INTERNATIONAL US WAIVERS, FORUM SELECTION & ARBITRATION CLAUSES

Presented by

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HUSTLE & HEART SETS US APART ™


LIABILITY WAIVERS
ARBITRATION
FORUM SELECTION
FULL COMPENSATION
SCOLARO LAW

LIABILITY WAIVER

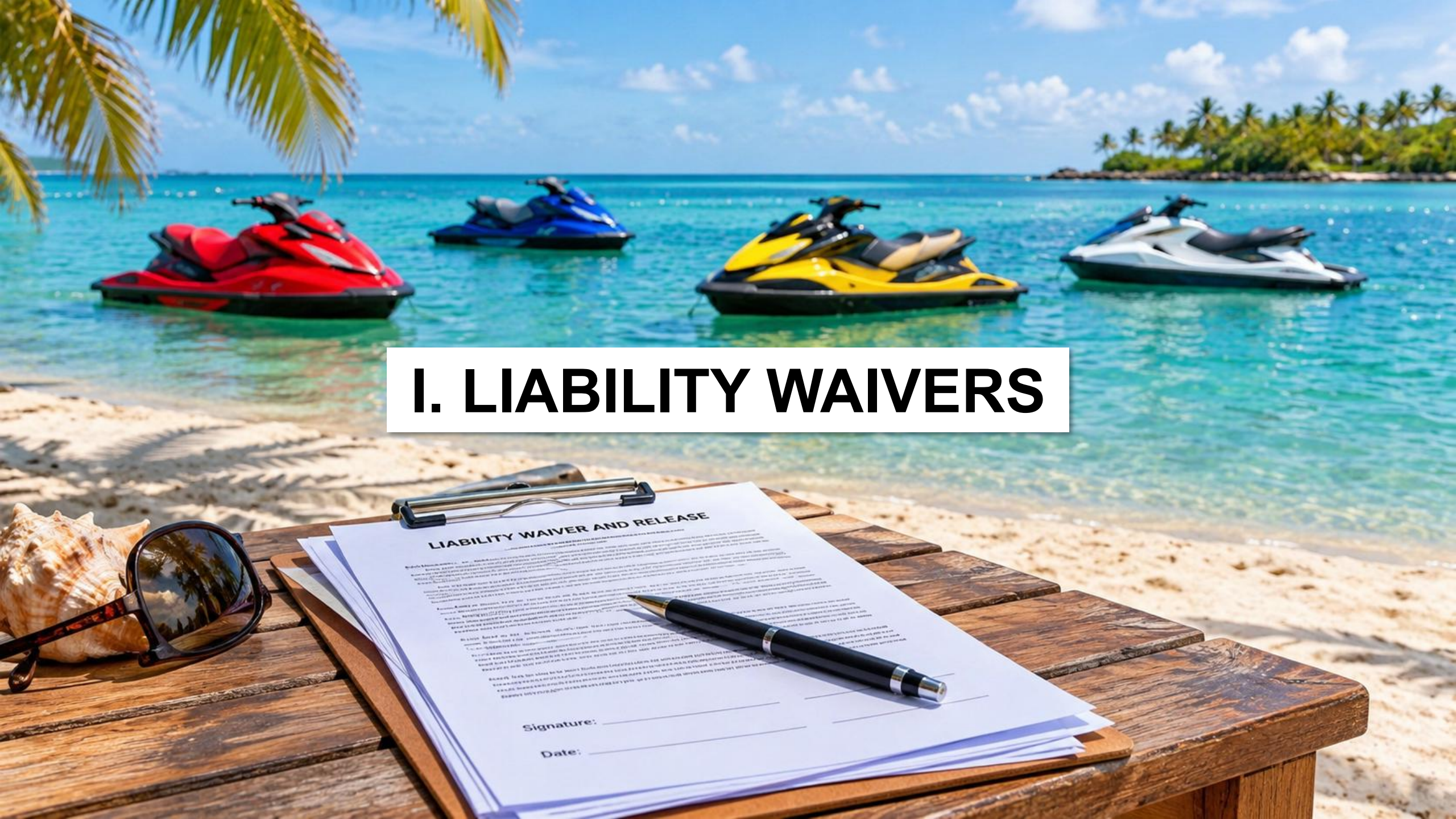
Accept a risk and release the company from claims.

