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Utah Court of Appeals

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IN THE SUPREME COURT OF THE STATE OF UTAH

LISA PENUNURI and BARRY SIEGWART,

Plaintiffs/Appellants,

vs.

SUNDANCE PARTNERS, LTD; SUNDANCE HOLDINGS, LLC; SUNDANCE DEVELOPMENT CORP; ROBERT REDFORD; REDFORD 1970 TRUST; ROCK MOUNTAIN OUTFITTERS, L.C.; and Does I-X.

Defendants /Appellees.

BRIEF OF AMICUS CURIAE UTAH ASSOCIATION FOR JUSTICE

Supreme Court Case No. 20110565

Court of Appeals Case No. 20100331

District Court Case No. 08040019

ON CERTIORARI FROM THE UTAH COURT OF APPEALS

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CONSENT FOR AMICUS FILING

This Court granted permission for Amicus briefing on December 20, 2011.

STANDARD OF REVIEW, STATEMENT OF THE CASE, AND ISSUES PRESENTED ON APPEAL

As amicus curiae, the Utah Association for Justice refers to the Standard of Review, Statement of the Case, and Issues Presented on Appeal as set forth by Appellants, and incorporates them as if set forth fully herein.

STATEMENT OF INTEREST

The Utah Association for Justice ("UAJ") is a statewide organization comprised of attorneys committed to protecting the rights of persons who have been injured in their person or property, and who turn to the courts for judicial redress. In promoting these interests, UAJ seeks to preserve a fair, prompt, open and efficient administration of justice.

UAJ members represent injured people in the vast majority of personal injury tort actions in this state. The Court's decision on whether or not pre-injury releases are valid and its consideration of Utah public policy will impact virtually every one of those actions, as well as future personal injury litigation. Thus, the resolution of this case significantly impacts the parties to this action, as well as thousands of tort victims throughout the State of Utah as well.

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CONSTITUTIONAL PROVISIONS

Utah Const. Art. I, § 1:

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Utah Const. Art. I, § 11:

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

INTRODUCTION AND SUMMARY OF ARGUMENT

"[T]he very meaning of public policy is the interest of others than the parties, and that interest is not to be at the mercy of the defendant alone."[1]

Imagine a new recreational activity that has become the latest craze, it is called "Hangman"—as part of an "old west" recreational facility, thrill seeking participants can be "hanged" as a criminal or horse thief. The gallows fully emulates a real life gallows, so that participants can have the complete experience, right down to falling through a trap door with a noose around their neck. The gallows, of course, is rigged so that the participant lands on a soft pad just prior to the time the rope runs out of length. The activity catches on as a new "near death" extreme sport, and thousands of adrenaline

[1] *Beasley v. Tex. & P. Ry. Co.*, 191 U.S. 492, 498 (1903) (Holmes, O.W.).

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junkie thrill seekers start participating in the activity. The participants all know the inherent risks such as rope burn, or splinters from the wooden deck.

In order to keep the business profitable and reduce expensive premiums associated with liability insurance, the business owners require that all participants sign a preinjury, exculpatory agreement. Specifically, the owners immunize themselves against any and all claims for injury, damages or loss as a result of negligence by the owner, their agents or employees. One day, because he is not paying attention, a minimum wage operator at the Hangman activity is checking his text messages as he winds out a new noose for the day's activity. He mistakenly shortens the noose by six inches. And, on this one fateful day, a middle aged father of three is rendered a quadriplegic. The father loses his job, and eventually his health insurance. He applies for and receives social security disability. He applies for and receives state Medicaid benefits. His wife, always a homemaker and mom, takes a minimum wage job. But, with three children, the family can't make ends meet and are forced to further apply for and rely upon state aid.

Approving exculpatory contracts implicitly condones as 'good' public policy the shifting of costs and consequences of a business' own negligence back onto the public at large. However, if an activity is so riddled with danger that it cannot profitably obtain insurance, the better policy is to not subsidize that dangerous activity through the shifting of private costs to the public.

The legislature, in the case of equine activities, *i.e.*, horseback riding, expressly preserved liability for negligence not once or twice, but three times within the Equine Liability Act. Owners remain liable for equipment failure "due to the sponsor's or

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professional's negligence."[2] Operators also remain liable if they fail to "make reasonable efforts to determine whether the equine or livestock could behave in a manner consistent with the activity with the participant."[3] In addition to the specifically enumerated duties, the Equine Act also retains liability for commits an act or omission that constitutes negligence."[4] The legislative voice speaks against ill-advised attempts to shift consequences of horse owner's negligence back upon the public at large.

Additionally, public policy further weighs against the enforcement of preinjury releases. Utah has endorsed "the prevailing view that the law disfavors preinjury exculpatory agreements."[5] Nevertheless, this Court has acknowledged that, "despite its flaws," the "general principle that preinjury releases are enforceable" is a part of Utah's common law, though it is subject to certain exceptions.[6] One of those exceptions is where the preinjury release violates public policy.

This case asks the Court to consider whether public policy invalidates a preinjury exculpatory agreement that Appellants required Appellee to sign prior to participating in recreational horseback riding activities. Amicus curiae Utah Association for Justice asserts that Utah has a strong policy interest in promoting safe recreational opportunities

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[2] *Utah Code Ann.* § 78B-4-202(2)(a)(iii) (West 2012).

[3] *Id.* at (2)(b) (emphasis added).

[4] *Id.* at 2(d)(i).

[5] *Berry v. Greater Park City, Co.*, 2007 UT 87, ¶ 14, 171 P.3d 442 (citing *Hanks v. Powder Ridge Rest. Corp.*, 276 Conn. 314, 885 A.2d 734, 739 (2005)).

[6] *See id.* at ¶¶ 13-14.

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accessible to its citizens. Utah being billed as a recreational destination, sponsors of such activities are engaged in public services, and ought to act with reasonable care.

Preinjury exculpatory releases for recreational horseback riding activities are contrary to public policy inasmuch as they remove the deterrent force of tort liability for ordinary negligence. Given the nature of public recreation in the state for residents and non-residents alike, Utah also has strong policy interests given the nature of the activity at issue, recreational horseback riding, the preinjury exculpatory agreement in this case is contrary to Utah's public policy of promoting public safety and deterring wrongful conduct by preserving tort remedies for ordinary negligence. The UAJ requests that the Court reverse the holding of the Utah Court of Appeals, and reaffirm Utah's public policy in favor of promoting public safety and deterring wrongful conduct through preserving tort liability.

