



**BROAD AND CASSEL
ATTORNEYS AT LAW**

CLIFFORD I. HERTZ STACEY HALPERN

Mr. Clifford I. Hertz, Partner and Ms. Stacey Halpern, Associate are located in the West Palm Beach office of Broad and Cassel. Both attorneys are members of the Firm's Real Estate Practice Group. Mr. Hertz offers a complete range of legal services to his clients. He serves as general counsel, providing day-to-day representation, to many local, national and international companies. Ms. Halpern has experience in the preparation of research memoranda and has researched numerous legal issues involving licensing agreements, trademarks, Internet legislation, employment discrimination, restrictive covenants and implied warranties. They can be reached at (561) 832-3300 or by e-mail at chertz@broadandcassel.com or shalpern@broadandcassel.com

USING ENFORCEABLE EXCULPATORY LANGUAGE

Learn what Florida Courts consider when deciding exculpatory claims and what you can do to protect your business

Many businesses and individuals use exculpatory contractual language, such as indemnification clauses and hold-harmless agreements, in order to protect themselves against future liability. However, as Florida law generally disfavors the use of such exculpatory language, drafters of these contractual provisions must become skilled artisans in order to navigate through the intricacies of Florida law. Even the most carefully drafted exculpatory language can be voided as shown in University Plan Shopping Center, Inc. v. Stewart, 272 So. 2d 507 (Fla. 1973) in which an indemnification clause in a lease could not protect a landlord from liability to a Tenant when a gas line exploded under the leased premises.

Florida courts consider multiple factors in deciding whether to enforce exculpatory clauses, including but not limited to:

- the language of the contract;
- The relative bargaining power of the parties;
- public policy considerations;
- statutory constraints; and
- the conspicuousness of the language in the contract.

Florida law prohibits a party from limiting itself from liability for intentional or reckless harm. In addition, contractual language that serves as limitation of liability for a party's own negligence is disfavored under Florida law, unless the intent of the parties is "clear and unequivocal." See Banfield v. Songea Louis, 589 So. 2d 441 (Fla. 4d DCA 1991).

Broad release language such as "indemnify against any and all claims" has been found unenforceable to relieve a party from its own negligence. It is recommended that a contractual provision limiting a party's liability be broadly drafted to protect against future contingencies, yet precisely stated to be enforceable in court. **BC**

Broad and Cassel, founded in January 1, 1946, has more than 140 lawyers and 200 support personnel located in seven offices throughout the state of Florida. Broad and Cassel has a national and international client base with offices located in Boca Raton, Fort Lauderdale, Miami, Orlando, Tallahassee, Tampa, and West Palm Beach. The Firm has extensive experience in a wide variety of practice areas including: Corporate and Securities; Real Estate; Estate Planning and Trusts; Commercial Litigation; Health Law; Taxation; Bankruptcy and Creditors' Rights; Labor and Employment; Intellectual Property Law; Computer and Technology Law; Appellate Law; White Collar Criminal and Civil Fraud Defense; and Special Assets.

PHONE: (561) 832-3300 **FAX:** (561) 655-1109
WEBSITE: [HTTP://WWW.BROADANDCASSEL.COM](http://www.broadandcassel.com)

BOCA RATON · FORT LAUDERDALE · MIAMI · ORLANDO · TALLAHASSEE · TAMPA · WEST PALM BEACH