



MAY 2025

## **You Can Not Waive Safety: WHEN LIABILITY RELEASES DO NOT PROTECT CITIES OR EVENT HOSTS**

*Whitehead v. City of Oakland*  
**P.3d 2025 WL1261981(2025)**

### **Background:**

#### **A Bike Ride, a Pothole, and a Lawsuit:**

March 2017, Ty Whitehead suffered a traumatic brain injury while participating in a group training ride in preparation for the AIDS LifeCycle week-long fundraiser bike ride from San Francisco to Los Angeles.

Before the ride, Ty and all participants signed a release form titled "AIDS LifeCycle Training Ride General Information and Release and Waiver of Liability, Assumption of the Risk, and Indemnity Agreement." It clearly warned of risks including broken pavement and road debris and stated that participants "assume all risks associated with the event, even those which are not reasonably foreseeable."

At the time of the injury, Ty was riding downhill on Skyline Boulevard in Oakland when his front tire suddenly went down into a large, deep pothole causing him to flip over the bike and hit the back of his head on the pavement.

One year after the accident, Ty sued the City of Oakland for failing to maintain a safe street. The City argued on motion for summary judgment that the release form Ty signed barred his claim against the City for any liability. The trial court sided with the City and Ty appealed. The Court of Appeals affirmed, but the Supreme Court reversed, issuing a powerful reminder: You can't sign away a city's legal duty to maintain public roads.

### **Why the Waiver Did Not Work:**

#### ***Ordinary negligence vs. Statutory Negligence***

A typical liability waiver protects against claims of ordinary negligence – when someone fails to use reasonable care in general – i.e. plaintiff was owed a general duty of care, that the duty of care was breached, and the breach caused some sort of injury.

However, Ty argued that the duty of care owed to him by the City was not an ordinary duty but rather a statutory duty – the specific statute being Gov. Code §835 which holds public entities responsible for injuries caused by dangerous conditions on public property. The Supreme Court found that: a waiver cannot excuse a public entity from violating a statutory duty designed to protect public safety, such as maintaining safe roads.



The Court concluded that “an agreement to exculpate a party for future violations of a statutory duty designed to protect public safety is against the policy of law (under California Civil Code §1668) and is not enforceable.”

The Court noted that it has consistently decided similar issues since 1912 and cited subsequent decisions that followed the same reasoning.

For example, in *Hanna v. Lederman* (1963), a tenant’s property suffered water damage when the fire sprinkler system flooded the building due to a municipal code violation. The tenant had signed a lease containing a release of liability, but the court held that it was unenforceable because there was a statutory duty to install the sprinkler system in accordance with the municipal code.

More recently in *Capri v. LA Fitness International, LLC* (2006), the Court of Appeal declined to enforce a release of liability clause in a gym waiver when a plaintiff slipped and fell on the edge of the facility pool due to algae. Because LA Fitness had statutory duty under state and local health codes to keep the pool area clean and free of algae and it failed to do so, the release of liability was not enforceable. The court concluded that “the plain language of [California Civil Code] §1668 invalidates contract clauses seeking to relieve a party from responsibility for future statutory and regulatory violations.”

In this case, the California Supreme Court concluded that because Ty alleged that the City had a statutory duty to maintain the street, the Release and Waiver of

Liability he signed prior to the injury was not enforceable.

### **Bottom Line:**

If a statute, regulation, or ordinance imposes a duty – whether it is on a city, property owner or event organizer – you cannot use a waiver to shield against liability for ignoring it.

### **What can be done?**

- ❖ ***Inspect the property where the event is to be held (streets, sidewalks, trails).***
- ❖ ***Repair any dangerous conditions or block them off if repairs aren’t feasible.***
- ❖ ***Warn attendees of known dangers clearly and conspicuously.***
- ❖ ***Ensure compliance with all permits, safety codes and local ordinances***
- ❖ ***Document your due diligence.***

Liability waivers can provide strong legal protection, but NOT when they conflict with the law. Cities and event organizers must recognize where waiver protections end, and legal obligations begin. If the duty exists in statute, no signature can erase it.

As Police Unity Tour riders are about to start their journey to honor the fallen, this Training Bulletin serves to remind us that with every public event comes a duty- not just to the cause, but to the safety of those who ride for it.

***Stay Safe and Stay Informed!***