USE OF TWO-PERSON RESISTANCE BAND LEADS TO INJURY AND LITIGATION BUT DEFENDED BY A RELEASE/ASSUMPTION OF THE RISKS

written by David Herbert | June 15, 2016

Most health and fitness facilities have a variety of equipment available for use either through personal trainers or exercise floor personnel. One of the devices that is sometime available for use is a two-person resistance exercise band with handles on each end of the band which are utilized by two participants pulling away from each other during various exercise activities. A recent Missouri case highlights both the kinds of claims that can be asserted with the use of such devices as well as the benefits of release documents like those we discussed in the last column on this site which can be used to defend against such actions.

In this case,[1] the plaintiff, a member of the defendant facility, joined the club on June 30, 2008. At that time, she signed a release of liability document which contained a prospective waiver of liability. In October of 2011, she began to participate in a "boot camp" exercise at the facility. Aside from the membership agreement which she had previously signed in 2008 containing the above mentioned waiver, she signed another document entitled Fitness Program Agreement which specifically related to her participation in the "boot camp" class. That agreement also contained another waiver of liability provision which released the facility for its own negligent conduct.

On March 5, 2012, the plaintiff was participating in a "boot camp" exercise class at the facility. The class took place on the facility's grounds with participants using the facility's equipment. The class was led by a personal trainer who was an employee of the facility. During the class, the personal trainer instructed the participants to perform a two-person exercise activity which involved using a two-handled resistance band. While the plaintiff had never performed this particular exercise before, she had used resistance bands in the past as part of a two-person partner exercise activity.

Based upon the evidence gleaned from the case, the plaintiff understood how to use the two-handled resistance band, knew that the resistance band would stretch when then the handles were pulled away by each partner from the other and un-stretch if one handle was released. She also understood that the further the resistance band was stretched, the faster it would snap back into its original shape and knew that if one person in a two-person exercise released one handle, the released handle would move in the direction of the other partner.

Prior to the plaintiff's utilization of the two-person resistance band under the direction of the personal

trainer, the personal trainer did explain how to perform the exercise but did not specifically address the possibility that the resistance band could recoil when used with the activity. During the two-person exercise activity with the resistance bands, the plaintiff's partner held the handles of the resistance band while the plaintiff stood behind her partner and held the middle of the resistance band with a towel. The plaintiff's partner walked forward causing the band to stretch but somehow during the exercise, the partner accidently released one of the handles to the resistance band which recoiled and struck the plaintiff in the nose and mouth, breaking her nose and damaging or dislodging several of her teeth. Subsequently, the plaintiff brought suit seeking damages for her injuries.

During the case, it became apparent that the personal trainer did not dispute the fact that there was a strong possibility of injury if a resistance band recoiled and hit another participant in the face. The personal trainer also indicated that a trainer should "always chose a safer exercise when possible." While the personal trainer also stated that different equipment could be used for this particular exercise the trainer indicated that no alternative equipment was available for use during the class.

In the lawsuit which the plaintiff filed against the facility she asserted negligence and recklessness. In response to those claims, the facility moved for summary judgment asserting the waiver of liability provisions contained in the membership and fitness program agreements. While the parties vigorously contested the facts and the law, the trial court granted the facility's motion for summary judgment and the plaintiff appealed.

On appeal, the plaintiff claimed that the release language contained in the agreements she had signed did not bar her recovery because:

1. they were not shown as a matter of law to apply to the exercise class in which . . . [she was injured];
2. the plaintiff's . . . injuries were caused by . . . [the facility's] enhancement of any risk she putatively assumed in signing the releases; and,
3. the type of injury suffered by . . . [the plaintiff] was different in kind from the injuries for which she had putatively assumed the risk in signing the releases.

While the court of appeals considered these assertions and noted that a release would not bar a claim against the facility for recklessness, the appeals court determined that recklessness was not established in this case even though the plaintiff asserted two different theories to support her claim. First, the plaintiff alleged that the personal trainer was reckless for failing to warn her of both the unreasonably dangerous elastic properties of the resistance band as well as the danger associated with the use of such a band by two persons. Secondarily she alleged that the facility was itself reckless for instructing her to engage in unreasonably dangerous two-person resistance band exercise when the personal trainer knew or should have known that the exercise was unreasonably dangerous, was foreseeably likely to cause her injury and involved a high degree of probability that substantial harm would result from such an activity.

The appeals court considered her arguments in detail but found that the facility had no duty as a matter of law to warn the plaintiff about the recoil capability of the resistance band used during the two-person exercise because the plaintiff had actual knowledge of such information. The court determined there was no duty to warn of a danger when the injured party had actual knowledge of that danger. Therefore the court reasoned, in the absence of any duty to warn the plaintiff of the recoil danger of the resistance band, the facility was not negligent much less reckless for failing to do so. The court also found that the facility and the personal trainer were not reckless in directing the plaintiff to participate in the two-person resistance band exercise because the use of the device, as the court found, was not per se reckless.

Based upon all of the foregoing, the releases were utilized in this case to withstand the plaintiff's attack on the basis of reckless conduct. This case should remind personal trainers of the importance of utilizing releases of liability as a first line of defense as we discussed in the last article on this site. It should also serve to demonstrate that truly reckless or willful/intentional conduct cannot be barred by a release document. A member's knowledge of the risks associated with a particular activity may well preclude recovery for any injury occurring during that activity based upon his or her assumption of the risks associated with the activity which can preclude recovery for any injuries arising out of the assumed risks.

[1] McNearney vs. LFT Club Operations Company, Inc., et al. 011216MOCAE, ED102905, Court of Appeals of Missouri, Eastern District, Fourth Division, January 12, 2016.