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I. Are pre-injury waivers/releases for injury or death enforceable in Iowa?

Yes, pre-injury waivers/releases of claims are enforceable in Iowa. See, e.g., Huber v. Hovey, 501 N.W.2d 53, 55 (Iowa 1993) (“[W]e have repeatedly held that contracts exempting a party from its own negligence are enforceable, and are not contrary to public policy”). Moreover, these releases will be upheld even when the claimant did not read the waiver before signing. See Id. (“Absent fraud or mistake, ignorance of a written contract’s contents will not negate its effect”).

By nature, “[a] release is a contract, and its validity is governed by the usual rules relating to a contract.” Korsmo v. Waverly Ski Club, 435 N.W.2d 746, 748 (Iowa Ct. App. 1988) (citing Stetzel v. Dickerson, 174 N.W.2d 438, 439 (Iowa 1970)). Therefore, absent ambiguity, Iowa courts examine the express language of the waivers in order to determine the extent of its legal effect. See Korsmo, 435 N.W.2d at 748. Furthermore, “[u]nder Iowa law, a contract need not expressly specify that it will operate for negligent acts if the clear intent of the language is to provide for such a release.” Id. (citing Hysell v. Iowa Pub. Serv. Co., 534 F.2d 775, 785 (8th Cir. 1976)).

Satisfactory language precluding suit was found in Korsmo v. Waverly Ski Club. There, participants in a water ski tournament released certain parties “[from any and all rights, claims, demands and actions of any and every nature whatsoever . . . sustained by [them] . . . before, during, and after said competitions.]” Korsmo, 435 N.W.2d at 748. The Iowa Court of Appeals held the language was sufficiently clear to convey the parties’ intent to be released from claims arising from participation in the tournament. Id. Moreover, this language clearly intended to cover negligent acts, despite the release never expressly using those words. Id. Finally, the explicit act causing injury was not required to be specified in the release’s language because “it [was] reasonable to conclude the parties contemplated a similarly broad range of accidents.” Id. at 749 (citing Schlessman v. Henson, 413 N.E.2d 1252, 1254 (Ill. 1980)).

However, pre-injury waivers/releases for claims of injury are not enforceable against minors. In the case of Galloway v. State of Iowa, 790 N.W.2d 252 (Iowa 2010), a minor sustained injuries while on an educational field trip through the child’s school. Id. at 253. Prior to the field trip, the child’s parent signed a permission form serving as a blanket release of the school’s liability for “any accidents, losses, damages or injuries” the child may sustain. Id. Although the mother signed the form, it was nevertheless deemed against public policy. See Id. at 258. The Iowa Supreme Court reasoned that “public policy protecting children from improvident actions of parents in other contexts precludes the enforcement of preinjury releases executed by parents for their minor children.” Id. Unlike an adult waiving their own liability, the waiver at issue in Galloway served as the relinquishment of another. See Id. The child doesn’t understand what has been forfeited and “may or may not have the knowledge and experience required to assess and avoid risks of injury created by the activity.” Id.

II. Are pre-injury waivers of jury trials enforceable in Iowa?
Iowa courts have not directly addressed this issue in the civil context, specifically as it pertains to pre-injury waivers. *But see State v. Yang*, 732 N.W.2d 888 (Iowa 2007) (noting a defendant must knowingly, voluntarily, and intelligently release their right to a jury trial in order to be effective in criminal matters).

However, in a similarly related context, the United States District Court for the Northern District of Iowa addressed waivers of jury trial provisions in loan agreements. *See Cooperative Finance Ass’n, Inc. v. Garst*, 871 F. Supp. 1168 (N.D. Iowa 1995). Under *Cooperative Finance Ass’n, Inc. v. Garst*, the court spoke to jury trial waivers generally, stating they may be waived either expressly or implied. *Id.* at 1171. Furthermore, these waivers are “neither illegal nor contrary to public policy.” *Id.*

