

Independent Contractor Exculpatory Agreements Are Unenforceable

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The Connecticut Superior Court, in a case of first impression, held that negligence waivers executed by independent contractors violate public policy. *Colagiovanni v. New Haven Acquisition Corp.*, 2006 Conn. Super. LEXIS 3387 (Nov. 15, 2006).

In *Colagiovanni*, the plaintiff, an independent contractor, delivered newspapers for defendant. Under an agreement signed by the parties, the plaintiff waived all rights to bring suit against defendant even though the plaintiff picked up the newspapers on defendant's property, and drove a delivery vehicle supplied and maintained by defendant. While delivering papers, plaintiff was injured in a collision with another vehicle and sued defendant.

In finding the agreement unenforceable, the court noted that contract provisions which relieve negligent parties from liability undermine the state's tort system. In particular it found that shifting the risk to the weaker party by forcing it to agree to a non-negotiable set of conditions is contrary to acceptable societal expectations. In comparing employees to independent contractors, the court noted that contractors are even more damaged by exculpatory agreements because they are not entitled to any relief under the Workers' Compensation Act, and therefore are forced to waive any and all sources of potential recovery.

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