MARTIAL MINDS

Are You Insured?

Before opening a martial arts school, it's important to find the right martial arts insurance program. However, too many martial artists find it too expensive, and either don't bother, or give up completely.

If you're intending to run a martial arts school, you really can't afford to do so without insurance to protect you from the possibility of financial loss, and more importantly, to cover your students in case they get injured. By not having insurance, you are taking a huge gamble, and ultimately you will be personally responsible for loss and damage to your property and students.

So, what if you can't afford insurance — is a Sports Waiver Form sufficient cover?

This issue came to trial in 2006 before the Supreme Court of British Columbia in the case of Robert Lorne Parker v Jodey Preston Ingalls (Pure Self Defence Studios). In that case, Parker sued Ingalls for negligence after he was injured during a demonstration of a shootfighting (MMA) technique. Parker alleged that Ingalls' negligence caused him a severe knee injury. Ingalls claimed he was not negligent, and that Parker had also agreed to waive any claim for damages against him.

Ingalls was a karate instructor who also introduced shootfighting to his class, including submission-grappling techniques. Parker's motivation in learning the art was physical fitness; he didn't enter competitions or sparring, to avoid getting hurt. On the date in question (in 2003), Parker and his friend were practising, and Ingalls came over to demonstrate the technique and its counter with Parker. It was alleged that during the counter-move, Parker suffered tearing and felt his knee 'pop'. He was taken to hospital and later received surgery as a result.

Ingalls testified that martial arts involved contact, and that he always discussed the possibility of injury with new students. He claimed he gave each student a document that explained the costs of instruction and the risk of injury. He said that from the start he used a system that involved explaining both the contract and the risk of injury to new students.

On the question of whether Ingalls was negligent, the judge said it was the duty of an experienced karate instructor such as Ingalls not to harm a student when demonstrating. The question was whether Ingalls breached the standard of care. The judge found that Parker's dislocated knee had resulted from excessive force, and speed, which prevented Parker from vocally telling Ingalls to stop or 'tapping out'. Accordingly, she found that Ingalls had failed to use the proper technique for the Achilles-hook. She also said that the risk of injury was forseeable to Ingalls, and that Parker's injury was caused by the force applied to his leg.

Injury insurance is a must-have for instructors

GETTY IMAGES

So, Ingalls was at fault. The question, then, is this: should Parker's claim fail because he signed a form waiving his right to sue for damages? Parker had denied any recollection that he discussed with Ingalls about his legal rights being waived, either when he first enrolled in the karate classes or when Ingalls began teaching shootfighting.

Ingalls, however, had a Student Enrolment Agreement Form that showed that Parker had signed it. Parker said that he did not know that the form was printed on both sides, and that it was not read or explained to him. He said he understood the document to be a contract where he had agreed to pay for instruction over a 12 months period.

The waiver of rights provisions read as follows: "Student further acknowledges the existence of some risk of personal injury in participating in the prescribed course of instruction and expressly agrees to assume the risk of all injuries, death or property damage and agrees to indemnify and save harmless Studio from and against any and all liability, including all expenses, legal or otherwise, incurred by Studio in the defense of any claim or suit."

However, the judge found that an injury such as that experienced by Parker was not covered by the waiver. She said that Parker, by engaging in shootfighting lessons, accepted certain risks of injury but he did not accept the risk of injury at the hands of his instructor, whom he trusted not to harm him. It was reasonable fro Ingalls to seek a waiver from accidents such as a student injuring himself as a result of falling or doing a move incorrectly, or being injured by another student. However, it was not reasonable for Ingalls to exclude himself from his own negligence where he was conducting a demonstration in which he had complete control over the safety of the student.

Notably, the judge also found that Ingalls had not explained to Parker the risks of injury involved in shootfighting, when he enrolled in that class. It was significant too that the waiver was "hidden" in the Student Enrolment Agreement Form, and not clearly spelled out.

This case illustrates that even if you have a waiver form signed by a student, you might still be found liable. Ultimately, every martial arts instructor should obtain insurance protection. A carefully worded and properly explained waiver could be a bar to a negligence lawsuit, but students must be given every opportunity to read waiver forms carefully and the terms must be sufficiently brought to their attention. Students must also be independently advised that they're waiving their rights to sue in case they are injured while participating.

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