

TYPES NOT MAPPED YET May 02, 2025 | TTR not mapped yet | Jeffrey N. Brown, Jose L. Lua-Valencia

Enforceable Pre-Injury Release-of-Liability Forms: Peace of Mind for Commercial Landlords

In *Diamond v. Schweitzer*, the California Court of Appeal recently issued helpful guidance for commercial landlords looking for peace of mind and lower business costs when facing potential premises liability.^[1] There, the court reiterated longstanding California law, dictating the requirements for an enforceable pre-injury release of liability. But the details of the case are also worth noting, as they shed light on the factors that might render such a release unenforceable.

The case arose after the plaintiff attended an event at a speedway to watch his brother and father race Modlite cars. During the event, an altercation broke out in the speedway's restricted pit area because of the plaintiff's brother's conduct while racing. The plaintiff tried to intervene in the fight, but someone punched him, causing him to fall to the ground, crack his skull, and sustain subdural and internal bleeding. The plaintiff filed the lawsuit, which included a claim for premises liability, and named the owners of the speedway as defendants. The plaintiff alleged that the defendants were negligent because they purportedly failed to provide reasonable security, failed to adequately respond to the altercation, and failed to undertake reasonable rescue efforts. The defendants successfully moved for summary judgment, arguing that to gain admission to the pit area, the plaintiff had signed a pre-injury release of liability form, which barred his negligence claims.

The Court of Appeal affirmed the trial court's summary judgment for the defendants because the pre-injury release of liability form met the three requirements for an enforceable release: (1) the release clearly, unambiguously, and explicitly reflected the parties' intent to release all liability for the alleged injury; (2) the defendants' alleged negligence was reasonably related to the purpose of the release; and (3) enforcement of the release would not conflict with public policy.

In so holding, the Court of Appeal first explained that a release is ambiguous if it is susceptible to more than one interpretation. Ambiguity can be patent—that is, evident on the face of the release—or it can be latent, shown by extrinsic evidence of the circumstances surrounding the release's execution.

Looking only at the language of the release, the court determined that it was unambiguous. The release stated: "[The plaintiff] hereby releases, waives, discharges, and covenants not to sue [the defendants] from all liability ... for any and all loss or damage, and any claim or demands therefor on account of injury to the person ... of [the plaintiff] arising out of or related to the event(s), whether caused by the negligence of [the defendants] or otherwise." Specifically, the appellate court found following language rendered this an unambiguous broad release of liability:

- use of word *all* to modify *liability* because "all" is broad and covers any possible liability, without exclusion;
- use of *any* and *all* to modify *loss* or *damage* because their use means the release is meant to cover any potential injury "without restriction";
- use of *arising out of* and *related to* in conjunction with *event(s)* because those words cover injuries or claims with a logical or causal connection to the racing event;
- incorporation of the following language elsewhere in the release because it meant the release should be read as broadly as possible: "I HAVE READ THIS RELEASE ... AND INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW";

- inclusion of the watermarked words “I HAVE READ THIS RELEASE” over the plaintiff’s signature; and
- although “event(s)” was undefined in the agreement, inclusion of the name of the speedway in the release’s “DESCRIPTION AND LOCATION OF SCHEDULED EVENTS” section and the date the release was signed sufficiently identified the “event(s)” the release was meant to cover.

Applying this language to the injuries raised in the plaintiff’s lawsuit, the Court of Appeal then held that the release covered the plaintiff’s injuries because they had a causal connection to the racing event. The injuries had a causal connection because, but-for the racing event, the plaintiff would not have been in the pit area, where he became involved in the altercation that resulted in his head trauma. The Court stressed that a *direct* causal connection was not required between plaintiff’s injuries and the racing activities, meaning that the injuries did not need to be caused by a race car crash. The court also declined to adopt the plaintiff’s narrower interpretation of the phrase “ARISING OUT OF OR RELATED TO THE EVENT(S),” which the plaintiff argued should be read to include only the dangers typically associated with standing in close proximity to racing cars. As support for his narrower interpretation, the plaintiff pointed to a warning about the dangers of racing that had been included in the release. But the court held that if a narrower reading was intended, the release would not have made a broad reference to “event(s)” and would have, instead, only referred to the *racing activities* or the *dangerous activities* of the events. The release would have also not stated that it was “intended to be as broad and inclusive as is permitted by the laws of the State ... in which the Event(s) is/are conducted.”

The Court of Appeal also held that the defendants’ alleged negligence, resulting in the plaintiff’s injury, was reasonably related to the purpose of the release. The alleged negligence occurred when a fight broke out in the pit area during the race, which the plaintiff attended to observe his brother and father race cars. The release, itself, stated that the plaintiff’s purpose for signing the release was to gain entry to the venue, including the pit area, to “observe” the race. Meanwhile, the defendants’ purpose for requiring the release was to decrease their business costs by allowing them to permit attendees into the pit area, without the risk of potential liability for negligence for failing to incur additional security expenses to prevent injuries to the attendees.

Finally, the court held that enforcing the release did not conflict with public policy because it did not involve a transaction that affected a matter of great public interest. As the court explained, under *Tunkl v. Regents of University of California*, courts are to void pre-injury releases when the agreement pertains to a service that is essential to the public, placing members of the public at a distinct bargaining disadvantage because, by needing the service, they lack a meaningful capacity to say “no” when presented with an agreement that includes a pre-injury release of liability.^[2] Unlike other services and premises that courts have said are of great practical necessity—banks, hospitals, and childcare services^[3]—the public has a meaningful choice as to whether to participate in entertainment and leisure. Accordingly, enforcement of a pre-injury release in the context of sports, large concerts, and other entertainment events does not conflict with public policy.

Commercial landlords should take some solace that, under *Diamond*, by and large, most business operations may continue to be protected by well-drafted, enforceable pre-injury release forms. But commercial landlords should also take heed of the potential pitfalls that might arise with poorly drafted releases. Indeed, *Diamond* suggests that creative litigation might identify a latent ambiguity in a release, even where no ambiguity is apparent at first glance. And if a court is persuaded that a latent ambiguity exists in a release form, it could open a Pandora’s box of extrinsic evidence that could ultimately render the release unenforceable. In *Diamond*, the court did not consider whether the release at issue contained a latent ambiguity only because the plaintiff did not raise that argument on appeal. Defendants in other lawsuits will not be so fortunate. Again, the best defense will be well-drafted releases.

[1] *Diamond v. Schweitzer*, No. F086150, 2025 Cal. App. LEXIS 258 (Cal. App. March 24, 2025).

[2] *Tunkl v. Regents of University of California*, 60 Cal. 2d 92 (1963).

[3] *Okura v. United States Cycling Federation*, 186 Cal. App. 3d 1462 (1986).

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