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

In Missouri, although exculpatory clauses in contracts releasing an individual from his or her own future negligence are disfavored, they are not prohibited as against public policy. *Alack v. Vic Tanny Int'l*, 923 S.W.2d 330 (Mo. 1996). Parties are generally free to contract as they wish, and courts will enforce contracts according to their plain meaning, unless induced by fraud, duress, or undue influence. *Util. Serv. & Maint., Inc. v. Noranda Aluminum, Inc.*, 163 S.W.3d 910, 913 (Mo. 2005). As a general proposition, however, contractual provisions releasing a party from liability for its own negligent acts must be clear, unambiguous, unmistakable, and conspicuous in order to release a party from his or her own future negligence. *Alack*, 923 S.W.2d at 337. General language will not suffice; and the exculpatory language must clearly notify a party that he or she is releasing the other party from claims arising from the other party's own negligence. *Id.* A determination as to whether a contract is ambiguous is a question of law to be decided by the court. *Id.* at 337.

While pre-injury waivers and/or releases of claims for injury or death are enforceable, there are limitations. The terms must be clear, unambiguous, and unmistakable. *Noranda*, 163 S.W.3d 910; and *Alack*, 923 S.W.2d at 337. Most notably, the courts draw a distinction between contracts with consumers and contracts between businesses of equal power and sophistication. *Noranda*, 163 S.W.3d at 913. Sophisticated businesses that negotiate at arm's length may limit liability without specifically mentioning "negligence," "fault," or an equivalent. *Purcell Tire & Rubber Co. v. Exec. Beechcraft, Inc.*, 59 S.W.3d 505 (Mo. 2001). Courts have found exculpatory clauses to be unenforceable when they do not specifically state that future negligence is being released. *See Alack.* Additionally, one cannot waive intentional acts of misconduct or gross negligence. *Alack*, 923 S.W.2d at 337; and *DeCormier v. Harley-Davidson Motor Co. Grp.*, 446 S.W.3d 668 (Mo. 2014).

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

A party may contractually waive its right to a jury trial. *Malan Realty Inv’rs v. Harris*, 953 S.W.2d 624 (Mo. 1997). To effectively waive a jury trial by contract, clear, unambiguous, unmistakable, and conspicuous language is required. *Alack*, 923 S.W.2d at 337. Courts have held that a party may contractually relinquish fundamental and due process rights. *Malan*, S.W.2d at 626. This theory is based on the right of a party’s freedom to contract. “Validity of the waiver must be knowingly and voluntarily made. This is designed to protect against over-reaching and inequitable bargaining positions.” *Id.* at 627.

Although, a party may waive a jury trial pre-injury, there are safeguards in place to prevent abuse. A waiver will not be implied, but must be clearly and explicitly stated. *Alack*, 923 S.W.2d at 334. To determine whether or not the waiver was knowingly and intelligently made, courts will examine the following factors: negotiability of the contract terms, disparity in bargaining power between the parties, the business acumen of the party opposing the waiver, and the conspicuousness of the jury waiver provision. *Malan*, 953 S.W.2d at 627.
III. Are agreements restricting claims for injury or death to binding arbitration enforceable in Missouri?

In Missouri, a party may contractually relinquish fundamental and due process rights. Arbitration agreements are an example where the courts have upheld the parties' right to contractually agree to relinquish substantial rights. *Alack*, 923 S.W.2d at 337. A party may contractually eliminate his or her right to bring an action for personal injuries that may be sustained as a result of future negligent acts. *Id.* If the contract terms are unequivocal, plain, and clear, the court is bound to enforce the contract as written. *Malan*, 953 S.W.2d at 627.

There are limitations to arbitration agreements restricting claims for injury or death. The right to restrict claims for injury or death through binding arbitration is limited to those who are parties to the agreement. *Jones v. Paradies*, 380 S.W.3d 13, 17 (Mo. App. E.D. 2012). These agreements are limited in wrongful death suits. Missouri law is clear that an arbitration agreement signed by a decedent does not apply to decedent's heirs in a wrongful death claim. *See Lawrence v. Beverly Manor*, 273 S.W.3d 525, 526-29 (Mo. 2009); and *Finney v. Nat'l Healthcare Corp.*, 193 S.W.3d 393, 395-97 (Mo. App. S.D. 2006). Because wrongful death is a cause of action distinct from any underlying tort claims of the decedent, the arbitration agreement necessarily cannot bind parties to the wrongful death suit. *Lawrence*, 273 S.W.3d at 527-259.