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ARGUMENT

I. PUBLIC POLICY IS A LEGITIMATE AND NECESSARY TOOL FOR EVALUATING PREINJURY RELEASES.

Utah courts have relied on public policy in crafting the common law since prior to statehood. The first use of public policy by a Utah court appears to have occurred in 1877, when the territorial court declared, "Concealment of the marriage contract is contrary to public policy and injurious to the best interests of society."[7] More recently, in *Rothstein v. Snowbird Corp.*,[8] this Court identified public policy as a basis for holding preinjury releases unenforceable:

> Preinjury releases from liability for one's negligence pit two bedrock legal concepts against one another: the right to order one's relationship with another by contract and the obligation to answer in damages when one injures another by breaching a duty of care. We have joined the majority of jurisdictions in permitting people to surrender their rights to recover in tort for the negligence of others. We have made it clear throughout our preinjury release jurisprudence, however, that contract cannot claim victory over tort in every instance. We have indicated that releases that are not sufficiently clear and unambiguous cannot be enforced. We have also indicated that we would refuse to enforce releases that offend public policy.[9]

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[7] *United States v. Miles*, 2 Utah 19, 0–8 (Terr. 1877).

[8] 2007 UT 96, 175 P.3d 560.

[9] *Rothstein v. Snowbird Corp.*, 2007 UT 96, ¶ 6, 175 P.3d 560 (citing *Berry v. Greater Park City Co.*, 2007 UT 87, ¶ 12, 171 P.3d 442 and *Hawkins v. Peart*, 2001 UT 94, ¶ 9, n.3, 37 P.3d 442).

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The court also noted, however, that public policy is a "protean substance,"[10] and cautioned against it being relied upon as a basis for judicial determination "unless [it] is deducible in the given circumstances from constitutional or statutory provisions[.]"[11]

In *Rothstein*, the legislature enacted a statute that struck a bargain in the interest of public policy: "ski area operators would be freed from liability for inherent risks of skiing so that they could continue to shoulder responsibility for noninherent risks by purchasing insurance."[12] A 3-2 majority concluded that ski area operators' extraction of preinjury releases from skiers "breached this public policy bargain," and the releases were therefore unenforceable.[13]

The majority in *Rothstein* noted that, "[r]ead in its most restrictive sense," the statutory policy statement "simply announces that it is the public policy of Utah to bar skiers from recovering from recovering from ski area operators for injuries resulting from the inherent risks of skiing, as enumerated in the [statute]."[14] Rather than injecting its

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[10] "[P]ublic policy is a protean substance that is too often easily shaped to satisfy the preferences of a judge rather than the will of the people or the intentions of the Legislature." *Rothstein v. Snowbird Corp.*, 2007 UT 96, ¶ 10, 175 P.3d 560. Although the description may be carry a negative connotation, "protean" can also be understood as a positive attribute. Although it can mean "tending or able to change frequently or easily: it is difficult to comprehend the whole of this protean subject." The New Oxford American Dictionary, 3rd Ed., Oxford University Press. It also means "able to do many different things; versatile: *Shostakovich was a remarkably protean composer, one at home in a wide range of styles*." *Id.*

[11] *Rothstein*, 2007 UT 96, ¶ 10, 175 P.3d 560.

[12] *Id.* at ¶ 16.

[13] *Id.*; *see also id.* at ¶ 20.

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own public policy views, however, the majority recognized that although the statute did not expressly invalidate preinjury releases, it nevertheless contained an implicit "public policy bargain"[15] that precluded such releases from being enforced.[16] Clearly, public policy is not only a legitimate resource, but is also a necessary tool, in determining the enforceability of preinjury releases.

This case involves the Equine and Livestock Activities Act (the "Equine Act"),[17] but it is not the sole source of public policy. Statutes are but one of three sources from which public policy may be ascertained: "We have stated that a public policy is 'clear' if it is plainly defined by one of three sources: (1) legislative enactments; (2) constitutional standards; or (3) judicial decisions."[18] And in *Hansen v. America Online, Inc.*,[19] this Court explained:

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[14] *Id.* at ¶ 13.

[15] *Id.* at ¶ 16.

[16] *See Snow v. Office of Legislative Research and General Counsel*, 2007 UT 63, ¶ 13, 167 P.3d 1051 ("Occasionally, the expression of state policy from our legislative branch is not as clear and understandable as they, or we as citizens, might hope . . . . [W]hen the policy and the intent of the legislature is unclear with respect to a particular enactment, it is to the judicial branch of state government that we turn for clarification . . . . This process . . . was calculated by the framers of our form of government to be most likely to produce a correct result.").

[17] Utah Code Ann. § 78B-4-201 *et seq.*

[18] *Rackley v. Fairview Care Centers, Inc.*, 2001 UT 32, ¶ 16, 23 P.3d 1022; *see also Burton v. Exam. Ctr. Indus. & Gen. Med. Clinic, Inc.*, 2000 UT 18, ¶ 6, 994 P.2d 1261 (stating that "declarations of public policy can be found in constitutions and statutes"). *See also Utah Pub. Employees Ass'n v. State*, 2006 UT 9, ¶ 59, 131 P.3d 725 (Parrish, J., concurring) (explaining that public policy is distinct from both legislative text and history).

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> We have no need to analyze the text of [a] statute [where] the issue before us is not one of statutory interpretation. The centerpiece of our inquiry is the strength and scope of public policy. In our effort to assay this question, we are not restricted to parsing statutory text and may properly look to many sources, including legislative history, which may illuminate the dimensions of the public policy at issue.[20]

Public policy interests are necessary considerations for the Court to make.

As the U.S. Supreme Court has noted, "[w]here the enforcement of private agreements would be violative of [public] policy, it is the obligation of courts to refrain from such exertions of judicial power."[21] While courts are wise to avoid "judicial mischief,"[22] they should not do so at the expense of the legitimate goal of preserving strong public policy. As former U.S. Supreme Court Justice Holmes wrote:

> The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned. **Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely**

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[19] 2004 UT 62, 96 P.3d 950.

[20] *Id.* at ¶ 15, n.7; *see also* Restatement (Second) of Contracts § 178, When A Term Is Unenforceable On Grounds Of Public Policy (1981) ("In weighing a public policy against enforcement of a term, account is taken of: (a) the strength of that policy as manifested by legislation or judicial decisions, (b) the likelihood that a refusal to enforce the term will further that policy.") (Emphasis added).

[21] *Hurd v. Hodge*, 334 U.S. 24, 34–35 (1948).

