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

With respect to this issue, Idaho adheres to the fundamental freedom of contract concept. Accordingly, express agreements releasing one party from pre-injury liability for that party's negligent acts are generally enforceable in Idaho unless: (1) there is an obvious disadvantage in bargaining power; or (2) there is an applicable public duty involved. *Morrison v. Northwest Nazarene Univ.*, 152 Idaho 660 (2012). The release agreement must be clear and ambiguous, and must address the conduct of the party that caused the harm. However, the parties to a release agreement "need not have contemplated the precise occurrence that caused the plaintiff's injuries, but rather may adopt language to cover a broad range of accidents by specifying injuries involving negligence on the part of the defendant." *Id.* It should be noted that Idaho courts disfavor a party trying to avoid liability for its negligent acts or omissions, and, accordingly, exculpatory agreements are strictly construed against the party relying upon them. *Id.* It is likely that an Idaho court would find a pre-injury release seeking to relieve a party of liability for gross negligence or reckless/intentional/willful conduct to violate public policy. *See Adams v. Conway*, Case No. BON CV 2013 1213, 2014 Ida. Dist. LEXIS 10 (1st Jud. Dist. Oct. 26, 2014).

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

Idaho courts have not addressed the enforceability of pre-injury waivers of jury trials. However, Article I, Section 7 of the Idaho constitution provides that "[a] trial by jury may be waived . . . in civil actions by the consent of the parties, signified in such a manner as may be prescribed by law." Idaho Const. Art. I, § 7. Idaho courts have enforced a provision in a lease agreement whereby the parties "agree[ed] that the matter shall be tried by the court without a jury and each party specifically waives the right to a jury trial." *Watkins Co., LLC v. Storms*, 152 Idaho 531 (2012). The Watkins court reasoned (1) that there was no modification of the jury-trial waiver provision because there was no writing signed by both parties, and (2) that "[i]f the written agreement is complete upon its face and unambiguous, no fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to or detract from the terms of the written contract." *Id.* In view of Article I, Section 7 of the Idaho constitution, and given the reasoning contained in Watkins, it is likely that an Idaho court would rely on the freedom of contract concept, and related principles and rules of construction/interpretation, when determining whether a pre-injury waiver of jury trial was enforceable.

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

Although Idaho courts have not addressed this issue, Idaho's Uniform Arbitration Act provides that "[a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, save upon such grounds as exist in law or in equity for the revocation of any contract." I.C. § 7-901 et seq. There is a strong public policy in
Idaho that favors arbitration, and all doubts are to be resolved in favor of arbitration. *Mason v. State Farm Mut. Auto. Ins. Co.*, 145 Idaho 197 (2007) (upholding an arbitration in an insurance contract in an injured plaintiff's lawsuit arising out of defendant insurers' refusal to pay medical expenses). "A court reviewing an arbitration clause will order arbitration unless 'it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" *Id.* (Citations omitted.) Idaho court's have also recognized (1) that "the validity of either a contract to arbitrate or an arbitration provision in a contract must be determined under contract defenses that are generally applicable to all contracts"; (2) that "the grounds for revocation of an arbitration agreement are either mutual agreement or a condition that vitiates the agreement *ab initio*, such as fraud, mistake, or duress"; and, (3) that because "unconscionability is a ground for voiding a contract, it can be a basis for revoking an agreement to arbitrate." *Id.* Based upon the foregoing, it is likely that an Idaho court would enforce an agreement that restricted claims for injury or death to arbitration as such agreement would be an issue of contract law.