 F.2d at 351. As a practical matter, to be sufficient to exculpate the release from its own negligence, an exculpatory clause must usually expressly refer to releasing the release from negligence claims. See Moore, 930 A.2d at 181.

Exculpatory clauses will not be enforced if they violate public policy. See, e.g., Godette v. Estate of Cox, 592 A.2d 1028, 1034 (D.C. 1991) (“An exculpatory clause [in a will] that excuses self-dealing [by the personal representative] or attempts to limit liability for breaches of duty committed in bad faith, intentionally, or with reckless indifference to the interest of the beneficiary, is generally considered to be against public policy.”); George Washington Univ. v. Weintraub, 458 A.2d 43, 47 (D.C. 1983) (exculpatory clause in lease was ineffective to waive tenants' rights under implied warranty of habitability); see also Wolf v. Ford, 335 Md. 525, 644 A.2d 522, 526 (1994) (public policy will not permit exculpatory agreements in certain transactions affecting the performance of a public service obligation or “so important to the public good that an exculpatory clause would be patently offensive”). Additionally, exculpatory clauses are subject to ordinary contractual defenses, such as unconscionability. See Moore, 930 A.2d at 182.

II. Are pre-injury waivers of jury trials enforceable in the District of Columbia?

Yes. “It is clear that the parties to a contract may by prior written agreement waive the right to a jury trial.” Pers Travel, Inc. v. Canal Square Assocs., 804 A.2d 1108, 1111 (D.C. 2002) (quoting K.M.C. Co. v. Irving Trust Co., 757 F.2d 752, 755 (6th Cir. 1985) (citations omitted). “It is also generally accepted that a voluntary waiver of the right to a jury trial ‘suffers from no inherent constitutional or legal infirmity,’” Id. (quoting Seaboard Lumber Co. v. United States, 903 F.2d 1560, 1564 (Fed. Cir. 1990)). “Although such a waiver must be knowing and voluntary, see, e.g., National Equipment Rental, Ltd. v. Hendrix, 565 F.2d 255, 258 (2d Cir. 1977), [such] jury waiver clauses ‘are enforceable unless they are unconscionable, offend public policy, or are shown to be unfair in the particular circumstances.’” Id. (quoting Chase Commercial Corp. v. Owen, 32 Mass. App. Ct. 248, 253, 588 N.E.2d 705, 708 (1992)). Whether a jury waiver clause is unconscionable or unfair depends on an analysis of several factors: “the nature of the contract, the conspicuousness of the jury waiver clause, the relative bargaining positions of the parties, and the fact that both parties had legal counsel.” Id.
III. Are agreements restricting claims for injury or death to binding arbitration enforceable in the District of Columbia?