[22] *See id.*

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> **understood views of public policy**; most generally, to be sure, under our practice and traditions, the unconscious result of instinctive preferences and inarticulate convictions, but nonetheless traceable to views of public policy in the last analysis.[23]

The court of appeals failed to engage in a thorough public policy analysis due to the lack of an express legislative statement. It should not have concluded its analysis there, however. "Public policy is that principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against the public good."[24] When "public policy" is employed as shorthand, without more explanation and analysis, it becomes nothing more than conclusory—protean in the negative sense. However, when well-defined and applied analytically, public policy is a legitimate, necessary tool for evaluating the enforceability of preinjury releases.

As the state constitution and common law show, Utah has a strong public policy interest in deterring unreasonable conduct through tort liability. As the following sections show, the constitution contains public policy in favor of preserving tort remedies as a means of deterring wrongful conduct and promoting public safety. These interests weigh against the use of preinjury releases for recreational activities, and warrant invalidation of the release.

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[23] Oliver W. Holmes, THE COMMON LAW 35-36 (1881) (emphasis added).

[24] *Berube v. Fashion Ctr., Ltd.*, 771 P.2d 1033, 1043 (Utah 1989)(quotation omitted).

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II. THE UTAH CONSTITUTION ENSHRINES THE PUBLIC POLICY INTEREST IN DETERRING WRONGFUL CONDUCT BY PRESERVING TORT LIABILITY.

Public safety is good public policy. While tort law serves to compensate individual injured parties for their losses due to another's negligence, its primary purpose is to serve the broader public interest by deterring wrongful conduct:

> The association of negligence with purely compensatory damages has prompted the erroneous impression that liability for negligence is intended solely as a device for compensation. Its economic function is different; it is to deter uneconomical accidents. As it happens, the right amount of deterrence is produced by compelling negligent injurers to make good the victim's losses.[25]

The "traditional goals of tort law" are "deterrence and cost distribution."[26] Indeed, deterrence of wrongful conduct "is at the core of all American tort law."[27] "Tort liability has a powerful deterrent effect on future conduct and would do much to protect other[s] . . . from being harmed under similar circumstances."[28] Accordingly, the framers of Utah's Constitution sought to explicitly protect and preserve the right to seek judicial redress. Two provisions address this issue: the Petition Clause and the Open Courts Clause.

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[25] *Condemarin v. University Hosp.*, 775 P.2d 348, 364 (Utah 1989) (quoting R. Posner, *Economic Analysis of Law* § 6.12, at 143 (1972) (footnote omitted)).

[26] *See Grundberg v. Upjohn Co.*, 813 P.2d 89, 94 (Utah 1991).

[27] *Wood v. University of Utah Medical Center*, 2002 UT 134, ¶ 83, 67 P.3d 436 (Durham, C.J., dissenting).

[28] *See S.H. ex rel. R.H. v. State*, 865 P.2d 1363, 1365 (Utah 1993) (Stewart, J., dissenting).

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A. The Petition Clause Preserves Public Policy Interest in Deterring Wrongful Conduct.

The Declaration of Rights in Utah's Constitution states, "All men have the inherent and inalienable right . . . to assemble peaceably, protest against wrongs, and *petition for redress of grievances*; to communicate freely their thoughts and opinions, being responsible for the abuse of that right."[29] According to the Utah Supreme Court, this provision:

> [C]onstitute[s] the supreme law of the commonwealth upon this subject. To that law, the executive, the legislative, and the judicial departments of the government alike must bow obedience, as well as every subject. It forbids the abridgement by the state of the privileges and immunities of all citizens . . . . These are inherent and inalienable rights of citizens, and are constitutional guaranties. An enactment, therefore, which deprives a person arbitrarily of . . . some part of his personal liberty, is just as much inhibited by the supreme law as one which would deprive him of life.[30]

Though there has been little discussion of the Petition Clause in Utah's appellate courts, the plain language of the clause reveals its meaning. "Independent analysis must begin with the constitutional text and rely on whatever assistance legitimate sources may provide in the interpretive process."[31] Indeed, "[t]he interpretation of the protections afforded by the Utah Constitution appropriately commences with a review of the constitutional text."[32]

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[29] Utah Const. Art. I, § 1 (1896) (emphasis added).

[30] *Block v. Schwartz*, 27 Utah 387, 76 P. 22, 24-25 (1904).

[31] *State v. Tiedemann*, 2007 UT 49, ¶ 37, 162 P.3d 1106.

[32] *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 10, 140 P.3d 1235.

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A "petition" is "[a] formal written request presented to a court or other official body . . . . In some states, a lawsuit's first pleading."[33] In *Kish v. Wright*,[34] the Utah Supreme Court recognized that "the Constitution of Utah . . . gives its citizens the 'inherent and inalienable' right to petition a state tribunal for redress of grievances in civil actions."[35] Thus, under a plain meaning analysis, a petition for redress of grievances is the same as a civil action. The right to bring a civil action is therefore considered an "inherent and inalienable right" by the Utah Constitution.

The clause's significance is further illuminated by its history, as well as its context. In selecting the phrasing, the framers noted that the consecutive ordering contemplated that the rights of assembly, protest, and petition mutually served "the purpose of communicating [the people's] thoughts."[36] The framers also explained that "[w]e put in our bill of rights a declaration that the right of petition of the people should not be taken away from them."[37] And they declared that "one of the very first articles that we passed in this Constitutional Convention was an article upon the declaration of rights, following out of the principle laid down in Magna Charta, and the principles in our own Declaration of Independence, that the right of petition shall never be ignored, and we

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[33] BLACK'S LAW DICTIONARY 1182 (8th ed. 2004).

[34] 562 P.2d 625 (Utah 1977).

[35] *Id.* at 627; *see also In re Anderson*, 2004 UT 7, ¶ 68, 82 P.3d 1134 ("In filing a civil action . . . Judge Anderson exercised his right to petition for redress of grievances.").

[36] 1 OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES OF THE CONVENTION 229 (Salt Lake City, Star Printing Co. 1898).

[37] *Id.* at 1182.

