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

In Kansas, pre-injury waivers and/or releases of claims for injury or death are enforceable. Generally, exculpatory agreements that are voluntarily entered into by parties of equal standing are valid. *New Hampshire Ins. Co. v. Fox Midwest Theatres, Inc.*, 203 Kan. 720, 726, 457 P.2d 133 (1969); *Talley v. Skelly Oil Co.*, 199 Kan. 767, 433 P.2d 425 (1967); *Grain Co. v. Railway Co.*, 94 Kan. 590, 146 Pac. 1134 (1915). Such pre-injury waivers and releases of claims for injury must be written in “clear and unequivocal” terms. *Ki Ron Ko v. Bally Total Fitness Corp.*, No. 02-2360-GTV, 2003 U.S. Dist. LEXIS 19378, at *6 (D. Kan. Sep. 16, 2003). Any limitation on liability must be “fairly and honestly negotiated and understandingly entered into.” *Id.* When determining whether a pre-injury waiver and/or release was voluntary and properly negotiated, Courts may consider the totality of the circumstances surrounding the formation of the contract. *Id.*

Although pre-injury waivers and/or releases of claims for injury or death are enforceable, Kansas courts do impose some limitations. Most notably, a pre-injury waiver and/or release of claims is void if against public policy or illegal. *Corral v. Rollins Protective Services Co.*, 240 Kan. 678, 681, 732 P.2d 1260 (1987). An agreement is against public policy if “it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute, or tends to interfere with the public welfare or safety. *Mid-Am. Sprayers, Inc. v. United States Fire Ins. Co.*, 8 Kan. App. 2d 451, 456, 660 P.2d 1380, 1384 (1983). Additionally, it is illegal for a party to exempt themselves from liability arising out of a willful breach of duty and for an individual who is charged with a public duty to escape liability for negligent performance of that duty by contract. *Talley v. Skelly Oil Co.*, 199 Kan. 767, 773, 433 P.2d 425, 430 (1967). Furthermore, the terms of an agreement cannot be extended to situations that fall outside of the plain language used in the waiver. *FEE v. STEVE SNYDER Enters.*, CIVIL ACTION No. 84-2323, 1986 U.S. Dist. LEXIS 28158, at *16 (D. Kan. Mar. 14, 1986). Finally, the Kansas Consumer Protection Act, K.S.A. § 50-693, prohibits the use of any limitation on remedies or liability for implied warranties; thus rendering them void.

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

There does not appear to be any case law or statutory authority on this particular issue.

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