Navigating liability: Lessons from Mitchell v Manson in waiver applicability

May 07, 2024

Facts

In June 2021, Mr. Manson (the plaintiff) enlisted Mr. Mitchell as his mountaineering guide. On June 18, 2021, the two embarked on their initial climbing trip, with Mr. Manson signing a digital waiver for this excursion. Subsequently, Mr. Mitchell accompanied Mr. Manson on two more climbing trips later that summer; however, Mr. Manson did not sign any liability waivers for these subsequent trips. During the third trip, Mr. Manson sustained injuries and filed a negligence and breach of contract action against Mr. Mitchell and related parties (the defendants). The defendants attempted to use the June 18 waiver to shield themselves from liability for Mr. Manson's claims that arose during the third trip, which made its way to the B.C. Court of Appeal (BCCA).

Analysis

The key issue before the court was whether, based on principles of contractual interpretation, both parties had intended the digital waiver to apply, not only to the initial rock-climbing expedition, but also to any subsequent expeditions scheduled that summer. Mr. Manson and Mr. Mitchell had explored the option of multiple climbing trips that summer; however, at the time of signing the waiver, no other climbing trips had been expressly confirmed. Furthermore, while Mr. Mitchell had a subjective intention for the waiver to cover *all* guided trips throughout the summer, there was no evidence indicating that this intention was mutual. This was particularly so since only the date of the first expedition was specified under the "Trip Details" section of the waiver form.

Therefore, the BCCA upheld the trial judge's ruling and concluded that the parties mutually intended the waiver to apply solely to the first expedition. The Court also upheld the trial judge's rejection of the "evolving contract" argument, emphasizing that while a release does not need to specify *every* potential claim, it must contain sufficient language to affect a release for unknown claims.

Takeaways

Enforcement of waivers is a common challenge in insurance law. Parties should take care when “rolling over” waivers to ensure the subsequent activity is reasonably similar in nature to the original activity. We further recommend utilizing clear and unambiguous terms and that the waiver be reviewed with the signatory at the time of execution.

By

Raphael Jacob, Jack Goranson

Expertise

Disputes, Contract Disputes, Retail & Hospitality, Sports & Gaming Law

---

BLG | Canada’s Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG’s privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.