

# 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](#)

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Centennial Place, East Tower  
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T2P 0R3

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F 403.266.1395

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

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H3B 5H4

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22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

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F 416.367.6749

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