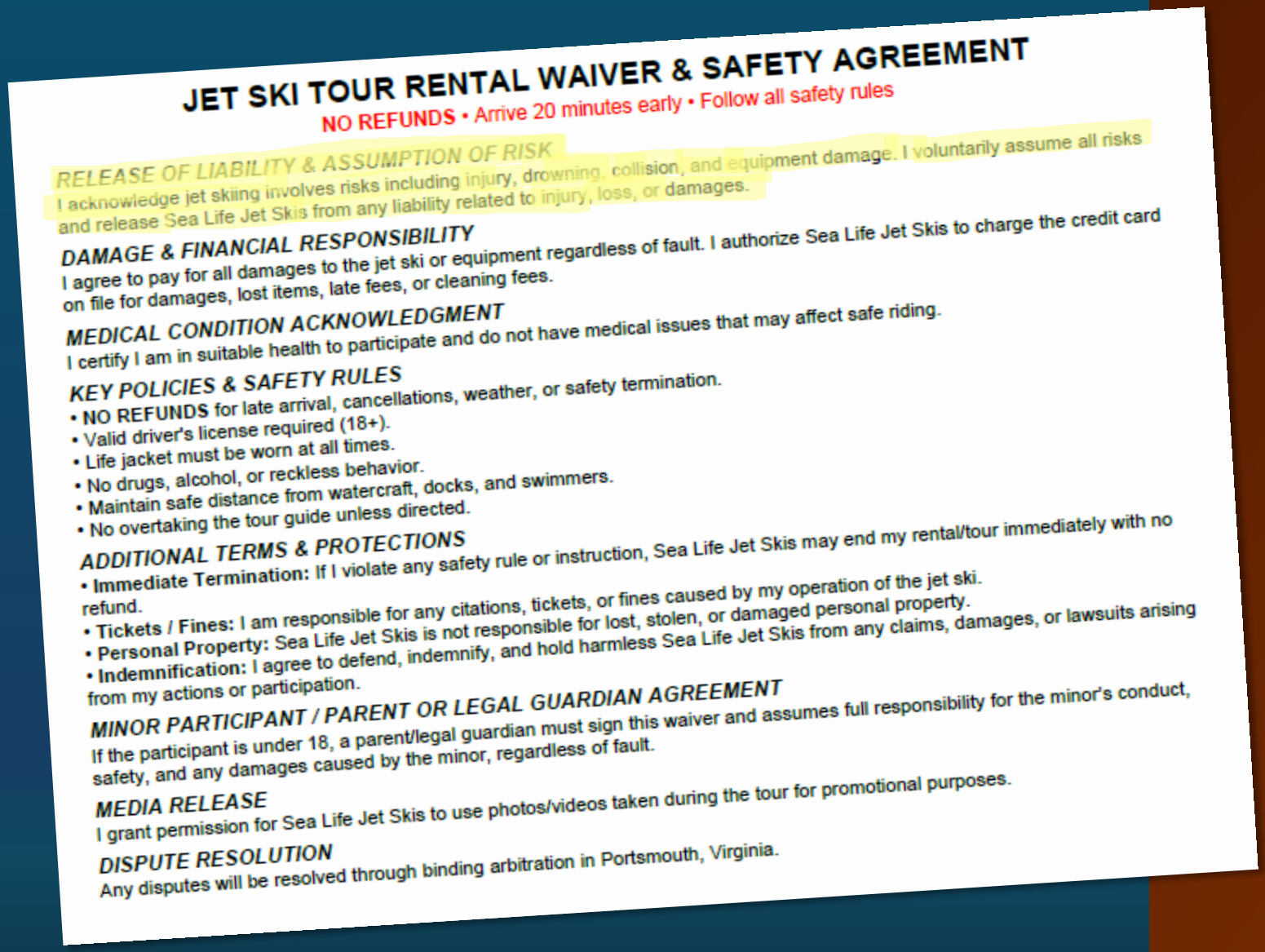
ARBITRATION

A private arbitrator decides the dispute, not a judge or jury.

FORUM SELECTION

Decides where a dispute will be heard and the laws which will govern.