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have in our article on the declaration of rights declared in favor of the right of petition."[38] The framers' reverence for the right of petition is not surprising; at the time Utah attained statehood, it was already well-settled that "[t]he very idea of a government, republican in form, implies a right on the part of its citizens . . . to petition for a redress of grievances."[39]

The historical record establishes that Utah's constitutional framers recognized the petition right as an independently significant free expression right. Significantly, courts are forums for "free and open expression."[40] The U.S. Supreme Court has expressly recognized that judicial petitions for civil redress "are modes of expression . . . protected by the First and Fourteenth Amendments," and are subject to judicial protection.[41] As the Court explained, "litigation is not [just] a technique of resolving private differences; it is a means for achieving . . . lawful objectives."[42] In such circumstances, "[i]t is thus a form of political expression."[43]

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[38] *Id.* at 1455.

[39] *U.S. v. Cruikshank*, 92 U.S. 542, 552 (1875).

[40] *See Pratt v. Nelson*, 2007 UT 41, ¶ 27, 164 P.3d 366. *Pratt* addressed the judicial proceeding privilege, which is recognized as necessary to facilitate the "free and open expression by all participants." *Id.* (citing *Allen v. Ortez*, 802 P.2d 1307, 1311 (Utah 1990)).

[41] *NAACP v. Button*, 371 U.S. 415, 428 (1963).

[42] *Id.*

[43] *Id.*

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The petition right's inclusion with other freedoms of expression is no mere coincidence. The right is intrinsically associated with expression, and should be weighted and analyzed accordingly. It goes without saying that Utah is a common law state, and while statutes supersede the common law,[44] its development is nevertheless a critical part of state government. The common law can only be developed where disputes are adjudicated by the courts, in a public forum; this is the essence of the expressive nature of the petition right. If preinjury releases are enforced, there is no deterrence, and no contribution is made to the common law. Deterring wrongful conduct and promoting public safety are certainly "lawful objectives," and are enshrined in the state's founding charter.

Reflecting on his fifty-year legal career, Utah Federal Judge J. Thomas Greene mourned the erosion of traditional civil litigation.[45] He noted:

> [W]e should not forget that the fundamental purpose of the courts is to litigate differences, and that citizens have a *right* to litigate. In this regard, Supreme Court Justice Harlan pointed out that litigation is not a scurrilous or evil thing, and that the right to litigate is derived from the First Amendment guarantee of the right to petition for redress of grievances. He said, "We have passed the point where litigation is regarded as an evil that must be avoided if some accommodation short of a lawsuit can possibly be worked out. Litigation is often the desirable and orderly way of obtaining vindication of fundamental rights.

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[44] *See* Utah Code Ann. § 68-3-2.

[45] J. Thomas Greene, *Reflections of a Senior Judge*, 232 F.R.D. 425 (October 14, 2005).

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> Similarly, the Supreme Court said, "[O]ver the course of centuries, our society has settled upon civil litigation as a means for redressing grievances, resolving disputes, and vindicating rights . . . . That our citizens have access to their civil courts is not an evil to be regretted; rather, it is an attribute of our system of justice in which we ought to take pride."[46]

Permitting the enforcement of preinjury releases that are required preconditions to participating in recreational activities such as horseback riding abridges the petition right and forecloses public expression, thereby defeating the deterrent effect of tort law. The public policy interest in petitioning for redress publicizes negligence, resulting in deterrence and promoting public safety. If private parties are permitted to immunize themselves from ordinary negligence claims through the use of preinjury releases, not only is access to justice denied, but recreational activities will become less safe due to the loss of deterrence. Enforcement of the preinjury release in this case is contrary to the public policy inherent in the Utah Constitution's Petition Clause.

B. The Open Courts Clause Reinforces Utah's Policy Interest in Public Adjudication of Private Disputes to Deter Further Wrongful Conduct.

Utah's constitutional Open Courts Clause states:

> All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.[47]

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[46] *Id.* at 440-41 (emphasis in original).

[47] Utah Const. Art. I, § 11.

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This provision guarantees access to a public judicial forum where parties can obtain substantive redress of their grievances. It embodies a "higher principle[ ] of justice,"[48] and, like the Petition Clause, reflects the framers' policy interest in preserving the civil justice system as a means of resolving disputes and deterring wrongful conduct.

Additionally, the Open Courts Clause preserves access to a public judicial forum wherein petitions for the redress of grievances may be heard. Certainly, the mutual inclusion of the term "redress" in the Petition and Open Courts Clauses supports their interrelatedness: petitions state the claims to be redressed, and courts are forums in which such petitions are entertained. When private disputes are adjudicated in public forums, there is a greater deterrent effect. When negligence occurs in silence, and public consequences escaped, there is little disincentive to refrain from further unreasonable conduct. The Open Courts Clause ensures access to a public forum where common law can be made through the publication of private grievances.

These constitutional provisions and judicial decisions clearly establish Utah's strong public policy interest in favor of preserving negligence causes of action, and weigh against foreclosure of the right to seek judicial redress by the enforcement of preinjury releases.[49]

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[48] *See Zamora v. Draper*, 635 P.2d 78, 81 (Utah 1981).

[49] *See Anderson Development Co. v. Tobias*, 2005 UT 36, 116 P.3d 323 (recognizing the public policy in favor of preserving "free access to the courts" and against depriving "the individual a fair opportunity to present his or her claim." *See id.* at ¶ 59 (quotations and internal citations omitted)).

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The legislature has already granted the recreational industry broad immunity for injuries suffered as a result of the inherent risks of an activity. This enables private parties to operate recreational businesses for a profit, and preserves access to liability insurance. Permitting these businesses to further immunize themselves against claims for ordinary negligence, however, violates Utah's public policy interest in promoting public safety by deterring negligent conduct. As discussed in the next section, this is the essence of tort law.

III. TORT LAW PROMOTES THE PUBLIC GOOD.

As discussed above, tort law provides not only a means to compensation[50] for people harmed by the negligence of another person's conduct, but also establishes a sound deterrent and encourages others to act with reasonable care.[51] The courts consistently "evaluate whether the effect of tort liability would promote public safety."[52] "Tort liability has a powerful deterrent effect on future conduct and would do much to protect other children from being harmed under similar circumstances."[53] The public policy in favor of tort law mitigates the flow of damages away from the tortfeasor and

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[50] *Condemarin v. Univ. Hosp.*, 775 P.2d 348, 364 (Utah 1989) (in addition to compensation, tort law is intended to "deter uneconomical accidents.")

[51] *Hansen v. Mountain Fuel Supply Co.*, 858 P.2d 970, 976 (Utah 1993) (Allowing medical surveillance damages for toxic-tort plaintiffs "furthers the deterrent function of the tort system by compelling those who expose others to toxic substances to minimize risks and costs of exposure.").

[52] *DeBry v. Noble*, 889 P.2d 428, 440 (Utah 1995).

