

[Running Treadmill Leads to Serious Injury and Suit - Waiver Does Not Protect the Club](#)

written by David Herbert | May 31, 2018

Avoiding Liability Bulletin - June 2018

In a very recent and interesting case from New Jersey,[\[1\]](#) the plaintiff was injured while using a treadmill. The court set forth the facts as follows:

The fitness club maintained a policy of keeping treadmills running after use.[\[2\]](#) The treadmill also contained no visual markings on the belt to alert users that the machine was running. Plaintiff's accident, which caused a substantial injury requiring spinal surgery for a fractured neck, was unrelated to using physical fitness equipment while engaging in strenuous exercises involving an inherent risk of injury. Rather, a fitness club employee directed plaintiff to step onto a running treadmill. Plaintiff, without knowing the tread was running, stepped onto the machine, which threw her off the spinning belt. The fitness club changed its policy after plaintiff's accident.[\[3\]](#)

As a result of the foregoing, a personal injury suit was filed. Notwithstanding the stated facts, the trial court granted the defendant health club summary judgment based upon the plaintiff's execution of a waiver form which she signed before her participation in any activity at the club. The waiver provided in significant part as follows:

I . . . waive any and all claims I may have . . . against [the fitness club] in connection with or arising out of my participation with [the fitness program] I understand that any exercise program carries with it some risk and acknowledge that risk. Further, in consideration of my participation in the [fitness] program, I agree . . . to release, indemnify, and hold harmless . . . [the fitness club] . . . from all liability for any personal injury . . . I might sustain during this [fitness] program.

Based upon the trial court's ruling the injured plaintiff appealed and among other things contended that the pre-participation waiver she signed should not bar her action since her injury did not result from an inherent risk related to her participation in strenuous exercise but instead resulted from when "she followed the instructor's direction and unknowingly stepped on a running treadmill." In that regard, the appeals court examined the facts and prior law and ruled that the "plaintiff did not engage in any activity involving an inherent risk of injury" as she was injured when she did as instructed. The appellate court also noted:

. . . we also conclude the waiver form is unenforceable. It adversely affects the public interest by transferring the redress of civil wrongs from the responsible tortfeasor to either an innocent injured party or society-at-large. It eviscerates the common law duty of care that the fitness center owes to

its invitees. And it is unconscionable, as the fitness center has attempted to shield itself from all liability based on a one-sided agreement that offered no countervailing or redeeming societal value.

Despite the appellate court's ruling in the case, a waiver like the one the plaintiff signed in this case may have protected the health club if she had experienced an injury arising out of an inherent risk of exercise activity instead of one arising out of some fitness professional's directions to her. Waiver and release documents executed before activity, when properly written and executed are usually a very valid first line of defense to personal injury actions arising out of that activity. Here, the waiver did not provide protection since the injury did not arise out of an inherent risk in the activity but rather due to the directions provided to the plaintiff by a member of the defendant's staff.

[1] Pak v Fitness Motion, LLC, No. A-5084-16T2, Superior Court of New Jersey, Appellate Division, April 19, 2018.

[2] While no explanation was offered in this case as to the club's policy of keeping treadmills running, a search of available resource materials by this author and inquiries of experts reveal no reason for such a practice. One must wonder how proper use instructions could be provided to new users who would be placed on or introduced to activity on a running machine.

[3] Evidence related to remedial steps taken after an incident like this one or after some kind of an accident are not generally admissible to establish negligence.

This publication is written and published to provide accurate and authoritative information relevant to the subject matter presented. It is published with the understanding that the author and publisher are not engaged in rendering legal, medical or other professional services by reason of the authorship or publication of this work. If legal, medical or other expert assistance is required, the services of such competent professional persons should be sought. Moreover, in the field of personal fitness training, the services of such competent professionals must be obtained.

Adapted from a Declaration of Principles of the American Bar Association and Committee of Publishers and Associations