I. LIABILITY WAIVERS
LIABILITY WAIVER AND RELEASE
Signature:
Date:



JET SKI TOUR RENTAL WAIVER & SAFETY AGREEMENT

NO REFUNDS • Arrive 20 minutes early • Follow all safety rules

RELEASE OF LIABILITY & ASSUMPTION OF RISK

I acknowledge jet skiing involves risks including injury, drowning, collision, and equipment damage. I voluntarily assume all risks and release Sea Life Jet Skis from any liability related to injury, loss, or damages.

DAMAGE & FINANCIAL RESPONSIBILITY

I agree to pay for all damages to the jet ski or equipment regardless of fault. I authorize Sea Life Jet Skis to charge the credit card on file for damages, lost items, late fees, or cleaning fees.

MEDICAL CONDITION ACKNOWLEDGMENT

I certify I am in suitable health to participate and do not have medical issues that may affect safe riding.

KEY POLICIES & SAFETY RULES

- **NO REFUNDS** for late arrival, cancellations, weather, or safety termination.
- Valid driver's license required (18+).
- Life jacket must be worn at all times.
- No drugs, alcohol, or reckless behavior.
- Maintain safe distance from watercraft, docks, and swimmers.
- No overtaking the tour guide unless directed.

ADDITIONAL TERMS & PROTECTIONS

- **Immediate Termination:** If I violate any safety rule or instruction, Sea Life Jet Skis may end my rental/tour immediately with no refund.
- **Tickets / Fines:** I am responsible for any citations, tickets, or fines caused by my operation of the jet ski.
- **Personal Property:** Sea Life Jet Skis is not responsible for lost, stolen, or damaged personal property.
- **Indemnification:** I agree to defend, indemnify, and hold harmless Sea Life Jet Skis from any claims, damages, or lawsuits arising from my actions or participation.

MINOR PARTICIPANT / PARENT OR LEGAL GUARDIAN AGREEMENT

If the participant is under 18, a parent/legal guardian must sign this waiver and assumes full responsibility for the minor's conduct, safety, and any damages caused by the minor, regardless of fault.

