

## BUSINESS LITIGATION ALERT

OCTOBER 2009

### Is Your Company's Liability Disclaimer Valid?

**In *Stelluti v. Casapenn Enterprises, LLC*, the New Jersey Appellate Division found that a health club's disclaimer only disclaimed liability for ordinary negligence, and did not shield against liability for reckless, willful, wanton or palpably unreasonable acts or omissions diminishing the safe condition of its equipment.** This case could have a wide ranging impact on all types of businesses, whether a spa, skating hall, health club, ski operator or any other business utilizing such disclaimers.

When she joined the health club, the Plaintiff in *Stelluti* signed an exculpatory agreement that disclaimed "all injuries which may occur," in the "use of all amenities or equipment," the "sudden and unforeseen malfunctioning of any equipment," and the club's "instruction, training [or] supervision," among other things. One (1) hour after she signed the agreement, Plaintiff proceeded to her first spinning class. Plaintiff informed her instructor that she was inexperienced. Plaintiff's instructor strapped her feet to the bike and adjusted the seat. During the class, the handlebars detached from the stationary bicycle causing Plaintiff to fall and sustain injuries. Thereafter, Plaintiff filed a lawsuit against the club for failure to maintain the bicycle, failure to provide adequate warnings and instruction, and failure to adequately train and supervise its employees. Plaintiff also sued the manufacturer of the bike and the premises owner.

The club moved for summary judgment arguing that Plaintiff's claims were barred pursuant to the liability disclaimer. The trial judge granted the club's motion for summary judgment finding that the liability disclaimer was unambiguous and enforceable, regardless of whether the club's conduct was just ordinary negligence or gross negligence. Plaintiff appealed arguing, in part, that it would violate public policy if a liability disclaimer could shield gross negligence or other more severe conduct. Plaintiff argued that the club's conduct was more than ordinary negligence and, therefore, could not be barred by the liability disclaimer.

The New Jersey Appellate Division analyzed public policy considerations and found the club's liability disclaimer valid as it applied to ordinary negligence, but invalid and against public policy as applied to conduct beyond ordinary negligence, such as reckless or palpably unreasonable behavior. However, the Appellate Division also found that the club's conduct did not rise above the level of ordinary negligence and the liability disclaimer was a valid bar to Plaintiff's claims. Summary judgment was affirmed in favor of the club.

Recreation and other businesses must be mindful of the limitations on liability disclaimers. Public policy considerations will always be weighed by the courts, and a liability disclaimer barring conduct worse than ordinary negligence may be invalid. Businesses must take this into account in their strategic planning and pricing of their products/services. ■

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## Corporations Get Personal

**In *AT&T, Inc. v. F.C.C.*, the United States Court of Appeals for the Third Circuit held that corporations – not just individuals – have personal privacy interests that could protect against disclosure of documents compiled for law enforcement purposes pursuant to The Freedom of Information Act (“FOIA”).** This case provides every company the defense of “privacy” in objecting to a FOIA request for documents gathered for law enforcement purposes.

The Freedom of Information Act requires a federal agency to disclose certain documents in its possession. However, FOIA exempts from mandatory disclosure “records or information compiled for law enforcement purposes . . . to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.” A FOIA request was made to the FCC requesting all documents pertaining to a prior FCC investigation of AT&T relating to a self-reported overcharge for work performed pursuant to a

federal program. AT&T objected and argued that the FCC could not legally release these documents because such disclosure would likely invade AT&T’s personal privacy. The FCC rejected this argument and found that only individuals – not corporations – could have personal privacy pursuant to the FOIA exemption. AT&T appealed.

The Third Circuit agreed with AT&T and held that corporations have personal privacy interests that could protect against disclosure requests for documents compiled for law enforcement purposes pursuant to FOIA. The Court then remanded the matter back to the FCC for a determination of whether disclosure of the requested documents fit within the FOIA exception and would “constitute an unwarranted invasion of personal privacy.” Every company that has turned over documents to a government agency for law enforcement purposes should be aware of this potential defense to a FOIA request for the public disclosure of these documents. ■

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