

# New Opinion: Illegality of Exculpatory Clauses in Strict Liability Actions

PALM BEACH GARDENS, FLORIDA, UNITED STATES, November 18, 2022 /EINPresswire.com/ -- Partner [Julie H. Littky-Rubin](#) obtained a tremendous new opinion from the 4th District Court of Appeal in *Harrell v. BMS Partners, d/b/a Broward Motorsports*.

In 2018, Plaintiff purchased a Suzuki brand motorcycle from the retailer

Defendant. The signed sales contract contained exculpatory language, purporting to insulate the dealer, Broward Motorsports, from any responsibility for injuries sustained by the purchaser. Shortly after buying the motorcycle, Plaintiff was involved in an accident and sustained serious bodily injuries.

Soon after he took possession of the motorcycle, its front end of began to wobble, thrash, and violently turn as he was operating it. This caused the young man to lose control of the motorcycle and crash into a motor vehicle. Mr. Harrell sued Broward Motorsports both for its negligence in assembling, setting up, servicing, repairing, and/or inspecting the motorcycle, and for strict liability. In its capacity as a seller in the stream of commerce. Florida law allows innocent injured victims to sue entities like sellers and distributors in the stream of commerce (along with the product's manufacturer) for their "strict liability," when a product they are using does not perform as a reasonable consumer would expect it should.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
HARRELL v. BMS PARTNERS, LLC, d/b/a BROWARD MOTORSPORTS,  
Case No. 4D22-121

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Because of this well-settled public policy in Florida, the Court found as a matter of first impression, that an entity in the stream of commerce/chain of distribution may not use a contractual provision to shield itself from a claim of strict liability. The Court found that even if



the provision purports to insulate (in this case, the retailer) from strict liability claims, Florida law does not allow such a provision to be enforced.

The Court looked to the Florida Supreme Court's adoption of strict liability in Florida in 1976, and its reliance on the Restatement 2d section 402A, is supporting its holding. Its additional reliance on strict liability laws taken from other jurisdictions, buttresses that litigants may be able to use this decision as authority to help them in other states, to strike down these virulent pre-injury exculpatory clauses.

"After the Fourth District's decision, the law in Florida is shining a little brighter for consumers," said Littky-Rubin in an interview with the Daily Business Review.

Ms. Littky-Rubin welcomes questions regarding the opinion, she can be reached at 561-899-2144 or [jlittkyrubin@clarkfountain.com](mailto:jlittkyrubin@clarkfountain.com).

#### About Julie H. Littky-Rubin

Julie H. Littky-Rubin is a Board-Certified Appellate Attorney and Partner of the Plaintiff Personal Injury Powerhouse, [Clark, Fountain, La Vista, Prather, Littky-Rubin & Whitman](#). Experienced in all aspects of civil trial law, Julie leads the firm's appellate practice and provides trial support to the firm. She prepares legal memoranda and makes oral arguments by skillfully synthesizing complex legal concepts into something powerful and understandable.

In addition, Julie manages an extensive appellate practice, crafting winning appellate briefs, and presenting effective oral arguments. Many firms and attorneys throughout Florida refer to Julie for her expertise in complex legal matters and retain her for their appellate and trial support needs.

#### Clark, Fountain, La Vista, Prather, Littky-Rubin & Whitman

Headquartered in Palm Beach Gardens, Florida, Clark, Fountain, La Vista, Prather, Littky-Rubin & Whitman has been representing clients in all areas of personal injury litigation, including automobile and trucking crashes, product liability, wrongful death, and medical malpractice, and appellate practice law for four decades. The attorneys of Clark Fountain have earned more than \$1 Billion in Record-Breaking Verdicts and Settlements in Florida and throughout the United States. For more information, call our office at 561-899-2144.

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