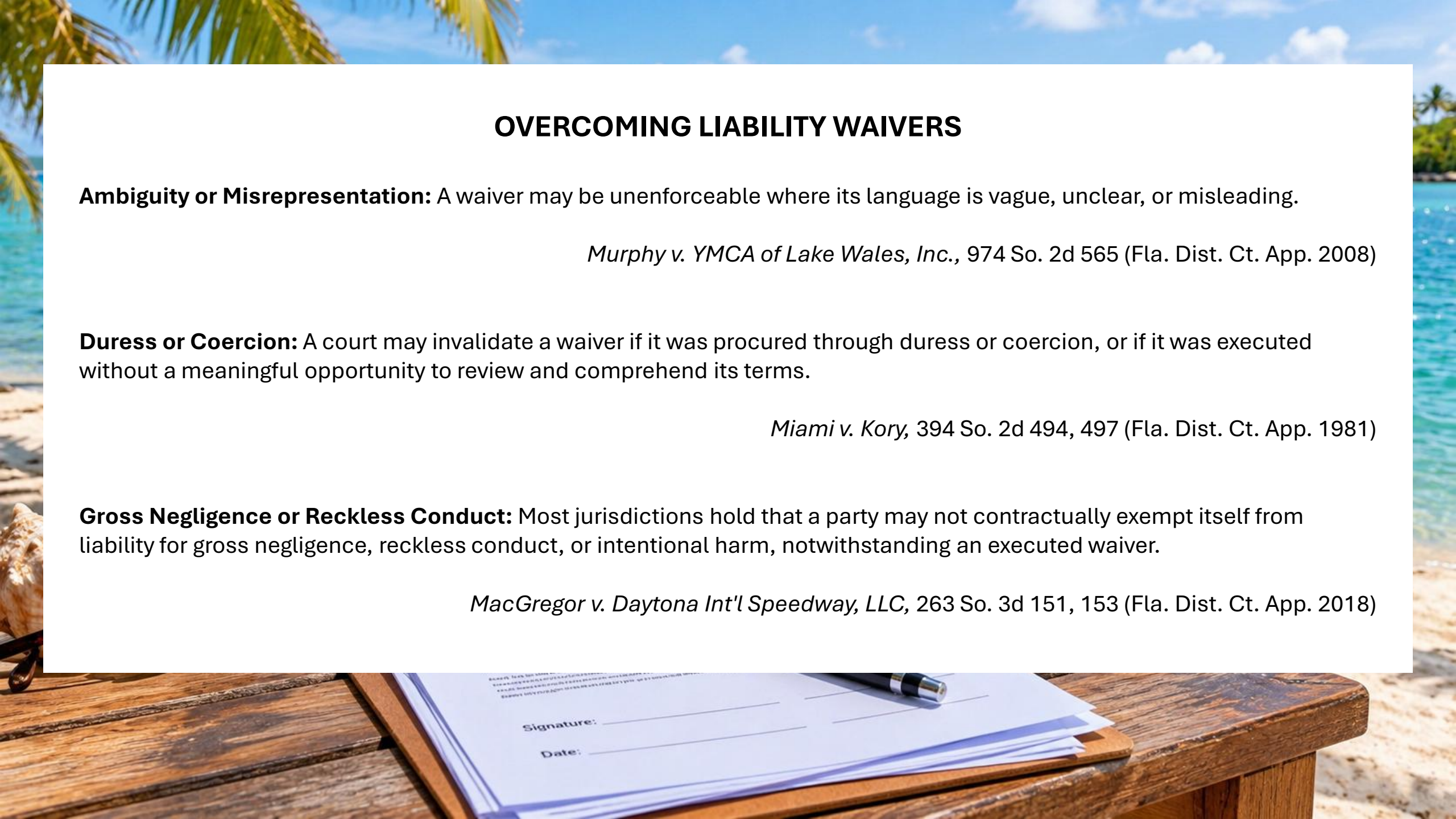
MEDIA RELEASE

I grant permission for Sea Life Jet Skis to use photos/videos taken during the tour for promotional purposes.

DISPUTE RESOLUTION

Any disputes will be resolved through binding arbitration in Portsmouth, Virginia.

- **A WAIVER IS A CONTRACT IN WHICH YOU GIVE UP THE RIGHT TO SUE FOR INJURIES**
- **MOST WAIVERS RELEASE THE OPERATOR FOR ITS OWN NEGLIGENCE, NOT JUST THE ORDINARY RISKS OF THE ACTIVITY**
- **WAIVERS APPEAR AT BOOKING, AT CHECK-IN, AT THE RENTAL COUNTER, ON THE DOCK, OR ON A TABLET MINUTES BEFORE AN ACTIVITY**
- **IN THE US, MANY WAIVERS ARE WRITTEN IN ENGLISH ONLY, INCLUDING FOR GUESTS WHO READ ANOTHER LANGUAGE**
- **COMMON SETTINGS INCLUDE JET SKI AND PERSONAL WATERCRAFT RENTALS, PARASAILING, BOAT CHARTERS, RENTAL OF SPORTING EQUIPMENT, ATV TOURS, SCUBA AND SNORKEL TRIPS, CRUISE SHORE EXCURSIONS, ETC.**
- ***SIGNING DOES NOT REMOVE THE OPERATOR'S STATUTORY DUTIES.***



OVERCOMING LIABILITY WAIVERS

Ambiguity or Misrepresentation: A waiver may be unenforceable where its language is vague, unclear, or misleading.