[53] *S.H. ex rel. R.H. v. State*, 865 P.2d 1363, 1365 (Utah 1993).

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back onto the public at large through welfare, insurance and entitlement programs.[54] In sum, the authorities consistently validate the general good and sound public policy supporting a system which maintains accountability of those who act with carelessness. These principles underlying tort law are so substantial and fundamental that there can be virtually no question as to their importance for the public good.

Importantly, the deterrent effect of negligence "belong[s] to society, not individual parties, and societal interests should outweigh private interests [over] freedom of contract."[55] Any decision to validate a private contract which shifts burdens to the public must be "based on prior ... judicial decisions, applying only those principles which are so substantial and fundamental that there can be virtually no question as to their importance for promotion of the public good."[56]

Appellee Sundance stands on a mistaken assumption: that this Court will never entertain or consider public policy arguments against exculpatory contracts. *Berry v. Greater Park City Co.*, in fact, holds quite the opposite. "The right to contract is always subordinate to the obligation to stand accountable for one's negligent acts."[57] Being

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[54] W. Page Keeton *et al.*, PROSSER AND KEETON ON THE LAW OF TORTS § 4 at 25 (5th ed. 1984) ("courts are concerned not only with compensation of the victim, but with admonition of the wrongdoer. When the decisions of the courts become known, and defendants realize that they may be held liable, there is of course a strong incentive to prevent the occurrence of harm.").

[55] *Berlangieri v. Running Elk Corp.*, 76 P.3d 1098, 1105 (N.M. 2003) (refusing to uphold exculpatory contract after injury during horseback riding activity).

[56] *Berube v. Fashion Ctr., Ltd.*, 771 P.2d 1033, 1043 (Utah 1989).

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subordinate, the validity of exculpatory pre-injury releases may still be called into question. *Berry* stopped short of holding all preinjury releases unenforceable as a matter of public policy. Rather, *Berry* recognized that the right to contract away one's right to recover damages for the negligence of another is "subject to many conditions and limitations," including limitations of public policy.[58]

Berry went on to note that the public policy considerations in that case merely fell "short of convincing us that freedom to contract should always yield to the right to recover damages on the basis of another's fault."[59] While pre-injury releases for damage due to another's negligence may not 'always' yield, there may still be occasions which warrant invalidation of the exculpatory contract as contrary to public policy. Accordingly, there remain "exceptions to the general principle that pre injury releases are enforceable."[60] In *Pearce v. Utah Athletic Found.*, this Court confirmed that there remain exceptions to the 'general rule' that "people may contract away their rights to recover in tort for damages caused by the ordinary negligence of others."[61]

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[57] *Berry v. Greater Park City Co.*, 2007 UT 87, ¶ 11, 171 P.3d 442, 445–46.

[58] *See id.* ¶¶ 11-12.

[59] *Id.* at ¶ 11 (emphasis added).

[60] *Id.* at ¶ 13.

[61] *Pearce v. Utah Athletic Found.*, 2008 UT 13, ¶ 14, 179 P.3d 760, 765 (observing that public policy, public interest and ambiguity all remain valid objections to enforcement of an exculpatory contract).

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Berry acknowledged the "legal and social philosophy" favoring invalidation of preinjury releases. But, another public policy not yet considered by Utah courts also favors invalidation. As one commentator has explained:

> What legal, equitable, or public policy justification exists to allow for-profit businesses to require their customers to contractually waive liability for their own negligence? This question is especially important when one considers that business owners and service providers can easily protect themselves with liability insurance and pass the cost of that protection on to their customers.
>
> In fact, in all but the least responsible businesses (and therefore the most likely to injure or kill someone) they do have insurance. . . . Thus, perversely, the law as it presently exists is detrimental to the legitimate interests of consumers and serves only to protect the coffers of business insurers whose policy holders are required to carry coverage but obliged to deny it.[62]

The public policy principles underlying tort law are so substantial and fundamental that there is no good reason to question their importance for the public good. Thus, when parties seek to exculpate themselves from the consequences of their own negligence, and ultimately force those costs back upon the public at large, courts should reject that request as antithetical to public good unless a countervailing public good can be gained. Here, the ability to arrange one's affairs as one sees fit must yield to the overall public good achieved through the deterrent and compensatory effects of remaining accountable and liable for harm caused by one's own negligence.

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[62] Steve Russell, *Pre-Injury Releases: A Problem Easily Solved*, UTAH TRIAL J. 7, 10 (Winter/Spring 2010) (emphasis in original).

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A private, preinjury release increases profits for business, relieving them of steps otherwise necessary to fully meet their obligations of reasonable care to society at large. A private exculpatory contract then shifts costs and consequences of negligently conducted business back onto the public at large through increased health care costs, reliance on public welfare and aid programs, lost wage earning and lost services to families.

Businesses that contract around their duty of reasonable care lower the cost of doing business, but at the expense of the public at large. For-profit business should not be allowed to escape their liability and shift those costs to the public at large by way of a private contract.

Courts should not condone and encourage for-profit enterprise that entice others to pursue risky activities under the guise of professional supervision. Allowing for-profit businesses to immunize themselves against negligence in the very arena wherein they hold themselves out as experts serves and promotes no societal benefits. "There can be no doubt concerning the duty of this Court to invalidate contracts which have a tendency to be injurious to the public welfare."[63] More recently this Court observed that, in addition to violation of legislatively expressed policy, contracts may also be struck down because enforcement "harmed the public as a whole—not just an individual."[64]

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[63] *Frailey v. McGarry*, 116 Utah 504, 516–17, 211 P.2d 840, 847 (1949).

[64] *Ockey v. Lehmer*, 2008 UT 37, ¶ 23, 189 P.3d 51 (citation omitted) (ultimately upholding trust contract because it 'did not harm the general public').

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If an activity is so dangerous that the recreational outfitter cannot obtain liability insurance without also exacting an exculpatory contract immunizing them against their own negligence, then perhaps the courts should refrain from allowing, encouraging, supporting and promoting such dangerous businesses. In effect, upholding an exculpatory contract disturbs the free market by subsidizing and passing on the costs of negligence to society at large where the free market has already determined that the services provided may not be worth their cost because insurance cannot be obtained.

