

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Businesses Are Not Protected By Parent's Waiver Of Child's Claim

By Kellie Lecznar

In *Woodman v. Kera, L.L.C.*, _ Mich _ (2010), the Michigan Supreme Court held that a parent's pre-injury liability waiver signed on behalf of their child is unenforceable under Michigan law. Businesses can no longer rely upon a parental waiver for liability protection if a child is injured on the premises.

Woodman involved five-year old Trent Woodman. Trent's parents held his birthday party at Bounce Party, operated by Kera, L.L.C. Bounce Party is an indoor play area containing inflatable play equipment. Prior to participating, Bounce Party required each child's parent to sign a liability waiver. The waiver was signed by Mr. Woodman, Trent's father. It provided that Bounce Party and Kera, L.L.C. would be held harmless for any injuries sustained by Trent as a result of his participation at Bounce Party.

During the party, Trent jumped off a slide and broke his leg. Trent's mother filed a negligence-based lawsuit against Defendant on behalf of Trent. Defendant argued that Plaintiff's claims were barred by the signed waiver. Plaintiff argued that the waiver was invalid because a parent could not waive his/her child's claims. The Michigan Court of Appeals and the Michigan Supreme Court agreed with Plaintiff.

The Michigan Supreme Court reasoned a parent cannot contractually bind a minor at common law. Mr. Woodman had no greater authority to waive the rights of his son than he had to waive the rights of any other non-consenting third party. It is well settled law that a minor lacks the capacity to contract. The Court refused to change this rule and permit a parent to do what a minor could not do on his own behalf - enter into a contract which binds the minor.

SECRET WARDLE NOTES:

While waivers signed by parents on behalf of their children are unenforceable under *Woodman*, indemnity agreements are enforceable. Therefore, businesses can have parents (and party hosts) sign indemnity agreements as a condition of allowing their children to use a facility such as Bounce Party. If a child is injured, the child can still sue the facility for negligence, but the facility can then sue the parents (or party host) for indemnity.

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The *Woodman* Court also declined to disregard Michigan's public policy of protecting children. Defendant argued that the enforcement of parental waivers would afford protection for businesses from litigation. Defendant argued that it would promote the availability of a wide range of activities for children. The Court noted its concerns with Defendant's position of the potential hidden costs which might occur. For example, if such waivers were enforced, business owners would have little incentive in maintaining their property, resulting in injuries to children. In order to encourage greater care in preventing negligent injuries to children, the Court held parental waivers unenforceable.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

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CONTRIBUTORS

Premises Liability Practice Group Chair

Mark F. Masters

Premises Liability Practice Group Co-Chair

Caroline Grech-Clapper

Editor

Bonny Craft

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