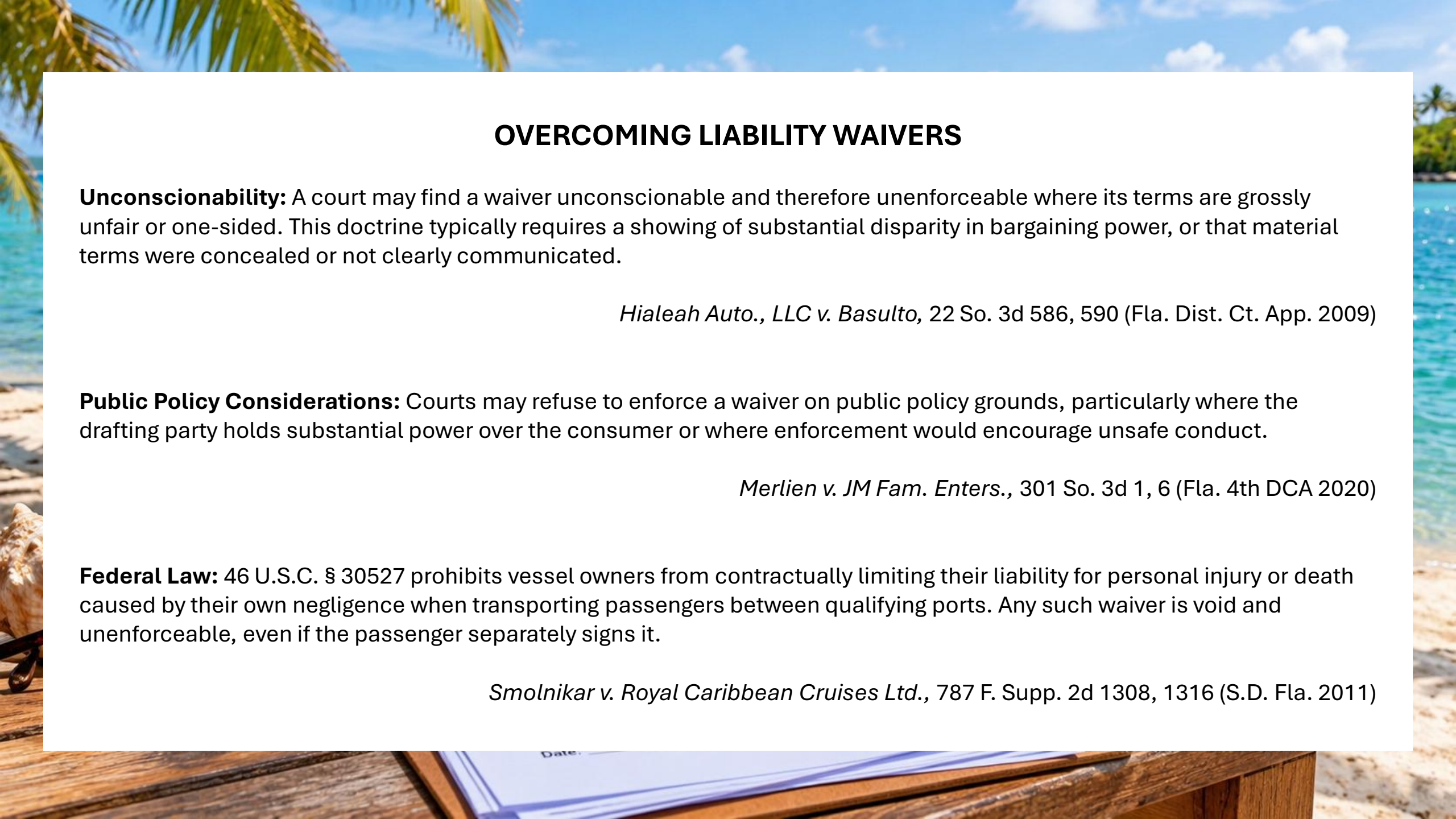
Murphy v. YMCA of Lake Wales, Inc., 974 So. 2d 565 (Fla. Dist. Ct. App. 2008)

Duress or Coercion: A court may invalidate a waiver if it was procured through duress or coercion, or if it was executed without a meaningful opportunity to review and comprehend its terms.

Miami v. Kory, 394 So. 2d 494, 497 (Fla. Dist. Ct. App. 1981)

Gross Negligence or Reckless Conduct: Most jurisdictions hold that a party may not contractually exempt itself from liability for gross negligence, reckless conduct, or intentional harm, notwithstanding an executed waiver.

MacGregor v. Daytona Int'l Speedway, LLC, 263 So. 3d 151, 153 (Fla. Dist. Ct. App. 2018)



OVERCOMING LIABILITY WAIVERS

Unconscionability: A court may find a waiver unconscionable and therefore unenforceable where its terms are grossly unfair or one-sided. This doctrine typically requires a showing of substantial disparity in bargaining power, or that material terms were concealed or not clearly communicated.

Hialeah Auto., LLC v. Basulto, 22 So. 3d 586, 590 (Fla. Dist. Ct. App. 2009)

Public Policy Considerations: Courts may refuse to enforce a waiver on public policy grounds, particularly where the drafting party holds substantial power over the consumer or where enforcement would encourage unsafe conduct.