IV. OVERLY BROAD RELEASES THAT IMMUNIZE AGAINST HARM "FOR ANY REASON" VIOLATE PUBLIC POLICY.

Exculpatory contracts which release liability "for any reason" offend public policy. *In Mettler ex rel. Burnett v. Nellis* the court also dealt with an exculpatory contract in a horseback riding case. The pre-injury release immunized against "any liability or responsibility for any accident damage, injury or illness and was "broad enough to include intentional behavior."[65] The court held that "an exculpatory contract contravenes public policy when it would absolve the tortfeasor from any injury to the victim for any reason."[66] An exculpatory agreement will generally be held to contravene public policy if it is so broad "that it would absolve [the defendant] from any injury to the [plaintiff] for any reason."[67]

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[65] *Mettler ex rel. Burnett v. Nellis*, 695 N.W.2d 861, 865 (Wis. Ct. App. 2005).

[66] *Id.*

[67] *Richards v. Richards*, 513 N.W.2d 118, 121 (Wis. 1994).

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The release in this case is so broad that it also offends notions of public good:

> Paragraph 1. "I expressly agree to assume all risks of personal injury, falls, accidents, and/or property damage, including those resulting from any negligence of Sundance."
>
> Paragraph 2. " . . . agree to indemnify and hold SUNDANCE harmless from all claims, damages or injuries in any way related to my participation in Horseback Riding . . . . " "My release includes all claims regarding the design, maintenance . . . , products liability."
>
> Paragraph 3. "I agree that no lawsuit will be filed by me or on my behalf against SUNDANCE as a result of my participation in Horseback Riding, use of any facilities or for any injuries or damages that I sustain even if SUNDANCE was negligent."

Paragraphs 1 and 3 are so broad as to release injury for any reason whatsoever, making the exculpatory contract so broad as to be unenforceable.

Further, Paragraph 2 is particularly offensive because it impermissibly prohibits claims based upon products liability. Under Utah law, parties may not avoid liability for products liability. "On grounds of public policy, parties to a contract may not generally exempt a seller of a product from strict tort liability for physical harm to a user or consumer unless the exemption term is fairly bargained for and is consistent with the policy underlying that [strict tort] liability.[68]

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[68] *Interwest Const. v. Palmer*, 923 P.2d 1350, 1356 (Utah 1996) (quoting Restatement (Second) of Contracts § 195(3) (1981)).

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Accordingly, the shear breadth and scope of the release at issue in this case has already been found to be in violation of sound public policy principles. This case marks an opportunity for the Court to reinforce those public policy principles by reaffirming that such overreaching exculpatory contracts will not be tolerated.

V. THE EQUINE LIABILITY ACT PRESERVES NEGLIGENCE CLAIMS AGAINST ACTIVITY SPONSORS.

In *Pearce v. Utah Athletic Found.*, the court held that "recreational activities do not constitute a public interest and that, therefore, preinjury releases for recreational activities cannot be invalidated under the public interest exception."[69] However, in *Pearce* the court did not have before it any statutory regulation which evinced or supported a "public interest." Here, by contrast, there is an express statutorily recognized public interest by virtue of the Equine Act. Accordingly, a blanket prohibition against considering exculpatory clauses for recreational activities is overcome by legislation which demonstrates the recreational activity to be a public interest worthy of regulation.

Under the Equine Liability Act, activity sponsors are "not liable for injury to or the death of a participant due to the inherent risks associated with [horseback riding]."[70] However, the legislature chose to preserve responsibility for negligence. Sponsors remain liable for harm if they "provided the equipment… and an equipment failure was due to

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[69] *Pearce v. Utah Athletic Found.*, 2008 UT 13, ¶ 17, 179 P.3d 760, 766.

[70] Utah Code Ann. § 78B-4-202(2) (West 2012).

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the sponsors negligence,"[71] or, "failed to make reasonable efforts to determine whether the equine or livestock could behave in a manner consistent with the activity and with the participant,"[72] or, commit "an act or omission that constitutes negligence."[73] Sundance attempted to avoid exactly what the statute retained - liability for negligence.

When determining whether to void an exculpatory clause, *Hawkins* and several other Utah decisions cited with approval *Tunkl v. Regents of Univ. of Cal.*[74] *Tunkl* surveyed the case law at the time and arrived at a "rough outline" of the factors which typically cause invalidation of exculpatory clauses.[75] In *Berry v. Greater Park City Co.*, the court adopted the *Tunkl* factors as a means for evaluating exculpatory clauses. Here, all but two of those factors are satisfied.[76]

In the face of a clearly expressed public policy, Sundance's exculpatory contract violates the first factor under a *Tunkl* analysis: "[The transaction] concerns a business of a

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[71] *Id.* at (2)(a)(iii).

[72] *Id.* at (3).

[73] *Id.* at (d)(i).

[74] *See Hawkins* at ¶ 9. *See also Pearce v. Utah Athletic Found.*, 2008 UT 13, ¶ 17, 179 P.3d 760; *and Berry v. Greater Park City Co.*, 2007 UT 87, ¶ 15, 171 P.3d 442.

[75] *Tunkl v. Regents of Univ. of Cal.*, 383 P.2d 441, 445 (Cal. 1963).

[76] Admittedly, horseback riding recreational activities are neither a "service of great importance to the public, which is often a matter of practical necessity for some members of the public", or an "essential service." *See, e.g., Berry*, 2007 UT 87, ¶ 10, 171 P.3d 442.

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type generally thought suitable for public regulation."[77] Because the Equine Act expressly retains liability for negligence or the failure to exercise reasonable care, it espouses a public interest in favor of maintaining that liability. Private parties should not be allowed to contract around a legislatively announced obligation to exercise reasonable care.

Further, because the legislature chose to use the word "negligence" and the phrase "failed to make reasonable efforts," there is no question regarding the purpose of the statute unlike the situation in *Rothstein v. Snowbird*. The *Rothstein* majority, interpreting the inherent risks of skiing act, had before it no express reservation of negligence within the statutory language. *Rothstein* therefore looked toward the expressed public policy and came to the inescapable conclusion that liability for negligence was retained under the ski act.[78] Here, by contrast, the retention for liability of negligence is expressly made within the Equine Act. The legislature reserved the right and ability of participants to bring claims for negligence as well as a duty for operators to exercise reasonable care.

The other *Tunkl* factors are also present in this case. It appears that Sundance holds itself out as willing to perform the horseback riding for hire service to any member of the public.[79] Sundance also makes no provision whereby a purchaser may pay

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[77] *Berry*, 2007 UT 87, ¶ 10, 171 P.3d 442.

[78] *Rothstein v. Snowbird Corp.*, 2007 UT 96, ¶ 16, 175 P.3d 560.