“For a waiver to be effective, the party waiving the right must do so ‘voluntarily’ and ‘knowingly’ based on the facts of the case.” *Id.* (citing *Brookhart v. Janis*, 384 U.S. 1, 4-5 (1966)). Importantly, “whether the waiver provision is on a standardized form agreement or newly-drafted document, in fine print or in large or bold print, set off in a paragraph of its own, in a take-it-or-leave-it or negotiated contract,” are all factors to be considered in making this determination. *Garst*, 871 F. Supp. at 1172. Thus, it becomes imperative for pre-injury releases (should they waive jury trials) to not hide this information; rather, to make this relinquishment as clear and visible as possible. *See id.*

This same issue was also addressed by the Eight Circuit Court of Appeals in *Bank of America v. JB Hanna, LLC*. *See generally* 766 F.3d 841 (8th Cir. 2014). There, several million dollars was borrowed over the course of approximately ten years. *See Id.* at 845-48. In all but two of the various loan agreements, the borrower “agreed to waive a jury trial in the event of a dispute arising from the transaction[ ].” *Id.* at 847. However, it was the default of one of the agreements not containing such a provision which accelerated all of the borrower’s outstanding debt. *See Id.*

Touching on the waiver of a jury trial, the Court of Appeals noted, “Although the jury-trial right can be waived . . . the right ‘is fundamental,’ so we ‘indulge every reasonable presumption against [its] waiver.’” *Id.* at 849 (citations omitted). Exercising this strong presumption against waivers, the court held the defaulting agreement was a separate and distinct transaction; therefore, the waiving provisions of the previous loan agreements did not carry over upon their acceleration. *See Id.* at 849.

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

Iowa will enforce an agreement restricting claims for injury or death to binding arbitration. In *Roth v. Evangelical Lutheran Good Samaritan Soc.*, documentation was signed prior to a resident being admitted into her nursing home. *See* 886 N.W.2d 601, 603 (Iowa 2016). The documents served as an agreement to arbitrate “all controversies, disputes, disagreements or claims including, but not limited to . . . all negligence and malpractice claims, [as well as] all tort claims.” *Id.* at 604. Shortly after the resident’s death, her children (a portion of whom were
serving as coexecutors of her estate) filed suit against the nursing home claiming negligent care, injury, wrongful death, in addition to loss of consortium. See Id. In reply, the nursing home moved to compel arbitration pursuant to the signed admission documents. See id. at 604-05.

Ultimately, the plaintiffs were not bound to arbitrate, as the loss of consortium claims were deemed belonging specifically to the adult children, and they “never personally agreed to arbitrate.” Id. at 613. Therefore, “the nominal plaintiff status of the administrator or executor is not enough to compel arbitration of claims owned by the adult children and not by the estate.” Id. at 614.

Nevertheless, the court made clear that “when a personal representative brings a wrongful-death action against a party with whom the decedent entered into a binding arbitration agreement, the case is subject to arbitration.” Id. at 608 (emphasis in original). This holding stems from the reasoning that, in such an action, the personal representative steps in the shoes of the decedent; a new action is not created in the decedent’s survivors. See id. Thus, despite the lack of arbitration in Roth, the Iowa Supreme Court definitively maintains that a party will be bound to arbitration should a claimant execute such an agreement prior to injury/death. See id.

Speaking broadly to arbitration agreements, Iowa federal courts recognize “a ‘liberal federal policy favoring arbitration agreements,’” specifically under the Federal Arbitration Act (FAA). Wells Enterprises, Inc. v. Olympic Ice Cream, 903 F. Supp. 2d 740, 745 (N.D. Iowa 2012) (quoting Moses H. Cone Memorial Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24 (1983)). Moreover, “[a] dispute must be submitted to arbitration if (a) there is a valid agreement to arbitrate and (b) the dispute falls within the scope of that agreement.” Olympic Ice Cream, 903 F. Supp. 2d at 745 (citing Telectronics Pacing Sys., Inc. v. Guidant Corp., 143 F.3d 428, 433 (8th Cir. 1998)).

Finally, governed by ordinary contract principles, “whether parties indeed agreed to submit their dispute to arbitration depends in the first instance upon whether their written agreement constitutes an enforceable contract.” Owen v. MBPXL Corp., 173 F. Supp. 2d 905, 913 (N.D. Iowa 2001) (citing Patterson v. Tenet Healthcare, Inc., 113 F.3d 832, 834 (8th Cir. 1997)). Should all these requirements be met, arbitration will be binding and enforced.