Merlien v. JM Fam. Enters., 301 So. 3d 1, 6 (Fla. 4th DCA 2020)

Federal Law: 46 U.S.C. § 30527 prohibits vessel owners from contractually limiting their liability for personal injury or death caused by their own negligence when transporting passengers between qualifying ports. Any such waiver is void and unenforceable, even if the passenger separately signs it.

Smolnikar v. Royal Caribbean Cruises Ltd., 787 F. Supp. 2d 1308, 1316 (S.D. Fla. 2011)

FLORIDA STATUTES LIMITING THE REACH OF WAIVERS

- Fla. Stat. § 327.54(3)(e): liveries **must provide pre-rental or pre-ride instruction** in compliance with Florida Fish and Wildlife Conservation Commission rules before renting a vessel.
- Fla. Stat. § 327.54(2): liveries **must keep an adequate supply of U.S. Coast Guard-approved personal flotation devices** on site.
- Fla. Stat. § 327.50(1)(a): vessel owners and operators **must carry, store, maintain, and use safety equipment required by current U.S. Coast Guard regulations**.
- Fla. Stat. § 327.50(1)(b): on vessels under 26 feet, **every child under 6 must wear a Coast Guard-approved personal flotation device** while the vessel is underway.
- Fla. Stat. § 327.50(4): operators of vessels used for water sport instruction **must use an engine cutoff switch and wear an operative link while a participant is in the water**.
- Fla. Stat. § 327.375(3): commercial parasailing operators **must hold a current, valid U.S. Coast Guard license authorizing passenger carriage for hire, carried on board and available for inspection**.
- Fla. Stat. § 327.331: divers **must display a divers-down warning device**, and vessels may not operate while displaying it unless divers are in the water.

FLORIDA LIVERY RENTAL STATUTE

Florida's livery-rental statute, Florida Statute § 327.54(3)(e), requires a livery renting a personal watercraft to provide pre-rental or pre-ride instruction that complies with Florida Fish and Wildlife Conservation Commission rules Fla. Stat. § 327.54.

Required Instruction
The instruction must address the vessel's operational characteristics, safe operation and right-of-way, the operator's responsibility for safe and proper operation, local waterway conditions and hazards, and emergency procedures.

It is unlawful for an owner or person controlling a rented personal watercraft to knowingly permit its operation by someone who has not received safe-handling instruction; the recipient must provide a written statement attesting that the instruction was received.

Kim v. Fury Management, Inc., No. 16-CA-000851-K (Fla. 16th Cir. Ct. 2016).





II. ARBITRATION

Arbitration: what changes and what does not

- An arbitrator or a panel of arbitrators, rather than a judge or jury, adjudicates the dispute.
- The arbitration agreement specifies the governing rules, the seat of arbitration, the method of selecting the arbitrator, and the allocation of arbitration costs.
- Arbitration provisions are commonly found in consumer credit agreements, telecommunications and internet service contracts, employment agreements, insurance policies, online terms of service, etc.
- Under the Federal Arbitration Act, U.S. courts generally enforce arbitration agreements, including where pursuit of an individual claim is not economically feasible.
- Where the claims are subject to arbitration, a federal court is required to stay the action rather than dismiss it.
- Multiple agreements may govern a single dispute, and the threshold question may be which agreement controls.
- Arbitration alters the forum and the procedure. It does not alter the company's underlying liability.



Tough Call (The Three Umpires)
Norman Rockwell (1948)

The EFAA: A Narrow Exception to Enforceable Arbitration

Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, 9 U.S.C. §§ 401–402 (enacted March 3, 2022)



- At the election of the person alleging sexual harassment or sexual assault, a pre-dispute arbitration agreement or pre-dispute joint-action waiver is invalid and unenforceable for a case filed under federal, Tribal, or state law that relates to that dispute.
- The election covers agreements made before the dispute arose, including joint-action waivers that bar class or collective participation.
- Sexual assault disputes follow 18 U.S.C. § 2246 or similar Tribal or state law, including cases where the victim lacks capacity to consent.
- A court, not an arbitrator, decides whether the Act applies and whether the agreement is enforceable, even if the contract delegates that question.
- Courts have applied the Act to the whole lawsuit, not only the harassment or assault claims.
- EFAA does not reach liability waivers, forum selection clauses, or negligence-based personal injury and wrongful death claims.