[79] Factor 3, *see Berry v. Greater Park City Co.*, 2007 UT 87, ¶ 10, 171 P.3d 442.

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additional fees to obtain protection against negligence.[80] And, finally, the purchaser is left wholly under the control of Sundance and its choice of horse, equipment and direction/instructions.[81] Particularly telling, the Equine Act itself supports the application of this last factor by declaring that participants may still bring an action if the providers do not choose a suitable mount or properly prepare and apply the riding gear.[82]

Family friendly activities also justify a more restricted approach to immunizing against liability than high risk, extreme sports activities. The case currently at bar, unlike *Berry* or *Pearce*, involves a much milder activity. *Berry* considered a competitive, elbow to elbow race between competitive skiers who were all vying to reach the finish line first. *Pearce* addressed the somewhat obvious, but thrilling, risks associated with bobsledding on an Olympic class facility. Here, Sundance provides the opportunity to "catch a view of beautiful Stewart falls, listen to the sounds of nature, and enjoy your cowboy guide as he/she leads you on a trail ride with your trusty mountain horse."[83] Further, Sundance offered this experience with the caveat that their "trails are walking only" and the opportunity for a "Chuck Wagon Dinner" following horseback rides. The recreational activity at issue can hardly be said to be of the same quality in terms of the experience, the dangers expected or the thrill sought out as the activities in either *Pearce* or *Berry*.

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[80] Factor 5, *see id.*

[81] Factor 6, *see id.*

[82] Utah Code Ann. § 78B-4-202 (3) and (2)(a)(iii) (West 2012).

[83] *See* "Sundance Activities: Horseback Riding" (attached as "Addendum A").

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Although horseback riding is depicted as a leisurely activity at Sundance, horseback riding accounts for a disproportionate share of emergency room injuries. According to a 2008 report released by the Centers for Disease Control and Prevention, horseback riding accounted for a greater percentage of traumatic brain injury to children than ice skating, riding ATVs, sledding or bicycling.[84] After reviewing available statistical data, another study concluded that "Horseback riding is considered more dangerous than motorcycle riding, skiing, automobile racing, football and rugby."[85]

A medical study done in 2006 revealed that "[e]ven though horse related activities have fewer participants than other sports and recreation activities, horseback riding is the eighth leading cause of emergency department treated, sports and recreation related injuries among female participants."[86] This same study concluded that "[h]orse related injuries are a public health concern not just for riders but for anyone in close contact with horses." Considering these statistics, and analyzing similar equine liability acts, it is not surprising that other state courts invalidated exculpatory releases for negligence of the owners of equine activities.

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[84] CDC Data & Statistics | Feature: Nonfatal Traumatic Brain Injuries (TBIs), http://www.cdc.gov/datastatistics/2008/brainInjuries/ (last visited Jan. 3, 2012).

[85] Ten years of major equestrian injury: are we addressing functional outcomes?, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2653027/ (last visited Jan. 3, 2012).

[86] Medical Non-fatal horse related injuries treated in emergency departments in the United States, 2001–2003, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2564310/ (last visited Jan. 3, 2012).

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New Mexico has also enacted an Equine Liability Act. New Mexico's statute is strikingly similar to Utah's Equine Act. The New Mexico act first provides immunity for injuries which occur as part of a horseback riding activity. But, the act goes on, as does the Utah act, to retain liability for faulty equipment and failure to make a reasonable and prudent effort to assure that the animal and participant were appropriate for the activity.[87] Unlike the Utah Equine Act, New Mexico does not expressly retain liability for plain negligence. However, the New Mexico Supreme Court nonetheless struck down an exculpatory clause under the *Tunkl* analysis.

In *Berlangieri v. Running Elk Corp.*, the court found the existence of the statute to provide a sufficient basis upon which to invalidate exculpatory contract on the basis an application of the *Tunkl* factors. The court first observed that the Equine Liability Act "very clearly expresses a policy that equine operators should not be held liable for equine behavior."[88] The court went on to note, however, that the Act also contains a qualifier, as does Utah statute, which retained liability for the acts or omissions of the operator which constituted negligence.[89] The defendant argued there, as does the defendant in the instant case, the retention of negligence served only to "limit the definition of conduct for which it cannot be held liable."[90]

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[87] N.M. St. § 42-13-4 (West 2012).

[88] *Berlangieri v. Running Elk Corp.*, 76 P.3d 1098, 1110 (N.M. 2003)

[89] *Id.*

[90] *Id.* at 1111.

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The court, however, stated that "the legislative intent goes further than that to express a policy that equine operators should be accountable for their own negligence."[91] "[T]he legislature used a manner of writing that evidences the intent that patrons of [horse riding businesses] should be able to make claims against them for negligence, but not for equine behavior."[92] "Thus, the Act expresses in general terms a policy that operators should be held liable for negligence, but not for events beyond their control."[93] Prior to invalidating the exculpatory contract, the court observed that the New Mexico "Act would do little more than codify the common law as it exists if it were to only provide that, absent a release, operators may be held liable for their negligence but not for injuries caused by equine behavior that is not the operators' fault."[94]

Because of the legislation, the court found that the first *Tunkl* factor had been met. Additionally, the court found all but two of the *Tunkl* factors to weigh against enforcement of the exculpatory contract. The court found that the horse riding business was opened to the public, did not offer a way for participants to expand their protection by purchasing additional coverage, and please participants within the control of an subject to the risk of carelessness by the businesses employees.[95]

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[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.* at 1112.

[95] *Id.* at 1112-13.

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Similarly, the Connecticut courts struck down an exculpatory clause in a recreational horseback riding case. In Connecticut, the act immunized 'inherent risks, but retained liability if "the injury was proximately caused by the negligence of the person providing the horse or horses."[96] In striking down the exculpatory provision, the court observed "that the legislature has stopped short of requiring participants to bear the very risk that the defendants now seek to pass on to the plaintiff by way of a mandatory release."[97] Thus, the "attempt contractually to extend the plaintiff's assumption of risk one step beyond that identified by the legislature [] violates the public policy of the state and, therefore, is invalid."[98] Finally, the Connecticut court made one other observation which also applies to the case under consideration by this Court.

In sum, the legislature preserved negligence liability for a recreational activity which is sold and marketed as family friendly. Other states considering similar legislative acts also strike down exculpatory contracts based on a *Tunkl* analysis. The contract at issue here should, similarly, be invalidated because it offends our legislature's express retention of negligence for seemingly benign, but statistically hazardous, activity.

