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*News and Updates for Sports, Fitness & Recreational Businesses*

### Illinois Court Enforces Waiver Signed By Volunteer

*By Alexander "Sandie" Pendleton*

On August 12, 2011, the Illinois Court of Appeals upheld a trial court's dismissal of a lawsuit brought against the Salvation Army by a voluntary participant in a Salvation Army rehabilitation program, based on the participant's having signed a waiver agreement prior to the accident occurring. Although the case does not arise in a recreational event context, the holding in the case is relevant and may be of value to recreational opportunity providers who ask event volunteers to sign pre-event waiver forms.

The plaintiff in the case (Andre Johnson) was injured in a single-car crash while a passenger in a Salvation Army-owned vehicle driven by a Salvation Army employee. Johnson himself was not an employee, but a beneficiary of a Salvation Army drug rehabilitation program, which provided to him room, board, counseling sessions, and "work therapy." As part of the work therapy component of the program, Johnson was assisting the driver in making deliveries at the time of the crash.

The Salvation Army's defense was based on a waiver agreement in which Johnson had agreed to hold the Salvation Army "free and harmless from any and all liability" if he were injured while a participant in the drug rehabilitation program. This agreement had been read aloud to Johnson, who then signed and dated it before a witness. The Salvation Army moved for summary judgment on the grounds that this agreement was a "complete bar" to Johnson's claims. Johnson cross-moved for summary judgment, alleging that the waiver was unenforceable (1) because it violated public policy, and (2) because the accident at issue was not covered by the specific terms of the agreement. The court granted the Salvation Army's motion for summary judgment, and Johnson appealed.

On appeal, Johnson contended that under Illinois law (as in most states) waivers signed by employees are not enforced, and that his relationship with the Salvation Army was "akin" to an employer/employee relationship. The Court of Appeals rejected this contention, finding that the relationship was one of beneficiary and charitable organization: Johnson was **voluntarily** in the program, which he could choose to leave at any time, and the work therapy tasks performed by Johnson were not employment, but were for skills training.

Johnson further contended that he, an unemployed, homeless, substance abuser, had "no free choice or reasonable alternative" in bargaining with the Salvation Army over the conditions of enrollment in the program; according to Johnson, if he failed to accept such terms, he would be "denied food and shelter" and "returned to the homeless and foodless environment from which he came." The court of Appeals found that the Salvation Army did not offer food, shelter, or the "necessities of life" to program beneficiaries, such as Johnson. Rather, what the Salvation Army offered was the opportunity to participate in the rehabilitation program, to which such benefits as food and shelter were "merely incident." Further, the Court of Appeals found that: Johnson had other rehabilitation program opportunities available to him, and, indeed, had taken advantage of other such programs both before and after his participation in the Salvation Army's program. To the court, Johnson's participation in this particular program was **strictly voluntary** – he was not required to participate and could cease to participate at any time, for any reason; and Johnson had also had the opportunity to live with his mother and/or his brother (*i.e.*, he would not actually have become homeless and foodless, had he not agreed to the terms set by the Salvation Army).

Johnson argued that the accident at issue was not covered by the language of the agreement, because, according to Johnson, the language covered only the premises of the Salvation Army's building in Chicago. The Court of Appeals disagreed, stating that, on its face, the agreement covered any accident causing any personal injury to Johnson while Johnson was a beneficiary of the rehabilitation program, without "limitation as to the physical or geographical location" of the incident or injury.

Based on these rulings, and finding no disputes of material fact that would require a jury trial to resolve, the Court of Appeals affirmed the circuit court's summary judgment in favor of the Salvation Army.

The key lessons that can be drawn from *Johnson* for recreational event organizers in Illinois are as follows:

1. Illinois courts will in certain circumstances enforce waivers signed by volunteers; so it is probably a good practice for event organizers to ask volunteers to sign waivers.

2. Illinois courts **will not enforce** a waiver if it is poorly drafted, and especially if it does not contain "clear, explicit and unequivocal language referencing the type of activity, circumstances or situation that it encompasses"; so event organizers that plan on asking volunteers to sign waiver forms, should make sure they have their lawyer review the waiver language for clarity and cohesiveness.
3. A recreational provider's case is strengthened if the provider can establish that the waiver agreement represented the "free choice" of the volunteer; because of this, event organizers are wise not "to spring the waiver form on the volunteer at the last minute," or to ask volunteers to sign forms where the waiver (and/or indemnification terms) are "buried" or "camouflaged" on the form.

In short, while the waiver was enforced in *Johnson*, there remain numerous potential pitfalls in Illinois associated with how liability agreements are drafted, and how they are deployed. If we can assist you in ensuring that your organization is using properly drafted waiver agreements, and is deploying those waivers in an appropriate way, do not hesitate to contact us.

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*(The information and views discussed in this article are for general information purposes only. An organization that has specific questions as to the effect the above development may have for it should discuss such with its attorney, or with an attorney who is familiar with this area of the law and the organization's specific operations or concerns.)*

**About Pendleton:** Alexander "Sandie" Pendleton is a shareholder with the Milwaukee law firm of Pendleton Legal, S.C. Sandie has over twenty years of experience counseling clients involved in sports and recreational activities, including power sports activities, and is a frequent speaker and writer on recreational liability issues.

**About Pendleton Legal, S.C.:** At Pendleton Legal, S.C., we continue to believe the right to the "Pursuit of Happiness" is a right worth preserving. Our S/F/R Team (Sports, Fitness & Recreation Team) guides and fights for businesses and organizations that provide recreational opportunities and products, so that our clients are not overwhelmed by liability that might otherwise threaten their continued success (or even existence). Preserving the right is often not an easy or simple task, but we know this mission is an important one to our clients, and to the future of a free society. In addition to our S/F/R services, we provide legal expertise across the numerous areas of law encountered by businesses and organizations in the normal course of their day-to-day operations and growth. If you would like to explore whether we can help your organization achieve its mission, contact us.