ARBITRATION CLAUSES IN CREWMEMBERS EMPLOYMENT CONTRACTS

	CARNIVAL	NORWEGIAN (NCL)	ROYAL CARIBBEAN (RCCL)
MANDATORY ARBITRATION	Yes	Yes	Yes
ARBITRATION ADMINISTRATOR	AAA / ICDR	AAA	AAA / ICDR
ARBITRATION RULES	AAA/ICDR International Rules	AAA International Dispute Resolution Procedures	AAA/ICDR or UNCITRAL, depending on agreement
ARBITRATION LOCATION	London, Monaco, Panama City, or Manila, whichever is closer to crew member's home country	Crew member's country of citizenship; Nassau, Bahamas, if unavailable	Miami, Oslo, or another mutually agreed location in documented agreements
GOVERNING LAW	Law of vessel's flag state	Law of vessel's flag state in documented SEA; Bahamian law in certain CBA arrangements	Norwegian law in documented agreements
ARBITRATION LANGUAGE	English	English	English
NUMBER OF ARBITRATORS	One	One	One
JURY TRIAL	Waived	Waived	Waived
SCOPE	Broad employment-related disputes	Broad employment-related disputes	Broad employment-related disputes



CREWMEMBERS CLAIMS WE HANDLE

III. FORUM SELECTION



PURPOSE OF FORUM SELECTION

- Names the court or tribunal where any dispute under the contract must be filed, such as a specific court in a specific country or state.
- Removes the choice of where to sue from the party who would otherwise pick the venue, which usually protects the drafter or the company that wrote the contract.
- Excludes other courts, so a claim filed somewhere not named in the clause may be dismissed or transferred, depending on whether the clause is exclusive or permissive.



OVERCOMING FORUM SELECTION CLAUSES



Grounds to challenge the clause

- Fraud or overreaching. *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972).
- Grave inconvenience that, for all practical purposes, deprives the party of its day in court. *Calix-Chacon v. Global International Marine, Inc.*, 493 F.3d 507, 511 (5th Cir. 2007).
- Fundamental unfairness of the chosen law that would leave the claimant without a remedy. *Calix-Chacon v. Global International Marine, Inc.*, 493 F.3d 507, 511 (5th Cir. 2007).
- Conflict with a strong public policy of the forum where suit is filed, whether set by statute or court decision. *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972).
- In form contracts, fundamental fairness: whether the forum was chosen to discourage claims, whether it has a legitimate connection to the parties, and whether the claimant had notice and a chance to reject the terms. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 594 (1991).

OVERCOMING FORUM SELECTION CLAUSES



Burden

- The clause is presumptively valid. The party resisting it must make a **strong showing**. *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972).

- Weighing convenience factors is not enough. The inconvenience must reach the deprivation standard.

Federal procedure

- If the clause selects another federal district, the remedy is transfer under 28 U.S.C. § 1404(a). The plaintiff's choice of forum gets no weight, and the party defying the clause must show transfer is unwarranted. *Atlantic Marine Construction Co. v. United States District Court for the Western District of Texas*, 571 U.S. 49 (2013).

- If the clause selects a state or foreign court, 28 U.S.C. § 1404(a) does not transfer the case, and an improper-venue dismissal is unavailable where federal venue is proper. Must seek forum non conveniens dismissal instead. *Atlantic Marine Construction Co. v. United States District Court for the Western District of Texas*, 571 U.S. 49 (2013).

- The transferee court applies the choice-of-law rules of the selected venue. *Atlantic Marine Construction Co. v. United States District Court for the Western District of Texas*, 571 U.S. 49 (2013).