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[96] Connecticut Statute § 52-557p (West 2012).

[97] *Reardon v. Windswept Farm, LLC*, 905 A.2d 1156, 1162 (Conn. 2006).

[98] *Id.*

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CONCLUSION

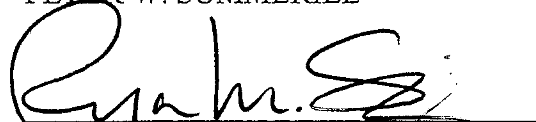
Allowing for-profit business to shift the costs associated with their irresponsible conduct back upon society at large through a private exculpatory contract served no valid societal interest. The public good served by tort law effects an appropriate distribution back upon the wrongdoer far outweighs the ability privately contract to the detriment of the public at large. Utah's constitution and historical case authority recognize a strong public policy in favor of tort law.

Utah is a beautiful state with attractive wilderness and unparalleled recreational opportunities. In order to promote public safety, and ensure that recreational activities are conducted responsibly, the Court should enforce the public policy interests inherent in the Utah State Constitution and the common tort law by ensuring public access to the courts for the redress of grievances. This public policy interest is consistent with the legislative objectives of the Equine Act, and will preserve the well-being of the public. The Court should reverse the Utah Court of Appeals, and remand the instant action for further proceedings.

Dated this 17th day of January, 2012.

UTAH ASSOCIATION FOR JUSTICE

PETER W. SUMMERILL



RYAN M. SPRINGER
Attorneys for Amicus Curiae

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CERTIFICATE OF COMPLIANCE

I hereby certify:

(1) This brief complies with Utah R. App. P. 24(f)(1) because it contains 9,433 words, excluding parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

(2) This brief complies with the typeface requirements of Utah R. App. P. 27(b) because it has been prepared in a proportionally spaced typeface, to wit, Times New Roman, 13 point font.

(3) Electronic copies of this brief are being supplied on compact disk, pursuant to Utah Supreme Court Standing Order No. 8.

RYAN M. SPRINGER

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 17th day of January, 2012, I caused a true and correct copy of the foregoing **BRIEF OF AMICUS CURIAE UTAH ASSOCIATION FOR JUSTICE** to be served, via first class U.S. mail, postage pre-paid, to the following:

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ADDENDUM A

1. Sundance Activities: Horseback Riding.

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Tab A

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horseback riding

Located in one of the most beautiful mountain ranges in the world, the stables are the perfect place to experience horseback riding at it's finest. Enjoy breathtaking scenery as you traverse through pristine mountain terrain. Catch a view of the beautiful Stewart Falls, listen to the sounds of nature, and enjoy your cowboy guide as he/she leads you on a trail ride with your trusty mountain horse.

Here at the stables we know the value in your experiences and memories. We want them to remain personal to you and your party. All rides are private or no more than 6 people per ride. We don't believe in long lines and boring nose to tail rides. Our stables have one of the best trail systems in the world. You will be captivated by the mountain surroundings and scenery. All rides are conducted by Boulder Mountain Ranch, our preferred horseback riding outfitter.

General Information

- Reservations are required. All rides must be scheduled at least 24 hours in advance. Contact our Concierge to make a reservation.
- All rides are western style and include a short instructional arena lesson before trip begins.
- Children must be at least 8 years or older to participate on a trail ride. Children under the age of 18 must be accompanied by an adult.
- One rider per horse--absolutely no double riding.
- Our trails are walking only.
- There is no weight limit. However, riders must be physically able to mount their horse unassisted.
- Group discounts are available (50% deposit required for all groups larger than 15 and/or any private function or activity).
- Maximum group size is 20 guests with one guide per six guests.
- Groups of 6 or more are automatically charged an 18% gratuity.
- Ride times are approximate due to different variables that can come up on each ride.
- **Please arrive 20 minutes prior to scheduled ride.**

Chuck Wagon Dinner

- We offer a wonderful Chuck Wagon dinner every Saturday at 4:30 pm. Includes wagon ride to Elk Meadows for Cowboy Dinner (menu varies occationally, call for more details). Groups of 12 or more can be scheduled any day of the week. Must make a reservation 24 hours in advance.

Cancellation Policy

- Cancellations inside of 24 hours will be charged in full
- Group reservations for 7 or more people require a 72 hour cancellation notice.

Times and pricing subject to change at any time without notice.

INFO...

801.223.6000

LOCATION

Stables

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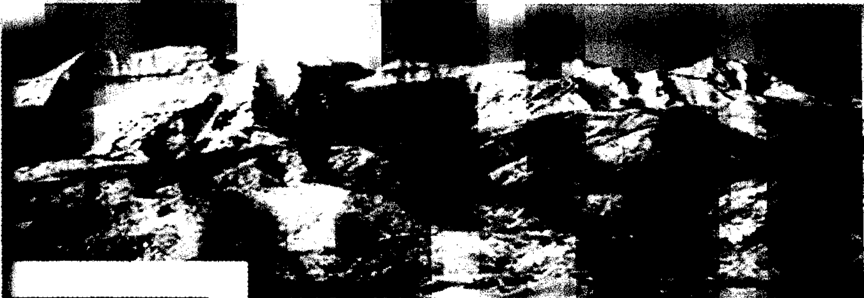

Welcome Y'all!

We invite you to pull up a stool and enjoy a moment going through our website. You will find a little bit about who we are and the fun you can have.

Home
Deer Valley S...
Sundance St...
Horse Drawn ...igh Rides
Guided Trail Rides
Horse Rentals

We outfit and guide
HORSEBACK RIDING TOURS
all summer, as well as
HORSE DRAWN SLEIGH RIDES
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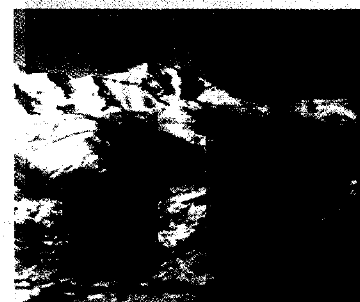
www.bouldermountainranch.com/

Boulder Moun... Ranch



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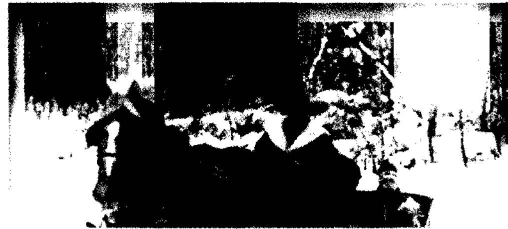

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