



Claim Case Studies & Legislation: Jamieson v. Whistler Mountain Resort Limited Partnership, 2017 BCSC 1001

Participants in many recreational activities are required to sign waivers. The appropriate legal wording of the waiver is obviously critical, but did you know that the manner in which the waiver is presented can be equally vital? This case demonstrates the importance of the process of administering a waiver.

The Plaintiff Jamieson was mountain bike riding at the Defendant Whistler's facility when he was thrown over his handlebars and suffered a spinal cord injury. Although he had signed a waiver and release, Jamieson commenced a claim against Whistler anyway.

Jamieson testified that he had previously been a volunteer patroller at Whistler and he had participated in the building of their mountain biking trails. Jamieson claimed that his experience as a patroller did not provide him with an understanding of the risks associated with mountain biking although he admitted having witnessed several incidents where spinal precautions were used.

Prior to riding, Jamieson had signed a document entitled "Whistler Blackcomb Mountain Biking Waiver of Claims

Assumption of Risk and Indemnity Agreement Release". The text was printed inside a bolded box and highlighted in yellow. The waiver also included the statement "by signing this release agreement you will waive or give up certain legal rights, including the right to sue or claim compensation following an accident." and "PLEASE READ CAREFULLY!" with a line for the rider's initials next to the statement "I have been offered a copy of this Release Agreement and I have been advised to read it carefully."

Jamieson claimed that no one explained the contents of the release to him. The contradictory evidence of Whistler employees was that, in addition to the wording of the release, they were trained to say "This is a release of liability and waiver of claims. It is a legal document, so you should make sure you read through it and understand what you are signing. I will be your witness." every time they presented the release and then give the person time to read the release. Before signing as a witness, the employee would always ask: "Have you read and understood what you have signed?". They would not witness the person's signature unless they answered yes. Although the employee who witnessed the Plaintiff's release did not specifically

remember her interaction with him, she testified that she was certain she would have administered the release in the way she had been trained because she always followed that exact procedure.

In addition to the release, Whistler had installed a sign at the beginning of the trail stating that it was advanced. There was also a “filter feature” that represented the skill level required to ride the trail. If riders were unable to complete the “filter feature” they were advised that they should not continue.

Although the Judge indicates that Whistler’s release is comprehensive and the process for administering the waiver was thorough, he does refer to the fact that specific injuries are not identified in the release.

Whistler brought an application for summary judgment to have Jamieson’s claim dismissed on the grounds that Jamieson had signed the release waiving his right to sue Whistler for his injuries.

Takeaways

If a waiver is comprehensive and properly administered, it can act as a complete bar to personal injury claims resulting from recreational activities. Some of the elements of Whistler’s waiver that the Judge in this case decided constituted a comprehensive waiver are:

- Bold text
- Highlighting
- Clear wording that included:
 - RELEASE OF LIABILITY, WAIVER OF CLAIMS, ASSUMPTION OF RISKS AND INDEMNITY AGREEMENT
 - BY SIGNING THIS RELEASE AGREEMENT YOU WILL WAIVE OR GIVE UP CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE OR CLAIM COMPENSATION FOLLOWING AN ACCIDENT.
 - PLEASE READ CAREFULLY!
 - “I have been offered a copy of this Release Agreement and I have been advised to read it carefully” with a line for the participant’s initials

- “STOP – READ THIS!!!” Underneath that heading are eight bulleted statements including:
 - “Use of the Bike Parks involves the risk of injury. You control the degree of risk you will encounter in using the trails and features in the Bike Parks”;
 - “Do not attempt any of the trails or features unless you have sufficient ability and skill to do so safely. Always ride in control and within your ability level”; and
 - “The Bike Parks are not recommended for first time cyclists, without proper instruction”.
- YOU ASSUME THE RISK OF ANY INJURY THAT MAY OCCUR WHEN USING THE BIKE PARKS. WHISTLER BLACKCOMB MOUNTAIN’S LIABILITY FOR ANY INJURY OR LOSS IS EXCLUDED BY THE TERMS AND CONDITIONS ON YOUR TICKET OR BIKE PARK PASS RELEASE OF LIABILITY.

The process followed by Whistler to administer their release included:

- training staff to say “This is a release of liability and waiver of claims. It is a legal document, so you should make sure you read through it and understand what you are signing. I will be your witness.” every time they presented the release;
- allowing the patron sufficient time to read the release;
- before signing as a witness, training the employee to always ask: “Have you read and understood what you have signed?”; and
- training staff not to witness the person’s signature unless they responded that they read and understood what they had signed.

Whistler’s defence was further bolstered by the fact that they followed an inspection process, posted signage warning of the skill level required and provided the alternative of an easier route to avoid the features that required an expert skill level.