CURRENT LITIGATION AGAINST RIU HOTELS & RESORTS

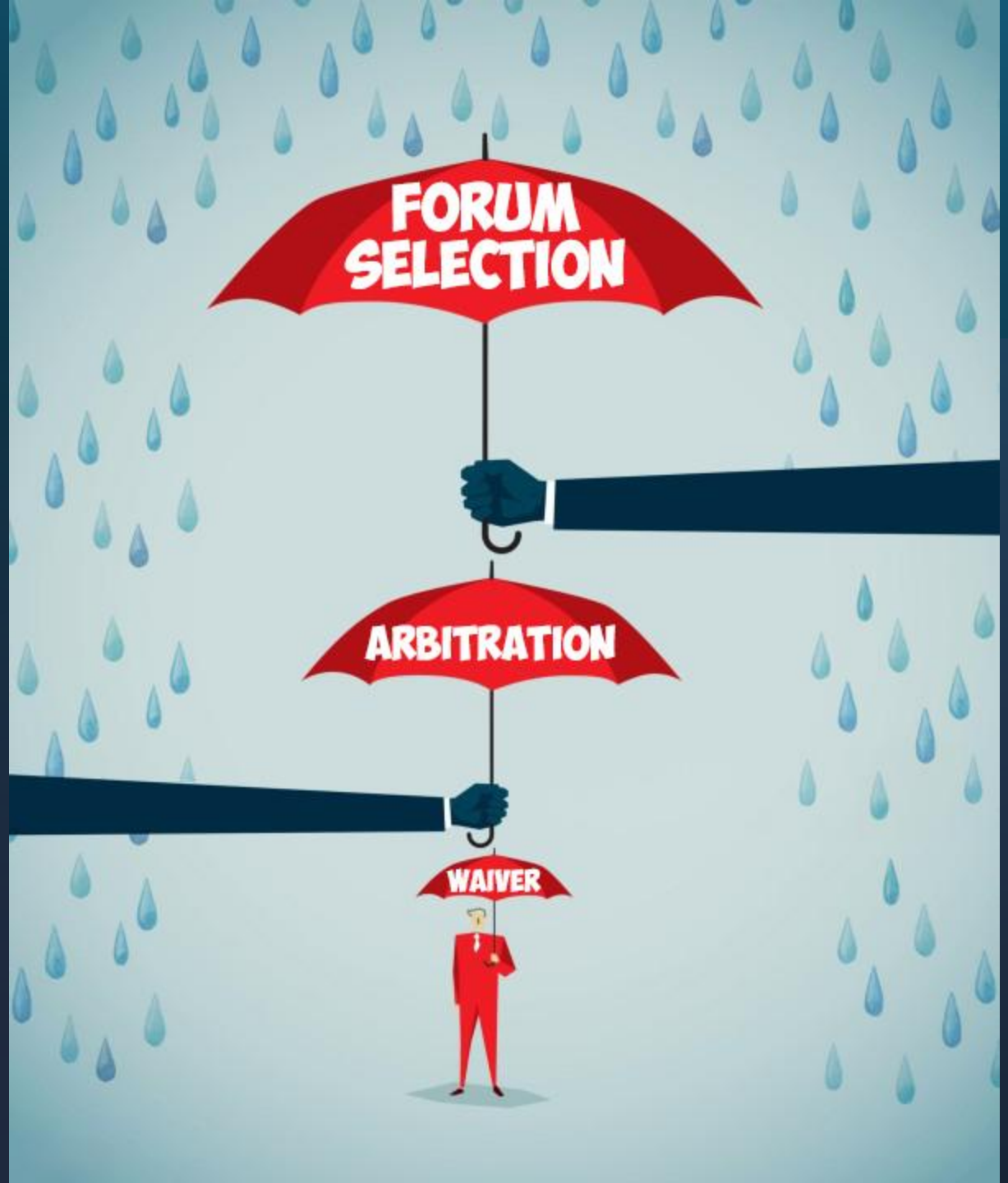
- Defendants are Florida corporations with their principal place of business in Miami Beach.
- Defendants operate RIU Plaza Miami Beach in Miami Beach.
- Defendants have created a Florida-based joint venture among themselves.
- Defendants control the “RIU Group” from Miami Beach.

Personal jurisdiction over the Mexican entities

- Defendants are subject to jurisdiction under Florida’s long-arm statute, § 48.193, based on business, real estate, advertising, and agent contacts in Florida.

Argument for keeping the case in Florida

- The case is filed in Miami-Dade because the Florida defendants have their principal place of business in Florida.
- The Mexican entities are reachable through their Florida contacts and their business relationships with the Florida defendants.



IV.
A *CATCH-ALL SYSTEM*





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SCAN ME